IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2024

CORAM :

The Hon'ble Mr. Justice Krishnan Ramasamy

C.M.A.No.1130 of 2022
and
C.M.P.No.8297 of 2022

1. The Deputy Director,
   Employees State Insurance Corporation,
   Sub Regional Office, No.1897, Trichy Road,
   Ramanathapuram, Coimbatore.
2. The Additional Commissioner,
   Employees State Insurance Corporation,
   Sub Regional Office, No.1897, Trichy Road,
   Ramanathapuram, Coimbatore. ... Appellants

Vs.

Shri Nehru Vidyalaya Matriculation Higher Secondary School,
No.26, Bhagwan Mahaveer Building,
Tibrewal Nagar, Robertson Road, R.S.Puram, Coimbatore,
Represented by its Secretary Ashok Kumar N.
... Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 82(2) of ESI Act 1948 against the Fair Order and Judgment passed in ESIOP No.102 of 2019 dated 28.10.2021 in partly allowing the petition, on the file of the Employees State Insurance Court, Coimbatore.

For Appellants : M/S.SP.Srinivasan

For Respondent : No appearance

JUDGEMENT

Challenging the impugned order passed by the Employees State Insurance Court, Coimbatore in ESIOP No.102 of 2019 dated 28.10.2021, the appellants have filed the present appeal.

2. The respondent herein, has filed ESI Original petition under Section 75 of the Employees State Insurance Act, 1948 (in short, 'the Act) before the Employees State Insurance Court, seeking to set aside the order of the 1st appellant herein, dated 28.09.2018 to an extent of Rs.54,64,632/- towards ESI dues and also to set aside the revised order dated 21.05.2019 of the 2nd appellant herein to an extent of Rs.48,08,176/- on the ground of lack of jurisdiction and without authority of law and contrary to proviso to Section 45A of the Act.

3. The ESI Court, on consideration of the pleadings and counter, has framed the following issues for determination, viz.,

> *"1. Whether the Order No.56-00-111185-000-1302. Ins. IV dated 28.09.2018 passed by the 1st Respondent under Sec.45A of the ESI Act, 1948, directing the petitioner to pay Rs.54,64,632/- is bared by limitation, as per Sec.45(A) (2) of the ESI Act?*
>
> *2. Whether the Order No.56-00-111185-000-1302. Ins. IV dated 28.09.2018 passed by the 1st Respondent under Sec.45A of the ESI Act, 1948 is liable to be set-aside?*
>
> *3. Whether the Order No.56-00-111185-000-1302. Ins.IV/45AA/2019/07-2019 dated 21.05.2019 passed by the 2nd Respondent under Sec.45AA of the ESI Act, 1948 is liable to be set-aside?"*

4. While answering the above issues, the ESI Court has set aside the order passed under Section 45A dated 28.09.2018 as well as the revised order under Section 45AA of the Act dated 11.05.2019 and ultimately, remanded the matter back to the Authority for determination. Challenging the same, the present appeal has been preferred.

5. The learned counsel appearing for the appellants would contend that the respondent has not filed any document before the ESI Court to show that allowances were granted to the employees and draw salary exceeding the coverage limit. In the absence of documents, the

appellants are justified to levy ES contribution based on the available records, which requires no interference. Therefore, the learned counsel for the appellants would contend that the order of remand passed by the ESI Court is unwarranted one and sought for setting aside the same.

6. A perusal of the order passed by the ESI Court, reveals that the ESI Court has considered every aspect in proper perspective and while answering the point No.3, the ESI Court has arrived at the conclusion that the matter requires re-determination. The relevant portion of the order of the ESI Court as regards Point No.3, is extracted as under:

"Point No.3

i) The petitioner has preferred the Appeal under Sec.45AA by depositing 25% of the amount of contribution, arrived in 45Aorder, which is equivalent to Rs.13,66,158/- and the 2nd Respondent Authority had conducted the enquiry and given opportunities to the petitioner for producing the document and registers. It is evident from EX P-4 one Bharathidasan, Representing the Petitioner's school appeared on 08.01.2019 and he came along with him all accounts for two Institutions i.e. Senior School and Feeder School. It is admitted that both schools were run by the petitioner and also it is seen from Ex P-4, the petitioner *himself arrived the conclusion of ESI dues to the tune of Rs.45,90,978/- and also it is averred that the petitioner was directed to produce relevant records before the Deputy Director and Assistant of the Respondent Corporation to verify the records. Accordingly, the petitioner has submitted the records on 08.01.2019 that was verified by the Deputy Director and finally he filed a report on 20.05.2019. He categorized into Feeder School and another one is Senior School, and as per the report, the Deputy Director categorized the wages under the Head of Salary, Stipend, Repair and Maintenance, Building Maintenance as shown below:*

