



C.M.A(MD)No.33 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 06.02.2024

CORAM:

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

C.M.A(MD)No.33 of 2013

The Employees State Insurance Corporation,
Madras through its
Regional Director,
No.143, Sterling Road,
Madras.

... Appellant/Respondent

Vs.

1.Thiagaraja Industries,
Through its Occupier J.Madasamy,
No.69, A.S.K.Thangaiah Nadar Road,
Sivakasi.

2.The District Collector,
Kamarajar District,
Virudhunagar.

... Respondents/Petitioners

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, Madurai passed in E.S.I.O.P.No.81 of 2001, dated 12.01.2012.

For Appellant : Mr.C.Karthik



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For R-1 : Mr.K.Hema Karthikeyan
For R-2 : Mr.N.Muthuvijayan
Special Government Pleader

JUDGMENT

The present Civil Miscellaneous Appeal has been filed as against the order passed in E.S.I.O.P.No.81 of 2001, dated 12.01.2012 on the file of the Employees' State Insurance cum Labour Court, Madurai.

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. According to the appellant / respondent, the respondent / petitioner factory establishment covered under the Employees' State Insurance Act and required to pay the contribution as per Section 40 of the Act read with regulations 29 and 31 of the Employees' State Insurance (General) Regulations, 1950. The appellant authority inspected the factory on 09.10.1988 and 10.10.1988 and the employer was advised vide inspection of the letter, dated 10.10.1988 to comply in respect of all



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omitted wages. Since the employer failed to do so, show cause notice was issued on 25.06.1987 and personal hearing was fixed on 15.09.1987.

Thereafter, the employer appeared and then again adjourned several times and thereafter only passed the order. Therefore, the order passed by the appellant is in order and only after hearing the respondents, the order was passed. But the Labour Court set aside the order and remitted back to the appellate authority for fresh disposal according to law. Therefore, the order passed by the Labour Court is liable to be set aside.

4. According to the respondents, the opportunity was not given to them and without hearing the respondents and without giving opportunity, the order was passed by the appellate authority. The authorities have not even served the copy of the inspection report and thereby, the Labour Court after considering all the aspects, correctly set aside the order passed by the authority under Section 45 of the Employees' State Insurance Corporation Act and remanded back to the authorities for fresh consideration.



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5. The learned Counsel appearing for the appellant / respondent would contend that the Tribunal has set aside the order on the ground that the opportunity was not given to the respondent / petitioner and in the impugned order, dated 28.01.1990 under Section 45-A of the ESI Act itself mentioned the dates of hearing and appearance of the respondents / petitioner despite that the Trial Court has held that the opportunity was not given to the respondents and erroneously set aside the order of the authority. Therefore, the order passed by the Tribunal is liable to be set aside.

6. The learned Counsel appearing for the respondents / petitioners would contend that the inspection report has not been served to the respondents / petitioners and the appellant / respondent had not filed any documents before the Labour Court to prove that the opportunity was given to the respondents and thereby, the Labour Court has correctly set aside the order and remanded back to the authorities. Therefore, the present Civil Miscellaneous Appeal is liable to be dismissed.



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7. 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 the appeal is liable to be allowed or not?

8. This Civil Miscellaneous Appeal filed against the order passed by the Labour Court, wherein the order passed by the appellant under Section 45-A of the ESI Act, dated 12.01.2012 was set aside and the matter was remanded back to the concerned authorities for fresh consideration. According to the appellant / respondent, already sufficient opportunity was given to the respondents / petitioners, despite that they have not established their case. Thereby, the authority has passed the order under Section 45-A of the ESI Act. According to the respondents / petitioners, no opportunity was given to the respondents / petitioners and without hearing the respondents and without serving the copy of the inspection report, the impugned order under Section 45-A was passed by the authority. Before the Labour Court, the petitioners have marked Exhibits P.1 to P.9 and no witnesses were examined. On the side of the respondents, no documents were marked and no witnesses were examined. After considering the



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documents, the Tribunal has set aside the order. The Tribunal in the order, after relying the judgment in **1995 (1) CLR page 1107 ESI represented by Regional Director Vs. Trichy District Co-operative Milk Producers Union Limited**, held that the opportunity was not given to the petitioners and thereby, set aside the order and remanded back the case to the authorities.

9. On perusal of the records, it shows that the first respondent herein has sent letters to the appellate authority and thereafter, no communication was sent to the first respondent and the main contention of the first respondent is that, no inspection report was served to them and no opportunity was given to them. On perusal of the impugned order passed by the appellant shows that already sufficient chances given to the first respondent for personal hearing and they also appeared in person and gave some letters. But during the course of trial before the Labour Court, in order to substantiate the contention of the appellant that the respondents have appeared and sent the letters, they failed to produce the documents and no contra evidence adduced by the respondents before the Labour Court. Therefore, the Tribunal after considering all the aspects, set aside



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the order passed by the authority and remanded back to the authorities for fresh consideration. Hence, there is no any illegality or infirmity in the order passed by the Tribunal. Therefore, this Court has no warrant to interfere with the order passed by the Tribunal.

10. In view of the above said discussions, 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. There shall be no order as to costs.

06.02.2024

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

To

1.Thiagaraja Industries,
No.69, A.S.K.Thangaiah Nadar Road,
Sivakasi.

2.The District Collector,
Kamarajar District,
Virudhunagar.



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3.The Employees' State Insurance cum Labour Court,
Madurai.

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



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P. DHANABAL, J.

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