



C.M.A(MD).No.1460 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 20.04.2023

PRONOUNCED ON : 25.04.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

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E.S.I.Corporation
Represented by its Director General
New Delhi

2.The Regional Director
ESI Corporation, Regional Office
No.143, Sterling Road
Chennai 600 034

3.ESI Corporation
Sub Regional Office
4th Main Road, K.K.Nagar
Madurai 625 020
Represented by its Joint Director

... Appellants

vs.

1.M/s.Shri Mookambiga Spinning Mills
Vadamadurai, Dindigul District
Represented by its General Manager



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2.Shri.Mookambiga Spinning Mills Thozhilalar Sangam
Shri.Mookambiga Spinning Mills Complex
Vadamadurai, Vendasandur Taluk
Dindigul District
Represented by its President S.Bomiraj

...Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 82(2) of E.S.I.Act, 1948, to set aside the decree and judgement passed in E.S.I.O.P.No.8 of 2008 dated 22.08.2011 by E.S.I.Court (Labour Court, Madurai).

For Appellants	: Mr.N.Dilip Kumar
For R1	: Mr.T.Ravichandran
For R2	: No appearance

JUDGMENT

The above appeal has been filed by E.S.I.Corporation challenging the order of remand passed by the E.S.I.Court.

2.Factual Matrix:

(i).The respondent mill is functioning at Vadamadurai Village, Vendasandur Taluk, Dindigul District. The Ministry of Labour, Government of Tamil Nadu had issued a notification under Section 1(3) read with Section 1(5) of E.S.I.Act and extended the said Act to various revenue villages including Vadamadurai. The said notification was issued



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on 20.06.2001 extending the applicability of the Act to the above said area with effect from 01.08.2001. This notification issued by the Government of India was not challenged by any one of the interested parties.

(ii).On 19.07.2001, the Sub Regional Office at Madurai had issued a communication to the respondent mill informing the applicability of the Act to their mill with effect from 01.08.2001. The corporation has also requested to comply with the initial registration work so that the employees and their families can avail the benefit. On 12.09.2001 another letter was addressed by the Sub Regional Office, Madurai requesting the respondent mill to furnish the information in the proforma enclosed on the ground that the corporation has reasons to believe that their establishment is amenable to the provisions of the E.S.I.Act. In the said communication, the Corporation has pointed out that if no reply is received within 15 days, the establishment will be deemed to have been covered with effect from 01.08.2001 and the arrears of contribution will be recovered. On 27.09.2001, another communication was addressed by the insurance inspector to the mill informing them that he would be



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visiting the factory for inspection on 16.10.2001. On 13.12.2001, an order was passed by the E.S.I. Corporation covering the establishment with effect from 01.08.2001 based upon the report of the insurance inspector dated 16.10.1992.

(iii). The respondent mill had filed W.P(MD).No.23457 of 2002 to quash the notification of Government of India dated 20.06.2001 and the consequential order of the Sub Regional Office dated 19.07.2001 and the final coverage order dated 13.12.2001 and sought to restrain the E.S.I. Corporation from implementing the provisions of the E.S.I. Act. The said writ petition was dismissed on 17.09.2009 with a finding that the Central Government was well within the power to issue impugned notification and the Sub Regional Office has rightly issued the consequential proceedings dated 19.07.2001 and 13.12.2001. The order passed in the writ petition was not challenged by the respondent mill and it has become final.

(iv) One of the employees of the respondent mill had filed W.P(MD).No.4504 of 2007 for a mandamus directing the E.S.I. Corporation to perform their duty by running a full time hospital at



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Vadamadurai, Veda sandur Taluk, Dindigul District for 24 hours.

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(v).In the said writ petition, the E.S.I.Corporation had filed a counter contending that in Tamil Nadu, all the E.S.I.Hospital are being run by the Government of Tamil Nadu as provided under Section 58 of the E.S.I.Act. Depending upon the requirement, a full-fledged hospital could be established. However, the employer or the employee cannot demand the corporation to maintain a full-fledged hospital as a pre-condition to pay contribution.