Contribution Due on:		
Salary for the period from 09/13 to 03/18	*Rs.44,24,226.00*	*"A"*
Stipend for the period from 09/13 to 03/18	*Rs.1,97,259.00*	*"B"*
Repair and Maintenance	*Rs.75,480.00*	*"C"*
Building Maintenance	*Rs.1,11,211.00*	*"D"*
Total:	***Rs.48,08,176.00***	

ii) It is mentioned that in addition to the above, some amounts were left under the Head of Medical Allowance, Washing Allowance, Conveyance Allowance but it was taken into consideration, because if these amounts are included against each employee's salary, many may go out of coverage limit.

iii) It is pertinent to note in the Impugned Order, Ex P-4, it is mentioned that the contribution in the above mentioned column are admitted by the Petitioner and *this Point is not disputed by the Petitioner's side. The 2nd Respondent Authority also mentioned that the admitted amount of contribution as per the detailed statement amounting to Rs.48,08,176/- can be claimed initially subject to verification of records later by the SSO, if necessary. So, it seems that the enquiry is not completed and determination of contribution as mentioned in Ex P-4, is subject to the verification of other records in future.*

iii) It is pertinent to note in the Impugned Order, Ex P-4, it is mentioned that the contribution in the above mentioned column are admitted by the Petitioner and this Point is not disputed by the Petitioner's side. The 2nd Respondent Authority also mentioned that the admitted amount of contribution as per the detailed statement amounting to Rs.48,08,176/- can be claimed initially subject to verification of records later by the SSO, if necessary. So, it seems that the enquiry is not completed and determination of contribution as mentioned in Ex P-4, is subject to the verification of other records in future.

iv) It is pertinent to note here that in the Impugned Order, Ex P-4, it is mentioned that the Representative of the Petitioner himself has arrived the calculation to the tune of Rs.45,90,978/-, but after verification of records, the 2nd Respondent has arrived Rs.48,08,176/- that was admitted by the Petitioner and also reiterated *the same in the later portion of the Impugned Order. But unfortunately the 2nd Respondent has not filed the alleged report of the Deputy Director, but simply mentioning the admitted contribution amount in Impugned Order under 45AA. The 2nd Respondent has mentioned as admitted amount of contribution that is the best reason known to the Petitioner only. However, in the 45A order, Ex P-2, the amount was arrived as defaulted contribution Rs.55,54,692/- for the period from 01.09.2013 to 30.04.2018 and it is mentioned that the Petitioner has deposited Rs.90,060/- on 17.09.2018, but no supporting document was filed. So, that amount was deducted in the contribution amount and finally the 1" Respondent has ordered the Petitioner to pay Rs.54,64,632/-as a contribution for the above said period.*

v) On perusal of the Appeal under 45AA, it is mentioned that the Petitioner has preferred the Appeal against the order passed in 45A for the amount of Rs.55,54,692/- for the wage period from 01.09.2013 to 30.04.2018 and not for the amount Rs.54,64,632/-. But, on perusal of the records and on the basis of report of the Deputy Director, the 2nd Respondent has arrived the contribution as Rs.48,08,176/- for the above said wage period, as defaulted contribution. But, on careful perusal of the Impugned Order, Ex P-4, the 2nd Respondent has deducted the 25% of the amount i.e.

