



C.M.A(MD)No.242 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 21.08.2023

Delivered on : 19.10.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

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1.The Deputy Director,
Sub Regional Office,
Employees State Insurance Corporation,
K.K.Nagar, Madurai.

2.The Joint Director,
Sub Regional Office,
Employees State Insurance Corporation,
K.K.Nagar, Madurai.

3.The Recovery Officer,
Sub Regional Office,
Employees State Insurance Corporation,
K.K.Nagar, Madurai.

: Appellants

Vs.

M/s.Sri.Ganesh Engineering Constructions,
Rep.by its Managing Partner N.Alagappan,
4/62-A West Street, Theroor,
Kanyakumari District.

: Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 82 of ESI Act., to set aside the order dated 11.10.2012, passed in ESIOP.No.12 of 2004 by the Employees Insurance Court, (Labour Court) Tirunelveli.



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For Appellant : Mr.R.Ravindran

For Respondent : Mr.M.Jerin Mathew

J U D G M E N T

The Civil Miscellaneous Appeal is directed against the award passed in ESIOP.No.12 of 2004, dated 11.10.2012 on the file of the the Employees State Insurance Court, (Labour Court) Tirunelveli.

2. The respondent/petitioner has filed a petition under Section 77 of Employees State Insurance Act, challenging the order passed under Section 45(A) of the said Act, dated 22.02.2002 and the consequent recovery order dated 06.05.2002.

3. Admittedly, the respondent is a partnership firm doing business in the erection, repairing and serving of wind mills and that they are having three branches in India besides their head Office at Aralvaimozhi.

4. It is evident from the records that the ESI Corporation has issued a show cause notice to the respondent in Form C-18 (AD HOC BASIS) dated 09.05.2002, directing the respondent to pay contribution of



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Rs.6,64,403/- due for the period from 01.04.1997 to 31.03.1998; 01.04.1998 to 31.03.1999 and 01.04.2000 to 31.03.2001, on omitted wages and that after enquiry, the Deputy Director of ESI Corporation has passed the impugned order, dated 22.02.2002, directing the respondent to pay contribution of Rs.1,12,287/- with interest for the period 4/99 – 3/00 and that since the amount was not paid, the third appellant/respondent Recovery Officer attached to the E.S.I Corporation has issued a notice of demand in Form No.ESI-CP 2, dated 06.05.2002, directing them to pay the amount within 15 days, failing which the recovery shall be made in accordance with the provisions of E.S.I., Act. Aggrieved by the above orders, the respondent has filed the petition before the E.S.I., Court.

5. The main contention of the respondent/petitioner is that their firm was having only 14 employees, who are directly controlled by the partners of the Firm; that they have never employed more than 14 employees at any point of time in any of their work site; that their other branches were situated in the non implemented area; that among the actual strength of 14 employees, the head office at Kuppanadal is having 8 in number and the remaining 6 employees related to Poolavadi Branch, which was in non implemented area; that the inspector of the



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E.S.I., Corporation in his report dated 12.01.2001 has made an entry that the respondent/petitioner firm has employed 20 employees with effect from 01.01.1999 to December 2000 and among those 20 employees, there are 5 partners and 6 employees of non implemented area of Poolavadi and that since the respondent/petitioner firm has not at all employed more than 10 employees at any point of time, the statutory coverage of the E.S.I., Act is not proper and as such, the respondent firm is not liable to pay any contribution to the E.S.I., Corporation.

6. The defence of the appellant Corporation is that the respondent firm has submitted 0-1 Form in the month of April 2000 admitting that there were 20 employees in their concern; that after inspection made in April 2000 and again on 12.01.2001 show cause notice was issued and after conducting personal hearing, the impugned order under Section 45-A of the E.S.I., Act came to be passed; that list of 20 persons given by the respondent Firm does not include the partners; that the respondent's Firm having branch office at non implemented area does not mean that the employees sent for execution of work to those branches could be excluded from consideration for coverage; that the payments made to the employees were entered in the main office accounts and therefore, those



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employees, who were listed in the form submitted by the respondent firm and for whom wages were paid are employees to be considered for coverage and that therefore, the above petition is liable to dismissed.

