BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 05.06.2023

PRONOUNCED ON : 09.06.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.1438 of 2012
and MP(MD).No.1 of 2012

R.C.Diocese of Kottar
Through its Financial Administrator
Fr.Francis Borgia
R.C.Diocese of Kottar
Bishop's House
Post Box No.17
Nagercoil 629 001 ... Appellant

vs.

1.The Director
Employees State Insurance Corporation
Sub-Regional Office
Madurai

2.The Assistant Director Cum Recovery Officer
Employees State Insurance Corporation
Sub-Regional Office
Tirunelveli ...Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 82 of E.S.I.Act 1948, to allow the civil miscellaneous appeal by setting aside the judgement and decree passed in E.S.I.O.P.No.8 of 2006 on the file of the Employees State Insurance Court (Labour Court), Tirunelveli, dated 10.10.2012.

For Appellant : Mr.RT.Arivukumar

Respondents : Mr.P.Ganapathysamy

JUDGMENT

The appeal has been filed by R.C.Diocese of Kottar challenging the order passed by the Labour Court, Tirunelveli in E.S.I.O.P.No.8 of 2006 wherein the E.S.I.Court had rejected the prayer of the appellant for a declaration that the appellant will not come within the coverage of Employees' State Insurance Act, 1948.

2.According to the appellant, the R.C.Diocese is committed to serve people irrespective of caste, creed and colour and doing several social and religious activities. They are running several institutions as minority institutions. According to the appellant, they are also running Home for aged, mentally retarded, handicapped and orphanage. They are involved in other social, religious and service related activities. According to the appellant, the Bishop's house is the residence of the Bishop and Priests. It is not a commercial place and nothing is manufactured inside the Bishop's house. The Bishop of R.C.Diocese is the head of 5 lakhs catholic people residing in Kanyakumari District. Inside the Bishop's house, churches, chappels and rest place for the priests are available. The Bishop is also residing therein.

3.The appellant had further contended that in order to execute the said social activities, offerings in churches, voluntary donation, donations from the well wishers are being utilized. The appellant is neither a profit making institution nor an industry which produces goods or materials for marketing purposes.

4.The appellant had further contended that the State Government and the Central Government have offered a host of concessions, considering the appellant as a charitable religious institution. According to the appellant, they have been exempted from the income and property tax. He had further contended that the employees are engaged only in social work and the said employees are provided with medical requirements through a reputed hospital namely Holy Cross Hospital at Nagercoil. Therefore, the employees of the appellant will not come under the purview of labour department since they are doing only social work.

5.The appellant had further contended that they are not undertaking any hard and tedious work or handling any heavy tools or heavy equipment. Therefore, the nature of work is not likely to result in any injury. The premises does not have any machineries. Therefore, the appellant will not come under the coverage of E.S.I.Act. The appellant had further contended that an inspection was conducted by the officials of the E.S.I.Corporation on 08.11.2004 and a Survey Visit Note was issued to the effect that they are employing more than 20 employees and therefore, they are coverable under E.S.I.Act. On the same day, a Preliminary Inspection Report was prepared to the effect that more than 20 employees are being employed in the Bishop house for the purpose of administration of R.C.Churches and the properties.

6.For the said Visit Note and the Inspection Note, an objection letter was given by the appellant to the effect that the Diocese of Kottar is entirely a service organization. Some domestic workers are engaged to assist the Priests who reside in the Bishop's house. These workers assist the priests and help in the charitable and administrative activities of the Priests and they are in no way entitled to the rights of those working in registered companies, profit making industries and allied organizations. However, having paid due attention to the welfare of the domestic workers, they have been enrolled under Employees' Provident Fund by paying them from the Church offering money. Only for the purpose of streamlining the work of the employees, they are made to affix their signature in certain records. Since they are only domestic assistants, the can never be considered to be employees. After receipt of the said reply, Form C-11 notice was issued by the Corporation on 28.02.2005 calling upon the appellant Diocese that the establishment is required to register under E.S.I.Act. Thereafter, an order under Section 45-A of the E.S.I.Act was passed on 02.08.2016 and contributions were demanded for a sum of Rs.4,94,955/- for the period covering from March 1997 to February 2006. After the said order was passed, the appellant herein had filed E.S.I.O.P.No.8 of 2006 before the Labour Court, Tirunelveli at Nagercoil for a declaration that they are not covered under E.S.I.Act. In the said petition, the appellant had reiterated all their contentions that were made in their reply to the notice .

