



C.M.A.(MD).No.744 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 01.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.M.A.(MD)No.744 of 2014

M/s.Uthayam Petroleum
Represented by its' Proprietor,
C.Kanagaraj
Verkilambi,
Kanyakumari District.

... Appellant/Petitioner

-VS-

1. The Assistant Director,
Employees State Insurance Corporation,
Sub – Regional Office,
Municipal Shopping Complex,
Sindupoonthurai,
Tirunelveli.

2. The Recovery Officer,
Employees State Insurance Corporation,
“Bhavaniship Bhavan”
Madurai – 20.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 82 (2) of the Employees State Insurance Act, against the order in E.S.I.O.P.No.13 of 2011, dated 04.10.2012 on the file of the Employees State Insurance Court, the Labour Court, Tirunelveli.



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For Appellant : Mr.M.Azeem

For Respondents : Mr.R.Ravikumar – for R1
: No appearance – for R2

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.13 of 2011, dated 04.10.2012, on the file of the Employees State Insurance Court/Labour Court, Tirunelveli, wherein the appellant herein has filed the petition to set aside the order passed by the E.S.I Authorities under Section 45-A of the E.S.I. Act and the same was dismissed. As against the order, the present appeal has been filed by the appellant.

2. According to the appellant, the appellant petrol bunk was not covered under the E.S.I.Act. The appellant started business with Indian Oil Corporation under the Scheme of Kissan Seva Kendra to supply diesel and petrol to the village farmers. Their establishment has only six employees called Pump Operators and no Manager was employed in the establishment.



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The owner, namely, C.Kanagaraj was only employed as Manager. Since the bunk was newly installed, in order to give training to the staff, two persons were brought from another petrol bunk. Therefore, by including those persons, the authorities have passed order stating that the petitioner's petrol bunk is covered under the E.S.I.Act. On 05.06.2007, the respondent Corporation inspected the petrol bunk and by compulsion the staff Sreekumar written the particulars of the staff and totally 12 persons were mentioned as staff, but among them four persons were unnamed persons and two persons were not employed as they are trainers. Thereafter, the authorities issued proceedings dated 06.02.2008 and the date was fixed on 25.02.2008 for personal hearing. The owner of the petrol bunk requested to stop proceedings through letter and thereafter served notice under Section 45-A of the E.S.I.Act by claiming a sum of Rs,17,160/- (Rupees Seventeen Thousand One Hundred and Sixty only) from June 2007 to September 2007. Thereafter, on 22.05.2008 sent Form C-19 for a sum of Rs.18,502/- (Rupees Eighteen Thousand Five Hundred and Two only). Therefore, the petition was filed to declare the proceedings dated 11.03.2008 as null and void and the proceedings for claiming amount is liable to be set aside.



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3. According to the first respondent, the petitioner institutions is covered under the E.S.I.Act, since more than 10 employees were employed. The notice was served on the Manager of the petrol bunk operator Sreekumar. At the time of inspection, they have not produced the Attendance Register or Salary Register of the persons who were employed and the particulars of the employees were given only by the employees of the petrol bunk. The Inspector has also personally enquired about the number of employees available after six months training given to the employees. Therefore, they inspected the petrol bunk and thereafter passed the order under Section 45-A of the E.S.I.Act after complying the procedures. Therefore, the petition is liable to be dismissed.

4. Before the Labour Court, on the side of the petitioner, they have examined P.W.1 to P.W.3 and documents P.1 to P 9 were marked. On the side of the respondents R.W.1 was examined and documents R.1 to R7 were marked.



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5. After evaluating the oral and documentary evidence adduced on either side, the Tribunal has dismissed the petition by holding that the employer only gave his particulars and more than 10 persons were employed in the petrol bunk and hence it is liable to pay contribution amount. As against the same, the present appeal has been preferred by the appellant on various grounds including on the following Substantial Questions of law:

1. Whether the provisions of Act apply to the petitioner establishment?

2. Whether the trainers deputed by the two unconnected petrol pumps to give training to the workmen of the petitioner could be treated as employees of the appellant as contended by the appellant?

