



C.M.A.(MD).No.1025 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 18.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.1025 of 2014

1. The Employees State Insurance Corporation
by the Dy. Director,
143, Sterling Road,
Chennai.

2. The Recovery Officer,
E.S.I. Corporation,
143, Sterling Road,
Chennai.

..... Appellants/ Respondents

-VS-

M/s.A.M.Engineers,
Agricultural & General,
Engineering Fabricators,
18-A, Anaikaranpalayam,
Kumbakonam- 612 001,
Thanjavur District.
Represented by its Sole Proprietor
A.Kopperman,
S/o.Arulnandi Sivam

.... Respondent/Petitioner



C.M.A.(MD).No.1025 of 2014

PRAYER: Civil Miscellaneous Appeal filed under Section 82 of the E.S.I.Act, 1948, against the fair order and ex-order dated 05.04.2007 on the file of the Principal District Court (Employee's Insurance Court), Thanjavur in E.S.I.O.P.No.59 of 1998.

For Appellants : Mr.R.Ravindran

For Respondent : No appearance

J U D G M E N T

The present appeal has been filed by the E.S.I. Corporation challenging the order of the E.S.I.Court, wherein, the order passed by the E.S.I. Corporation under Section 45-A of the E.S.I.Act and the recovery certificate have been set aside.

2. According to the respondent, they are running M/s.A.M.Engineers, Agricultural and General Engineering Fabricators from the year 1990 onwards as a small scale industry. The total number of employees is seven in number and they have voluntarily applied for extension of benefits under the Employees Provident Funds Act.



C.M.A.(MD).No.1025 of 2014

WEB COPY

3. The Respondent had further contended that the authorities under the P.F.Act have been regularly verifying the attendance register and wage register which would establish that the employees are less than ten in number. They have further contended that on 27.08.1996, an inspection was conducted by the officials of the E.S.I Corporation and on the said date, out of seven regular employees, six of them were on duty. Even though, records were produced and detailed explanation was offered, the same was not accepted. However, they have clubbed the employees of the respondent Industry with another industry run by his wife viz., Santhana Lakshmi under the name and style of Mangala Implements.

4. The respondent had further contended that the Proprietorship concerned run by his wife is a small scale industry having a separate electricity service connection and it is entirely a different unit functioning in a different door number. He has further contended that the accounts were also maintained separately and therefore, both the establishments cannot be clubbed together for the purpose of bringing it under the purview of the ESI Act.



C.M.A.(MD).No.1025 of 2014

WEB COPY

5. Per contra, the appellants herein had filed a counter contending that one of the establishments is run by the husband and other establishment is run by the wife and both of them are located within the same compound. They have further contended that since 17 employees are working, both establishments were clubbed together. They have further contended that only after giving due opportunity to both the parties, the order under Section 45-A has been passed. Therefore, the Corporation had prayed for confirmation of the order before the E.S.I. Court.

6. The E.S.I. Court, after considering the contentions of the either parties and going through the oral and documentary evidence, has arrived at a finding that the establishments run by the husband and the wife are separate entities and they are having independent accounts. Though, both the establishments are located within the same premises but they are being running by different legal entities. Just because, both the units are being run by the husband and wife, they cannot be clubbed together for the purpose of coverage. The E.S.I Court further found that both the establishments are having independent electricity service connection and certificates of



C.M.A.(MD).No.1025 of 2014

registration are also independent. Unless both the establishments were clubbed together, the ESI Act cannot be implemented. When the establishments are completely independent, the question of clubbing both of them is not legal. Based upon the said findings, the E.S.I Court was pleased to allow the petition. Challenging the same, the appeal has been filed by the E.S.I. Corporation.

7. It is an admitted case that unless both the establishments are clubbed together the E.S.I Act cannot be implemented. The only issue that has to be considered by this Court is whether the clubbing of two establishments run by the husband and wife are legally sustainable or not.

8. A perusal of the records indicate that the establishments are having separate Sales Tax Certificates under Ex.P.14 and Ex.P.15. The respondent establishment has voluntarily covered itself under the P.F. Act. The voluntarily coverage order would clearly indicate that they are having less than 10 employees. The wage register is also independently maintained by both the establishments.



C.M.A.(MD).No.1025 of 2014

WEB COPY

9. A perusal of Ex.P.19 to Ex.P.22, will indicate that they are wage registers of the respondent Institution. Ex.P.23 is the registration Certificate for the establishment run by the wife and Ex.P.25 and Ex.P.26 are wage registers of the establishment maintained by the wife. Ex.P.27- is the Electricity Card in favour of the establishment maintained by the wife. All these documents put together would clearly indicate that the husband and wife are running two independent establishments with separate service connections, accounts and separate registration before the authorities and they are maintaining independent attendance register and wage register. The accounts maintained by both of them are also separate. Therefore, the order passed under Section 45-A of the Act, clubbing both the establishments, which are completely independent from one another and only based upon the fact that they are run by husband and wife is not legally sustainable. Therefore, this Court does not find any illegality or infirmity in the order passed by the E.S.I. Court and there are no merits in the appeal.



C.M.A.(MD).No.1025 of 2014

WEB COPY

10. Accordingly, this Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs.

18.04.2023

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

1. The Principal District Court (Employee's Insurance Court),
Thanjavur.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A.(MD).No.1025 of 2014

R.VIJAYAKUMAR,J.

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C.M.A.(MD)No.1025 of 2014

18.04.2023



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C.M.A.(MD).No.1025 of 2014