7.The E.S.I.Corporation had filed a detailed counter contending that the appellant establishment employed 20 or more persons for wages. Since they are working for wages, they fall within the definition of employees under E.S.I.Act. The corporation had further contended that the appellant has not obtained any exemption from the Government from the coverage of the E.S.I.Act. The Corporation had further contended that the Provident Fund calculations maintained by the Diocese shows that the wages were paid to the employees and therefore, the contentions that they are only domestic employees is not correct. Hence, he prayed for dismissal of the petition.

8.The Tribunal after considering the oral and documentary evidence, relied upon the deposition of PW1 and arrived at a finding that the properties of the R.C Diocese are being administered only from the Bishop's house. Therefore, an administration office is functioning in the said premises. The Tribunal further relied upon the deposition of PW2 and arrived at a finding that they are maintaining an attendance register and they are making contribution under E.P.F Act. When persons are employed for wages and attendance register and wage register are maintained and they are covered under the E.P.F.Act, thereafter, the Diocese cannot contend that they are domestic workers and they are not coverable under E.S.I.Act. On the basis of the above said findings, the E.S.I.Court had dismissed petition. Challenging the same, the present appeal has been filed by the RC Diocese of Kottar.

9.The present appeal has been admitted on the following substantial questions of law:

> *"1.Whether the public religious and charitable institution will come within the coverage of Employee's State Insurance Act, 1948?*
>
> *2.Whether the contributors who do voluntary service getting honorarium can be called as employees and whether they will come within the definition of Section 2(a) of Employee's State Insurance Act, 1948?*
>
> *3.Whether the institution covered under Employee's Provident Act will necessarily have statutory coverage under Employee's State Insurance Act, 1948."*

10.The learned counsel appearing for the appellant had contended as follows:

(i).The appellant is only carrying out public charitable and religious activities within the premises of the Bishop's house and no commercial activity whatsoever is being carried on in the said premises.

(ii).In the deposition, the financial administrator of the R.C Diocese has categorically pointed out that there are no commercial activities or any activities in which the machineries are involved. Therefore, the E.S.I.Act cannot be made applicable to the appellant.

(iii).The administration office that is being run from the said Bishop's house is only administering the Church and properties of R.C Diocese. Therefore, this should only be considered to be a religious activity. The persons who are engaged in the process of assisting the Priests and Bishops for effectively administering the Church and its properties could never be considered to be employees of a commercial organization who could be brought under the coverage of the E.S.I.Act.

(iv).He had further contended that just because the employees are covered under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, it will not automatically result in coverage of the same employees under E.S.I.Act. He had further pointed out that the definition of an employee under E.S.I.Act and E.P.F Act are different. Hence, he prayed for allowing the appeal and to declare that the appellant Diocese is not coverable under the E.S.I.Act.

11.Per contra, the learned counsel appearing for the E.S.I.Corporation had contended that any establishment which had employed 10 or more persons with power and 20 or more person without power and wages are paid on a regular basis, is coverable under E.S.I.Act. There is no difference between the definition of employee in the E.S.I.Act and E.P.F Act. Therefore, whenever an employee is covered under Employees' Provident Funds and Miscellaneous Provisions Act, 1952, he is automatically covered under the Employees' State Insurance Act. It is not necessary that commercial activities should be carried on by the said employees. The organization being a non-profitable organization is not a criteria for determining the coverage under E.S.I.Act. The only point that should be considered is that whether the employees are being engaged for wages and organized activities are being carried on in the premises by following the attendance register and wage register or not. In the present case, admittedly, they are maintaining the attendance register and wage register and therefore, it is clear that the organized activities are being carried on in the said premises.

