



C.M.A.(MD)No.906 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 18.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

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The Joint Regional Director,
Employees State Insurance Corporation,
Sub-Regional Office,
1-B, Old Post Office Street,
Tallakulam, Madurai – 625 002.

... Appellant/1st Respondent

-VS-

1. Madurai Meenakshi Appalam & Chips,
No.33, Khanpalayam ,
2nd Street, Madurai – 625 009,
Through its Partner P.Sethu.

... 1st Respondent/Petitioner

2. P.Murugan
3. K.Matha Pillai

... Respondents 2 and 3/
Respondents 2 and 3

(Respondents 2 and 3 Given up)

PRAYER: Civil Miscellaneous Appeal filed under Section 82 of the E.S.I.Act, 1948, against the order in E.S.I.O.P.No.10 of 2001, dated 31.03.2015 on the file of the Labour Court (Employees' State Insurance Court or in short, ESI Court) Madurai.



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For Appellant : Mr.P.Ganapathisamy
For R1 : Mr.C.Karthikeyan
For R2 and R3 : Given up

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.10 of 2001, dated 31.03.2015 on the file of the E.S.I.Court, Madurai, wherein, the first respondent herein has filed a petition before the Labour Court to set aside the order passed by the appellant under Section 45-A of the E.S.I.Act. As against the order passed by the Labour Court, the present appeal has been filed by the appellant.

2. For the sake of convenience and brevity, the parties hereinafter will be referred to as per their status/ranking in the Labour Court.

3. The brief contents of the averments made in the petition before the Labour Court are as follows:

The petitioner is manufacturing Appalams and chips. The manufacturing of appallams are not done at the petitioner's premises, but by



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self employed persons in their premises. The petitioner supplied raw materials like Gram-Flour etc., to the independent self employed persons, and the said persons do the manufacturing of appalams and chips on cottage industry basis. There is no supervision or control over them by the petitioner's concern. Mostly the women folk of the family do the manufacturing of the appalams in their homes and there is no equipments or instruments needed for preparing appalams. The remuneration is based upon the quantity of work carried out by them. The persons engaged in the manufacturing are not workmen under Section 2 (9) of E.S.I.Act and the payment made to them are not wages under Section 2 (22) of the E.S.I.Act. The petitioner has engaged only 5 persons for handing over the dhal flour, collecting , labeling and packing the finished products and for marketing the same. As no manufacturing process is carried out, inside the premises, the concern cannot be considered as a factory under Section 2(12) of the E.S.I.Act. While so, the E.S.I. Corporation issued show cause notice dated 14.05.1998 proposing to launch criminal prosecution for the non compliance of the order passed by the E.S.I.Authorities. The petitioner has sent a letter dated 06.07.1998 stating that their unit is a small one and not coverable under the E.S.I.Act but under protest complied the said order. The respondent has sent a letter dated



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16.08.1999 claiming contribution of Rs.3,51,872/- for the period from December 1996 to March 1998. The respondent/petitioner has also send a reply dated 23.11.1999 and 30.11.1999 reiterating their stand. The petitioner attended the personal hearing on 23.11.1999 and produced bills, vouchers and general ledgers and disputed the liability and the contribution for unidentified 28 persons and they were not engaged by them. The respondent has issued an order dated 03.03.2000 directing the petitioner to pay a sum of Rs.2,27,378/- for the period from December 1996 to March 1999 with interest at 15% p.a. till payment.

3.1 The petitioner concern has engaged only 5 employees and never engaged 20 persons. The E.S.I. Inspector who visited the establishment has included the persons who came to receive the dhal, the merchant or their representatives. The copy of the inspection report has not been furnished to the petitioner. The E.S.I Inspector has also not recorded the names of the workers, their address, designations and failed to obtain their signatures. The respondent has fixed wages for the so called 28 uncovered persons on adhoc basis and he has failed to consider the documents and only on the basis of visit note and other forms. Hence, the petitioner has filed the petition.



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4. The gist of the counter filed by the first respondent are as follows:-

The petitioner has no locus standi to file the above petition and he has not come with clean hands, and suppressed the real facts. The E.S.I Inspector has visited the petitioner establishment on 24.12.1996 and submitted the report stating that only the names of three workers mentioned in the attendance register. But 16 workers were found employed for wages in packing Section, in addition to that additional 3 part time employees were found working in the account section, that one Watchman was also been employed for wages and that 10 persons including the in charge Sri.Chellaiah were found employed in the “Dhal girding Mill” of the petitioner. Totally 33 persons were found working for wages in the petitioner unit. The visit note has been counter signed by Sri.Sethu Partner of petitioner unit. Another visit note relating to Dhal Mill has been counter signed by Sri.Chellaiah Pillai in charge of that unit. Hence the unit was definitely coverable under the E.S.I.Act from the date of inspection.

