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C.M.A. No. 178 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No.178 of 2022
and C.M.P. No.1411 of 2022

Sri Lux Leather's
14, Kundrathur Road,
Guragambakkam,
Chennai 602 101.

... Appellant / Petitioner

Vs.

1. The Employee's State Insurance Corporation,
Represented by its Regional Director,
143, Sterling Road,
Chennai 600 034.
2. The Deputy Director,
The Employee's State Insurance Corporation,
143, Sterling Road,
Chennai 600 034.
3. The Recovery Officer,
The Employee's State Insurance Corporation,
143, Sterling Road,
Chennai 600 034.

... Respondents / Respondents



C.M.A. No. 178 of 2022

Civil Miscellaneous Appeal filed under Section 82(2) of the Employee's State Insurance Act) against the Order and Decree of Employee's State Insurance Court (Principal Labour Court), Chennai in E.S.I.O.P. No.126 of 2004 dated 25.08.2021.

For Appellant : Mr. Haroon S. Rasheed

For Respondents : Mr. T.N.C. Kaushik

JUDGMENT

This Civil Miscellaneous appeal has been filed challenging the order passed by the Employee's State Insurance Court (Principal Labour Court), Chennai (ESI Court, hereinafter) in E.S.I.O.P. No.126 of 2004 dated 25.08.2021, confirming the order passed under Section 45-A of Employees State Insurance Act (ESI Act, hereinafter), dated 30.06.2003.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the ESI Court.

3. The appellant herein is the original petitioner, who challenged the order dated 30.06.2003, passed under Section 45A of the Employee's



State Insurance Act, wherein, the petitioner was directed to pay a sum of Rs.80,867/- as ESI contribution, for the period April 2002 to September 2002. According to the appellant/ petitioner, C-18 notices dated 06.08.2003 were served on them for two different periods i.e., October 2002 to March 2003 and April 2002 to September 2002 respectively. Since the petitioner was not able to appear on the date of enquiry, the ESI Authority had passed two different orders, fixing the liability, payable by the petitioner. Challenging the same, the petitioner had preferred two separate original petitions in E.S.I.O.P. Nos.125 and 126 of 2004, respectively. Both matters were listed before the ESI Court (Principal Labour Court, Chennai) and during pendency of the petitions, the E.S.I.O.P..No.125 of 2004 was amicably settled between the parties by invoking Amnesty Scheme, 2014. However, in respect of E.S.I.O.P. No.126 of 2004, the petitioner could not able to settle, under the above scheme. Thereafter, enquiry was conducted in the original petition and the impugned order was passed by the ESI Court.

4. Aggrieved over the dismissal of E.I.S.O.P. No.126 of 2004, this appeal has been filed and after hearing the parties, it was admitted by



this Court on the following substantial questions of law:

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- (i) *Whether the ESI Court was justified in not framing the issue as to whether the ESI Corporation has proved on record their demand for 58 employees was justified?*
- (ii) *Whether the ESI Court was justified in overlooking Ex.P.5 and Ex.P.6 on the ground that the said documents were not produced along with the petition?*
- (iii) *Whether the ESI Court was justified in invoking Section 114(e) of the Indian Evidence Act, 1872 based on Ex.R.2 - Show Cause Notice?*
- (iv) *Whether the ESI Court failed to frame proper issues with regard to demand of contribution amount?*

5. The learned counsel appearing for the appellant/ petitioner submits that, two original petitions were filed and in the enquiry, evidence of petitioner was recorded and documents were marked. During enquiry, due to over sight, some of the documents to be marked in the connected matters have been marked in this present ESIOP. He further submitted that the best judgment assessment was passed under Section 45A solely by relying on the Inspection Report dated 21.02.2001, whereas this inspection report was not served either to the appellant or produced before the ESI Court during the enquiry. He further submitted that in the order under Section 45-A of the ESI Act, it has been alleged that the appellant engaged



58 employees in his establishment, but there is no prima facie material to show that the appellant have engaged 58 employees and defaulted payment of ESI contribution. Similarly, the ESI Court has not appreciated the evidence adduced by the petitioner, more particularly it brushed aside Ex.P.5 and Ex.P.6, which shows number of employees engaged during relevant period and shifted the burden of proof wrongly on the appellant. He further submits that, in the absence of any Inspection Report or any supportive materials to substantiate the reasons, the order passed under Section 45A is not proper, prays to set aside the order passed by the ESI Court.

6. Per contra, the learned counsel appearing for the ESI Corporation submits that the Social Security Officer had conducted inspection and his report was also submitted to the ESI Authority concerned. He further submits that based on this Inspection Report, C-18 notices were served on the petitioner and since, the petitioner had not come forward to produce requisite documents to deny the Inspection Report, based on best judgment assessment, the order has been passed by invoking Section 45A, therefore, the same is valid and there is no infirmity in the



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order passed by the ESI Court.

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7. I have considered the representations made on both sides and perused the materials available on record.

8. According to the appellant, two original petitions were filed, and they amicably settled one of them, as per Amnesty Scheme, 2014. However, at the time of marking documents, relating to this case, exhibits have been wrongly marked, more particularly, Ex.P.5 and Ex.P.6, which relates to other E.S.I.O.P. No.125 of 2004. Admittedly, no Social Security Officer's inspection report was either furnished to the petitioner or produced before the ESI Court, at the time of enquiry, to support the order passed under Section 45-A of the Act.

