



C.M.A(MD)No.1457 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 13.02.2024

CORAM:

THE HON'BLE MR.JUSTICE P. DHANABAL

C.M.A(MD)No.1457 of 2013

The Employees State Insurance Corporation,
Represented by its Assistant Director,
Municipal Shopping Complex,
Salai Street,
Sindhupoonthurai,
Tirunelveli.

... Appellant

Vs.

Jeyam Marbles,
43/180, Hindu College Road,
Beach Road Junction,
Nagercoil.

... Respondent

Prayer : This Civil Miscellaneous Appeal filed under Section 82(2) of the ESI Act, 1948, to set aside the decree and judgment of the Employees State Insurance cum (Labour Court, Tirunelveli) passed in E.S.I.O.P.No.03 of 2010, dated 29.10.2012.

For Appellant : Mr.R.Ravikumar

For Respondent : Mr.M.Azeem



C.M.A(MD)No.1457 of 2013

JUDGMENT

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This Civil Miscellaneous Appeal has been preferred as against the order passed in E.S.I.O.P.No.3 of 2010 on the file of the Employees State Insurance cum Labour Court, Tirunelveli, wherein the respondent herein has filed E.S.I.O.P.No.3 of 2010 challenging the order passed by the appellant herein under Section 45-A of the ESI Act, 1948.

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

3. The brief facts of the petition averments are as follows:

The petitioner establishment is the partnership Company. The Headquarters is Nagercoil. They are doing business of Marbles. In the Head Office, three persons are employed and in the Branch office, two persons have been employed. In total, five persons were employed. The respondent Corporation Inspector on 08.09.2009 inspected the Branch Office. At that time, the daughter of the petitioner, who was working in Chennai Chartered Bank as Executive Portfolio Manager and the grandfather of one of the partner, namely, V.D.Selvam also assisted to the



C.M.A(MD)No.1457 of 2013

WEB COPY

daughter of the petitioner were present. The said V.D.Selvam was doing research work and they have not connected with the petitioner's establishment. The Inspector of the respondent Corporation has included all the customers, who were presented on the date of inspection and issued notice, dated 29.09.2009. On 22.10.2009, objection was sent by the petitioner. Again on 05.11.2009, notice was issued by the Corporation stating that by fixing Rs.9,295/- as salary for the 26 employees without any basis. The same was also suitably replied by the petitioner through notice, dated 16.12.2009. On 29.12.2009, the personal hearing was conducted and the petitioner also submitted all the papers along with written submissions. In spite of that, the respondent Corporation issued notice under Section 45-A by demanding a sum of Rs.9,295/-. The said fixation of the amount is arbitrary and against natural justice. The Inspector has not inspected the Head Office and only inspected the Branch Office and wrongly included the daughter of the petitioner and one V.D.Selvam. The respondent Officer has not obtained any signatures from the employees, who were working at the time of Inspection and thereby, he failed to follow the procedures. Therefore, the order passed by the ESI Corporation is liable to be set aside.



C.M.A(MD)No.1457 of 2013

WEB COPY

4. The counter filed by the respondent is as follows:

The petition is not maintainable either in law or facts. The respondent inspected the petitioner's establishment on 08.09.2009 and also prepared inspection report. One R.B.Vaishnavi being the Manager has signed in the report. At the time of inspection, in the Branch Office, 22 persons worked and five persons worked in the Head Office. The particulars were filled up based on the information of the said Vaishnavi. The respondent Corporation also issued notice, dated 29.09.2009 and thereafter, they received the reply, dated 22.10.2009 with false allegations. On 05.11.2009, the respondent has issued show cause notice. It is false to state that only five persons are working in the Company. Based on the information and the persons, who employed on the date of inspection, the Inspector has prepared the report. It is not possible to run the said establishment with five employees. At the time of Inspection, no documents were produced to the Inspector. Already ample chances given to the petitioner for personal hearing despite that they have failed to produce all the records. The attendance and the salary register have been prepared for the purpose of this petition. The petitioner establishment



C.M.A(MD)No.1457 of 2013

covered by ESI Act and thereby, issued notice under Section 45-A and the petitioner is liable to pay the above said amount mentioned in the notice.

Therefore, the petition is liable to be dismissed.

5. Before the Tribunal, in order to prove the case of the petitioner, they have examined P.W.1 to P.W.5 and marked Exhibits P.1 to P.40 and on the side of the respondent, they have examined R.W.1 and marked Exhibits R.1 to R.5.

6. After perusing the materials available on records and hearing both sides, the Tribunal has allowed the petition and set aside the order passed by the respondent Corporation under Section 45-A of the ESI Act, dated 11.03.2010. As against the order passed by the Tribunal, the present Civil Miscellaneous Appeal has been preferred by the respondent ESI Corporation on various grounds.