7. During trial, the respondent/petitioner has examined two witnesses as P.W.1 and P.W.2 and exhibited 12 documents as Ex.P.1 to Ex.P.12. The appellants/respondents have examined one witness as R.W.1 and exhibited one document as Ex.R.1.

8. The learned E.S.I., Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned order dated 11.10.2012, allowing the petition and thereby setting aside the order passed under Section 45-A of the E.S.I., Act, dated 06.05.2022 and the consequent recovery action.

9. The following Substantial Questions of law framed by this Court are :

(i) Whether the E.S.I., Court erred in rendering a finding that the very E.S.I, coverage to the respondent firm is not proper as they have not employed 20 persons in the main establishment, that as per Section 2(9)



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of the E.S.I., Act when the main establishment is covered, automatically coverage will be extended to the employees working in other branches of the said establishment ?

(ii) Whether the impugned order, dated 11.10.2012 passed in ESIOP.No.12 of 2004, is liable to be interfered with ?

10. The learned counsel for the appellants would submit that even according to the respondent firm, they are having two branches and separate workers are working in the said branches, all records are maintained only in the head office; that since the main establishment is covered, its branches will be by way of corollary covered; that since the partners were being paid some remuneration, they were included in the list of employees and as such, they were rightly counted for employment strength test; that the respondent firm itself has submitted a Form 01 stating that there were 20 employees working in their concern and that subsequent reduction in number of employees cannot be considered as criteria to remove them from the statutory coverage.

11. Admittedly, the respondent firm has submitted Ex.R.1/Form 01



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whereunder, they have specifically admitted that 20 persons were employed for wages. Moreover, in Column-15 of Form 01, they have furnished the particulars of the employees engaged month wise and year wise and it is evident that in April 2000, it has been shown that they have engaged 20 employees.

12.The respondent firm has not disputed the submission of Ex.R.1 with the E.S.I. Corporation. But, according to them, it is not a voluntary submission and as per the compulsion of the E.S.I, Inspector, who visited the respondent's establishment, the same was given to him. The learned trial Judge by observing that Ex.R.1/Form 01 was not given by the respondent in the E.S.I., Office, but on the other hand, when the E.S.I., Inspector came to the respondent concern for inspection, the same was given to the E.S.I., Inspector and that Ex.R.1 is the printed Form, has held that the respondent can very well challenge the coverage. When the respondent has specifically admitted that Ex.R.1 was submitted by them, whether the same was submitted in the Office of the E.S.I., Corporation or it was submitted to the E.S.I., Inspector at the respondent's establishment, does not make any difference.



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13. It is pertinent to note that the trial Court, by specifically observing that in Ex.P.5/Attendance Register and Ex.P.6/ Salary Register, the respondent has listed out 20 employees and that the respondent has attempted to canvass a case that 20 employees would include the partners of the Firm, has held that since the partners' names were shown in the attendance register and salary register and they were also considered as employees, they cannot be excluded for ascertaining number of employees required for the statutory coverage.

14. As rightly contended by the learned counsel for the appellants, the respondent has not filed any appeal nor filed any cross appeal, challenging the said finding of the Labour Court.

15. As rightly contended by the learned counsel for the appellants, the learned trial Judge, taking note of the fact that the respondent Firm is having two branches one at Thadapathiri and other at Poolavadi and considering the case of the respondent that there were totally 20 employees in their concern, has observed that the persons employed in other branches are excluded, there will be reduction of total employees in the main establishment, which would be below 20, then the question of



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covering the respondent establishment under the E.S.I., Act does not arise at all.

