



C.M.A.No.637 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.06.2023

Delivered on : 25.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.M.A.No.637 of 2021

and

C.M.P.No.3895 of 2021

Employees State Insurance Corporation,

Rep. by Assistant Director,

No.143, Sterling Road,

Nungambakkam,

Chennai-600 034.

... Appellant /Respondent

Vs.

M/s/Arihant Pharmaceuticals (P) Limited,

No.292, Sydenhams Road, Choolai,

Chennai -600 112.

... Respondent / Petitioner

Prayer: Civil Miscellaneous Appeal filed under 82 (2) of E.S.I Act, against the fair order and judgment passed in E.I.O.P.No.16 of 2014, dated 28.09.2018, on the file of the Employees Insurance Court (Principal Labour Court, Chennai), Chennai.



C.M.A.No.637 of 2021

WEB COPY

For Appellant : Mr.S.P.Srinivasan

For Respondent : Mr.D.Abdullah

JUDGMENT

The instant Civil Miscellaneous Appeal is filed against the order passed in E.I.O.P.No.16 of 2014, dated 28.09.2018, on the file of the Employees Insurance Court (Principal Labour Court), Chennai.

2. The appellant herein is the respondent and the respondent herein is the petitioner before the Court below.

3. For the sake of convenience, the parties are referred according to their litigative status of the trial Court:

4. The brief facts which give rise to filing of the Appeal is as follows:-

According to the petitioner, he filed E.S.I.O.P.No.410 of 2001, against the impugned order dated 18.12.1992, passed under Section 45-A of the E.S.I.Act for the period May 1987 to March 1991. The said application



C.M.A.No.637 of 2021

WEB COPY

was allowed on 23.05.2013 and remitted back the matter to the respondent for a fresh consideration. The specific direction to the respondent in the said order was, to consider Ex.P10 - Register and Ex.P11 - Government Order, before passing the fresh 45-A order. As directed by the E.S.I Court, though the petitioner has produced material records, more particularly, Ex.P10 and Ex.P11, the respondent once again without considering the material documents, has passed the present 45-A order, dated 16.01.2014.

5. Disputing the contention of the petitioner, the respondent has filed a counter statement, and would contend that they have complied with the direction of the E.S.I Court, and they would further submit that the petitioner has simply submitted the registers, namely, Ex.P10 and Ex.P11, without producing supporting documents, to examine the veracity of the documents. Since the petitioner did not submit any supporting documents, they did not have any other option, except to confirm the earlier 45-A order. Therefore, this respondent submits that the petitioner is liable to pay contribution of Rs.87,836/- for the period of May 1987 to March 1991.



C.M.A.No.637 of 2021

WEB COPY

6. Before the trial Court, on behalf of the petitioner and respondent, each one witness was examined as P.W.1 and R.W.1. Similarly, each side 10 documents were marked as Ex.P1 to P10 and Ex.R1 and R10. After taking into consideration of the oral and documentary evidence, and other materials on records, the E.S.I. Court has allowed the application with the finding that the respondent did not comply with the direction of the E.S.I. Court order dated 23.05.2013 in E.S.I.O.P.No.410 of 2001.

7. Aggrieved with the said order, the respondent is before this Court, with this Civil Miscellaneous Appeal.

8. The learned counsel for the appellant / respondent / Insurance Company would vehemently submit that, though the petitioner has submitted Ex.P10 and Ex.P11 as directed, in the E.S.I.O.P.No.410 of 2001, in spite of sufficient opportunity, the petitioner did not produce relevant supporting documents, so as to validate and to test the veracity of the statement Ex.P10, where the details of employee, who were allegedly on tour was listed. Hence, prayed to allow this Appeal.



C.M.A.No.637 of 2021

WEB COPY

9. Per contra, the learned counsel for the respondent/ petitioner would vehemently submit that there was a specific direction by the E.S.I. Court so as to consider Ex.P10 and Ex.P11. However, even while passing the impugned order, dated 16.01.2014, the appellant / respondent has given a go by to the specific direction of E.S.I. Court. Therefore, the very order is liable to be set aside.

10. I have given my anxious consideration to the either side submissions.

11. The entire issue revolves around mostly on the factual aspect, rather the legal aspect. The specific contention of the respondent / petitioner is that in E.S.I.O.P.No.410 of 2001, which has arisen out of the earlier 45-A order, dated 12.06.1989, [for the period May - 1987 to March - 1991] there was a direction by the E.S.I Court, to consider Ex.P10 and Ex.P11, while passing the fresh 45-A order. The relevant portion of the order of the E.S.I.Court in E.S.I.O.P.No.410 of 2001, is hereby extracted as follows:-

“8. In the result, the order of the first respondent,



C.M.A.No.637 of 2021

WEB COPY

*dated 08.12.1992 and the order of the second respondent, dated 16.11.2000, are set aside and the case is remitted back to the respondent Corporation for consideration afresh. **The petitioner has to produce Exs.P10 and P.11 and other relevant documents if any before the concerned Authority and the respondent Corporation has to pass an appropriate order under Section 45-A of the E.S.I Act, after considering all the documents and giving due opportunity to the petitioner. The E.S.I. Corporation is directed to dispose of the matter within three months from the date of receipt of copy of this order. The petitioner has to co-operate in the conduct of the enquiry for ensuring disposal within the time stipulated.***