7. The learned Counsel appearing for the appellant would contend that the Inspector of the ESI Corporation inspected the petitioner's establishment and prepared the Inspection Report and as per his report,



C.M.A(MD)No.1457 of 2013

WEB COPY

more than 27 persons were employed in the Company. 22 persons were employing in the Branch office and 5 persons were employed in the Head Office and thereafter, personal hearing was conducted and the respondent / petitioner has also appeared and failed to produce sufficient documents and they produced the attendance register only for five persons. In those documents, the concerned authorities have not signed and thereby, those documents are not valid documents. At the time of inspection, one Vaishnavi was present there and she as the Manager of the Company has received the copy of the notice without any objection. Thereby, the authorities issued the notice after affording opportunity to the respondent / appellant under Section 45-A of the ESI Act. But the Tribunal failed to consider the above said aspects and erroneously allowed the petition and set aside the order passed under Section 45-A of the ESI Act, dated 11.03.2010. Therefore, the present Appeal is filed and the order passed by the Tribunal is liable to be set aside.

8. The learned Counsel appearing for the respondent would contend that the authority has only inspected the Branch Office and not inspected the Main Office and the authorities have included the name of the



C.M.A(MD)No.1457 of 2013

WEB COPY

customers as well as the daughter of the one of the partner of the Company, namely, Vaishnavi, who was working as a Manager in the Private Bank at Chennai and also included the name of one V.D.Selvam, who was the father of one of the sharers, V.D.Selvam, who was doing research work and also impleaded the customers, who were present on the date of inspection. In fact only five persons were employed in the Company and no 27 persons were employed as alleged by the appellant / respondent Corporation. In order to prove the case of the petitioner, they have examined P.W.1 to P.W.5 and marked Exhibits P.1 to P.40. After taking into consideration of the evidences adduced on either side, the Tribunal has set aside the order passed by the ESI Corporation authorities and allowed the petition. Therefore, the present appeal is liable to be dismissed.

9. This Court after hearing both sides and upon perusing the documents including the order of the Tribunal, the point for determination in this appeal is:

i) Whether any substantial question of law involved in this case and the appeal is to be allowed or not?



C.M.A(MD)No.1457 of 2013

WEB COPY

10. The main contention of the appellant is that, in the respondent / petitioner establishment on the date of inspection, 22 persons were employed in the Branch Office, in the Head office 5 persons were employed. In total, 27 persons were employed and at the time of inspection, the first respondent also prepared inspection report. In the inspection report, the daughter of one of the share-holder, namely, Vaishnavi signed as received the copy. According to the respondent, on the date of inspection, the Inspector has not inspected the Head Office and only inspected the Branch Office, where only five persons were employed. The other persons mentioned in the inspection report were customers and one of the person mentioned in the inspection report is the daughter of the one of the share-holder, who was working as Bank Manager in the Private Bank at Chennai. Another person, namely, V.D.Selvam was also added as employee. But in fact he was doing research work and his name was also included as employee.

11. Before the Tribunal, the petitioner had examined P.W.1 to P.W.5 and on perusal of P.W.1 to P.W.5 and Exhibits P.1 to P.40, they revealed that the persons, namely, Vaishnavi and V.D.Selvam are not employees of



C.M.A(MD)No.1457 of 2013

WEB COPY

the respondent / petitioner Establishment and it is admitted by the respondent Corporation (i.e.,) on the date of inspection, he has not inspected the Head Office and only inspected the Branch Office. Further it is admitted fact that the respondent / petitioner have produced the original register and the salary particulars of the employees and the same have also been considered by the ESI authority. Further one David Reginald name also included in the list of the employees and he was examined as witness and he stated before the authority that he was aged about 72 years and he was a customer to the petitioner's establishment. When he was present in the Company, the authority asked Vaishnavi and included his name without any enquiry. Therefore, this evidence shows that the authorities of the ESI Corporation have not properly inspected the petitioner establishment.

12. On the side of the respondent they examined R.W.1 and he deposed about the inspection made by the authorities. But however, he himself admitted that on the date of inspection, the Head Office was not inspected by him and he did not obtain any signatures of the employees, who were employed in the petitioner's establishment on the date of



C.M.A(MD)No.1457 of 2013

inspection and also the evidences shows that the Vaishnavi was working at Chennai and the V.D.Selvam has been doing research work. Thereby, the report of the ESI Corporation creates serious doubt and the Tribunal also in this aspect elaborately discussed and after taking into consideration the evidences adduced on both the sides and fairly came to a conclusion that the appellant / ESI Corporation except the report, no other documents were produced to show that in the petitioner Company more than 27 persons were employed. After analyzing all the evidences, the Tribunal has fairly came to a conclusion that the respondent / appellant / ESI Corporation have failed to prove that the Company is covered the ESI Act and failed to prove that more than 10 persons were employed in the Company. Therefore, the order passed by the Tribunal is in order and no any infirmity or perversity found in the order passed by the Tribunal in E.S.I.O.P.No.3 of 2010 on the file of the Employees State Insurance cum Labour Court, Tirunelveli. In this case, on careful perusal of records, there is no substantial question of law is involved. The grounds raised by the appellant are only factual aspects.



C.M.A(MD)No.1457 of 2013

WEB COPY

13. In view of the above said discussion, this Court is of the opinion that this Civil Miscellaneous Appeal has no merits and deserves to be dismissed. Accordingly, this Civil Miscellaneous Appeal stands dismissed by confirming the order of the Tribunal. There shall be no order as to costs.

13.02.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

1.The Employees State Insurance cum Labour Court,
Tirunelveli.

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



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C.M.A(MD)No.1457 of 2013

P. DHANABAL, J.

BTR

C.M.A(MD)No.1457 of 2013

13.02.2024