



C.M.A(MD)Nos.1675 of 2013 & 524 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 21.02.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

C.M.A(MD)Nos.1675 of 2013 & 524 of 2014

The Employees State Insurance Corporation,
Through its Regional Director,
Having his office at
No.143, Sterling Road,
Madras.

... Appellant/Respondent
(In Both the Cases)

Vs.

Trichy Handloom Weaver Co-operative
Sales Society Limited,
Represented by its Special Officer,
Ponnavaaraha Swamy Kovil Street,
Woraiyur,
Trichy-3.

... Respondent/Petitioner
(In C.M.A(MD)No.1675 of 2013)

Trichy Handloom Weaver Co-operative Production
and Sales Society Limited,
Represented by its President,
Ponnavaaraha Swamy Kovil Street,
Woraiyur,
Trichy-3.

... Respondent/Petitioner
(In C.M.A(MD)No.524 of 2014)



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Prayer in C.M.A(MD)No.1675 of 2013 : This Civil Miscellaneous Appeal filed under Section 82(2) of the ESI Act, 1948, to set aside the decree and judgment of the ESI Court, (Labour Court, Trichy) passed in E.S.I.O.P.No.18 of 2001, dated 12.07.2012.

Prayer in C.M.A(MD)No.524 of 2014 : This Civil Miscellaneous Appeal filed under Section 82 of the ESI Act, 1948, against the decree and judgment of the Employee's State Insurance cum Labour Court, Thiruchirapalli passed in E.S.I.O.P.No.114 of 2001, dated 12.07.2012.

In Both the Cases:

For Appellant : Mr.R.Ravikumar

For Respondent : Mr.N.Balakrishnan

COMMON JUDGMENT

In C.M.A(MD)No.1675 of 2013, the appeal has been preferred as against the order passed in E.S.I.O.P.No.18 of 2001 on the file of the ESI Court, Labour Court, Trichy, wherein, the respondent herein have challenged the order passed by the appellant / respondent under Section 45-A of the ESI Act, dated 23.10.1998, for the period from 3/86 to 3/91. The ESI Court had allowed the petition and set aside the order passed by the appellant / respondent. Aggrieved by the said order, C.M.A(MD)No.



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1675 of 2013 has been preferred.

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2. In C.M.A(MD)No.524 of 2014, the appeal has been preferred as against the order passed in E.S.I.O.P.No.114 of 2001 on the file of the ESI Court, Labour Court, Trichy, wherein, the respondent herein have challenged the order passed by the appellant / respondent under Section 45 A of the ESI Act, dated 23.10.1998 for the period from 4/91 to 3/97. The ESI Court had allowed the petition and set aside the order passed by the appellant / respondent. Aggrieved by the said order, C.M.A(MD)No.524 of 2014 has been preferred.

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

4. The brief contention of the petition before the ESI Court in E.S.I.O.P.No.18 of 2001 are as follows:

The petitioner's Society is not covered under the ESI Act. Neither the petitioner has submitted any application nor the respondent Corporation brought it under the provisions of ESI Act. The ESI Act is not



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applicable under Section 44 of the Act. Thereby, the appellant / respondent cannot exercise the powers under Section 44 of the ESI Act. On 03.09.1991, the respondent issued a proceedings as though the petitioner was covered under the Act and found fault with the petitioner for non submission of returns. The petitioner did not submit the jurisdiction of the Act. Hence, there is no liability under the Act. If the respondent have not giving any code number and without making any adjudication under Section 44(2) of the Act, the order was issued. No show cause notice was issued and no enquiry was made and thereby, not complied the provisions under Section 44(2) of the Act. Hence, they filed this petition.

5. The counter averments filed by the respondents are as follows:

The Act was notifying the application of the Act to that area only from 01.01.1983 and after notification, based on the surveyor report, received from the Statutory Inspector, dated 13.09.1984, the petitioner was directed to comply the Provisions of the Act and the petitioner was given a code number and the same was also informed to the petitioner. In the earlier E.S.I.O.P.No.4 of 1986 filed by the petitioner, dated 25.01.1998,



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this Court upheld the coverage the provision to this establishment and thereafter, the same was remanded back to the authorities for determining the quantum of compensation amount. Thereafter, the respondent had issued letters to the petitioner but they have not appeared and not produced documents. The surveyor report by the Statutory Inspector, dated 06.07.1984 and 07.07.1984 proved that the petitioner establishment was only covered under the Act. On 03.09.1991, a show cause notice was issued and thereafter, the order was passed to the authorities. Therefore, the present petition is liable to be dismissed.

