



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	26.11.2021
DELIVERED ON	17.12.2021

WEB COPY

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.M.A. (MD) .No.668 of 2019

and

C.M.P. (MD)No.4146 of 2020

M/s.P.E.Industries,
Through its Partner N.Chokalingam,
Masthanpatti,
Madurai - 20.

...Appellant/Petitioner

Vs.

1. The Employees State Insurance Corporation,
Through its Joint Director,
Sub-Regional Office, 4th Main Road,
K.K.Nagar, Madurai - 625 020

2. The Recovery Officer,
The Employees State Insurance Corporation,
Through its Joint Director,
Sub-Regional Office, 4th Main Road,
K.K.Nagar, Madurai - 625 020.

...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 82(2) of the Employees State Insurance Corporation, to set aside the award passed in E.S.I.O.P.No.81 of 2009 dated 24.10.2018 on the file of the E.S.I.Court (Labour Court), Madurai, by allowing the Civil Miscellaneous Appeal.

For Appellant :Mr.R.Aravindan
For R-1 & R-2 :Mr.I.Pinayagash

ORDER

This Civil Miscellaneous Appeal has been filed to set aside the award passed in E.S.I.O.P.No.81 of 2009, dated 24.10.2018 on the file of the E.S.I.Court (Labour Court), Madurai

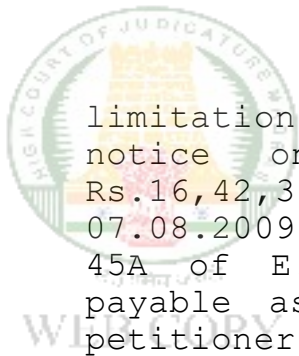
2.The appellant/petitioner has filed a petition in E.S.I.O.P.No.81 of 2009, under Section 75(1)(g) of the E.S.I. Act, to declare the order passed by the 1st respondent under Section 45 (A) of the E.S.I.Act, dated 07.10.2009 as illegal and without jurisdiction.



3.The case of the appellant/petitioner is that the petitioner is a partnership firm manufacturing all springs and other allied products and having its factory at Masthanpatti Village which is not a place notified under the E.S.I. Act. The Inspector of the 1st respondent E.S.I. Corporation inspected the petitioner's factory and advised the petitioner to pay contribution for their workers from 01.04.2004, on the basis of the same the 2nd respondent had issued a letter, dated 20.01.2005 by allotting a code No.57-65029-56 and directed to pay contribution for their workers from 01.04.2004. Though the factory of the petitioner is functioning in a non-notified area, the petitioner has been paying the contribution under E.S.I. Act, under protest. Further, the petitioner has made a request to the respondent to decide the jurisdictional issue and the respondent has not chosen to decide the same till the date of filing of the present petition. The respondent E.S.I. Corporation has made a claim of Rs.7,56,275/- towards E.S.I. contribution payable for the period from 4/2004 to 3/2007 under the Heads of contract wages and a claim of Rs.8,86,124/-towards manufacturing labour charges for the very same period. In the inspection report, no particulars were given regarding the number of contract workers employed by the petitioner through independent contractors. The petitioner is not liable to pay contribution of Rs.7,56,275/-as per order, dated 07.10.2009 under Section 45(A) of E.S.I.Act. The claim of the respondent corporation, the assessment made under Section 45(A) of E.S.I. Act is illegal and unsustainable.

4.The respondent has filed counter and stated that 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 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 coverage and claiming contributions. If stay is granted against such recovery of contributions, then the respondent corporation will not be able to provide benefits to the needy workers and their families.

5.It is further stated that in all the correspondence with the respondent corporation till date, the petitioner/employer has mentioned the address and location of the factory only as "No.3-A, Annai Street, Seeman Nagar, Karuppayurani P.O., Madurai - 20 and only in the present petition the petitioner has mentioned the location of the factory as "Masthanpatti". The dispute has been raised in the matter of coverage for the first time with the wrong allegation that the factory is located in Masthanpatti without



limitation. The respondent E.S.I. Corporation has issued C-18 notice on 15.05.2009 proposing to claim contribution of Rs.16,42,399/-. After hearing the petitioner on 08.06.2009 and 07.08.2009 and 11.08.2009 a speaking order was passed under Section 45A of E.S.I. Act on 07.10.2009 determining the contribution payable as Rs.7,56,275/-and the same was not responded by the petitioner. Hence, recovery notice in Form C-19 dated 26.10.2009 was issued by the respondent. The petitioner is well aware of the E.S.I. liability, the present petition filed is an after thought and the same is liable to be dismissed.

6.The jurisdiction point is not pressed by the appellant/petitioner.

7.The only issue to be decided is that Whether the appellant/petitioner is not liable to pay compensation for their workers?

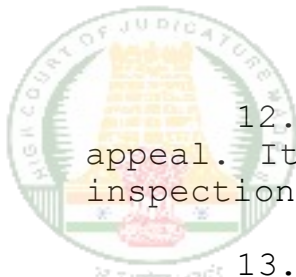
8.The ingredients of Section 45(A) of E.S.I.Act is extracted hereunder:

"45-A.Determination of contributions in certain cases: Where in respect of a factory or establishment no returns, particulars, registers or records are submitted, furnished or maintained in accordance with the provisions of Section 44 or any [Social Security Officer] or other official of the Corporation referred to in sub-section (2) of section 45 is [prevented in any manner] by the principal or immediate employer or any other person, in exercising his functions or discharging his duties under Section 45, the Corporation may, on the basis of information available to it, by order, determine the amount of contributions payable in respect of the employees of that factory or establishment."

9.Every employer has to contribute subscription to the E.S.I. for their employees. It is a mandatory provision. The employer has to main register for his employees. During the time of inspection, there were eight persons working. But, register was not produced to the officials by the employer.

10.It is not the case of the appellant that only minimum members are working in his factory and contribution towards is not necessary. He raised an objection only regarding the jurisdiction.

11.As per the Registration certificate the factory address is Seeman Nagar, Madurai which comes under the jurisdiction of E.S.I. Act. Masthanpatti is only an additional place of income.



12.Further, the inspection report also filed in this appeal. It is revealed from the inspection report, at the time of inspection more than 10-employees were working in the factory.

13.Further, when the appellant/petitioner questioned the Section 45(A), notice has to establish that his factory is not come under purview of E.S.I. Act.

14.The E.S.I. Court dismissed the petition on the ground that the petitioner has not produced any document to show that his factory not comes under the purview of the E.S.I.Act. Even then, the appellant has not filed any register to show that his factory has minimum employees. There were no pleadings in the petition also.

15.In view of the above discussions, this Court finds that the Labour Court, Madurai, has rightly dismissed the petition.

16.Finally, this Civil Miscellaneous Appeal is dismissed by confirming the order, dated 24.10.2018 in E.S.I.O.P.No.81 of 2009 passed by the learned Judge, E.S.I. Court (Labour Court), Madurai. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// 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 Judge,
(E.S.I. Court) Labour Court,
Madurai.

+1 CC to M/s.I.PINAYGASH, Advocate (SR-39553[F] dated 20/12/2021)

Order made in
C.M.A. (MD) .No.668 of 2019
17.12.2021