(vi).In the said writ petition, the employer namely the mill had filed a counter contending that an E.S.I.hospital is already functioning from 7.00 a.m to 10.30 a.m and 4.00 p.m to 6.30 p.m in week days and in Sunday and other holidays, it is functioning from 7.00 a.m to 10.30 a.m. Based upon the counter filed by the E.S.I.Corporation and the employer, the writ Court found that the employees has not made out any case to entertain the writ petition and dismissed it on 06.10.2010.

(vii).While both the above referred writ petitions were pending, the employer had parallelly filed E.S.I.O.P.No.8 of 2008 before the Labour Court, Madurai challenging the communication of the Sub Regional



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Office dated 19.07.2001 and the rejection of their representation on 16.03.2007. This petition was strongly contested by the E.S.I. Corporation by filing a counter. The E.S.I. Court allowed the petition on the ground that no opportunity was given to the petitioner mill before passing the impugned order and remitted the matter back to the E.S.I. Corporation to decide the issue as to whether the employer is liable to pay contribution in view of the fact stated in their representation. This order of remand is under challenge in the present appeal by the E.S.I. Corporation.

3. Contentions of the learned counsel appearing for the appellants:

(i). The Act has been extended to Vadamadurai area by way of notification issued by the Central Government on 20.06.2001 and the said notification has not been challenged by the respondent. Therefore, there cannot be any dispute that the Act is applicable to all the factories and the establishments in the said locality.

(ii). He had further contended that on 19.07.2001, a communication was addressed by the Corporation only to bring it to the notice of the respondent mill that the notification has come into effect from 01.08.2001 and thereby, the mill has to register itself and make regular



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contribution.

(iii).The learned counsel for the appellants had further contended that the communication dated 19.07.2001 is nothing but a reminder to the employer to pay contribution in view of extension of the Act to the locality. Once extension of the Act to the locality is not challenged, the consequential communication of the corporation cannot be challenged.

(iv).The learned counsel for the appellants had further contended that the employer had given a representation on 12.03.2007 only to set up full-fledged dispensary in the area of Vadamadurai and it was not a representation seeking to postpone. The said request was rejected pointing out Section 58 of the E.S.I. Act, that in Tamil Nadu, the E.S.I.Hospitals are being run only by the Government of Tamil Nadu.

(v).The Corporation had further pointed out that the non-availability of a full-fledged hospital is not a ground to an employer to refuse to pay contribution under E.S.I.Act. Therefore, the said order cannot be challenged before the E.S.I.Court.

(vi).The learned counsel for the appellants had further contended that with a similar relief a writ petition was filed by one of the employees



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in W.P(MD).No.4504 of 2007 which was dismissed by the High Court on 06.10.2010 accepting the contentions of the E.S.I.Corporation.

(vii).The learned counsel for the appellants had further contended that once an Act is extended to a particular locality by a notification of the Central Government, by sending representation to the Sub Regional Office of the E.S.I.Corporation, the implementation of the said Act cannot be postponed. The Sub Regional Office or the Corporation have no power whatsoever to suspend or postpone the implementation of the Act, once it is notified by the Central Government. Therefore, a representation given to the Sub Regional Office of the E.S.I.Corporation, and the rejection of the said representation will not provide a cause of action to the employer to file a petition before the E.S.I.Court.

(viii).The learned counsel for the appellants had further contended that the Act has been extended to Vadamadurai area with effect from 01.08.2001 but the respondent mill has not paid a single paise towards contribution for the past 21 years by citing pendency of various proceedings.

(ix).The learned counsel had further contended that the employer



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having filed a writ petition challenging the Central Government Notification dated 20.06.2001 and 19.07.2001 and 13.12.2001, cannot file E.S.I.O.P for the same relief when the writ petition was pending.

(x).The learned counsel had further contended that the question of granting opportunity to the employer would arise only if the employer has got any defence to suspend or postpone the implementation of the E.S.I.Act.

