IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.08.2021

PRONOUNCED ON : 20.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CMA.Nos.1449 and 1450 of 2017
CMP.Nos.7703 and 7704 of 2014

(Through Video Conferencing)

1.M/s. Nagapattinam Sivasakthi Chit Funds Private Limited
by its Director, K.Elangovan, Nagapattinam

...Appellant/ Petitioner-CMA.1449/2017

2.M/s. Nagai Sivasakthi Benefit Fund Limited,
by its Director, K.Elangovan, Nagapattinam

...Appellant/Petitioner-CMA.1450/2017

Vs

1.The Zonal Director,
Employees State Insurance Corporation,
No.143, Sterling Road, Chennai – 600 034.

2.The Inspector,
Employees State Insurance Corporation,
Kumbakonam.

...Respondents/Respondents-Both CMAs

Prayer:- These Civil Miscellaneous Appeals have been filed, against the orders, dated 28.03.2017, passed in ESIOP.Nos.1 and 2 of 2009, by the Employees State Insurance Court (Labour Court), Cuddalore.

For Appellants : Mr.P.Valliappan-Both CMAs

For Respondents : Mr.Ramachandra Murthy-Both CMAs

JUDGEMENT

1.These Civil Miscellaneous Appeals have been filed, against the orders, dated 28.03.2017, passed in ESIOP.Nos.1 and 2 of 2009, by the Employees State Insurance Court (Labour Court), Cuddalore.

2. The facts, leading to filing of these Civil Miscellaneous Appeals, are that the 1st Appellant Company is a Private Limited Company and the 2nd Appellant is a Public Limited Company, both registered under the Companies Act, 1956, in 1993 and 1994 respectively and both the Companies are non-banking financial Companies. For non compliance of the provisions of the ESI Act, show cause notices, in Form C18, dated 13.09.2002 were issued to them, bringing them under the coverage of the ESI Act, 1948. The said Companies had sent representations dated 18.12.2002. Thereafter, the Respondent Corporation had passed orders, dated 23.06.2005, under Section 45A of the ESI Act, calling upon them to pay Rs.52,924/- each towards arrears of contribution. As against the same, the Appellants had filed ESIOP.Nos.1 and 2 of 2009 before the court below, contending that the Companies are not coming under the purview of the provisions of the ESI Act and hence, the orders impugned therein are illegal. The said Petitions were contested by the Respondent Corporation, by filing separate counters, supporting the impugned orders therein. Before the court below, Ex.P1 to Ex.P3 were marked and PW.1 was examined, on the side of the Appellants and Ex.R1 to R8 were marked and RW.1 and RW.2 were examined, on the side of the Respondent Corporation. In and by the impugned orders, the said Petitions were dismissed. Hence, these Civil Miscellaneous Appeals have been filed.

3. These Civil Miscellaneous Appeals have been admitted on the following substantial question of law:-
   i. Whether the ESI Court is right in holding that the Appellant would be covered by the provisions of the ESI Act, by clubbing the employees of two different entities, solely on the ground of Geographical Unity?

4. This Court heard the submissions of the learned counsel on either side.

5. The learned counsel for the Appellants has submitted that since both the Companies are separate legal entities, they cannot be clubbed together for the purpose of determining the contribution payable to the ESI Corporation and that without considering the evidence of RWs.1 and 2 and Ex.P1 to P3, which clearly support the case of the Appellants and when each of the Companies have employed less than 20 employees, the court below erred in dismissing the petitions, but ought to have held that the Appellants are not liable to pay any contribution. He would rely on the decisions reported in AIR 1959 MADRAS 457 (S.M.Sriramulu Naidu Vs. Employees State Insurance Corporation), AIR 1969 MADRAS 155 (V.Mohamed Haneef and Co. and Others Vs. Regional Director, Employees' State Insurance Corporation), AIR 1970 DELHI 182 (Employees' State Insurance Corporation Vs. Peter Sewing Machine Co. etc.), 1973 (1) L.L.N.245 (Kaithari

Achagam Vs. Employees' State Insurance Corporation), 2006 (4) L.L.N.339 (India Motor Parts and Accessories, Ltd, Madras Vs. The Regional Director, Employees' State Insurance Corporation).

6. Per contra, the learned counsel for the Respondent Corporation, by filing separate counter affidavits, would submit that since the Companies are doing all types of businesses, such as banking, real estate, jewellery shop, the activities of the Companies are multi folded, involving a work force, numbering more than 20 persons and both the Companies are functioning in one and the same premises and both the Director and the Managing Director, who are also one and the same persons, of the said Companies, have been drawing their salaries in common and therefore, clubbing of the two firms M/s.Nagai Sivasakthi Benefit Funds (P) Ltd and M/s.Sivasakthi Chit Fund (P) Limited and classifying them as Unit I and Unit II and consequently, bringing them under the provisions of the ESI Act, thereby ordering them to pay the arrears of contribution, is legal. The learned counsel would further submit that since, both the Companies have employment Unity and the salaries, allowances, travelling expenses and bata for the persons employed in the Unit I were paid from the funds of Unit II and vice versa, coverage of both the Companies, by clubbing with each other under the provisions of ESI Act 1948 is in order and as such the Employer is liable to make compliance under the provisions of ESI Act 1948 and accordingly, the Petitions were rightly dismissed by the impugned orders.

