BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 06.12.2023

PRONOUNCED ON : 24.01.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)No.885 of 2014

The Deputy Regional Director,
The Employees State Insurance Corporation,
Sub-Regional Office,
4th Main Road, K.K.Nagar,
Madurai. ... Appellant / Respondent

Vs.

Madurai District Co-operative
Milk Producer's Union Ltd.,
Represented through its General Manager,
Madurai. ... Respondent / Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Section 82 of the ESI Act, 1948 to set aside the order dated 10.04.2013 passed by the ESI Court (i.e. Labour Court), Madurai in ESI OP No.27 of 2003.

For Appellant : Mr.P.Ganapathi Samy

For Respondent : Mr.V.O.S.Kalai Selvam

JUDGMENT

This Civil Miscellaneous Appeal has been filed to set aside the order dated 10.04.2013 passed by the ESI Court (i.e. Labour Court), Madurai in ESI OP No.27 of 2003.

2. The brief facts of the case are as follows:

(i) The respondent / M/s. Madurai District Co-operative Milk Producer's Union Ltd., which was covered under the Employees' State Insurance Act, 1948 (hereinafter referred to as 'ESI Act, 1948') vide code No. 57-5230-07, with effect from 30.06.1968. The ESI Inspector visited the respondent's factory at Kappalur on 30.06.1992 and found that more than 10 employees were working for wages and reported the matter to the appellant office. Since it was found that the respondent factory was coverable under ESI Act with effect from 01.04.1992, the employer was advised to comply with the provisions for the period from 01.10.2001 to 30.09.2002, a notice in Form 18 dated 19.02.2003 was issued. However, the respondent had appeared before appellant on 10.03.2003 and submitted that they have applied for exemption to the appropriate Government and were awaiting the exemption order within a period of one month. Even after a lapse of one month, the respondent did not turned up, the appellant determined the contribution on adhoc basis under Section 45(A) of the ESI Act and the impugned order claiming contribution of Rs.94,810/- (Rupees Ninety Four Thousand Eight Hundred and Ten only) came to be passed. Challenging the same, the said ESI OP.No.27 of 2003 came to be filed.

(ii) The respondent / appellant herein had filed a counter refuting the allegations made by the respondent / petitioner put forth in the petition before the learned ESI Court, Madurai. The learned ESI Court observed that it was admitted by both the parties that the Government of Tamil Nadu issued a G.O.No.904 dated 22.09.2003 exempting the Madurai District Co-operative Milk Producer's Union Limited, Madurai from the provisions of the ESI Act for the period from 01.04.2001 to 31.03.2002. Though it was was also argued by the Counsel for the appellant that the respondent / petitioner Union at Sathamangalam alone was granted exemption under the said Government orders and Kappalur Unit was not given any exemption.

It was also evident from the G.O.No.904 dated 22.09.2003 that the said order does not make any distinction between the Sathamangalam Union and Kappalur Union. Further, no doubt, in the G.O.911 dated 26.07.2004 exemption is ordered to be given for the permanent staff of Madurai District Co-operative Milk Producer's Union Limited, Avin, Sathamangalam, Madurai. It is the specific case of the appellant / respondent that both units of the respondent / petitioner union were allotted with separate ESI Code numbers and as such exemption granted to one unit cannot be used in favour of the other unit.

(iii) The learned ESI Court rightly observed that, no ESI code number was mentioned in the operative portion of the said Government orders. But it is observed that in the “Read” column of the said G.Os. letter from the Joint Director, Sub-Regional Office, Madurai was referred along with ESI Code No.57-10500-100 admittedly allotted for the Kappalur Unit, moreover, ESI code number allotted to the Sathamangalam Unit was mentioned nowhere in the said two Government orders. The impugned order was passed on 14.07.2003 and the first G.O.No. 904 for the period from 01.04.2001 to 31.03.2002 was issued on 22.09.2003 and G.O.No.911

for the period from 01.04.2002 to 31.03.2003 was issued on 26.07.2004, i.e., after passing of the impugned order. The learned ESI Court observed that there is no fault in passing the said impugned order as exemption was granted at that point of time.

