IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2023

CORAM:

MR.JUSTICE N.SESHASAYEE

C.M.A.No.842 of 2022
and C.M.P.No.6086 of 2022

Electronics Corporation of Tamil Nadu Limited
Rep. by its Managing Director
MHU Complex, 2nd Floor
No.692, Anna Salai Nandanam
Chennai 600 035 ... Appellant

Vs.

1.Joint Director (R)
Employees State Insurance Corporation
143, Sterling Road
Chennai 600 034

2.The Assistant Director
Employees State Insurance Corporation
143, Sterling Road
Chennai 600 034

3.The Assessing Authority
Employees State Insurance Corporation
143, Sterling Road
Chennai 600 034 ... Respondents

PRAYER:This Appeal is filed under Section 82(2) of Employees' State Insurance Act, 1948, against the order of the Employees Insurance Court (Principal Labour Court), Chennai dated 26.11.2021 made in E.I.O.P.No.28 of 2014.

For appellants : Mr.M.Vijayan for M/s.King and Partridge

For respondents : Mr.S.P.Srinivasan

JUDGMENT

The learned counsel for the appellant submitted that one of the grounds on which the E.S.I. Court rejected the contention of the appellant was that it has not produced document to show that it has surrendered its licence vis-a-vis its factory. The learned counsel has now produced a copy of the said communication from the appellant dated 30.11.2004 to the Deputy Chief Inspector of Factories. The learned counsel further submitted that the Corporation relies on two inspection reports, the first one dated 16.06.2011 and the second one dated 11.01.2012. In neither of these inspection reports, the inspecting authority disclosed the number of employees for whom the contribution is payable. Indeed the second of the enquiry reports merely records that despite the inspecting authority repeatedly requiring for the details, it was informed that the employees were taken over as State Government employees, and that the E.S.I. is not applicable to them.

2.Developing his argument further, the learned counsel submitted that the only business of the appellant was electronic hardware procurement for the State Government and its associated departments, and pursuant to the surrender of licence by the appellant, all the employees were absorbed by the Government, and they were relocated in non-manufacturing departments. When there is no factory existing and no employee is there, it is inconceivable that the appellant should be made liable to pay a contribution for the non existing employee. Indeed the Act will apply only to factories and establishments and not to Government employees. The learned counsel also submitted that the concerned inspector was examined on the side of the Corporation as RW1, and he categorically admitted in his/her cross examination that he does not know any particulars of the employees working in the alleged factory belonging to the appellant. RW1 also made a categorical admission that there is no manufacturing activity happening at the time when the inspections were held.

3.Per contra, the learned counsel for the Corporation submitted that when once the company falls within the net of factory or establishment, and consequently falls within the net of E.S.I. Act, then it is bound to pay contribution for all time, even if the number of employees fall below the minimum number required to bring a factory or establishment within the net of E.S.I. regime. He further developed that a factory under the control of the Government is exempted within the meaning of Proviso to Sec.1(4) only if such employees were granted benefits substantially similar or better than the benefits provided under the Act. He submitted that the appellant has not produced any material to show that such employees of the factory of the appellant were granted any such benefits as indicated under Proviso to Section 1(4).

4.Rival submissions carefully weighed and the records are perused. Vide Ex.P9, the appellant has addressed a communication dated 05.06.2013 responding to the respondent Corporation that vide G.O.Ms.No.12 Information Technology (e-Gov.I) Department dated 08.11.2006, the

Government has implemented the State Government pay scale for the Communication Division Employees with effect from 01.06.2003, and that the employees were therefore given medical facilities on par with the corporate employees, and that all the erstwhile employees of the appellant who have been absorbed of the Government, enjoy medical benefits and were also brought under New Health Insurance Scheme, for which premium amount too are being collected and remitted to the treasury. To this communication the appellant also enclosed a copy of the G.O.Ms.No.12 dated 08.11.2006. This G.O. discloses wage settlement under Section 12(3) of the I.D. Act and also informs that different categories of employees of the appellant have been brought to Government scale of pay in view of the wage settlement.

5.The larger issue is whether a factory exists for E.S.I. to continue to demand contribution. It is seen from the records now produced that the appellant Corporation had surrendered its licence for manufacture even on 30.11.2004, and this is followed by relocation of employees in the non manufacturing activities. G.O.Ms.No.12 dated 08.11.2006 also informs that these employees have been absorbed into Government scale of pay. Where is the factory in relation to which the Corporation now demands contribution, and who are those employees? Here, the inspection report is blissfully silent and the testimony of RW1 makes the matter worse for the Corporation.

6. To conclude, the appeal is allowed, and the order dated 26.11.2021 passed in E.I.O.P.No.28 of 2014 by the E.S.I. Court, Chennai, is set aside. No costs. Consequently, the connected miscellaneous petition is closed.

15.12.2023

kas/ds

Index : Yes / No
Neutral Citation

To:
The Employees Insurance Court
(Principal Labour Court)
Chennai

N.SESHASAYEE.J.,

kas

C.M.A.No.842 of 2022
and C.M.P.No.6086 of 2022

15.12.2023