6. Brief averments of the petition filed before the E.S.I Court in E.S.I.O.P.No.114 of 2001 are as follows:

The petitioner Society is engaged in production of hand-loom products through the members who have paid capital and they are not bound by the time schedule. Members will fluctuate even weekly or monthly or annually. Therefore, the manufacturing personnel do not confirm to the concept of 'workman' or 'labourer' or 'employee'. The petitioner is not covered under the Act. The petitioner has not filed any application for registration. The respondent without any investigation and



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without any show cause notice passed the impugned order. The respondent has not followed the procedures contemplated under Section 44 of E.S.I Act. Therefore, the order passed by the respondent is liable to be set aside.

7. Brief facts of the counter filed by the respondents are as follows:

The petition is not maintainable either in law or on facts. The petitioner establishment was inspected by this authority during July 1984 and the same is covered under the E.S.I Act from 01.01.1983 onwards. The petitioner was informed through letter, dated 13.09.1984 and also allotted No.51012778. Against which the petitioner filed E.S.I.O.P.No.4 of 1986 and upheld the coverage, but set aside the order on the ground that the contribution did not state clearly the grounds on which wages of the employees were assumed as Rs.350/-. Thereafter, the petitioner did not appear before the authority even issued notices on 29.03.1988 and 22.04.1988 for personal hearing. The authority need not conduct enquiry under Section 44 of the Act. The petitioner was given opportunity but he failed to appear for personal hearing, hence, the respondent passed order under Section 45 A of the Act, dated 23.10.1998 determining the



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contribution payable for the period 4/91 to 3/97.

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8. In E.S.I.O.P.No.18 of 2001, before the Tribunal, on the side of the petitioner, P.W.1 was examined and marked Exhibit P.1. On the side of the respondent, no witnesses were examined and not marked any documents.

9. In E.S.I.O.P.No.114 of 2001, before the Tribunal, on the side of the petitioner, P.W.1 and P.W.2 were examined and marked Exhibits P.1 to P.3 and no witnesses were examined and marked Exhibits R.1 to R.2.

10. The Tribunal after perusing the records, allowed these petitions and set aside the order passed by the authorities under Section 45A of the ESI Act. As against the dismissal order, the present Civil Miscellaneous Appeals have been preferred.

11. This Court at the time of admission, in C.M.A(MD)No.1675 of 2013, framed the following substantial questions of law:

"a) Whether the petition filed by the respondent is barred by *res judicata* in view of the order passed in E.S.I.O.P.No.4 of 1986, dated



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ii) Whether the order passed by the Labour Court declaring that the ESI Act, is not applicable to the respondent, namely, Trichy Handloom Weaver Co-operative Sales Society Limited, Trichy is correct?"

12. In C.M.A(MD)No.524 of 2014, at the time of admission, framed the following substantial questions of law:

"1. When the Authorised Officer has passed the order under Section 45-A of the Act after following the principles of natural justice and has given several opportunities to the respondent to prove his case. The respondent neither come forward to appear before the enquiry officer nor file any records to support his contention. In the above said circumstances, was the learned Judge is correct to declare that the appellant's enquiry officer has failed to follow the provisions of the ESI Act and to set aside the order passed under Section 45-A of the ESI Act?

2. When a similar situation the Principle District and Sessions Judge, Thiruchirapalli upheld the coverage and declared that the provisions of the ESI Act applies to the respondent establishment and remanded for fresh enquiry to determine the contribution and has given a



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specific direction to the respondent to produce all the relevant records at the time of enquiry. Failure to produce the documents, determine the contribution based on the available records, as per the provisions of Law. Was the learned Judge is correct to decide the issue in favour of the respondent on the ground that the enquiry conducted by the authority was not proper?"

13. In C.M.A(MD)No.1675 of 2013, the learned Counsel appearing for the appellant / respondent would contend that already the petitioner has filed the petition in E.S.I.O.P.No.4 of 1986 and the Labour Court also passed order that the petitioner establishment covered by the Act and only remanded back the matter for fixing the quantum of contribution amount and thereafter, the petitioner has not filed any appeal and thereby, the present petition is hit by principle of *res judicata* and the Labour Court failed to consider the same and erroneously allowed the petition.

14. As far as C.M.A(MD)No.524 of 2014 is concerned, already after hearing the petitioner only, the order was passed and at the time of personal hearing, the petitioner has not produced any documents and



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thereby, the order passed by the authorities are in order as per Section 45-A of the ESI Act. But the Tribunal without considering the above said aspects, erroneously allowed the petition by setting aside the order passed by the authorities under Section 45-A of the ESI Act.