12.The learned counsel for the respondents had relied upon the judgement of the Hon'ble Supreme Court reported ***in (1987) 4 SCC 203 (M/s.International Ore.& Fertilizers (India) Pvt.Ltd.**, **Vs. Employees' State Insurance Corporation)*** to contend that there need not be sale of goods for being declaring a premises as a commercial premises.

13.He had further relied upon the judgment of the Hon'ble Supreme Court reported in ***1997 (1) LLJ 606 (Madras Government***

Servants Co-operative Society Ltd., Madras Vs. Employees' State Insurance Corporation (represented by its Regional Director), Madras) and contended that it is not necessary that there should be a building or land for conducting a shop, nor is it necessary that in the premises there should be buying or selling. Once an ordinary occupation is carried on, if there is a systematical economic or commercial activity, that will be sufficient to bring that place within its sphere of E.S.I.Act.

14.The learned counsel for the respondent had further relied upon the judgement of the Hon'ble Supreme Court reported ***in (1987) 2 SCC 101 (M/s.Hindu Jea Bank, Jaipur Vs. State of Rajasthan)*** to contend that the definition of employee under the E.S.I.Act has got a wider meaning and it includes the employees who work outside the premises and who are paid wages.

15.The learned counsel had further relied upon the judgment of the Hon'ble Supreme Court reported in ***(1992) 4 SCC 245 (Cochin Shipping Co., Vs. E.S.I.Corporation)*** to contend that the object of E.S.I.Act is to envelop as many establishments as possible without leaving any room for doubt. Wherever a systematic economic or a commercial activity is being carried on, it should only be considered to be a shop which is coverable under the E.S.I.Act. The learned counsel for the respondents had further relied upon the judgment of the Hon'ble Supreme Court in a judgment reported in ***(1994) 1 SCC 445 (Employees' State Insurance Corporation Vs. R.K.Swamy and others)*** to contend that even advertising agency which provides just advise to their clients was considered to be covered under E.S.I.Act. He had further contended that the financial administrator of the appellant Diocese has categorically admitted in his cross examination that the employees are being engaged for the purpose of administering the Churches and its properties. Therefore, it can only be considered to be a systematic economic activity and therefore, the E.S.I. Act is coverable to the said employees. Hence, he prayed for dismissal of the appeal.

16.I have given anxious consideration to the submissions made on either side and perused the material records.

17.The officials of the corporation have visited the Bishop's house of R.C Diocese of Kottar on 08.11.2004 and have prepared a Survey Visit Note which is marked as Exhibit P4. As per the said report, the officials of the corporation had inspected the attendance register and wage registered maintained by the said institution. Thereafter, they have recorded that the appellant Diocese is complying with Employees' Provident Funds and Miscellaneous Provisions Act, 1952 for more than 20 employees with E.P.F Act No.TN33176. The said Visit Note has also been counter signed by the financial administrator of the appellant.

18.A Preliminary Inspection Report prepared on the same day indicates that there are more than 20 employees based upon the wage particulars and provident fund calculation. Therefore, it is clear that more than 20 employees are employed in the premises of the Bishop's house on payment of wages and attendance and wage registers are being maintained for them.

19.The only defence on the side of the appellant Diocese is that they are only carrying out the charitable and religious activities from the said premises and those employees are employed only for the purpose of assisting the Priests and Bishops for domestic activities. They further contended that there is no commercial activities or engagement of any machineries in the said premises. The financial administrator of the appellant Diocese has been examined as PW1. In his cross examination, he has categorically admitted that the head office for administering the Churches and its properties are located within the Bishop's house. He had further admitted that they are registered under the E.P.F Act.

20. PW1 has not chosen to file the E.P.F records to establish that only 9 employees are covered. After perusing the Employees Provident Funds record, officials of the corporation, in their preliminary report under Exhibit R3 have recorded that there are more than 21 employees as per E.P.F records. Therefore, it is clear that more than 20 employees are employed in the said premises for wages.

21.Even as per the deposition of PW1 and PW2, an administrative office is being run from the Bishop's house for administering the Churches and its properties. Therefore, the issue that now arises for consideration is whether the employment of 20 or more persons by a religious institution for administering the Churches and its properties could be considered to be a systematic economic activity so as to covered under the E.S.I.Act or not?.

