



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	02.12.2021
DELIVERED ON	23.12.2021

WEB COPY

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.M.A. (MD) .No.429 of 2020

and

C.M.P. (MD)No.5083 of 2020

M/s.Bhuvaneswari Textiles Private Limited,
Thadicombu, Dindigul District,
Represented by its Chairman Managing Director,
Thiru.R.R.Arvind ...Appellant/Petitioner

Vs.

The Deputy Director (Ins.II),
Sub Regional Office,
Employees State Insurance Corporation,
4th Main Road, K.K.Nagar,
Madurai - 625 020. ...Respondent/Respondent

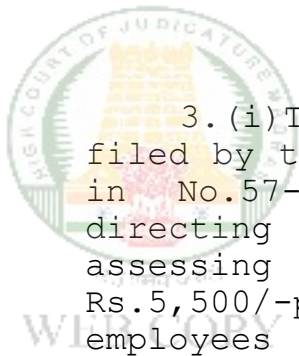
PRAYER: Civil Miscellaneous Appeal filed under Section 82 of E.S.I. Act, 1948, against the order and decree, dated 13.07.2020 made in E.S.I.O.P.No.38 of 2011 on the file of the Employees State Insurance Court (Labour Court), Madurai.

For Appellant : Mr.P.R.Raman, Senior Advocate,
for Mr.M.Elanchezhian
For Respondent : Mr.R.Ravikumar

ORDER

This Civil Miscellaneous Appeal has been filed against the order and decree, dated 13.07.2020 in E.S.I.O.P.No.38 of 2011 passed by the learned Labour Judge, (Employees State Insurance Court), Madurai.

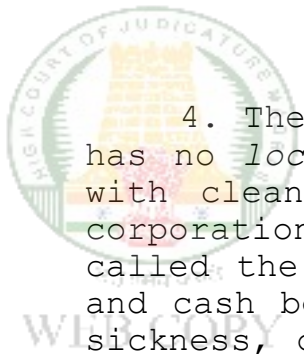
2. The appellant/petitioner has filed a petition in E.S.I.O.P.No.38 of 2011 under Section 75(i) of the E.S.I.Act, to set aside the order of the respondent in No.57-00-047369-000-0101-INS.II/SRO/MDU/MEC, dated 31.01.2011 directing the petitioner to remit a sum of Rs.13,94,250/-for the period from 04/2008 to 03/2009 and to grant permanent injunction in respect of the said order.



3.(i)The case of the petitioner is that the petition has been filed by the petitioner challenging the order issued by respondents in No.57-00-047369-000-0101-INS.II/SRO/MDU/MEC, dated 31.01.2011 directing the petitioner to pay contribution of Rs.13,94,250/- assessing contribution on ad hoc basis at an assumed wage of Rs.5,500/-per month per employee from 04/2008 to 03/2009 for 325 employees as per the details of number of employees mentioned in E.S.I. coverage intimation letter in Form C-11 dated 19.12.2011. The assumed average wage is based on E.S.I.C. office memorandum dated 19.04.2007. Following the court verdict and court direction only the assessment of contribution for the period from 04/2008 to 03/2009 is now done. The petitioner mills provided all medical benefits to its employees. When the respondent attempted to implement the E.S.I. scheme to the employees of the mills without extending the benefits as enunciated under the Regulations and the scheme under the Act, the union made representation to the Director General of E.S.I. Corporation through its communication, dated 01.07.2006 expressing their unwillingness for the coverage.

3(ii).Instead of appreciating the representation of the union, the respondent directed the petitioner mills to make deduction from the salary of the employees and remit the contributions to the corporation. Aggrieved over the same, the union filed W.P.No.24082 of 2006 before this Court and the same was disposed of with a direction that the first respondent should dispose of the representation of the union within a period of 8 weeks from the date of receipt of the order. Instead of complying the letter and spirit of the direction issued by this Court, the respondent has issued C-18(Ad hoc) notice in No.57/47369/11/INS II/MEC/119/09 dated 04.11.2009 for the period between 04/2008 and 03/2009 for Rs.13,94,250/-. The petitioner was directed to appear for personal hearing on 19.11.2009. In the personal hearing the respondent warned the petitioner by stating that unless and until any order of stay is in force, the respondent will proceed further and pass orders under Section 45(A) of E.S.I.Act. Subsequently, the petitioner mills filed E.S.I.O.P.No.44 and 69 of 2008 and obtained interim stay in I.A.No.124 and I.A.No.191 of 2008 respectively.

3(iii).The respondent has assumed the number of employees and the wages while passing orders and therefore the order is clearly in violation of Section 45(A) of E.S.I. Act. The claim made for the period from 04/2008 to 03/2009 to the tune of Rs.13,94,250/-is unfair and unjust. For the aforesaid period the respondent has not submitted the visit note which is the basic record on which the claim is to be made and the petitioner could not be able to ascertain the computation of contributions. Under Section 45(A) of the E.S.I. Act, the respondent is bound to pass orders determining the actual contributions payable by the petitioner. The petitioner is not liable to pay the contribution amount as claimed by the respondent.



