



C.M.A(MD)No.1016 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.06.2023

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.1016 of 2014

1.Employee State Insurance Corporation,
Represented by its Regional Director,
143, Sterling Road, Nungambakkam,
Chennai-34.

2.The Joint Director,
Employee State Insurance Corporation,
2 & 3 Floor, Theerthamalai,
Vaniga Valagam, 39/57 Three Road,
Salem.

... Appellants

Vs.

Bharat Heavy Electricals Limited,
Unit Thiruverumbur, Trichy-14.

... Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 82 of the ESI Act, to set aside the order, dated 12.07.2012 passed by the ESI Court (i.e.Labour Court), Trichirappalli in E.S.I.O.P.No.8 of 2006, reinstate the damages, order dated 31.08.2006 of the said corporation.

For Appellants : Mr.P.Ganapathisamy

For Respondent : Mr.Raguvaran Gopalan



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JUDGMENT

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The present appeal has been filed by the E.S.I corporation challenging the order passed by the Labour Court, Trichirappalli in E.S.I.O.P.No.8 of 2006.

2. It is not in dispute as far as the permanent employees of the respondent establishment are concerned, they have been exempted from the purview of the E.S.I Act by the Government of Tamil Nadu. The officials of the E.S.I corporation have conducted an inspection and found that the contractual, casual and temporary employees, who were not covered under the order of exemption, have not been brought within a purview of E.S.I Act. On 13.07.2005, an order under Section 45-A was passed for the period covering 01.04.1991 to 31.03.2001 demanding a sum of Rs.72,36,409/- as contribution. The said amount was promptly paid by the respondent employer on 23.07.2005.

3. After payment of the contribution amount, the corporation had initiated proceedings for recovery of interest and a sum of Rs.24,38,000/- was demanded under the head of interest. This amount was also promptly paid by the respondent employer.



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4. The corporation has initiated proceedings under Section 85-B and an order to the said effect came to be passed on 31.08.2006. According to the corporation, when the employer has admitted his liability and paid the amount demanded under Section 45-A of the Act belatedly, certainly he is liable to be imposed with the penalty as contemplated under Section 85-B of the Act. As per the said order, a sum of Rs.40,68,052/- was demanded. This order was challenged by the respondent employer in E.S.I.O.P.No.8 of 2006.

5. The tribunal after considering the evidence on either side, arrived at a finding that the employer had promptly paid the contribution amount and the interest. That apart, the corporation has not established that there was *mens rea* on the part of the employer for avoiding payment of the contribution amount with regard to the casual and temporary employees. The tribunal further found that the imposition of damages is discretionary in nature and the authorities have not exercised the discretion in a proper manner and proceeded to set aside the imposition of penalty in entirety. This order is under challenge in the present appeal.



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6. The learned counsel appearing for the appellants / E.S.I corporation has contended that the liability to pay the contribution being a civil liability, the question of *mens rea* would not arise. If at all if there is any mitigating circumstances for the delay in payment of the contribution amount, the same have to be established only by the employer and not by the corporation. He further contended that as per Section 40 (1) of E.S.I Act, only the principal employer is liable for payment of contribution even in respect of contractual labours. Therefore, the contention of the employer that he was under the impression that the contractors would have paid the contribution is not legally sustainable. Though the imposition of penalty is discretionary in nature, in the present case, since the employer has not established any mitigating circumstances, the tribunal ought not to have exercised its discretion to waive the penalty in entirety.

7. Per contra, the learned counsel appearing for the respondent employer had contended that the employer is a public sector undertaking which is running a full-fledged hospital within the factory premises. He further contended that they are also operating a dispensary near the city



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limits. Whatever amount that was demanded by the corporation has been paid promptly by the employer and therefore, without considering the said fact, penalty has been imposed. Hence, he prayed for sustaining the order passed by the Labour Court.

8. I have carefully considered the submissions made on either side and perused the material records.

9. It is not in dispute that the permanent employees of the respondent employer have been exempted by the Government from the purview of the E.S.I Act. As far as the contractual, casual and temporary employees are concerned, the E.S.I corporation has passed an order covering them and the contribution for them have been promptly paid by the employer. For the belated payment of the contribution, the corporation has demanded interest which has also been promptly paid by the employer. However, the employer is challenging only the imposition of penalty by an order, dated 31.08.2006 under which a sum of Rs. 40,68,052/- was demanded. This Court is of the view that the employer being a public sector undertaking and they are running a full-fledged hospital inside the factory premises, which is catering to the needs of the



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contractual, casual and temporary employees also, the imposition of penalty of 100% is not legally sustainable. However, the tribunal ought not to have waived the penalty in entirety. Considering the above said facts, this Court is inclined to waive 75% of the penalty imposed by the E.S.I corporation. The respondent employer is directed to pay 25% of the penalty imposed by the E.S.I corporation by their order, dated 31.08.2006.

10. With the above said observations, the Civil Miscellaneous Appeal stands partly allowed to the extent as stated above. No costs.

20.06.2023

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

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To

- 1.The E.S.I Court (i.e.Labour Court),
Trichirappalli.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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Judgment made in
C.M.A(MD)No.1016 of 2014

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