4.1 Thereafter, the respondent has issued a notice in Form C-18, dated 16.08.1999 proposing to levy contribution of Rs.3,51,872/- for the period



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from December 1996 to March 1998 and offering a personal hearing on 28.09.1999. On that date, the petitioner submitted letters dated 23.11.1999 and 30.11.1999, disputing the proposals in the C-18 notice on various grounds. The pleas of the petitioner were examined in detail and a speaking order has been passed on 03.03.2000 assessing the contribution payable for the said period as Rs.2,27,378/-. There is no evidence that the employees not covered by the petitioner were actually persons who came to the establishment for receiving dhal or merchants who came there for placing orders. If the petitioner had got any dispute, he could have raised the same while receiving the visit note. The counter signing of the visit note clearly shows that the present contention disputing the facts therein are actually an after-thought on the part of the petitioner. The order passed by the respondent is a speaking order. Therefore, the petition is liable to be dismissed.

5. The gist of the counter filed by the second respondent which was adopted by the third respondent are as follows:

The second respondent has never worked as employee at any point of time. He used to visit the petitioner concern in getting the gram flour and oil for manufacturing appalams and they used to prepare appalams in his house



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with the help of women and children. Thereafter, the second respondent after preparing the appalams, used to hand over the same to the petitioner concern and receive the remuneration on the basis of weight of the finished products. There is no supervision or control over the manufacturing process by the “appalams” companies. When the second respondent visited the petitioner concern to return the manufactured appalams, one officer had enquired as to whether the second respondent was a worker and he replied in negative. The said officer had also recorded names of the other persons who came as Merchants and customers. The second respondent is an unnecessary party in the above case. Hence, the petition is liable to be dismissed.

6. Before the Labour Court, on the side of the petitioner, P.W.1 was examined and documents Exs.P.1 to P.21 were marked. On the side of the respondents, R.W.1 was examined and documents Exs.R.1 to R.5 were marked. After perusing the records, the Labour Court has allowed the petition and set aside the order passed by the respondent on the ground that the inspection report was not served and the mandatory procedures were not followed while passing order by the respondents.



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7. Aggrieved by the order passed by the labour Court, the present appeal has been preferred by the appellant on various grounds.

8. The learned counsel appearing for the appellant has filed written arguments. The coverage of the respondents company was fixed based on the inspection made by the authorities. The order dated 03.03.2000 was passed under Section 45 of the E.S.I.Act, after inspection by the competent authorities and the visit note also countersigned by the authorized persons of the respondent. As per the report more than 28 workers had not been covered for the period from December 1996 to March 1999. Therefore, notice was issued for contribution of Rs.3,51,872/-. The employer appeared for personal hearing on 23.11.1999 and submitted letters. After considering the letters only the authorities have passed a speaking order. Therefore, the contention of the respondent that no opportunity was given is false. Non mentioning of father's name, wages, length of service etc, in the visit note by the Inspecting Officer has been alleged as a ground for set aside the order, but in fact, the Inspector, who enters the premises of any employer, has to face hostile atmosphere and thereby the employees also refuse to give necessary information to the



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inspecting official. In such circumstances, it is very difficult to collect the full details of the employees.

9. To support of his contention, the learned counsel appearing for the appellant relied upon the following judgments:

1. ***2008 – III -LLJ- 619 (Del) (Employees' State Insurance Corporation vs. Om Shiv Dye and Leaf Printers)***

2. ***2016 (2) LLN 660, (Bright Export Vs. Central Board of Trustees, EPF Organization)***

3. ***(2006) INSC 784, (M/s.Srinivasa Rice Mill Vs. Employees' State Insurance Corporation).***

4. ***2011 (3) LLN 369, (Syndicate Printers Vs.RD Employees' State Insurance Corporation)***

He referred the above said judgments in the written arguments. But copies of the judgments have not been produced by the appellant.

10. The learned counsel appearing for the first respondent would contend that the inspection authorities have not followed the procedures and they have not even furnished the copy of the Inspection Report and the same



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has not been served to the first respondent and in the first respondent concern only 5 persons were engaged as employees and they used to give material to the self help groups and they fixed the amount based on the quantity ie., number of appalams. The first respondent has no control over the persons whom make the appalams based on the materials given by the first respondent. Therefore, the first respondent/ petitioner company will not be covered under the E.S.I Act. The trial Court also after taking into consideration, evidences adduced on either side fairly came to a conclusion that the Inspection Report has not been furnished and thereby fair opportunity has not been given and also the particulars of the employees names, designations, address and other details were not given and therefore, set aside the order passed by the appellant and the same is a reasoned order. Therefore, the present appeal is liable to be dismissed

11. To support of his contention, the learned counsel appearing for the first respondent relied upon the following judgments:

1. ***2007 (3) TLNJ 399 Civil (The Regional Director, E.S.I. Corporation vs. M/s Skiltek Engineers, represented by its Managing Partner, V.Lakshmanan).***