Rs.13,66,158/- paid by the Petitioner only from Rs.48,08,176/- and fixed the liability of the Petitioner to pay Rs.34,42,018/-. But, the 2nd Respondent has not deducted Rs.90,060/- as deducted in order passed under Sec.45A. The reason for the non- deduction of the above said amount is not mentioned in 45AA order. Though in Ex P-2 it is mentioned that amount was paid for the month of April 2014, but as no supporting document was filed to show that amount was deducted from the contribution arrived in 45A order. The same principle and analogies should also be adopted in deducting the said amount in the amount of contribution arrived in 45AA order also. So, in deducting that amount of Rs.90,060/- from Rs.34,42,018/-, the amount comes to Rs.33,51,958/- in the result. But, it was not done so. It is raised on the petitioner side that the 2nd Respondent Appellate Authority has no power to delegate its power to the Deputy Director, but on careful perusal of the Impugned Order, Ex P-2 the power was delegated only to verification of records furnished by the Petitioner and the 2nd Respondent has passed the order after verification of report and records adjudication power of R-2 was not delegated. So, the Learned Petitioner Counsel contention is untenable, but at the same time the 2nd Respondent Authority has clearly mentioned that medical allowance, washing allowance, conveyance allowance are left over, if they are added, the salary may go out of average limit. Since the 2nd Respondent is *an Adjudicating Authority, it cannot escape from its responsibility from adjudicating whether the employees are under the coverage of ESI Act. Thereby it can determine the actual contribution. Apart from that the 2nd Respondent Authority has arrived Rs.48,08,176/ as amount of admitted contribution and stated that it can be claimed initially subject to the verification of other records later by the SSO, if necessary. Its seems enquiry was not completed and prematured. In addition to that the 2nd Respondent has not deducted Rs.90,060/- as mentioned in the order passed in 45A order. So, these are the irregularities shown in the Impugned Order.*

vi) It clearly indicates that the 2nd Respondent has not properly adjudicated and perused the records and also it shows that in hasty manner, it concluded the enquiry and arrived the amount. This Court have considered view that it requires warrant of interference in the order of the 1st Appellate Authority i.e. the 2nd Respondent. Hence, this Court deem fit and proper to remand the matter to the 1st Appellate Authority i.e. the 2nd Respondent to peruse all the records produced by petitioner and determine the definite amount of contribution liable to be paid by the Petitioner for the wage period 01.09.2013 to 30.04.2018. and ***thus the Point No.3 is answered accordingly.“***

7. Per contra, by referring to the above said remanding order, the learned counsel for the appellants would submit that the respondent themselves admitted the ESI contributions payable to the extent of Rs.90,060/- and also paid the same. However, the ESI Court without considering the said aspects, remanded the matter in entire aspects for the purpose of re-determination. Further, he would submit that despite the respondent failed to produce the documents in support of their claim, the ESI Court has erroneously remanded the matter.

8. However, on perusal of the order passed by the ESI Court, this Court finds that the ESI Court has given sufficient reasons for remanding the matter to the 1st appellate Authority for re-determination of the amount of contribution liable to be paid by the respondent herein. It is worthwhile to refer the observation made by the ESI Court as found in sub para (vi) of para 12, which is extracted as under:

> *"(vi) It clearly indicates that the 2nd Respondent has not properly adjudicated and perused the records and also it shows that in hasty manner, it concluded the enquiry and arrived the amount. This Court have considered view that it requires warrant of interference*

in the order of the 1st Appellate Authority i.e. the 2nd Respondent. Hence, this Court deem fit and proper to remand the matter to the 1st Appellate Authority i.e. the 2nd Respondent to peruse all the records produced by petitioner and determine the definite amount of contribution liable to be paid by the Petitioner for the wage period 01.09.2013 to 30.04.2018. and ***thus the Point No.3 is answered accordingly.“***

9. Therefore, the ESI Court is of the considered view that the Additional Commissioner/2nd appellant herein, has not properly adjudicated and perused the records and also it shows that in hasty manner, it concluded the enquiry and arrived at the amount. In these circumstances, the ESI Court has rightly remanded the matter to the 1st appellate Authority. This Court does not find any infirmity or irregularity in the said order in order to interfere with the same. It is surprising to note that instead of complying the order of the ESI Court, the authorities have come forward with the preset appeal as if they are prejudiced with the order.

10. For the foregoing reasons, the present appeal is liable to be dismissed as devoid of merits. Accordingly, the Civil Miscellaneous

Appeal is dismissed. The 2nd appellant shall complete the exercise as directed by the ESI Court in its order, within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

23.01.2024

Index : Yes / No
NCC : Yes / No
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   Employees State Insurance Corporation,
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