15. The learned Counsel appearing for the respondent would contend that already the petitioner filed E.S.I.O.P.No.4 of 1986 and the order passed by the authority was set aside and thereafter, remanded back to the concerned authorities and thereby, the question of *res judicata* would not arise. Further, thereafter, the authorities have not passed any order and not complied the order of this Court and the petitioner's Establishment will not cover under the ESI Act and the Trial Court after referring the judgments of Hon'ble High Court of Karnataka and Hon'ble High Court of Kerala reported in **1991 (II) L.L.N 519 [Employees' State Insurance Corporation and Karnataka Asbestos Cement Products]** and **E.S.I. Corporation Vs. Vattiyoorkavu H.W. Co-operative Society reported in 1999 (III) L.L.J 452**, fairly came to a conclusion that the ESI Act will not cover to the petitioner Establishment and correctly allowed the petitions. Therefore, the present Civil Miscellaneous Appeals are liable



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to be dismissed.

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16. This Court had heard both sides and upon perusing the records, the following substantial questions of law arose in the appeal in C.M.A(MD)No.1675 of 2013:

"Whether the petition filed by the respondent is barred by *res judicata* in view of the order passed in E.S.I.O.P.No.4 of 1986, dated 25.01.1988?"

17. It is admitted fact that already the respondent / petitioner filed E.S.I.O.P.No.4 of 1986, dated 25.01.1988 and the order passed by the authorities are set aside and remanded back to the authorities for fixing the quantum of the contribution amount. But the respondent ESI Corporation have not complied the order and so far, they have not passed the order. Thereafter, the same authorities have issued another order by stating that the petitioner Establishment is covered under the ESI Act and there are some arrears of payment of contribution. The above said order has been challenged through these petitions and the Trial Court after elaborate discussion, held that the earlier order passed by this Court was not



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complied and without furnishing the inspection report and without conducting any enquiry under Section 44 (2) of the ESI Act, the order has been passed. Therefore, set aside the order. Since this Court passed earlier order, by setting aside the order of the authorities and remanded back the case for fresh disposal, the question of *res judicata* will not arise. Thus the substantial question of law is answered.

18. The Tribunal after taking into consideration of the judgments of Karnataka High Court reported in **1991 (II) L.L.N 519 [Employees' State Insurance Corporation Vs. Karnataka Asbestos Cement Products]** and also referring the judgment in **E.S.I. Corporation Vs. Vattiyoorkavu H.W. Co-operative Society reported in 1999 (III) L.L.J 452**, has passed the order that the petitioner Establishment will not come under the ESI Act. Therefore, the order passed by the Tribunal is in order and no any infirmity or perversity found in the order of the Tribunal. Thus the substantial question of law is answered in C.M.A(MD)Nos.1675 of 2013.

19. In C.M.A(MD)No.524 of 2014, the substantial questions of law is when the authorities passed order under Section 45-A by following the



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principles of natural justice and the respondents failed to avail those opportunities. Whether the order passed by the Labour Court that the ESI officials have not followed the procedures is correct.

20. In this context, it is admitted fact that the inspection report was not produced before the Labour Court and the enquiry also not conducted under Section 44 of the Act to determine the amount liable to be contributed. Already the Labour Court in E.S.I.O.P.No.4 of 1986 directed the E.S.I authorities to pass order afresh by remanding the case to them. But the said order was not complied and the amount for the period of 1984-1986 was not determined, without determining the said amount, the authority cannot proceed for the subsequent period. Even for the subsequent period, the respondent had not filed survey report to prove the number of employees. Therefore, the Tribunal has passed the order by stating that the report furnished by the Inspector did not contain details and the officer has not offered sufficient opportunities to the petitioner and thereby, allowed the application by giving adequate reasons. Therefore, the order passed by the Tribunal is in order and without serving the copies of the inspection report, it is not appropriate to pass orders under Section



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45-A of the Act without complying the conditions and without following the procedures under Section 44 of the Act the impugned order passed by the authorities are not in accordance with law. Thus the substantial questions of law are answered.

21. As far as the second substantial question of law is concerned, the Labour Court in the earlier order set aside the order of authorities and directed to conduct fresh enquiry. Therefore, the Labour Court has not decided the case on merits and directed to conduct fresh enquiry. That order was also not complied by the E.S.I authority. The Tribunal also after referring the judgment of the Hon'ble Supreme Court in ***E.S.I Corporation Vs. C.C.Santhakumar reported in 2007 SCC 413*** came to a conclusion that the respondent failed to follow the provisions of the ESI Act. Therefore, the order passed by the E.S.I Court is correct to decide the issue in favour of the respondent herein on the ground that the enquiry conducted by the authority was not proper.

22. In view of the above said answers given for substantial questions of law, these two appeals have no merits and deserves to be



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dismissed. Accordingly, these appeals are dismissed by confirming the order of the Trial Court in E.S.I.O.P.No.18 of 2001 and E.S.I.O.P.No.114 of 2001 on the file of the The Employee's State Insurance cum Labour Court, Thiruchirapalli. There shall be no order as to costs.

21.02.2024

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

To

- 1.The Employee's State Insurance cum Labour Court,
Thiruchirapalli.
- 2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL, J.

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