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2. 2011 SCC online Mad 2773, (*Syndicate Printers Vs. Regional Director, E.S.I. Corporation*)

12. This Court has heard both sides and perused the materials available on record.

13. In this case, according to the appellant they visited the respondent concern and 33 persons were totally employed on the date of inspection but the document reveals only 5 persons employed. In the Inspection Report the representative of the respondent company counter signed and thereby they issued notice and then offered personal hearing also. The respondent appeared for personal hearing and they have not produced any documents and thereby, the order was passed by the E.S.I. Authorities under Section 45-A of the E.S.I. Act. The 1st respondent denied the inspection and also denied the number of employees worked in the concern. According to them, they only supplied raw materials like Gram-Flour etc., to the independent self employed persons. There is no control over them by the 1st respondent/petitioner concern. They engaged only 5 persons in their concern and the respondent concern is not coverable under the E.S.I Act. Moreover, the copy of the inspection report has not been served and also there is no details of



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employees were mentioned in the order and thereby opportunity was not given to the respondent.

14. In this context, it is the contention of the 1st respondent that they have not been served with a copy of the Inspection Report but according to the appellant, in the said Inspection Report are countersigned by the respondents staff and thereby they cannot deny the number of persons in the respondent concern.

15. Before the Labour Court, both sides they have not adduced any oral evidence but both sides have marked Exs.P.1 to P.21 and Exs.R1 to R.5. The Labour Court has passed the order by holding that the available record shows that the 1st respondent has only less number of persons and not as stated by the appellant after referring the documents filed by the petitioner/1st respondent. The labour Court also relied the Ex.R1 to Ex.R5 submitted by the appellant/1st respondent. In Ex.R.2, Visit Note, names of 17 persons are mentioned and three part time employees were also mentioned and also in the Visit Note Ex.R3 the E.S.I Corporation recorded the names of 9 workers who were counted in the name of in charge. But no mention about the particulars



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of employees like name, father name and other particulars as required under law.

16. The learned counsel for the first respondent/petitioner relied upon the judgement in the case of *E.S.I. Corporation Vs. Subbaraya Adigaa, (1988) 2 Karnataka LJ 69* wherein it is held that the E.S.I. Authority has to mention the “name, fathers' name, place from which the employee hails, the designation, the length of service, emoluments and the signature or thumb impression of the employee. At the time of inspection, if persons other than the employees are present, the names and addresses of at least two of them with their signatures and also the signatures of the proprietor or Manager or the person-in-charge of the establishment should be obtained at the end of the list and a copy of which be furnished to the establishment”. Further, he also relied upon the judgement in *2011 (3) LLN 369 (Mad), (Syndicate Printers by its Proprietor, V.Chockalingam Contract of Insurance Vs. The Regional Director, E.S.I. Corporation)* wherein it is held that “in order to find out whether the provisions of the E.S.I. Act are attracted, the report must contain the list of employees, the designation, the length of service, emoluments and the signature of the employees. It is also required to give the particulars of



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other persons, if persons other than the employer are present. But in the instant case, as the said report has not been produced before the E.S.I. Court, there is no material to find out as to whether all those details are found in the said report. There are no materials produced to show on what basis liability of the appellant is determined and the contribution was arrived at” and allowed the petition.

17. As far as the judgements relied upon by the appellant are concerned, they will not be applicable in the present facts of the case, because in this case, the E.S.I. Authority has not even served the copy of the Inspection Report and not even filed it before the E.S.I.Court. Per contra, the judgments relied upon by the 1st respondent/petitioner are concerned, on a careful perusal of the judgments, they reveal that unilateral order can be passed under Section 45-A of the E.S.I.Act only, if there is no cooperation from the establishment and the said amount determination can be recovered as arrears of Land Revenue under Section 45-B of the E.S.I.Act. As per Section 45-A 1 opportunity has to be given before covering 1st respondent/petitioner establishment under the Employees' State Insurance Act and also the Inspection Report has to be furnished to the establishment and just and



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fair opportunity has to be given to the opposite party before the determining liability of the appellant.

18. This Court also perused the entire materials and the order of the Labour Court. The order of the Labour Court is a reasoned order and the appellant has not produced the Inspection Report before the Labour Court and not even served a copy of the Inspection Report to the 1st respondent/petitioner and thereby no proper opportunity was given to the 1st respondent and the available documents filed by the 1st respondent/petitioner shows that only 5 persons were employed as workers and there is no records to show that they are coverable number of persons employed in the 1st respondent establishment. Therefore, the order passed by the Labour Court is in order and there is no perversity or infirmity in the order passed by the Labour Court. Further, there is no substantial question of law is involved in this case as raised by the appellant in the grounds of appeal. In view of the above said judgments and as discussed supra, the present appeal has no merit and it deserves to be dismissed.



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19. In the result, this Civil Miscellaneous Appeal is dismissed. There shall be no orders as to costs.

18.03.2024

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

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



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