9. This Court in ***C.M.A. Nos.1350 and 1355 of 2023 dated 16.08.2023, M/s. Poshak Industries vs. Employees' State Insurance Corporation, Chennai***, while considering the relevancy of marking Social Security Officer's inspection report has observed that the Inspection Report of the Social Security Officer is a basic document, which contains the vital



information and also forms basis for passing Orders under Section 45A. In paragraph No.15, it has been observed as follows:

"15. This Court is of the view that the words "Information" available to it" would mean facts and details (i.e) names and addresses of the employees and the total number of the employees. This information has to be gathered, and any demand for contribution based on guess work or presumptions would not amount to demand based on information. The Act, as stated earlier, provides for obtaining information in various ways. Section 44 (2) of the ESI Act, 1948 provides for the power to issue show cause notice to the corporation calling upon the factory or establishment to furnish details. Section 45 of the ESI Act, 1948, provides for the gathering of information by the Inspectors appointed by the Corporation. As stated earlier, after the Amendment of the Act in the year 2010, the said provision provided for the gathering of information by a Social Security Officer appointed by the Corporation. Admittedly, in this case, the Inspectors had not resorted to any of the methods provided under Section 45 (2) of the ESI Act, 1948, to gather information. To reiterate, the methods available are:

- (a) Calling upon the employer to furnish information. or*
- (b) To conduct an inspection. or*
- (c) To examine the employer. or*
- (d) To take copies of the extracts of the registers etc., or all of the above.*

Without resorting to any of the procedures to gather information, the Corporation cannot determine the amount of contribution. Non-furnishing of returns may amount to a violation, but that does not empower the Corporation to arbitrarily fix the number of employees and claim compensation. The ESI Court also, unfortunately, delved into the correctness or genuineness of the defence of the appellant. Before calling upon the appellant to offer his explanation, the corporation must have information which is based on facts gathered. In the instant case,



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no such exercise has been done. The substantial question of law is answered accordingly."

10. The above observation of this Court reiterates the importance of Inspection Report and its relevancy to decide the issues involved herein. The Inspection Report has not been produced in the original proceedings, further the respondents have come forward to produce the Inspection Report before this Court, at this appeal stage. On going through the impugned order, passed under Section 45A, it shows that the Corporation has fixed the ESI contribution, based on the Inspector Report for omitted wages under various Head of Account such as "Machinery Repair, General Repair and Repair to Office equipments". Since, the ESI Court is the Court of original jurisdiction, when the order of fixing the liability is challenged, then the burden is on the petitioner, to make out the grounds for setting aside the order under Section 45-A order.

11. It is the specific case of the petitioner that they had engaged only 11 employees and according to them, they never engaged 58 employees as stated in the impugned order for the period between April 2002 to September 2002. Further, they have come forward to produce



Exs.P.5 and P.6 to show that they had engaged only 11 employees, though the Exs.P.5 and P.6 related to subsequent periods i.e., October 2002 to March 2003. The appellant has relied on these exhibits to prove the number of employees engaged by them. However, the same was not considered by the ESI Court. Admittedly, Exs.P.5 and P.6 relates to different periods, but it contains the number of employees employed and the number of hours they worked from the subsequent months of the same year. Now, the appellant claims that, documents relating to other months also available and filed in other connected original petition. The enquiry by the ESI Authority was conducted for two half yearly periods, but based on one inspection report dated 21.02.2021, two orders were passed under Section 45-A. Since the petitioner is able to produce the exhibits to show that they had engaged only 11 employees for the one half year period i.e., October 2002 to March 2003, the Trial Court ought to have compared these exhibits with the other documents to find out, whether the petitioner has probalilized his case that they had engaged only 11 employees and not 58 employees. If Exs.P.5 and P.6 is accepted in favour of the petitioner, then the burden shifts on the respondents to show that the petitioner had employed 58 employees, for the both periods i.e., April 2002 to September 2002 and October 2002 to March



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12. Admittedly, ESI Corporation has not produced this Inspection Report, at the time of enquiry. before ESI Court. Now, in this appeal, respondents have come forward to file the Inspection Report. Since, the Inspection Report has not been produced either by way of additional documents or by obtaining leave of this Court to mark additional documents, this Court is not inclined to look into that document. The number of employees engaged by the petitioner during the relevant period is the core issue involved in this proceedings. The exhibits marked by the petitioner, more particularly Exs.P.5 and P.6 have not been taken into account for fixing the number of employees engaged by the establishment and the ESI Corporation has now come forward to produce the Inspection Report, I am of the view that the matter is to be reconsidered by the ESI Court, afresh.

13. Accordingly, I am inclined to remand the matter back to the ESI Court, after setting aside the order of ESI Court dated 25.08.2021, with liberty to both parties to adduce their additional evidence, if any. The ESI



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Court (Principal Labour Court, Chennai) is also directed to reconsider the case of the parties and additional documents adduced on either side, if any and pass order, at the earliest.

14. In the result, this civil miscellaneous appeal is allowed with direction in paragraph 13 above. Consequently, connected civil miscellaneous petition stands closed. There shall be no order as to cost.

26.11.2024

stn

Index: Yes/No

Speaking Order: Yes/No

Neutral Citation Case: Yes/No

To:

1. The Principal Judge,
ESI Court (Principal Labour Court),
Chennai.
2. The Section Officer,
V.R. Section,
High Court, Chennai.



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K. RAJASEKAR, J.

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