16. At this juncture, it is necessary to refer Section 2(9) of the E.S.I., Act.

“ "employee" means any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies and-

(i) who is directly employed by the principal employer on any work of, or incidental or preliminary to or connected with the work of, the factory or establishment whether such work is done by the employee in the factory or establishment or elsewhere; or

(ii) who is employed by or through an immediate employer on the premises of the factory or establishment or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment; or

(iii) whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered into a contract of service;



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and includes any person employed for wages on any work connected with the administration of the factory or establishment or any part, department or branch thereof or with the purchase of raw materials for, or the distribution or sale of the products of, the factory or establishment or any person engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 and includes such person engaged as apprentice whose training period is extended to any length of time but does not include]] - (a) any member of [the Indian] naval, military or air forces; or

17[(b) any person so employed whose wages (excluding remuneration for overtime work) exceed [such wages as may be prescribed 136 by the Central Government]]:
provided that an employee whose wages (excluding remuneration for overtime work) exceed [such wages as may be prescribed by the Central Government]
at any time after (and not before) the beginning of the contribution period, shall continue to be an employee until the end of that period;]”

17.It is also necessary to refer the judgment of Andrapradesh High Court in **Modi Rubber Limited Vs. Regional Director, E.S.I., Corporation** reported in **1984 0 Supreme (AP) 469**, relied on by the learned counsel for the appellants and the relevant passage is extracted hereunder :



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“5. True, Section 2(9) of the Act and the decisions of this Court as well as the Supreme Court, contemplate a situation where the expression "employee" working in any factory or establishment includes any person employed for wages on any work connected with the administration of the factory or establishment or any part, department or branch thereof and the object is quite obvious from this provision, namely, a benefit which is extended to the employees working in the main factory or establishment, as the case may be, will have to be automatically extended to the employees working in all the branches wherever they were established, whether they are within the area of operation or outside the area of operation of the Act, notwithstanding the fact that the number of employees is less than 20. In our undoubted view, this is one of the aspects deliberately contemplated by the legislature and so wherever the main factory or establishment is covered, its branches also will be, by way of corollary, covered. But this positive aspect will not deter the court from construing and giving effect to the provisions enacted in Section 1(5) of the Act, more so in the absence of any explicit provision in the Act that wherever the main factory is not covered by the Act a branch also should not be covered even under the powers conferred under the provisions enacted in Section 1(5) of the Act. In the absence of such provision, we are unable to see any fetter on the powers conferred on the State Government for extending the benefit explicitly postulated under Section 1(5) to such of these other establishments wherein the employees engaged are 20 or more



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in number, even though the parent unit is not covered. In fact, if we construe narrowly we will be defeating the very purpose of the Act itself. Legislature, in our view, has covered deliberately such of these areas where a branch may not be covered in view of the fact that the main office is not covered by the ESI Act, will nevertheless be covered under the powers given to, the State Government. In fact, the policy is very well laid down in the very Section itself and before seeking to cover any establishment the State Government has, before issuing a notification, to consult the Central Government and give due notice to the establishment as well.”

18. Considering the object of the Act and the relevant provision of the said Act, this Court is in entire agreement with the decision arrived at by the learned Judge of the Andhra Pradesh High Court. It is pertinent to note that after covering a factory or establishment under the E.S.I., Act, a benefit is extended to the employees working in the main factory or establishment, then the same will have to be extended automatically to the employees working in all the branches, whether they are within the implemented area or not.

19. In the case on hand, as already pointed out, even according to the respondent, there were 20 employees in their establishment. Even assuming for argument sake that some of the employees in the main



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establishment were deputed to the other branches, that by itself will not make the establishment from coming out of the statutory coverage.

20. Considering the above, the learned trial Judge, without considering the above aspects in proper perspective, has passed the impugned order mechanically and as such, the same is liable to be set aside. Considering the other facts and circumstances, this Court further decides that the parties are to be directed to bear their own costs.

21. In the result, the Civil Miscellaneous Appeal is allowed and the order dated 11.10.2012, in ESIOP.No.12 of 2004 passed by the learned Labour Judge, Employees Insurance Court, (Labour Court) Tirunelveli, is set aside. Parties are directed to bear their own costs.

19.10.2023

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

- 1.The Judge, Employees Insurance Court,
(Labour Court) Tirunelveli.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court, Madurai.



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K.MURALI SHANKAR,J.

das

Pre-delivery order made in
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