22.The Hon'ble Supreme Court in a judgment reported in ***(1997) 4 SCC 606 (Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi and others Vs. State of Utter Pradesh and others)*** while considering the constitutionality of Sri Kashi Vishwanatha Temple Act, 1983, in Paragraph No.31 has held as follows.

"31.....It is not every aspect of the religion that requires protection of Articles 25 and 26 nor has the Constitution provided that every religious activity would not be interfered with. Every mundane and human activity is not intended to be protected under the Constitution in the grab of religion. Articles 25 and 26 must be viewed with pragmatism. By the very nature of things it would be extremely difficult, if not impossible, to define the expression "religion" or "matters or religion" or "religious beliefs or practice". Right to religion guaranteed by Articles 25 and 26 is not absolute or unfettered right to propagate religion which is subject to legislation by the State limiting or regulating every non-religious activity. The right to observe and practice rituals and right to manage in matters of religion are protected under these Articles. But right to manage the Temple or endowment is not integral to religion or religious practice or religion as such which is amenable to statutory control. These secular activities are subject to State regulation but the religion and religious practices which are an integral part of religion are protected. It is a well settled law that administration, management and governance of the religious institution or endowment are secular activities and the State could regulate them by appropriate legislation. This Court upheld the A.P.Act which regulated the management of the religious institutions and endowments and abolition of hereditary rights and the right to receive offerings and plate collections attached to the duty." (emphasis supplied).

23. In the said judgment, the Hon'le Supreme Court was pleased to hold that only right to observe and practice rituals and right to manage in matters of religion are protected under Article 25 and 26 of the Constitution of India. However, right to manage the Temple or endowment is not integral to religion or religious practice or religion as such which is amenable to statutory control. The Hon'ble Supreme Court had further held that the administration, management and governance of the religious institution or endowment are secular activities and the State could regulate them by appropriate legislation.

24.In the present case, as evident from Paragraph No.8 of the petition in E.S.I.O.P.No.8 of 2006 that the appellant Diocese is running Churches, Educational Institutions, Home for the aged, Home for mentally retarded, handicapped, orphanage, counselling centres, dispensaries, widow welfare institutions and other social, religious and service related activities. The deposition of financial administrator of the appellant clearly points out that the Bishop's house is the head office for administration of the Churches and its properties. It is an admitted fact that they are maintaining attendance register and wage register. It is also an admitted fact that the employees of the said premises are covered under Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

25.As per Section 3(b) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the said Act is applicable to all the establishments employing 20 or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf. From the inspection report, it is clear that there are more than 20 employees and therefore, it is not a voluntarily coverage under E.P.F Act as claimed by the financial administrator of the appellant Diocese. When the coverage under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 is in view of the statutory compliance, this Court does not find any reason whatsoever for exempting the same employees from the purview of E.S.I.Act. Therefore, in view of the judgment of the Hon'ble Supreme Court reported in ***(1997) 4 SCC 606 (Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi and others Vs. State of Utter Pradesh and others)*** wherein it has been held that the secular activities of a temple could be subject to statutory control, the R.C. Diocese cannot seek any exemption on the ground that they are carrying out charitable and religious activities alone. The E.S.I.Act being a labour welfare legislation, it is all the more necessary, the employees who are rendering administrative service should be covered under the E.S.I.Act.

26.In view of the above said deliberations, this Court finds that the E.S.I.Act is applicable to all the employees of the Diocese who are working on the administrative side. All the substantial questions of law are answered as against the appellant. This Civil Miscellaneous Appeal stands dismissed. No costs. Consequently connected miscellaneous petition is closed.

09.06.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
msa

To

1The Employees State Insurance Court
(Labour Court),
Tirunelveli,

2.The Record Keeper
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

CMA(MD).No.1438 of 2012

R.VIJAYAKUMAR,J.

msa

Pre-delivery order made in
C.M.A(MD)No.1438 of 2012
and MP(MD).No.1 of 2012

09.06.2023