(xi).When the non availability of full pledged hospital is not a ground for postponement of implementation of the Act, the order passed on 16.03.2007 cannot be considered to be against the principles of natural justice. Hence, he prayed for allowing the appeal.

4.Contention of the learned counsel for the respondents:

(i).The implementation of E.S.I.Act should be beneficial to the employees concerned. When the corporation has not established any full-fledged hospital, the payment of the contribution to the corporation would be detrimental to the employees concerned.

(ii).He had further contended that the employer is offering better medical services to their employees.



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(iii).The learned counsel for the respondents had further contended that the High Court by its order dated 22.11.2006 had directed the management to give a representation to the E.S.I.Corporation. Accordingly a representation was presented by the management to the corporation on 12.03.2007 seeking full-fledged dispensary in the area of Vadamadurai. In fact, the employees have also raised objection and have prayed to postpone the implementation till the corporation is able to provide free medical treatment. This representation was rejected by the Corporation on 16.03.2007 without affording any opportunity as prayed for and in clear violation of the principles of natural justice. Therefore, the employer was constrained to file E.S.I proceedings before the Labour Court.

(iv).The learned counsel for the respondents had further contended that the order dated 16.03.2007 refers to the report of 3 officials, but the said report was not served to the employer. No full time hospital is functioning in Vadamadurai and it is proved by the certificate issued by the Village Administrative Office that only a part time hospital is functioning in the said locality.



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(v).The learned counsel had further contended that several employers and trade union have challenged the implementation of the said Act to Vadamadurai locality and interim orders were in force. The corporation had never provided any benefit to the employers nor contribution has been collected from the wages of the employees. Therefore, it is not proper on the part of the Corporation to demand contribution for the past period from the employer.

(vi).The learned counsel for the respondents had further contended that the Hon'ble Supreme Court has held in many decisions that since no contribution was collected from the employees and no benefit was extended to the employees by the E.S.I.Corporation, the Corporation cannot demand the contribution for the past period. In order to establish the said fact, a proper enquiry has to be conducted by the Corporation on the representation made by the employer on 12.03.2007. However, without affording any opportunity or giving personal hearing, the said representation was rejected within a period of 4 days. Therefore, the E.S.I.Court was right in remitting the matter back to the Corporation to



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provide opportunity to the employer and pass orders on merits and in accordance with law. Hence, he prayed for dismissing the appeal.

5.I have considered the submissions made on either side and perused the records.

6.The E.S.I.Act has been extended to Vadamadurai area by way of a notification issued by the Central Government on 20.06.2001 with effect from 01.08.2001. In order to inform about the notification, a communication was sent by the Sub Regional Office of E.S.I.Corporation to the respondent mill on 19.07.2001. Despite several notices, there was no proper reply from the employer and therefore, a final order of coverage was passed by the E.S.I.Corporation on 13.12.2001. All these three orders i.e.20.06.2001, 19.07.2001 and 13.12.2001 were challenged in W.P(MD).No.23457 of 2002 with a consequential prayer to restrain the corporation from implementing the provisions of E.S.I.Act.

7.While this writ petition was pending, E.S.I.O.No.8 of 2008 has been filed to quash and set aside the Central Government Notification dated 20.06.2001, the consequential communication of the corporation dated 19.07.2001 and the rejection order of the Corporation dated

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16.03.2007. Therefore, it is clear that while the writ petition was pending before the High Court with a similar prayer, the respondent mill has chosen to file E.S.I.O.P. for the same prayer. Therefore, it is clear that the respondent mill is guilty of forum shopping. On 17.09.2009, the said writ petition has been dismissed.

8. Another writ petition has been filed by one of the employees of the respondent mill in W.P(MD).No.4504 of 2007 for a mandamus to direct the E.S.I. Corporation to perform their duty by running a full-fledged hospital at Vadamadurai. The said writ petition was dismissed on 06.10.2010. The order in both these writ petitions have been marked as Exhibits P7 and P8 on the side of the employer before the Labour Court. This Court had dismissed the Central Government Notification dated 20.06.2001 and the final coverage order dated 16.03.2007 on 17.09.2009. However, the E.S.I. Court had proceeded to pass an order on 22.08.2011 allowing the E.S.I.O.P filed by the employer thereby quashing the Central Government Notification dated 20.06.2001, the letter dated 19.07.2001 issued by the Corporation informing about the implementation of the Act. Therefore, it is clear that the order of the



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E.S.I.Court is clearly in violation of the order passed by this Court.