12. As per the above direction, two documents and other relevant documents were directed to be submitted before the respondent / appellant herein. It appears that the petitioner / respondent herein has produced only those two documents Ex.P10 & Ex.P11 of the earlier case, through the letter under Ex.P6, on 02.07.2013. The said Ex.P10 and Ex.P11 of E.S.I.O.P.No.410 of 2001 has been again marked in the instant E.I.O.P as Ex.P5 and Ex.P4 respectively. This Court had occasion to peruse the register- Ex.P5, showing the name of the employees, who remain on tours



C.M.A.No.637 of 2021

WEB COPY

for 7 months and above, I have carefully gone through the same. It contains name of some employees. The same is only the list and not the document maintained in their day to day regular course of business. Now the issue involves in the instant E.I.O.P is of the period 01.05.1987 to 31.03.1991. However, P.W.1 when confronted during the cross examination, he would admit as follows:-

“Ex.P5 ஆவணமானது marketing பிரிவில் வெளி ஊர்களுக்கு 7 மாதங்களுக்கு மேலாக tour சென்று வந்த நபர்களின் பட்டியல் ஆகும். இதற்கான விவரங்கள் எங்களது ஆவணங்களில் இருந்து எடுக்கப்பட்டது. வருகை பதிவேடு மற்றும் இதர ஆவணங்கள் அடிப்படையில் எடுக்கப்பட்டது. மற்ற ஆவணங்கள் பற்றி என்னால் தற்பொழுது சொல்ல முடியாது.”

and more pertinently, he would further admits as follows:-

“ Ex.P5 பட்டியல் 2012-ல் தயார் செய்யப்பட்டதா அல்லது 2013-ல் தயார் செய்யப்பட்டதா என்று ஞாபகம் இல்லை”.

13. Here, as already stated, the issue is in respect of the past period between 1987 to 1991. Therefore if really these employees were on tour for more than 7 months, there would have been separate register maintained in the regular course of business. Here, admittedly the Ex.P5-register is not really register, but only a list. More pertinently, the names



C.M.A.No.637 of 2021

WEB COPY

were culled out from the attendance and other documents. Therefore, unless those supporting documents such as attendance and other registers, is produced, the correctness or otherwise of Ex.P5 could not be decided.

14. The respondent / petitioner by taking advantage of the observation of the E.S.I. Court in E.S.I.O.P.No.410 of 2001, expect the statutory authority and quasi judicial authority E.S.I. Corporation to believe the statements of the petitioners. The E.S.I., has got every right to require the respondent / petitioner to produce the supporting document so as to substantiate the veracity of the Ex.P5 register. Admittedly, the respondent/ petitioner has not submitted any other supporting document so as to prove Ex.P5 or in other words failed to substantiate the same.

15. In the instant case, when the respondent / petitioner has produced Ex.P4 and Ex.P5 through letter, Ex.P6, dated 02.07.2013, the appellant has directed the respondent to produce the supporting document through the notice issued for the personal hearing, dated 20.08.2013, 07.10.2013 and 29.11.2013.



C.M.A.No.637 of 2021

WEB COPY

16. But, the respondent / petitioner would submit that they did not receive personal hearing notices from the appellant. On perusal of the acknowledgment, which were marked as Ex.R3, R4, R5, R7, this Court could able to see that the notices were sent to the address mentioned in the Ex.P6- letter, dated 02.07.2013. Though some of the notices were returned as left, for the same, we can not blame the respondent, as they had sent notices to the address mentioned in Ex.P6 - letter qua their letter head. However, the Court below without appreciating the factual position in it's right perspective, has curiously stated that since there is no finding, or reference in the impugned order, in respect of Ex.P10 and Ex.P11 (now marked as Ex.P5 and Ex.P4), the same is liable to be set aside. But, while this Court harmoniously read the impugned order – Ex.P7, dated 16.01.2014 (45A order), this Court find the reason in the impugned order for such conclusion. The respondent in their order categorically stated that in view of submission of no supporting documents, to substantiate the register - Ex.P5, they were constrained to confirm the earlier 45 A order.

17. It is pertinent to mention here that under Section 45-A of the



C.M.A.No.637 of 2021

WEB COPY

E.S.I Act, the E.S.I. Corporation is competent to pass orders with the available records. Here, the appellant /petitioner failed to submit the supporting documents to the Ex.P5, even after the notice issued by the respondent. Therefore, the very order passed by the Court below in setting aside the 45-A order, dated 16.01.2014, is perverse and liable to be set aside. Eventually, the 45-A order is liable to be confirmed.

18. In the result, the Civil Miscellaneous Appeal is **allowed** by setting aside the order passed in **E.I.O.P.No.16 of 2014**, dated 28.09.2018. As a consequence, the order under Section 45-A of the E.S.I. Act, dated 16.01.2014 is confirmed. There shall be no order as to cost. Consequently, connected Miscellaneous Petition is closed.

25.08.2023

NCC : Yes/No

Index : Yes/No

Ls

To

1.The Employees Insurance Court

(Principal Labour Court, Chennai),

Chennai.

2.The Section Officer,



C.M.A.No.637 of 2021

VR Section, Madras High Court,
Chennai.

WEB COPY



WEB COPY



C.M.A.No.637 of 2021



WEB COPY



C.M.A.No.637 of 2021

C.KUMARAPPAN.,J.

Ls

C.M.A.No.637 of 2021

25.08.2023