



C.M.A.(MD).No.426 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 24.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.426 of 2017

1. The Deputy Director,
Sub – Regional Office (Madurai)
Employees' State Insurance Corporation,
Madurai. `

2. The Recovery Officer,
Employees' State Insurance Corporation,
Sub – Regional Office,
Madurai.

..... Appellants

-vs-

M/s. S.Ponnusamy Nadar Agencies (P) Ltd.,
117-A, South Raja Street,
Tuticorin – 628001,
Represented by its
Managing Director
Mr.K.Pon Venkatesh.

... Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 82 of the ESI Act, 1948, against the fair and decretal order dated 31.12.2014 of the Labour Court, (Employees' State Insurance Court or, in short, ESI Court) Madurai in ESI OP No.22 of 2003.



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For Appellants : Mr.R.Ravindran

For Respondent : Mr.S.Alagar Raja

J U D G M E N T

The present Civil Miscellaneous Appeal has been filed by the ESI Corporation challenging the order passed by the ESI Court, in E.S.I.O.P.No. 22 of 2003, on the file of the Labour Court, Madurai, wherein, the order passed by the Corporation under Section 45-A of the ESI Act, relating to clubbing and coverage have been set aside.

2. According to the learned counsel appearing for the appellants/ Corporation, M/s.S.Ponnusamy Nadar Agencies Private Limited having a strength of 16 employees and another establishment viz., Ponnusamy Nadar and Sons having a strength of 5 employees are operating from the same premises under the same employer. Therefore, after conducting an inspection, notices were issued to the employer calling upon him to show cause why both the concerns should not be clubbed together and the ESI Act coverage cannot be applied. Though notices were received by the concerned Management,



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there was no proper response from the said Management and thereafter, the Corporation proceeded to pass independent orders covering two different periods clubbing both the establishments and imposing coverage upon those establishments and demanding contribution from them. These two orders were challenged by the employer by filing ESI O.P.Nos. 22 and 29 of 2003 before the Labour Court, Madurai.

3. The employer has contended that one establishment is a private limited company operating in a different field and other employer is a registered partnership firm operating in an entirely different sphere. Just because both the establishments are located within a single building, the Corporation has no right to club them together and arriving at a finding that the establishments will have more than 21 employees without using power.

4. The Corporation had contended that both the establishments are one and the same and they are operated by the same employer in the same premises and therefore, clubbing and covering is proper as per the ESI Act.



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5. The Tribunal, after considering the oral and documentary evidence submitted on either side, arrived at a finding that one of the concerns is a Private Limited Company operating in the field of export and import, whereas, the partnership firm is doing business of shifting, clearing and forwarding work for the consumers. The Tribunal further found that both of them are maintaining independent accounts and both are two different entities. Therefore, clubbing both the establishments on the mere ground that they are operating in a single building is not a legal and set aside the order passed by the ESI Corporation. This order is under challenge in the present appeal filed by the Corporation.

6. The learned counsel appearing for the appellants reiterated his contentions in the grounds of appeal to the effect that merely under the different names, similar operations are being carried out by the same employer and therefore, the separation of the establishments is only with the view to evade the purview of the labour enactments. Therefore, he contended that the Employees' State Insurance Court was not right in arriving at a finding that both the establishments are different establishments. Hence, he prayed for allowing the appeal.



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7. Per contra, the learned counsel appearing for the employer had pointed out that the one of the establishments is a Private Limited Company and they have produced the Incorporation Certificate before the Tribunal and the Tribunal has arrived at a finding that both the establishments are completely different from one another and there is no possibility of clubbing them together. He further contended that the accounts are maintained separately by both the concerns and Private Limited Company cannot be clubbed with the Partnership Firm. Therefore, he prayed for sustaining the order passed by the ESI Court.

8. I have carefully considered the submissions made by the learned counsel on either side.

9. The issue that arises for consideration is whether the two establishments viz., M/s.S.Ponnusamy Nadar Agencies Private Limited and Ponnusamy Nadar and sons firm could be clubbed together for the purpose of covering them under the ESI Act. According to the Corporation, 16 employees are working in S.Ponnusamy Nadar Agencies Private Limited and



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five employees are working in the Ponnusamy Nadar Sons. Both the establishments are operating without using power and hence, the number of employees reached 20. They are liable to be covered under the ESI Act. However, the specific case of the respondent employer that these two organizations cannot be clubbed together. M/s.Ponnusamy Nadar Agencies Private Limited is a Private Limited Company incorporated by way of Certificate of Incorporation, dated 14.03.1995. The other establishment viz., M/s.S.Ponnusamy Nadar Agencies and sons is a registered firm. Both these establishments were operating in two different spheres and they are maintaining two separate accounts.

10. Therefore, in view of the above submissions, this Court is of the view that both the establishments cannot be clubbed together only for the purpose of totalling the employees to bring it under the ESI Act. Both the establishments are completely different operating in two different spheres and managed by two different organizations. They cannot be clubbed together.



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11. In view of the above said facts, this Court does not find any illegality or infirmity in the order passed by the ESI Court. The substantial questions of law raised by the Corporation in the appeal are answered as against the appellants and this Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs.

24.03.2023
(2/2)

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

1. The Labour Court,
(Employees' State Insurance Court or, in short, ESI Court),
Madurai.
2. M/s. S.Ponnusamy Nadar Agencies (P) Ltd.,
117-A, South Raja Street,
Tuticorin – 628001,
Represented by its
Managing Director
Mr.K.Pon Venkatesh.
3. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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