9.The primary contention of the learned counsel appearing for the respondent mill is that unless a full-fledged 24 hours hospital is established by the E.S.I.Corporation, the Act cannot be extended and the contribution cannot be demanded. An employee of the respondent mill (obviously set up by the management) had filed W.P(MD).No.4504 of 2007 for a mandamus to start a full-fledged hospital. In the said writ petition, the Corporation had filed a counter pointing out that in the State of Tamil Nadu, the E.S.I.Hospitals are being run by the Government of Tamil Nadu as contemplated under Section 58 of the E.S.I Act.

10.The employer had also filed a counter pointing out that an E.S.I.Hospital is running in the said locality, however for a limited time. Based upon the counter filed by the Corporation and the employer, the said writ petition has been dismissed on 06.10.2010. Therefore, it is clear that the non availability of the full-fledged 24 hours E.S.I.Hospital, cannot be a ground to suspend or postpone the implementation of the E.S.I.Act to the particular locality.



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11.The respondent mill has submitted a representation to E.S.I.Authority on 12.03.2001 only to set up a full-fledged dispensary in Vadamadurai area and sought to postpone the implementation of the Act. This representation has been rejected by the Corporation on 16.03.2007 which is also one of the orders that were challenged before the E.S.I.Court. The implementation of the Act is decided by the notification issued by the Central Government and the Sub Regional Office has no power whatsoever to suspend or postpone the implementation of the Act. Only when the authority has got powers to alter his stand based upon an enquiry or personal hearing, the principle of natural justice can be invoked. However, when the authority himself has no power whatsoever to decide about the suspension or postponement of the Act, the order of rejection dated 16.03.2007 passed by the Sub Regional Office cannot be considered to be in violation of the principles of natural justice. However, the E.S.I.Court has proceeded to allow the petition on the sole ground that the employer was not given any opportunity to put forth his views. In such circumstances, the order of remand passed by the



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E.S.I.Court to provide opportunity to the employer will be an empty formality.

12.Though the Act has been implemented in the locality from 01.08.2001 onwards, the employer has managed to not to pay a single paise for contribution for the past 22 years citing his pendency of various proceedings. The order of the E.S.I.Court is clearly in violation of the orders passed by this Court in W.P(MD).No.23457 of 2002 and W.P(MD).No. 4504 of 2007. Therefore, this Court has no hesitation whatsoever to hold that the order of remand for providing opportunity to the employer to decide about the postponement or implementation of the E.S.I.Court is clearly without jurisdiction and it is a perverse order.

13.The Central Government Notification dated 20.06.2001 and the communication of the corporation dated 19.07.2001 were already challenged before this Court in W.P(MD).No.23457 of 2002 and the writ petition has already been dismissed. As far as the order dated 16.03.2007 passed by the E.S.I.Corporation rejecting their representation of the employer is concerned, it does not give any cause of action to the employer to file an E.S.I.O.P. It relates to the opening of a full-fledged



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dispensary at Vadamadurai and the said contention has also been rejected in W.P(MD).No.4504 of 2007. Therefore, this Court is of the view that there is no necessity whatsoever to set aside the order of E.S.I.Court and remit it back to the E.S.I.Court to consider the validity of 3 orders challenged in the said E.S.I.Petition.

14.In view of the above said deliberations, all the substantial questions of law are answered in favour of the appellants. E.S.I.O.P.No.8 of 2008 on the file of the E.S.I.Court (Labour Court), Madurai stands dismissed. This Civil Miscellaneous Appeal is allowed. No costs.

25.04.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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- 1.The E.S.I.Court
(Labour Court, Madurai).
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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Pre-delivery Judgement made in
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