BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 08.02.2024

CORAM:

THE HON'BLE MR.JUSTICE P. DHANABAL

C.M.A(MD)No.1401 of 2012

M/s.Subbiah Match Works,
Through its Sole Proprietor,
R.Ananthakrishnan,
No.825, East Railway Station,
Rajapalayam-625 117. ... Appellant / Petitioner

Vs.

1.The Employees State Insurance Corporation,
Rep. by its Joint Director,
Sub Regional Office,
4th Main Road, K.K.Nagar,
Madurai-20.

2.The Recovery Inspector,
The Employees State Insurance Corporation,
Sub Regional Office,
4th Main Road, K.K.Nagar,
Madurai-20. ... Respondents / Respondents

Prayer : This Civil Miscellaneous Appeal filed under Section 82(2) of Employees State Insurance Act against the fair and decreetal order dated 15.12.2011 passed in E.S.I.O.P.No.22 of 2007 on the file of the E.S.I Court (Labour Court) Judge, Madurai.

For Appellant : Mr.P.Vinoth

For Respondents : Mr.C.Karthick

JUDGMENT

This Civil Miscellaneous Appeal is preferred as against the order passed in E.S.I.O.P.No.22 of 2007 on the file of the ESI Court (Labour Court), Madurai wherein the appellant herein has filed the original petition challenging the order passed under Section 45 A of the Act dated 13.09.2006.

2. According to the appellant, the appellant is a small cottage industry engaged in production of matches. The appellant's unit was started in the year 1962 and was given license for production of 100 million match sticks per year. The appellant was holding license to produce only about 300 bundles per month. These works were done by the persons engaged for the said job only by hand. In the appellant's cottage industry, only 6 or 7 persons were employed. Hence, the provision of ESI Act is not applicable. The appellant received the notice from the respondent dated 07.03.1995 in Form C 11 stating that on the basis of the inspection report conducted by inspection on 23.12.1994, the appellant

establishment was coverable under ESI Act. The respondent has allotted code number to the appellant. The appellant was not served with the copy of the report. Since only less than 10 employees were working, ESI Act was not applicable to the appellant. The appellant received another notice in C 18 on adhoc basis dated 26.12.1995 from the respondent stating that there is an arrears of contribution of Rs.25,562/- for the period from 23.12.1994 to 30.11.1995. The appellant was called upon to attend the personal hearing and the appellant appeared and the matter was adjourned for some hearings. The appellant gave a written statement stating that they would pay the contribution on or before 30.04.1996 on the basis of actual wages without knowing the consequences. Later, the appellant did not receive any notice regarding the claim for contribution for the period from 23.12.1994 to 30.11.1995. Thereafter, the order passed under Section 45 A of the ESI Act holding that the petitioner is liable to pay contribution of Rs.25,562/-. The appellant did not employ more than 10 persons at any time. The ESI Inspector inspected the appellant match factory on 14.09.1998 and verified the attendance register. Since ESI Act is not applicable to the appellant, there is no contribution payable to the respondent. Therefore, the order of the respondent is illegal and the inspection report is not binding on the appellant and the order passed by the respondent under Section 45 A of the ESI Act is liable to be set aside.

3. The respondent's contention is that the appellant has not filed the relevant records and accounts. The respondent has passed the order under Section 45 A of the Act on 06.08.1997 determining the contribution due from the petitioner and the order is legal. The appellant's unit is coverable under the ESI Act and they had employed 25 persons during the inspection dated 23.12.1994. Therefore, the appellant's concern is coverable under the Act. They had failed to pay contribution. Hence, the respondent Corporation issued show cause notice and the appellant was given reasonable opportunity to defend their case and after enquiry, the respondent has passed the order dated 06.08.1997 determining the contribution for Rs.25,562/-. The appellant has paid certain amount towards contribution. They had omitted to pay the amount. During inspection, it was found that nearly 25 persons were working in the unit and the Foreman M.Balraj has singed the statement. The appellant has admitted their liability and has wrongly given the statement without knowing the consequences and the appellant did not disclose the actual

wages paid to the workers. Thereafter, the appellant was given opportunity to defend their case. Hence, the order passed by the Tribunal is correct.

