



C.M.A.(MD).No.1386 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 11.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

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1. The Employees State Insurance Corporation,
Represented by the Joint Director,
Municipal Shopping Complex,
Tirunelveli.

2. The Branch Manager,
E.S.I.Corporation,
Marthandam,
Kanyakumari District.

... Appellants/Respondents

-VS-

M/s.T.Narayanapillai,
Dealer of Bharat Petroleum,
Represented by its Partner,
S.Anwar Nizath,
Marthandam.

... Respondent/Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Section 82(2) of the E.S.I.Act, 1948, against the decree and judgment of the Employees' State Insurance-Cum- Labour Court, Tirunelveli in E.S.I.O.P.No.05 of 2008, dated 10.07.2012.

For Appellants
For Respondent

: Mr.C.Karthik
: Mr.T.Antony Arul Raj
for Mr.D.Raj Kumar



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J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants as against the order passed in E.S.I.O.P.No.05 of 2008, dated 10.07.2012, on the file of the Employees' State Insurance-Cum- Labour Court, Tirunelveli, wherein, the respondent herein has filed the E.S.I.O.P to set aside the order passed by the appellants under Section 45-A of the E.S.I Act and the Labour Court has set aside the order. As against the order passed by the labour Court, the present appeal has been filed by the appellants/E.S.I. Authorities.

2. For the sake of convenience and brevity, the parties herein after will be referred to as per their status/ranking before the trial Court.

3. The brief averments made in the petition before the labour Court are as follows:

The petitioner establishment, M/s.T.Narayana Pillai Dealer Bharat Petroleum, was a partnership firm with M.Shahul Hameed and N.Suresh. Thereafter, the partnership was dissolved on 19.02.2007 and it was



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reconstituted on 20.08.2007 with one, S.Anwar Nizath and N.Suresh as partners of the establishment. The petitioner only engaged 7 employees. While so, during April 2007, the second respondent visited the petrol bunk of the petitioner and obtained the letter head from the employer in the name of M/s.T.Narayana Pillai and M.Shahul Hameed (Anwar Associates) along with seal. At that time, they are not partners of the petrol bunk. No statement was recorded from the employees and the signatures of the employees were not obtained. While so, there was a letter dated 16.04.2007 stating that the second respondent inspected the petrol bunk on 10.01.2007 and prepared inspection report and the employees refused to sign and put the seal in the inspection report. The petitioner has sent a representation to the second respondent dated 24.04.2007 by stating that seven persons alone were working in the petrol bunk. Thereafter, the respondents served Form C-11, dated 30.04.2007 and stated that the petitioner is covered under the E.S.I. Act from 10.01.2007, provisionally and also allotted a Code Number to the petitioner. Immediately the petitioner sent a reply by requesting a copy of the inspection report through letter dated 20.06.2007 and stating that without conducting any proper enquiry Form C-18 notice dated 03.08.2007 was issued for the period from 10.01.2007 to 30.01.2007 for the 12 employees demanding a sum of



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Rs.8,615/-. In that letter, personal enquiry was fixed on 17.08.2007. Immediately the petitioner sent a representation dated 11.08.2007, stating that under Section 45-A of the ESI Act the petitioner is not covered and also requested to serve copy of the inspection report and also sought for adjournment to 16.08.2007. The respondents have not granted any opportunity and not served the inspection report. Lastly, on 13.09.2007, the petitioner was present before the authority to get the copy of the inspection report but without supplying the copy of the report the order was passed, confirming the earlier order and no principles of natural justice was followed while passing the order. Therefore, the petitioner challenged the order passed by the respondents under Section 45-A of the E.S.I. Act.

4. The gist of the counter filed by the respondents are as follows:

The petition is not maintainable either in law or on facts. The petitioner's factory was inspected on 10.01.2007. On 10.01.2007, at the time of inspection Shahul Hameed, Partner of the petitioner's establishment, and Mohideen Shah, the Manager of the establishment, were present. The names of the 12 employees of the petitioner were ascertained and the names and their salary were written in the visit note prepared on 10.01.2007. The



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allegation that the petitioner never employed more than 7 employees is not correct. The petitioner could have produced the Attendance Register and wage register and also Account books. At the time of inspection, Shahul Hameed, the partner of the petitioner's establishment refused to sign the visit note. The official seal on the visit note also shows that on 10.01.2007 there was an inspection. The show cause notice was issued to the petitioner in order to give an opportunity to explain why the establishment has not paid contribution to the employees and also given opportunity a personal hearing. On the basis of the inspection, the petitioner is bound by the provisions of the ESI Act and a code number was allotted to the petitioner and a direction was given to comply with the provisions of the Act. The Manager of the petitioner's establishment visited the second respondent's branch office and ascertained all facts about the liability to pay contribution payable by the employer. The petitioner did not cooperate by producing records or by giving any explanation and therefore an order was passed under Section 45-A of the E.S.I Act, assessing the amount of contribution payable by the petitioner. The petitioner's establishment is covered under the provisions of E.S.I Act and also as per the request of the petitioner the personal hearing was adjourned, but the request for copies of records was not a bonafide request. There is no



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violation of principles of natural justice. Therefore, the petition is not maintainable and liable to be dismissed.