4. The respondent has stated in the counter that the petitioner has no *locus standi* to file the present petition, he has not come with clean hands and suppressed the real facts. The respondent corporation has been established by an enactment of the Parliament called the Employees' State Insurance Act, 1948 to provide medical and cash benefits to the workers and their families in the case of sickness, disability due to accidents, maternity etc. For providing these benefits, the respondent corporation collects contribution at the rate of 1.75% of the wages of each worker, covered/coverable under the said Act and 4.75% of the total wages of all such workers from the employer. The case relates to recovery of contributions. The petitioner unit was covered under the E.S.I. Act with effect from 01.08.2001 on the basis of a Government of India (Ministry of Labour) Notification bearing No.S/38013/11/2001/SS-1 dated 20.06.2001. There is no evidence to show any medical facilities provided by the employer to the workers. The representation of the petitioner was duly replied on 26.12.2006. The petition in W.P.No.24848 of 2007 was filed in the name of the worker's union was also dismissed by this Court on 03.10.2007 on merits. Non-availing of E.S.I. benefits is no excuse for non-payment of contributions. In this connection, no evidence was produced by the employer at the time of personal hearing. The claim has been decided after affording an opportunity of personal hearing and the speaking order, dated 31.01.2011 has been passed and the principles of natural justice is fully complied with in this case. Hence, the respondent corporation is praying to declare that the order, dated 31.01.2011 under Section 45(A) of E.S.I. Act is perfectly valid and the present appeal is liable to be dismissed with Costs.

5.The relevant portion of the Judgment reported in **2003(2) SCC 138 page 24 in the case of Bharagath Engineering Vs. R.Ranganayaki**, is extracted hereunder:

"It is the obligation of the employer to pay the contribution from the date the Employees' State Insurance Act casts a statutory obligation on the employer to insure its employees. That being a statutory obligation, the date of commencement has to be from the date of employment of the concerned employee."

6.As per Section 39(2) of the E.S.I. Act, the contribution shall be paid at such rates as may be prescribed by the Central Government.

7.The ingredients of Section 40(1) of E.S.I. Act, is extracted hereunder:

"40.Principal employer to pay contributions in the first instance:

(1)The Principal employer shall pay in respect of every employee, whether directly



employed by him or by or through an immediate employer, both the employer's contribution and the employee's contribution."

Therefore, contribution to E.S.I. Corporation is mandatory and voluntary.

WEB COPY

8.It is clear that the petitioner's Mill was brought under coverage of E.S.I. Act and remitting the contribution from 01.04.2009. The notice was issued for the period of April 2008 to March 2009.

9.The grounds raised for challenging the coverage under the Act is that the petitioner's Mill providing all medical benefits to its employees on par with Government employees. But, it is not a ground for exemption from the contribution to E.S.I. Corporation. Further the appellant has not produced any documents to show that their company is providing medical benefits to its employees.

10.As Chapter VIII of E.S.I. Act, the Government may exempt by notification certain companies. But the company cannot claim exemption as a matter of right.

11.The impugned order highlighted the failure on the part of the petitioner. The employer has failed to produce the following records for verification.

(i).Statement of contribution payable on wages paid to their employees as per wages records from April 2008 to March 2009.

(ii).Attendance and wages register for the period from April 2008 to March 2009.

(iii).Ledger, Cash book and audited Trading, profit and loss account and balance sheet for the period from April 2008 to March 2009.

12.In the order passed by the Court below, it is clearly stated that the Insurance Inspector visited the factory on 18.10.2001 with prior intimation sent by registered post for verification of records for coverage of the factory under the E.S.I. Act. In the order Ex.P.4, the respondent also gave emphasis to the fact that no record was produced by the employer regarding payment of wages from the period April 2008 to March 2009 and the employer has reportedly started implementing the E.S.I. Scheme in their factory with effect from 01.04.2009 on their own. It is further stated that the E.S.I. Corporation provides five main benefits and a number of other minor benefits, medical benefit is one of the five main benefits and there is no evidence that the employer was providing any medical or other benefits in the instant case.

13.Even now, the appellant/employer has not produced any of the above documents.



14.As per discussion in the order passed in E.S.I.O.P.No.38 of 2011, it is quiet clear that the Sec. 45(A) order Ex.P.4 has been passed for the period from 4/2008 to 3/2009. As stated earlier, the petitioner's management is duty bound to remit contributions from 03.10.2007 earmarked by this Court in the clarification petition which becomes final. As such the employer started paying E.S.I. contribution from 01.04.2009 at their own whims and fancies cannot absolve them of their liability to pay contributions from 04/2008 to 03/2009 which is the period coming after 03.10.2007 earmarked by this Court.

15.The Labour Court, E.S.I. Court, Madurai, has rightly fixed liability on the appellant/petitioner. This Court has no valid reason to interfere with the findings passed by the Court below.

16.Accordingly, this Civil Miscellaneous Appeal stands dismissed by confirming the order and decree, dated 13.07.2020 in E.S.I.O.P.No.38 of 2011 passed by the learned Labour Judge, (Employees State Insurance Court), Madurai. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

ksa

Note:In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

The E.S.I. Court/
Labour Court, Madurai.

COPY TO:

The Section Officer, V.R.Section,
Madurai Bench of Madras High Court, Madurai. (2 COPIES)

+1 CC to M/s.R.RAVIKUMAR, Advocate (SR-40321[F] dated 23/12/2021)
+1 CC to M/s.K.HEMAKARTHIKEYAN, Advocate (SR-40312[F] dated 23/12/2021)

C.M.A. (MD) .No.429 of 2020
23.12.2021

RD(6.01.2022) 5P 6C

<https://hcservices.ecourts.gov.in/hcservices/>