3. Whether the trainers who were neither under managerial supervision of the appellant nor paid wages by the appellant are “employees” under Section 2(22) of the E.S.I. Act?

4. Whether the order passed by the first respondent under Section 45-A of the E.S.I. Act, dated 11.03.2008 solely based on the report of Insurance



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Inspector is valid?

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6. As far as the first substantial question of law is concerned, according to the first respondent, on the date of inspection more than 10 persons were employed in the petrol bunk and the same was denied by the appellant but the appellant admitted that on the date of inspection, one Sree Kumar was present and no documents viz., Attendance Register and Salary Register was produced at the time of inspection and they were only produced at the time of examination before this Court and there is no reason stated for non production of documents during the course of inspection. Further the appellant/petitioner has not examined the said Sree Kumar as witness, who is the important witness in this case, and thereby the contention of the respondent is acceptable and since more than 10 persons were employed in the petrol bunk, the provisions of the E.S.I. Act would apply.

7. As far as the second substantial question of law is concerned, according to the appellant, two persons were brought to the petrol bunk for giving training. In this context, the appellant failed to examine any witness to prove that some of the persons were brought from another bunk for giving



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training and so called persons who were engaged for training also have not been examined on the side of the appellant. Further, the appellant himself admitted that at the time of inspection the particulars were given by Sree Kumar, who was working as pump operator in the petrol bunk. Therefore, the appellant failed to prove that the some of the persons were engaged for training purpose. Therefore, the question of treatment by trained persons as employer of the appellant would not arise. Thus, the second substantial question of law is answered.

8. In view of the answer made to the second substantial question of law that the appellant failed to prove that persons who were engaged for training, the question of neither under managerial supervision of the appellant nor paid wages by the appellant are not at all arise and thereby, the third substantial question of law will not arise.

9. As far as the fourth substantial question of law is concerned, the authorities have passed the order after giving opportunity to the appellant and the appellant also admitted that the personal hearing was fixed and sent a letter to the authorities. Therefore, after following the procedures only the



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order was passed by the authorities under Section 45-A of the E.S.I Act. Therefore, the order passed by the respondent under Section 45-A of the E.S.I. Act dated 11.03.2008 solely based on the report on the date of inspection is valid. Thus, this substantial question of law is answered.

10. The Trial Court after considering all the aspects correctly dismissed the petition and this Court also in the previous paras answered the substantial question of law as against the appellant. In view of the answers given to the substantial questions of law, this Court finds no merits in the appeal and it deserves to be dismissed.

11. The learned counsel appearing for the appellant has produced the judgment of the Hon'ble Karnata High Court in **(1999) 79 FJR – 188 (Employees State Insurance Corporation Vs. Karnataka Asbestos Cement Products)** and on a careful perusal of the judgment, will not be applicable, because in this case the authorities have passed order based on the inspection report and the report also duly signed by the employees of the petrol bunk. Therefore, this judgment will not applicable in the present facts of the case as it is distinguishable from the facts of this case.



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12. In view of the above said discussions, this Civil Miscellaneous Appeal is dismissed, by confirming the order passed by Authorities in E.S.I.O.P.No.13 of 2011, dated 04.10.2012 on the file of the Employees State Insurance Court, the Labour Court, Tirunelveli. There shall be no order as to costs.

01.03.2024

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

1. The Assistant Director,
Employees State Insurance Corporation,
Sub – Regional Office,
Municipal Shopping Complex,
Sindupoonthurai, Tirunelveli.
2. The Recovery Officer,
Employees State Insurance Corporation,
“Bhavaniship Bhavan”
Madurai – 20.
3. The Employees State Insurance Court,
(Labour Court), Tirunelveli.
4. The Section Officer,
Vernacular Records,

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Madurai Bench of Madras High Court,
Madurai.

P.DHANABAL,J.

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