



C.M.A.(MD).No.200 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 24.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.200 of 2009

The Employees State Insurance Corporation,
Represented by the Joint Director,
Sub Regional Office,
Madurai – 20.

.....Appellant/ Respondent

-vs-

Tuticorin Permanent Fund Ltd.,
Through its Manager,
Having Office at
160, Sivankoil Street,
Tuticorin – 628 002.

.... Respondent /Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Section 82 of the E.S.I.Act, 1948, against the Fair order and Ex-order, dated 18.08.2008 on the file of the Labour Court (Employees' Insurance Court) Tirunelveli made in M.C.O.P.No.11 of 2005.

For Appellant : Mr.R.Ravindran

For Respondent : Mr.M.P.Senthil



C.M.A.(MD).No.200 of 2009

WEB COPY

J U D G M E N T

The present Civil Miscellaneous Appeal has been filed by the Employees' State Insurance Corporation challenging the order passed by the Employees' State Insurance Court (E.S.I.Court), Tirunelveli, wherein a show cause notice issued by the E.S.I. Corporation for initiating proceedings under Section 45-A of the E.S.I.Act was set aside.

2. According to the respondent, they are running a Nidhi Company, which is not covered under the Notification issued by the Government of Tamil Nadu in G.O.M.S.No.287, (Labour and Employment), dated 03.04.1976. Since the Nidhi Company is not a shop, the show cause notice issued under Section 45-A of the E.S.I.Act, is without jurisdiction.

3. The learned counsel appearing for the Appellant/E.S.I. Corporation had contended that where an ordinary occupation was carried on in a systematic economic and commercial activity, that will be sufficient to bring the place within the sphere of E.S.I.Act. However, the E.S.I Court, had proceeded to hold that the Nidhi Company is not covered under the order issued by the Government of Tamil Nadu and allowed the E.S.I.O.P.No.11 of



C.M.A.(MD).No.200 of 2009

WEB COPY

2005 filed by the respondent herein. Challenging the same, the E.S.I. Corporation has filed by the present appeal.

4. The learned counsel appearing for the appellant contended that any financial institution, which is carrying on any commercial activity considered to be a shop or establishment under the Act and E.S.I Act is applicable to the said institution. The E.S.I. Court had erroneously allowed the appeal without properly appreciating the object of the E.S.I. Act. The learned counsel appearing for the appellant had also relied upon the judgment of the Hon'ble Division Bench of our High Court reported in **1996 (2) LLN 1216 (Mad) (Madras Government Servant Co-operative Society Ltd., Madras Vs. Employees' State Insurance Corporation, Madras)** and judgment of the Hon'ble Supreme Court reported in **2001 (1) LLN 55 (SC) (Kirloskar Consultants Ltd., Vs. Employees State Insurance Corporation)** to contend that the Nidhi Company can also be considered as shop for the purpose of coverage under the E.S.I. Act. He further contended that no orders have been passed under Section 45-A of the Act. Therefore the present petition filed before the E.S.I Court, for declaring that the Act is not applicable to the petitioner Nidhi Company is not at all maintainable and such a petition ought not to have been entertained by the E.S.I. Court.



C.M.A.(MD).No.200 of 2009

WEB COPY

5. Per contra, the learned counsel appearing for the appellant had contended that the factories and the industries are directly covered under the E.S.I.Act. As far as the shops and establishments are concerned, a separate notification is required under Section 1(5) of the E.S.I. Act. The Government of Tamil Nadu has issued such a notification, on 03.04.1976. On a perusal of the said notification, only Hotels, Restaurants, Shops, Cinemas, including theatres, Motor Transport undertakings, and Newspaper establishments are covered under the E.S.I.Act. Therefore, Nidhi Company having not been specifically mentioned in the said Government Order, it should have been treated as excluded. Therefore, the prayer sought for in the E.S.I.O.P is legally maintainable and the order passed by the E.S.I. Court may be sustainable.

6. I have carefully considered the submissions made by the learned counsel on either side.

7. The E.S.I. Corporation has conducted an inspection, on 20.08.1999 and thereafter, had issued a notice on 06.09.1999. When the reply issued by the respondent Nidhi Company was not satisfactory, a show cause notice was issued by the Corporation on 10.11.2000 calling upon the respondent to show



C.M.A.(MD).No.200 of 2009

cause as to why the proceedings under Section 45-A of the Act cannot be invoked. Thereafter, the present E.S.I.O.P.No.11 of 2005 has been filed by the Nidhi Company for a declaration that the Act is not applicable. Without filing any reply or any explanation to the notice issued by the E.S.I. Corporation, straight away E.S.I.O.P No.11 of 2005 has been filed by the respondent herein.

8. It is the contention of the Corporation that the Nidhi Company would also fall within the definition of “shop”. On the other hand, it is the contention of the Nidhi Company that the financial institution can never be considered as the shop. Therefore, this issue has to be raised first before the Corporation and in case, if any, adverse orders are passed by the Corporation, the respondent Nidhi Company is entitled to approach the E.S.I. Court, under Section 75 (1)(g) of the ESI Act. In the present case, without filing any reply or offering any explanation, straight away petition has been filed before the ESI Court seeking for declaration, that this Act is not applicable.

9. In view of the above said facts, this Court is of the view that the prayer sought for in the petition before the Labour Court, Tirunelveli is not maintainable. Therefore, the order passed by the labour Court in E.S.I.O.P.No.



C.M.A.(MD).No.200 of 2009

WEB COPY

11 of 2005 is hereby set aside. The respondent Nidhi Company is at liberty to file an explanation before the ESI Corporation within a period of four weeks from the date of receipt of a copy of this order. After receiving the explanation and after affording personal hearing to the Nidhi Company, the ESI Corporation is at liberty to proceed further and pass orders on merits and in accordance with law. Since the matter is being remitted back to the E.S.I. Corporation, the questions of law are left open.

10. With the above said observations, this Civil Miscellaneous Appeal stands allowed. There shall be no order as to costs.

24.04.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
ebsi



C.M.A.(MD).No.200 of 2009

WEB COPY

- To
1. The Labour Court,
(Employees' Insurance Court),
Tirunelveli.
 2. Tuticorin Permanent Fund Ltd.,
Through its Manager,
Having Office at
160, Sivankoil Street,
Tuticorin – 628 002.
 3. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A.(MD).No.200 of 2009

R.VIJAYAKUMAR,J.

ebsi

C.M.A.(MD)No.200 of 2009

24.04.2023