



C.M.A.(MD).No.962 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 20.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.M.A.(MD)No.962 of 2012

and

M.P(MD) No.1 of 2012

- | | |
|-------------------------|--------------------------|
| 1. A.Rathinasamy (died) | ... Appellant/Petitioner |
| 2. R.Esakkiammal | ... Appellant |

(Appellant No.2 is brought on record as
Legal Heirs of the deceased sole appellant
vide order of this Court dated 06.11.2023
made in C.M.P(MD) Nos.8464 and 8465
of 2018 in C.M.A.(MD) No.962 of 2012)

-vs-

- | | |
|--|------------------------------|
| 1. The Authorised Officer,
Employees State Insurance Corporation,
Tirunelveli. | |
| 2. The Recovery Officer,
Employees State Insurance Corporation,
Tirunelveli. | ... Respondents/ Respondents |

PRAYER: Civil Miscellaneous Appeal filed under Section 82 (2) of Employees State Insurance Act, 1948, against the order passed in E.S.I.O.P. No.17 of 2011, dated 11.01.2012 on the file of the Employees State Insurance Court (Labour Court), Tirunelveli.



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C.M.A.(MD).No.962 of 2012

For Appellant : Mr.H.Arumugam
For Respondents : Mr.R.Ravikumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant as against the order passed in E.S.I.O.P. No.17 of 2011, wherein, the appellant herein filed the petition before the Employees State Insurance Court (Labour Court), Tirunelveli, by challenging the order passed by the E.S.I. Authorities, dated 14.05.2009 under Section 45-A of E.S.I. Act from 23.01.2009 to February 2009.

2. According to the appellant, he was running Hotel Hari Krishna for the past 25 years. In that Hotel only 8 persons were employed. Therefore, the Act is not applicable to the Hotel. While so, the first respondent has inspected the Hotel on 23.01.2009. In that inspection report, he recorded that 10 persons were working and thereby, given temporary number and fixed a sum of Rs.7,494/- (Rupees Seven Thousand Four Hundred and Ninety Four only) and sent the notice on 05.02.2009. A detailed reply was given on 09.03.2009.



C.M.A.(MD).No.962 of 2012

WEB COPY

The full address of the employees were not given. There was no opportunity given to the petitioner for personal enquiry and no order was served to him. In the meantime, the petitioner received a notice on 27.08.2009 demanding a sum of Rs.7,540/- (Rupees Seven Thousand Five Hundred and Forty only). Therefore, the order passed by the respondent is liable to be set aside.

3. According to the respondents, the appellant's Hotel was inspected by the Inspector on 23.01.2009. At that time, one L.Sankaranarayanan, who was Supervisor was present. At that time, 10 persons were working and all are drawing salary of more than Rs.3,000/- (Rupees Three Thousand only). Thereby, the Inspector prepared inspection report and in that, Sankaranarayanan also signed as received the copy. Thereafter, Form C-11 was sent to the petitioner on 05.02.2009 and allotted E.S.I.Number. On 09.03.2009, the reply was sent by the appellant stating that only 8 persons were alone working in the Hotel. Again on 18.03.2009, Form C-18 was sent and the date for the personal hearing was fixed on 01.04.2009, but none appeared. Again, the date was fixed on 05.05.2009 for personal hearing. On that date also, none appeared on behalf of the appellant/petitioner. Therefore, the respondents passed the order under Section 45-A of the E.S.I Act dated



C.M.A.(MD).No.962 of 2012

14.05.2009. Hence, the order is in order.

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4. Before the Tribunal, on the side of the petitioner, P.W.1 to P.W. 3 were examined and Exhibits P.1 to P.9 were marked. On the side of the respondents, R.W.1 was examined and Exhibits R.1 to R.11 were marked. Thereafter, the Tribunal, after analyzing the evidences, dismissed the petition. As against the order passed by the Tribunal, the present appeal has been preferred by the appellant on various grounds.

