



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.12.2021

CORAM :

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THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.M.A. (MD)No.97 of 2018

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

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

...Appellants/Respondents

Vs.

P.Krishnamoorthy

...Respondent/Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Section 82(2) of ESI Act, 1948, to set aside the decree and Judgment made in E.S.I.O.P.No.14 of 2009, dated 05.07.2017 passed by the ESI Court (Labour Court), Madurai and allow the Civil Miscellaneous Appeal.

For Appellants :Mr.I.Pinayagash

For Respondent :Mr.G.Arunachalam

JUDGMENT

This Civil Miscellaneous Appeal has been filed to set aside the decree and Judgment made in E.S.I.O.P.No.14 of 2009, dated 05.07.2017 passed by the ESI Court (Labour Court), Madurai.

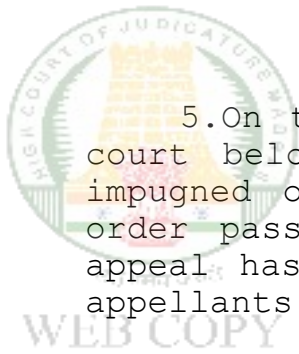
2.The respondent herein, as petitioner, has filed a petition under Section 75(1)(a)(g) of the ESI Act, to declare the order and impugned notice of the 2nd respondent is null and void and to declare that the notice of the Recovery Officer, ESI Corporation, Madurai in No.57-RRC/5368/SRO/MDU/08, dated 24.12.2008, for arrest of the applicant for Civil Provision is null and void and have to be set aside and for granting an order of permanent stay restraining the respondents their man claiming through them from collecting a sum of Rs.41,176/- with interest sought to be collected in the wake of the



order referred in Cl(a) to supra and to launch any criminal prosecution on the basis of the order refer in No.57-RRC/5368/SRO/MDU/08, dated 24.12.2008 and for cost.

3.It is mentioned in the petition that the petitioner was one of the partner of erstwhile M/s.Lakshmi Match Works, Sivakasi, a closed concern and the 2nd respondent issued the impugned notice against him. M/s.Lakshmi Match Works was closed in the year 1980 itself which consisted of three partners. After closure of the concern, the entire machineries and articles were sold and the partnership was also dissolved. The one of the main partner, the mother of the petitioner was also expired. After 1980, the concern never received any correspondence from the respondent corporation and informed that all the dues of the Government including the ESI corporation were completely settled. While so, the petitioner received the impugned notice without passing 45A order from the respondent corporation stating that for the non payment of arrears of ESI contribution of Rs.41,176/- due with future interest. After receipt of the notice, the petitioner sent a letter dated 02.01.2009 to the respondent requested to furnish particulars regarding the claim. The 2nd respondent informed that the said claims are relating to the year 4/78, 9/86, 10/83 to 1/85 and 3/81 to 11/83 without any other particulars. After closure of the concern nearly 30 years, the question of non-payment of contribution will not arise. Without giving any opportunity to the petitioner and without passing any order u/s.45A of ESI Act to arrive a sum of Rs.41,176/- with interest is completely against the provisions of law and the order is nullity and void and barred by limitations and therefore, the respondent prayed to set aside the recovery proceedings.

4. On the side of the respondents, the petitioner unit was covered under the ESI Act with effect from 1972. Some claims raised by the respondents are found to be still pending. Hence a notice in Form C-18, dated 06.11.1987 was issued proposing to charge a contribution of Rs.8262/-. Neither the petitioner nor his representative appeared for the personal hearing, hence 45A order was issued on 16.03.1989. Then notice for recovery in Form No.ESI-CP2, dated 28.05.1996 was issued for Rs.16,057/-. Another C-18 notice issued on 27.05.1987 for an amount of Rs.9244.30 for the period from 3/81 to 11/83 based on that 45A order dated 29.10.87, and then 29.01.1987 were issued. The petitioner failed to remit the contribution for the period from 6/83 to 1/85, the petitioner is liable to pay contribution, as claimed by the respondents. Multiple remedies have been claimed by the employer by challenging the 45A orders through the single petition which is also legally not permissible. The petitioner unit was closed with effect from 4/1987 as per records and not from 1980. The contributions have been determined after proper notices and after giving opportunities of hearing by following the principles of natural justice. Hence, the petition is liable to be dismissed with cost.



5. On the basis of the available rival evidence on record, the court below has allowed the petition and thereby set aside the impugned order of demand made by the respondents. Against the order passed by the court below, the present civil miscellaneous appeal has been preferred at the instance of the respondents, as appellants.

6. Heard Mr. I. Pinayagash, learned counsel for the appellants and Mr. G. Arunachalam, learned counsel for the respondent and perused the materials available on record.

7. The learned counsel for the appellants contended that the C-18 notices are issued to the appellants after a long delay is erroneous and arbitrary. Under Section 77(a) of the ESI Act, there is no time limit prescribed to claim the arrears of contribution. The learned judge has failed to consider the issue as per the provisions of the Act and allowed the petition. Hence, he prayed for dismissing the petition.

8. The learned counsel appearing for the respondent/petitioner has contended that court below after considering all the available evidence on record, allowed the petition and therefore, the order passed by the court below is perfectly correct and the same does not require any interference.

9. According to the appellants, under Section 77 (a) of the ESI Act, there is no time limit prescribed to claim the arrears of contribution. But the first appellant claim contribution from the respondent from 01.04.1978, 30.09.1986 and he sent C18 notice on 29.01.1987 and further he issued the show cause notice on 24.12.2008. After thirty years, the first appellant issued the show cause notice and has not stated the sufficient causes for the inordinate delay in sending the C18 notice on 29.01.1987. Even though there is no limitation for taking action against the establishment, there should be a reasonable time for recovering the amount.

10. As per judgment of Hon'ble Supreme Court of India in ***E.S.I.C. Vs. C.C.Santha Kumar***, reported in (2007 LAB I.C 597) wherein, in paragraph Nos.34 and 35 held as follows:

34.A "reasonable period" would depend upon the factual circumstances of the case concerned. There cannot be any empirical formula to determine that question. The Court/authority considering the question whether the period is reasonable or not has to take into account the surrounding circumstances and relevant factors to decide that question.



35. In *State of Gujarat v. Patel Raghav Natha* (1969 (2) SCC 187) it was observed that when even no period of limitation was prescribed, the power is to be exercised within a reasonable time and the limit of the reasonable time must be determined by the facts of the case and the nature of the order which was sought to be varied.....''.

11. It is seen from the records that already in the year 1987, the respondent/Ms. Lakshmi Match Works was closed. Even though Act is beneficiary for the works under the ESI Corporation enhanced to spend beneficiary of the workers of the closed establishment, the ESI Corporation has to take steps in reasonable time. Without any reasons for the delay, they issued show cause notice on 24.12.2008, after an inordinate delay. Hence, the court below, after considering all the contentions raised on either side, has rightly passed its order. As per Supreme Court judgment, the delay is huge, this Court finds no valid reason to interfere with the award passed by the Court below.

12. In fine, this civil miscellaneous appeal is dismissed. The impugned order passed in E.S.I.O.P.No.14 of 2009 by the ESI Court (Labour Court), Madurai, is hereby confirmed. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

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Sub Assistant Registrar (CS)

vsd

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
ESI Court (Labour Court),
Madurai.

+1 CC to M/s.G.ARUNACHALAM, Advocate (SR-36928[F] dated 02/12/2021)

+1 CC to M/s.I.PINAYGASH, Advocate (SR-36964[F] dated 02/12/2021)

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