IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:14.09.2022

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.No.3260 of 2017
and
C.M.P.No.20342 of 2017

M/s.Swathi Enterprises,
Proprietor B.Suresh,
No.T51, Elango Street,
Thirunagar, Jafferkhanpet,
Chennai- 600 083 ..Appellant

Vs.

The Deputy Director,
Employees State Insurance Corporation,
No.143, Sterling Road,
Chennai- 600 034. ..Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 82 of Employees State Insurance Act, 1948 to set aside the final order and Decree dated 27.07.2017 made in E.I.O.P.No.8 of 2013 on the file of the Employees State Insurance Court (Principal Labour Court) Chennai.

For Appellant : Mr.A.V.Arun
For Respondent : M/s.S.Jayakumari

JUDGMENT

1. The appellant herein is the petitioner in E.S.I.O.P.No.8 of 2013. He preferred this appeal against the final order and Decree dated 22.07.2017 made in E.I.O.P.No.8 of 2013 on the file of the Employees State Insurance Court (Principal Labour Court) Chennai.

2. The learned counsel for the appellant submits that the appellant was running a Dry Pantry on service charges for Cognizant Technological Solutions at different locations with minimal staff and the contracts at different locations were cancelled and subsequently the number of employees also came down and as such, the contribution does not arise for those periods, as the demand was made by the respondent from October 2007 to September 2008, but the Court below without appreciating this aspect, erroneously held that the appellant is bound to pay the contribution for the said period of demand which is totally unjustified and erroneous and liable to be set aside.

3. The learned counsel for the respondent submits that, as per the

information given by the employer in relation to M/s.Swathi Enterprises, the factory failed to pay the contribution as required by law, hence a show cause notice in Form C-18 dated 11.05.2009 was issued to the employer with regard to their contribution as per the statement which includes the said notice which was duly received by the employer and inspite of the opportunity of personal hearing to present his case in person with relevant document, and though one B.Suresh, Proprietor attended one hearing on 10.11.2009 and stated that the Unit was closed with effect from 10/08 and no employees are working at present and for the claim period also, only two employees worked and the matter was adjourned to produce the relevant documents, but none appeared. Based on the available records and as per the information, the employer had engaged 20 number of employees for wages, but they have not made contribution for the period referred to in the notice. Hence the appellant was directed to pay the contribution with interest for the period from 10/2007 to 9/2008 and the amount of contribution is raised to Rs.85,800/-. Thus, the order under Section 45-A of the ESI Act was passed on 26.10.2010 by the Employees State Insurance Corporation.

4. The learned counsel for the respondent submits that without

including ESIC Corporation, the appellant challenged the said order and filed E.S.I.O.P.No.8 of 2013 by impleading the Recovery Officer. The appellant preferred E.I.O.P. against the respondent herein before the Principal Labour Court, Chennai by submitting the same fact that only two employees were appointed for working as per the contract with Cognizant Solutions was already cancelled and without giving fair opportunity, the Award was passed accordingly he prayed to set aside the order passed under Section 45-A of the said Act.

5. On considering the submissions as well as available record on evidence, the learned Judge held that the appellant has not proved its case by letting in sufficient evidence, nor he availed the opportunity given by the officials before passing the order under Section 45-A and dismissed the application as there was no merit in the same. The appellant challenges the said order in the appeal preferred and the same admitted on the following question of law

A. Whether the ESI Court is correct in not considering all the points raised by the appellant before disposing the Original Petition?

B. Whether the ESI Court is correct in brushing aside the statutory order passed by EPF Authority with regard to the number of employees for payment of contribution?

C. Whether the ESI Court is correct in not fixing the burden on the respondent in proving the number of employees for payment of contribution under the Act?

D. Whether the Court below is right in dismissing the original Petition of the appellant even after the admission made by RW1 about the deployment of persons during the course of enquiry? and

E. Whether the Court below is right in not considering all the documents filed by the appellant?

6. The learned counsel appearing for the appellant submits that the Court below failed to consider the fact that only two persons were working during the period of inspection, even as per Ex.P-9 assessment order under Section 7-A, wherein it was concluded that the establishment had no work, which is also confirmed by the Enforcement Officer of the PF Organisation and through the said document, the appellant established that no contractual work was done in the appellant's premise's and the order passed in Ex.P-9 is a conclusive proof, but the same was not properly appreciated by the Court below.

7. The point to be considered is as whether no employees are working

at the time of the inspection as well as during the claim period.

8. The case of the respondent is that the appellant's establishment was run by the appellant and as per the information, more than 20 employees were working and hence the appellant is liable to pay compensation as per the ESIC Act, but the appellant raised objection stating that only two employees worked at the time of issuance of the notice, and for the claim period also only two employees were present, though the officials also accepted the said fact but erroneously, demand notice was issued. But records reveal that when the matter was posted for enquiry, one B.Suresh appeared before the Authorities on 10.11.2009, but no document was produced to show that only two persons were employed, inspite of the request made by the respondent's official. Thereafter opportunity was given to the appellant to prove his contention, but he failed. Hence, there was no record to prove the defence of the appellant that only two persons were employed during the claim period and when he failed to prove his contention, the appellant is not entitled to dispute the impugned order passed under Section 45-A of the Act, and even the learned counsel for the appellant prayed to remit the matter back to the Court below and he did not produce documents, thus the learned counsel for the respondent strongly

raised objection stating that already they were given opportunity, but they have not availed.

9. The objection raised by the respondent is acceptable one for the reason that inspite of three hearings adjourned, at request of this appellant, they had not appeared before the Enquiry Officer with appropriate evidence and documents. Hence, authorities passed order based on information. Therefore, with regard to closing of the contract as well as the employment of the two persons, there is no sufficient evidence adduced on the side of the appellant to prove the case. The Court below appreciated this aspect and dismissed the E.I.O.P.No.8 of 2013 which needs no interference and all the questions of law are answered accordingly.

Accordingly, there is no merit in this petition and it is dismissed and time to pay the contribution amount as per the demand notice is three months. Consequentially, connected C.M.P. is closed.

14.09.2022

Index: Yes/No
Speaking order: Yes/No

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To

The Deputy Director,
Employees State Insurance Corporation,
No.143, Sterling Road,
Chennai- 600 034.

T.V.THAMILSELVI,J.

dsn

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