4. The learned counsel appearing for the appellant would contend that in the petitioner's cottage industries, only 6 to 7 persons were working and the industry is not covered under ESI Act. The inspection report filed by the authorities is denied by the appellant and no opportunity was given to the appellant to prove that the appellant's cottage industries has not employed 25 persons. The Tribunal failed to consider the said aspects and erroneously dismissed the petition. Therefore, the order passed by the authority by fixing the contribution is liable to be set aside.

5. The learned counsel appearing for the respondent would contend that already, sufficient opportunity was given to the appellant. During personal hearing, the appellant admitted his liability. Therefore, at the time of inspection, more than 25 persons were employed in the appellant cottage industries. Thereby, the authorities have fixed the contribution under Section 45 of the Act. The Tribunal after taking into consideration of all these aspects correctly dismissed the petition. Hence, the present appeal is liable to be dismissed.

6. This Court heard both sides and perused the records. At the time of admitting the appeal, this Court framed the following substantial question of law.

> "Whether in law the Court below is right in accepting the statement made by the respondent under Section 45(A) of the Employees State Insurance Act, 1948 that 25 workers were doing work without disclosing their names"

7. In this case, there is no dispute that the appellant was running the cottage industries and according to the appellant, the establishment is not covered under the ESI Act, since only 5 to 6 persons were working in the concern. According to the respondent, at the time of inspection, more than 25 persons were working in the unit and thereby, they issued notice to the appellant cottage industry and they also appeared and after hearing the appellant, the authorities have passed the order.

8. In order to prove the case of the appellant before the Tribunal, P.W.1 was examined and Ex.P1 to Ex.P28 were marked. On the side of the respondent, R.W.1 was examined and Ex.R1 to Ex.R6 were marked. After hearing both sides and analyzing the evidence available on record, the Tribunal had dismissed the petition.

9. The main contention of the appellant is that opportunity was not given to the appellant and the establishment is not covered under the ESI Act and the same was also reflected in the records. The appellant admitted that he appeared before the authorities and wrongly filed the written statement without knowing the consequences. It shows that opportunity was given to the appellant. The order passed by the ESI Corporation authorities shows that more than 25 workers were employed on the date of inspection and at the time of personal hearing, the documents produced by the appellant / petitioner to show that only 6 to 7 persons were employed. Further, P.W.1 also admitted before the Tribunal that one Paulraj was working in his establishment and he informed about that 25 persons employed in the establishment. Therefore, P.W.1 admitted that number of persons worked in the establishment and the ESI authoirties have passed a reasoned order based on the information given by the employers of the appellant establishment. The appellant himself admitted that he appeared before the authority and filed written statement without knowing the consequences. Therefore, from the above, it is clear that the appellant admitted his liability and filed written statement before the authority.

Therefore, the submission of the learned counsel for the appellant that no opportunity was given to the appellant is not acceptable one. The Tribunal has also in its order elaborately discussed about the evidence adduced on both sides and passed reasoned order. Therefore, the court below is right in accepting the statement made by the respondent under Section 45-A of the ESI Act, 1948 that 25 workers were doing work. Thus, the substantial question of law is answered. Therefore, on a careful perusal of the order of the Tribunal and in view of the answer of the substantial question of law, there is no infirmity or perverse found in the order of the Tribunal. Hence, this appeal has no merit and deserves to be dismissed. Accordingly, this Civil Miscellaneous Appeal is dismissed by confirming the order of the Tribunal made in E.S.I.O.P.No.22 of 2007. No costs.

08.02.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
rmi

To

1.The E.S.I Judge (Labour Court), Madurai.

2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.

P. DHANABAL, J.

rmi

C.M.A(MD)No.1401 of 2012

08.02.2024