(iv) Following which, the learned ESI Court proceeded to conclude that the appellant Corporation has absolutely no right or power to proceed and the impugned order cannot be allowed to stand further in view of the subsequent G.O. which was passed after the date of the impugned order. The learned Trial court has framed three issues and Ex.P-1 to Ex.P-6 were marked on the side of the petitioner. However, no witness was examined either side of the petitioner or on the side of the respondent. Accordingly, the learned ESI Court proceeded to set aside the impugned order. Challenging the same, the present Civil Miscellaneous Appeal came to be filed.

3. The learned Counsel for the appellant contended that in absence of oral evidence, the learned Trial Court ought to have rejected the case of

the employer and upheld the impugned order dated 14.07.2003 as valid. It was further contended that the ESI Act is a social security legislation and the same should be given wider interpretation so that coverage of large number of workers is effected under the said Act. On the other hand, the exemption order should be subjected to stricter interpretation where there are no express words to exempt workers of a particular unit from the purview of the ESI Act. The Trial Court ought to have held that the Kappalur unit of the employer is coverable under the said Act. Having observed that on the date of the impugned order, there was no exemption in favour of the employer, the learned ESI Court ought not have interfered with the impugned order. On that basis, the learned Counsel for the appellant pressed for allowing the appeal.

4. Per contra, the learned Counsel appearing for the respondent / employer submitted that the learned Trial Court has properly appreciated the pros and cons of the various facts and circumstances of the case and has rightly concluded in favour of the employer. Hence, the order passed by the learned ESI Court is legally sustainable and the same has to be

confirmed. Therefore, this Civil Miscellaneous Appeal is liable to be dismissed.

5. Heard the learned Counsel appearing for the appellant and the learned Counsel appearing for the respondent and carefully perused the materials available on record.

6. A careful perusal of the impugned order passed by the learned ESI Court would reveal that though the impugned order was passed on 14.07.2003, no coolie exemption was provided to the employer from the provisions of the ESI Act 1948. Relying upon a subsequently, granted exemption vide G.O.No.911 for the period from 01.04.2002 to 31.03.2003 which was issued on 26.07.2004 and the G.O.No.904 for the period from 01.04.1991 to 31.03.2002 which was issued on 22.09.2003, giving retrospective effect to the same, the learned Trial Court proceeded to conclude that the appellant Corporation has no right to proceed further. It is pertinent to mention here that the impugned order dated 14.07.2003 passed under Section 45(A) of the ESI Act, 1948 was with respect to the

period from 01.10.2001 to 30.09.2002. The interpretation drawn by the learned ESI Court cannot sustain the test of law and is liable to be rejected on the ground that if the interpretation as projected by the petitioner is taken to be true then, it will tantamount to draw a different interpretation than what was the import of the Government order. It would tantamount to interpret the Government order imposing exemption retrospectively. The retrospective operation of a Government order cannot be permitted particularly where it is merely an executive order, and not a legislation. Every Government / Executive order by virtue of a policy has prospective operation and it can in no way be applied retrospective by infusing life in a Government order and interpreting differently. I am fortified by the view of the Hon'ble Supreme Court in Bhart Sanchar Nigam Ltd. and others .Vs. Tata Communications Ltd, 2022 SCC Online 1280, the relevant portion is extracted as under:

> *"30. The power to make retrospective legations enables the Legislature to obliterate an amending Act completely and restore the law as it existed before the amending Act, but at the same time, administrative/executive orders or circulars, as the case may be, in the absence of any legislative competence cannot be made applicable with retrospective effect. Only law could be made retrospectively if it was expressly provided by the Legislature in*

the Statute. Keeping in mind the aforestated principles of law on the subject, we are of the view that applicability of the circular dated 12th June, 2012 to be effective retrospectively from 1st April 2009, in revising the infrastructure charges, is not legally sustainable and to this extent, we are in agreement with the view expressed by the Tribunal under the impugned judgment."

7. Fully in consonance with the discussion of the Hon'ble Apex Court extracted supra, I am of the considered view that since the aforesaid two G.Os were issued, subsequently after the date of the impugned order, the learned Trial Court ought not have set aside the impugned order and the said exercise is illegal. In view of the same, I hereby set aside the order dated 10.04.2013 passed by the the learned ESI Court.

8. Accordingly, this Civil Miscellaneous Appeal is allowed. There shall be no order as to costs.

24.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Sml

To

The ESI Court,
Labour Court,
Madurai.

Copy to

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

L.VICTORIA GOWRI, J.,

Sml

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