7. This Court considered the submissions of the learned counsel on either side and also perused the materials placed on record, including the relevant provisions of law.

8. According to the Appellants, since both the Companies are separate entities and having less than 20 employees and the income tax returns have been filed separately, clubbing the employees of two different entities together under the provisions of the ESI Act and consequently, ordering to pay the arrears of contribution, is illegal. On the other hand, according to the Respondent Corporation, since both the Companies are functioning under one and the same premises and there were more than 20 employees employed and the salaries, maintenance expenses, transportation expenses, batta and incentives were also being paid from the Office of the Appellants, classifying them as Unit I and Unit II, both the Companies were clubbed together under the provisions of the ESI Act and accordingly, ordered to pay the arrears of contribution, which is legal.

9. The only substantial question of law, which has been raised by the Appellants before this Court, is as to whether the ESI Court is right in holding that the Appellant would be covered by the provisions of the ESI Act, by clubbing the

employees of two different entities, solely on the ground of Geographical Unity?

10.In this case, as per the survey reports, dated 22.07.1998, 10.05.2002, 13.05.2002 and 14.05.2002, it was found by the Respondent Corporation that the two Units are coverable under the ESI Act, clubbing them together. Because of the non compliance of the provisions of the ESI Act, show cause notices, in Form C18, dated 13.09.2002 were issued to the Appellants to show cause as to why contributions as per the details of calculations should not be assessed as provided under Section 45A of the Act. Sufficient opportunity of personal hearing to the Appellants was given and their representations were considered. Since both the Units were functioning in one and the same building, there was Geographical Unity, there was also Managerial Unity as seen from General Ledgers Folio, the services of the employees of one Unit was utilized by the other Unit, there was also Functional Unity, as per the Memorandum and Articles of Association and there were more than 20 employees working and relying on the survey reports, the Respondent Corporation had passed the impugned orders under Section 45A of the ESI Act, calling upon the Appellants to pay arrears of contribution.

11.The court below, considering Ex.R5, General Ledger, had found that all the employees of both the Units were paid with salaries, bonus, incentives, bata, maintenance expenses, by the Appellant Company, namely, M/s.Nagapattinam Sivasakthi Benefit Funds Private Limited and the Appellants did not rebut Ex.R5, by letting in any oral or documentary evidence. Further, it was found by the court below that there is no evidence, such as, attendance register and salary ledger, produced by the Appellants to show that there were separate employees, numbering less than 20 and the employees of both the Units were paid salaries separately and accordingly, upheld the order of the Respondent Corporation, clubbing both the Companies together and consequently, ordering them to pay the arrears of contribution, not only on the ground of Geographical Unity, but also on the other grounds as stated above.

12.As rightly pointed out by the court below, this Court is of the view that since it is established that there were more than 20 employees, the activities of the Appellants come under the purview of 2(12) of the ESI Act and that since the Appellants have not questioned the reports of the Respondent Corporation, holding that there were more than 20 employees working and they were paid salary separately, by way of rebuttal evidence, they are not entitled to dispute the contribution amount, ordered to be paid to the Respondent Corporation. On examination of the evidence of the parties, the court below had rightly found that the applications filed by the Appellants had no substance and were liable to be dismissed and accordingly, dismissed, by the impugned orders.

13.In view of the above, this Court is of the firm view that the Appellants have miserably failed to prove their case, by adducing valid oral and documentary evidence. On the other hand, the Respondent Corporation has proved that the Appellant would be covered by the provisions of the ESI Act, by clubbing the employees of both the Companies, by valid evidence.

14.An appeal under Section 82 of the ESI Act lies only when it involves a substantial question of law. Section 82 of the Act reads as under:-

> "82. Appeal.-(2) An appeal shall lie to the High Court from an order of an Employees' Insurance Court if it involves substantial question of law."

15.Looking to the facts and circumstances of the case, this Court is unable to hold that these appeals do not give rise to any substantial question of law and the one raised is a mixed question of law and question of fact, arising from the documents and pleadings. Having not been able to find as to how the impugned orders of the ESI Court are illegal, these Civil Miscellaneous Appeals deserve to be dismissed.

16.In fine, these Civil Miscellaneous Appeals are dismissed. No costs. Consequently, the connected MPs are closed.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

Srcm

To

1.The Judge, The Labour Court, Cuddalore.

2.The Zonal Director,
Employees State Insurance Corporation, Chennai.

3.The Inspector,
Employees State Insurance Corporation, Kumbakonam.

+2ccs to Mr.P.Valliappan, Advocate SR. No.3756

CMA.Nos.1449 & 1450 of 2017

NR (CO)
PR (20/04/2022)