



C.M.A.(MD).No.504 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 12.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.504 of 2014

Sahul Hameed,
Proprietor,
Athangarai Body Labour Works,
3/99, Main Road,
Therekalputhur,
Tirupathisaram (Post)
Kanyakumari District.

.....Appellant/Petitioner

-VS-

1. The Deputy Director,
Sub Regional Office,
E.S.I. Corporation,
K.K.Nagar, Madurai – 20.
2. The Joint Director,
Sub Regional Office,
ESI Corporation, K.K.Nagar,
Madurai – 20.
3. The Recovery Officer,
Sub Regional Office,
ESI Corporation, K.K.Nagar,
Madurai – 20.
4. E.S.I Inspector,
Inspection Office,
E.S.I. Corporation,
10/25 South Car Street,
Nagercoil, Agastheeswaram Taluk,
Kanyakumari District.

..... Respondents / Respondents



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PRAYER: Civil Miscellaneous Appeal filed under Section 82 of the E.S.I. Act, 1948, against the order and decretal order passed by the Labour Court, Tirunelveli in E.S.I.O.P.No.14 of 2003, dated 21.07.2011.

For Appellant : Mr.Vasik Ali
for Mr.R.Murugan
For Respondents : Mr.P.Ganapathysamy

J U D G M E N T

The present Civil Miscellaneous Appeal has been filed by the employer challenging the order passed by the E.S.I. Court, wherein, the said Court had refused to set aside the show cause notice issued by the Corporation under Section 45-A of the E.S.I. Act.

2. Admittedly, the appellant/employer was running a lorry repairing and servicing station in the name and style of “Athangarai Thai Body Labour Works”. An inspection was conducted by the authorities under the E.S.I.Act on 27.03.2001 and a visit note was prepared to the effect that twelve (12) employees are working with power. Based upon the said visit note, a second visit note was also made on 22.04.2002. A third visit note was made on 05.08.2002. A coverage order was passed by the authorities on 17.04.2001 allotting code number to the appellant/employer.



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3. Since the employer had not deposited his contribution, the E.S.I. Corporation issued a show cause notices, dated 05.11.2002 and 07.11.2022, to show cause why the employer should not be called upon to pay a contribution of Rs.45,066/- (Rupees Forty Five Thousand and Sixty Six only). However, the employer did not send any reply to the said communication.

4. The employer challenged the show cause notice by filing E.S.I. O.P.No.14 of 2003, before the Labour Court, Tirunelveli, on the ground that the visit note dated 27.03.2001 just contains the name of the employees without their address, designation or monthly salary. They have further challenged the show cause notice on the ground that the visit note dated 05.08.2002 clearly pointed out that they were only seven employees. Therefore, they are not covered under the E.S.I.Act.

5. The Labour Court, after considering the contentions on either parties arrived at a finding that the Corporation has just issued a show cause notice calling upon the employer to establish the case of non-coverage. The amount mentioned in the show cause notice is only a tentative/*ad hoc* amount which is likely to be reduced or enhanced based upon the reply to be given by the



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employer. On the said findings, the Labour Court dismissed the said petition. Challenging the same, the present appeal has been filed by the employer.

6. The learned counsel appearing for the appellant/employer had contended that the visit note dated 27.03.2001 does not have any legal sanctity whatsoever. That apart, the third visit note dated 05.08.2002 clearly points out that there were only seven employers. Therefore, the coverage of the appellant establishment under the E.S.I.Act cannot be decided unilaterally by the authorities under the E.S.I.Act on the basis of visit note. Challenge made to the show cause notice is legally sustainable and the E.S.I. Court ought to have considered the same on merits.

7. Per contra, the learned counsel appearing for the E.S.I. Corporation had contended that the visit note only reflects the *prima facie* view of the authorities to initiate proceedings for determination of contribution under the E.S.I. Act. Any amount that is mentioned in the show cause notice is only *ad hoc* in nature and therefore, it cannot be presumed that the authorities have already pre-determined the said issue.



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

9. The primary contention on the part of the appellant/employer is that the establishment is not covered under the E.S.I. Act, in view of the fact that less than 10 employees are employed. Solely on the basis of the visit note, the authorities are compelling the appellant to pay the contribution amount by unilaterally allotting a code number for the appellant establishment. However, it could be seen from the records that what is challenged before the E.S.I. Court is only a show cause notice for initiating proceedings under Section 45-A of the E.S.I. Act. Therefore, any amount that is mentioned in the said show cause notice is only tentative/*ad hoc* in nature which is likely to be reduced or enhanced depending upon the reply to be submitted by the employer. Admittedly, in the present case the employer has not chosen to submit a reply and raised a dispute before the E.S.I.Court challenging the show cause notice. Therefore, this Court is of the view that the E.S.I.O.P.No.14 of 2003 filed by the employer challenging the mere show cause notice without filing reply is not maintainable in the eye of law.



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10. When the challenge is only with regard to the show cause notice under Section 45-A of the E.S.I.Act, the E.S.I. Court ought not to have arrived at a finding with regard to the coverage of the establishments. The order relating to the coverage of an establishment has to be first ascertained and passed by the authorities under the E.S.I.Act. Therefore, the said finding is hereby set aside. The appellant/employer is at liberty to file his reply within a period of four weeks from the date of receipt of a copy of this order to the show cause notices dated 05.11.2002 and 07.11.2002. After affording due opportunity to the employer, the Corporation is directed to pass orders on merits and in accordance with law. The employer is at liberty to raise all the pleas including the validity of the visit note.

11. With the above said observation, this Civil Miscellaneous Appeal stands dismissed. There shall be no order as to costs.

12.06.2023

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

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Tirunelveli.
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10/25 South Car Street,
Nagercoil, Agastheeswaram Taluk,
Kanyakumari District.
6. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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