5. Before the Labour Court, on the side of the petitioner, P.W.1 was examined and documents P.1 to P15 were marked. On the side of the respondents R.W.1 was examined and documents R.1 to R3 were marked. The Labour Court after hearing both sides allowed the petition and set aside the order passed by the E.S.I Authorities under Section 45-A of the E.S.I.Act. As against the order passed by the Labour Court, the present appeal has been preferred by the appellants/respondents.

6. The learned counsel appearing for the appellants would contend that the respondent petrol bunk is covered under the E.S.I. Act and more than 12 persons were employed in the petrol bunk. The authorities inspected the petrol bunk on 10.01.2007 and thereafter issued show cause notice to the respondent and the personal hearing also fixed. The respondent also attended personal hearing and after hearing parties, the authorities have passed the order. During the course of inspection, the inspection report was prepared and partners of Sahaul Hameed refused to sign in the inspection report and after



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following Rules only, the order under Section 45-A of the E.S.I. Act was passed to the effect that the petitioner's petrol bunk covered under the E.S.I. Act. But the labour Court has failed to consider all these aspects. Therefore, the order passed by the Labour Court is liable to be set aside.

7. The learned counsel appearing for the respondent/petitioner would contend that the respondents have not at all inspected the property. However, they obtained the letter head of the petrol bunk and prepared a report as if they inspected the property. Even by the inspection report of the first inspection, the date is mentioned as 10.01.2007 and the second inspection date is mentioned as 20.04.2007 but the date of orders were signed on 10.01.2007 and also they issued notice dated 16.04.2007. However, there is no reference about the earlier inspection dated 10.01.2007 and 20.04.2007. In view of the above, the E.S.I Court after considering the above said submissions made on either side fairly came to a conclusion that the inspection was not conducted by the respondents and thereby set aside the order passed by the appellant/E.S.I Authorities. Therefore, the present appeal is liable to be dismissed.



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8. This Court heard both sides and perused the materials available on record. Upon hearing both sides and perusing the records, the following questions of law were framed:

1) Whether the trial Court has correctly held about the number of employees in the respondent/petitioner petrol bunk?

2) Whether the rejection of document Ex.R.1 by the trial Court applying presumption under Section 114 of the Evidence Act is correct or not?

9. In this case, according to the appellants, they have passed order under Section 45 of the E.S.I.Act since more than 12 persons were employed in the respondent's establishment. When they inspected the premises on 10.01.2007 and thereafter on 20.04.2007 as per the inspection report more than 12 persons were employed. The respondent has denied inspection and during the inspection only signature was obtained in the letter head and passed the order as if they have inspected the petrol bunk. The learned trial Judge disbelieved Ex.R2, dated 10.01.2007 and the same was written in the letter head of the respondent/petitioner. The authorities ought to have used



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their own letter head to prepare the report but they have used the letter head of the petrol bunk. There is no explanation as to why the said letter head was used by the authority and in the letter head why there is no signature in the establishment firm. The letter head was enclosed with another letter head stating that 12 persons were employed in the petrol bunk. In that letter head also, the personal hearing was fixed. In both the documents no signature of the employees is found. There is no endorsement in the said documents about the refusal one of the employees to sign in the said document. Even after completion of the inspection, there is no information about the alleged refusal to sign in the report. In the Ex.R1, the authority signed on 10.01.2007 for the period between 10.01.2007 and 20.04.2007. There is no chance to sign in the document prepared on 20.04.2007 as dated 10.01.2007. Therefore, the trial Court discussed about the same and held that the respondent authority has not proved the number of employees working in the petrol bunk and also correctly rejected the document Ex.R.1, that the first date of inspection is 10.01.2007 and the next date of inspection is 20.04.2007 and the period between the two dates are 101 days, but the signature was signed on 10.01.2007 therefore the document prepared on 20.04.2007 could not be signed on 10.01.2007, therefore it is clear that the Ex.R1, document was not



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prepared on 10.01.2007, as alleged by the authorities. Even in the said document there is no mention that number of 12 persons were employed in the petrol bunk. There are discrepancies in the Form No.10. Already the petitioner demanded the copy of the records but the same has not been furnished by the petitioner. Therefore, the trial Court after discussing all these aspects set aside the order passed by the authorities. Therefore, the E.S.I Court correctly held that the authorities have not proved the number of employees worked in the petrol bunk and correctly rejected the Ex.R1, that the same has not been proved by the E.S.I. Authority. Thus, the substantial questions of law 1 and 2 are answered.

10. Therefore, the order passed by the labour Court is in order there is no infirmity or perversity found in the said order. In view of the answers made for the substantial questions of law, there is no merit in the present Civil Miscellaneous Appeal and the same is liable to be dismissed.



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11. In the result, this Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs.

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

1. The Employees' State Insurance-Cum- Labour Court,
Tirunelveli.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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P.DHANABAL,J.

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