



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated 11.04.2023

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THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)Nos.1502 to 1505 of 2013

E.S.I.Corporation
Sub Regional Office
Tallakulam
Madurai
Represented by its Deputy Director

... Appellant in all the appeals

vs.

M/s.New Thilaka Bakery
10, Puttuthoppu Road, Madurai
Represented by its Proprietor
P.Gandhi Venkatesh

...Respondent in all the appeals

COMMON PRAYER:- Civil Miscellaneous Appeals have been filed under Section 82 of the E.S.I.Act, 1948, to set aside the order dated 02.05.2013 passed in ESIOP.Nos.40, 96, 97 and 98 of 2001 by the Employees Insurance Court (Labour Court) Madurai and to allow this Civil Miscellaneous Appeal with necessary directions.

For Appellant : Mr.R.Ravindran
in all the appeals

For Respondent :Mr.S.Karthik
in all the appeals

**COMMON JUDGMENT**

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All the four appeals have been filed by the E.S.I. Corporation challenging the order of E.S.I. Court, Madurai wherein the order passed by the E.S.I. Corporation under Section 45-A of the E.S.I. Act was set aside.

2. The respondent herein is running a bakery in Madurai city. According to the respondent, they have never engaged more than 6 employees for wages at any point of time. The attendance and the wage registers maintained by them will establish that at no point of time 10 employees were engaged by them. However, on 22.12.1994 during the Christmas season, when the inspector of the E.S.I. Corporation had visited the bakery, he had taken it into account the relatives and friends of the proprietor of the bakery who were present during the festival season and included them as employees of the bakery.

3. The respondent had submitted a reply on 04.04.1996 along with wage records and they have also appeared for personal hearing. Not being satisfied with the reply, the corporation had passed an order under Section 45-A of E.S.I. Act. On 28.06.1999 another order was passed fastening the liability to pay contribution for the period between



December 1994 to September 1995 of a sum of Rs.1960/-. It is also the contention of the respondent that the corporation had issued a recovery notice on 28.09.1999. Challenging the same, the respondent had filed E.S.I.O.P.Nos.40 of 2001 before the E.S.I.Court.

4. When the issue relating to the coverage was pending before the E.S.I.Court, the corporation had passed another order under Section 45-A of the E.S.I.Act on 06.07.2001 demanding a sum of Rs.76,354/- for the period covering from October 1995 to March 1999. This order was challenged in E.S.I.O.P.No.96 of 2001. A separate order under Section 45-A of the Act was passed on 06.07.2001 covering a period between April 1999 to September 1999 demanding a contribution of Rs.13,943/-. Challenging the same, the respondent had filed E.S.I.O.P.No.97 of 2001. On the same day namely 06.07.2001 another order under Section 45-A of the Act was passed for the period covering from October 1999 to March 2000 demanding a sum of Rs.13,943/- as contribution. Challenging the same, the respondent had filed E.S.I.O.P.No.98 of 2001.

5. The E.S.I.Court after considering all the petitions filed by the respondent bakery, arrived at a finding that the corporation had not established that there were 10 persons working in the bakery. The



inspection having been conducted in the Eve of Christmas and New Year, they were lot of customers in the said premises and therefore, the contentions of the bakery owner seems to be correct.

6.The E.S.I.Court further found that the bakery has produced a salary register for the period between April 1994 to October 1994 as Exhibit P5 and profit and loss account statement for the period 1995-1996 to 2000-2001 under Exhibit P6. A perusal of Exhibit P5 would indicate that only six employees were present and the salaries were disbursed to them after obtaining their signatures.

7.The E.S.I. Court further found that the bakery was functioning from a rented building having limited extent which could not accommodate 10 or more persons. Based upon the said facts, the E.S.I.Court arrived at a finding that the corporation has not established that the bakery has employed 10 or more persons at the time of inspection or thereafter. Independent orders were passed in each one of the E.S.I.Petitions. Challenging all the four orders, the above four appeals have been filed by the E.S.I.Corporation.

8.According to the learned counsel appearing for the appellant/corporation, the inspector had visited the premises on



22.12.1994 and on that date, 10 persons were employed in the said premises. Since they were using power for manufacturing purpose, the presence of 10 persons would clearly attract the coverage under E.S.I.Act. The learned counsel had further contended that only based upon the wage register produced by the employer, the calculations were arrived at by the corporation and therefore, four orders that were passed under Section 45-A of the Act should have been confirmed by the E.S.I.Court.

9.Per contra, the learned counsel appearing for the respondent/employer had contended that it is a small bakery and it has never engaged more than 6 employees at any point of time. They are regularly maintaining the attendance register and wage registers. The said attendance register and wage register were also produced before the authorities as well as before the Tribunal to establish that at no point of time more than 6 employees were employed in the bakery.

10.The learned counsel for the respondent had further contended that the respondent authorities had visited just one week prior to the Christmas and New Year and there was huge crowd in the bakery and the customers have been considered to be employees and the order of



coverage has been passed by the corporation. He had further contended that the profit and loss account register, attendance register and the wage register would clearly indicate that they have been engaging only 6 employees at that point of time. Therefore, the Act would not get attracted. Hence, he prayed for sustaining the order passed by the E.S.I.Court.

11.I have considered the submissions made on either side and perused the materials available on record.

12.The issue relates to the coverage of respondent bakery under the E.S.I.Act. According to the respondent, they have never engaged more than 6 persons at any relevant point of time. However, on the basis of the inspection conducted on 22.12.1994, it is contended that on behalf of the corporation that 10 persons were employed at relevant point of time. The employer has produced Exhibit P5 salary register for the period covering from April 1994 to October 1994 which reflects that there were only 6 employees. The employer has also produced profit and loss account statement as Exhibit P6. The employer has produced the sale deed copy for the building in which the bakery is located as Exhibit P7.



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13.A perusal of the sale deed copy will indicate that there are 2 portions in the building measuring 33 x 8 and 11.4x31.6. Considering the extent of the building and the salary register, this Court is of the considered opinion that the corporation has not established that there are 10 or more employees at any relevant point of time. Admittedly, the employers are using machinery to run the bakery business and hence, unless it is established that 10 or more employees were employed at any relevant point of time, the Act is not attracted. Before the E.S.I.Court, the employer has prayed for a declaration that the provisions of the E.S.I.Act are not applicable to the bakery and they have also challenged the orders passed under Section 45-A of the Act. This Court is of the opinion that a blanket order of declaration that the E.S.I.Act is not applicable to the respondent bakery cannot be granted. It depends upon the number of employees who are engaged from time to time. However, this Court is of the opinion that the corporation has not established that there were 10 or more employees on the date of inspection and therefore, the orders passed under Section 45-A of the Act are not legally sustainable.

14.In view of the above said deliberations, the appellant corporation is at liberty to conduct an inspection at any point of time and



if they arrive at a conclusion that there are 10 or more employees, they are very well empowered to pass order of coverage. With the said liberty, the appeals filed by the E.S.I. Corporation based upon their inspection dated 22.12.1994 stand dismissed. No costs.

11.04.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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To

1. The Employees Insurance 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 order made in
C.M.A(MD)Nos.1502 to 1505 of 2013

11.04.2023