



C.M.A.(MD).No.75 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 15.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

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1. The Employees State Insurance Corporation
Sub-Regional Office,
Represented by the Deputy Director (INS.I),
Vth Main Road,
K.K.Nagar, Madurai – 625 020.

2. The Recovery Officer,
The Employees State Insurance Corporation
Sub -Regional Office,
Vth Main Road,
K.K.Nagar,
Madurai – 625 020.

..... Appellants/Respondents

-vs-

A.Narayanan

.... Respondent/ Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Section 82 of the ESI Act, 1948, against the order dated 10.11.2016 of the Labour Court (Employees' State Insurance Court or in Short, ESI Court) Madurai in ESI O.P.No.95 of 2007.

For Appellants : Mr.P.Ganapathisamy

For Respondent : Mr.T.Ravichandran



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The present Civil Miscellaneous Appeal has been filed by the ESI Corporation, challenging the order of the E.S.I.Court, allowing the application filed by the respondent under Section 75 (1) (g) of the ESI Act.

2. The respondent is running a cotton reeling unit using electric power. The said premises was inspected by the authorities under the ESI on 30.01.2006. After inspection, a visit note was prepared by the Inspector indicating the number of employees as 10 along with the age and fathers' name. Based upon the said report, a coverage order was passed with effect from 30.01.2006. Thereafter, the order under Section 45-A of ESI Act was passed on 12.10.2007 covering the period between 01.10.2006 to 31.03.2007 for a sum of Rs.21,450/- (Rupees Twenty One Thousand Four Hundred and Fifty only). The said order was challenged by the Management by way of E.S.I.O.P. No.95 of 2007 on the file of the Labour Court, Madurai.

3. The main contention of the Management was that the employees were not ten in number and the head count has not been properly done and it



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was a family concern. The Management has further taken a stand that the signatures of the employees have not been obtained nor the length of service and emoluments have been recorded in the visit note. Therefore, based upon the visit note, the coverage order cannot be passed and hence, the said coverage order has to be set aside.

4. The ESI Court, after considering the submissions made on either side, had relied upon the judgment of our High Court in C.M.A.No.1432 of 2006, dated 21.03.2011, (*the Syndicate Printers by its Proprietor vs- the Regional Director, ESI Corporation*) and came to a conclusion that unless the visit note is having the full particulars relating to the name, age, emoluments, length of service and the signatures of the employees, visit note cannot be relied upon for the purpose of passing the coverage order under Section 45-A. This order is under challenge in the present appeal by the ESI Corporation.

5. The learned counsel appearing for the Corporation had contended that whenever the Inspector visits the premises for taking a head count, always a hostile atmosphere prevails. Neither the employer nor the employees



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co-operate with the Inspector to find out the truth. In such circumstances, it is very difficult to obtain the signatures of the employees or get details about the length of service and their emoluments, especially, when no records are maintained by the Management. Therefore, according to the learned counsel appearing for the appellant the visit note prepared by the Inspector should be taken into account for the purpose of passing coverage order.

6. Per contra, the learned counsel appearing for the respondent/ Management had contended that it is a family concern and at that relevant point of time, 10 persons were not working in the said concern. Therefore, any visit report prepared by the Inspector is only a self-serving one and without any signatures obtained from the employees, such self-serving documents cannot be the basis for passing the coverage order. Therefore, he prayed for sustaining the order passed by the ESI Court.

7. I have carefully considered the submissions made by the learned counsel on either side and perused the records and the judgment placed by both the parties.



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8. The dispute that arises for consideration, is relating to the coverage of the ESI Act with regard to the respondent factory. The contention of the Management is that 10 employees were not working at the relevant point of time for being covered under the Act. However, the Corporation relies upon the visit note prepared by the Inspector on 30.01.2006 for passing the coverage order under the subsequent orders under Section 45-A of the Act.

9. The dispute now arises, is whether the visit note prepared by the Inspector at the time of inspection is enough and whether it is to an extent of the coverage of the Act to the respondent factory or not?.

10. As rightly pointed out by the learned counsel appearing for the respondent, this Court, by order dated 21.03.2011 made in C.M.A.No.1432 of 2006, (*Syndicate Printers by its Proprietor -vs- the Regional Director, ESI Corporation*), in paragraph No.22 held as follows:

“22. It is the specific case of the Appellant that he has not employed more than eight persons and he was also not served with the copy of the report of the Inspector, which formed the basis for the impugned show cause notice, the determination under Section 45A



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of the Act and the demands that followed. In order to find out whether the provisions of the ESI Act are attracted, the report must contain the list of employees, the designation, the length of service, emoluments and the signature of the employees. It is also required to give particulars of other persons, if persons other than the employer are present. But, in the instant case, as the said report has not been produced before the ESI Court, there is no material to find out as to whether all those details are found in the said report. There are no materials produced to show on what basis liability of the Appellant is determined and the contribution was arrived at”.

11. In view of the judgment of our High Court, it is clear that whenever a visit note is prepared by the Inspector for the purpose of coverage, the report must contain the list of employees, their designation, the length of service, emoluments and signature of the employees. When these particulars are lacking in the visit report, the said report cannot be a basis for passing an order under Section 45-A of the Act.



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12. In the present case, admittedly, the visit report does not contain the length of service, emoluments or signature of the employees. Therefore, as rightly contented by the learned counsel appearing for the respondent, the said visit note cannot be relied upon for any purpose much less for the purpose of passing an order under Section 45 of the Act. Therefore, the ESI Court was right in accepting the contention of the respondent and setting aside the order passed by the Corporation under Section 45-A of the Act. I do not find any illegality or infirmity in the order passed by the ESI Court. However, the Corporation is at liberty to conduct inspection on any future date to ascertain the coverage under the Act.

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

15.03.2023

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

1. The Labour Court
(Employees' State Insurance Court,
ESI Court), Madurai.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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