5. The learned counsel appearing for the appellant would contend that the appellant/petitioner was running Hotel by employing 8 persons and 10 persons were not employed. On the date of inspection, one Sankaranarayanan was present, but the said person was not working in the Hotel. Only Sankaran was alone working. But the authority in the inspection report had taken response from the employees. Already notice was issued and the same was suitably replied but, no personal hearing was conducted and no opportunity was given to the appellant. Further, the appellant/petitioner has produced the Attendance Register and the same were not considered by the Tribunal. Therefore, the order passed by the Tribunal is liable to be set aside.



C.M.A.(MD).No.962 of 2012

WEB COPY

6. The learned counsel appearing for the respondents would contend that the petitioner was running a Hotel. In the Hotel, more than 10 persons were employed as employees. On 10.03.2009, the Inspector has inspected the Hotel and prepared the inspection report and the report was prepared in the presence of employees working in the Hotel and the list of employees also prepared as particulars provided by them. As per the report, 10 persons were working in the Hotel. But the appellant/petitioner has not paid any contribution. Thereby, notice was served with the appellant and he has issued reply by denying the number of employees as only 8 persons but however the respondent has given opportunity for personal hearing to the appellant. The appellant did not appear and thereby, he passed an order under Section 45-A of the E.S.I. Act. The Tribunal also taking into consideration of the facts correctly dismissed the petition. Therefore, the present appeal is also liable to be dismissed.

7. This Court heard both sides and perused the materials on record.

8. In this case, there is no dispute that the appellant/petitioner was running a Hotel and inspection was made by the respondents authorities.



C.M.A.(MD).No.962 of 2012

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According to the appellant, in the Hotel, only 8 persons were employed and so called Sankaranarayanan was not working as employee and Sankaran only was working as employee. In this context, Sankaran was examined as P.W.3 and he also admitted the inspection made by the Corporation and his presence was also not denied. Further, based on the information given by the employees, the E.S.I authorities recorded the names of the employees. Therefore, the Tribunal also elaborately discussed about the evidence adduced on either side and rejected the Attendance Register Ex.P6 submitted by the petitioner. In this context, the the respondents have inspected the Hotel on 23.01.2009 and the Salary Register and the Attendance Register were produced for the period on 21.12.2008 and the Tribunal rejected the said documents. However, on the date of inspection, the appellant/petitioner has not produced any documents and the said Attendance Register and Salary Register have not been produced on the date of inspection. There is no reasons stated by the appellant, for non production of the said registers either on the date of inspection or at the time of personal hearing. Therefore, the Tribunal has rightly come to a conclusion. Further before issuing Form-11 and Form – 18, opportunity was given for personal hearing. The order passed by the E.S.I. Authorities itself shows that already two personal hearings were



C.M.A.(MD).No.962 of 2012

given but the petitioner had not appeared. Therefore, the contention of the appellant that no opportunity was given for personal hearing is not acceptable. Further to sustain the appeal the appellant has to satisfy the Substantial question of law is involved in this case. On careful perusal of the entire case records, there is no substantial question of law involved in this case.

9. In view of the above said discussions, this Court is of the opinion that there is no substantial question of law is involved in this case and thereby, the appeal has no merit and the same is liable to be dismissed.

10. In the result, these Civil Miscellaneous Appeal is dismissed and the order passed in E.S.I.O.P.No.17 of 2011, dated 11.01.2012 on the file of the Employees State Insurance Court, (Labour Court), Tirunelveli, is confirmed. There shall be no orders as to costs. Consequently, connected Miscellaneous Petition is closed.

20.02.2024

NCC : Yes/No
Index : Yes / No

7/10



C.M.A.(MD).No.962 of 2012

Internet : Yes / No
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To

1. The Authorised Officer,
Employees State Insurance Corporation,
Tirunelveli.
2. The Recovery Officer,
Employees State Insurance Corporation,
Tirunelveli.
3. The Employees State Insurance Court
(Labour Court), Tirunelveli.
4. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A.(MD).No.962 of 2012

P.DHANABAL,J.

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C.M.A(MD)No.962 of 2012



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C.M.A.(MD).No.962 of 2012

20.02.2024