
(2007) 07 MAD CK 0117
In the Madras High Court
Case No : C.M.A. No. 1586 of 2000

E.S.I. Corporation

APPELLANT

Vs

R.P.M. Engineers and Others

RESPONDENT

Date of Decision : 27-07-2007

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(9), 44, 45, 45(2), 45A

Citation : (2007) 115 FLR 1010 : (2008) 1 LLJ 235

Hon'ble Judges : N. Paul Vasanthakumar, J

Bench : Single Bench

Advocate : G. Desappan, for the Appellant; S. Venkataraman, for the Respondent

Final Decision : Dismissed

Judgement

N. Paul Vasanthakumar, J.—This Civil Miscellaneous Appeal is filed by the Regional Director, Employees State Insurance Corporation, Madras, challenging the order dated November 2, 1995 made in ESI O.P. No. 98/1988.

2. The first respondent herein filed ESI O.P. No. 98/1988 u/s 75 of the Employees State Insurance Act, 1948, by: contending that it is a

Proprietary concern employing less than 20 workmen depending on the Government Tenders and its business premises is at 14, N.P. Developed

Plots, Industrial Estate, Ekkattuthangal, Chennai-97. According to the first respondent herein, the industry is covered under the Employees State

Insurance Act, 1948, to all the employees and paying regular contribution to the appellant herein. The appellant wanted to verify the documents

and after perusal issued a notice in April 1986, which was received by the establishment on May 10, 1986, wherein it was called upon to pay a

sum of Rs. 7,312.55 towards security service for the period from October, 1983 to November, 1985, labour charges paid by the establishment

for the job carried outside the factory and short payment of contribution.

3. On May 19, 1986, the first respondent herein submitted reply and denied the liability to pay contribution by stating that except the balance of

Rs. 35.10, no amount is payable by the first respondent establishment. The respondent was awaiting for the date of hearing. But without issuing

any notice for the date of hearing, an ex parte enquiry was conducted on May 21, 1986 without adjudication of the matter on merits.

4. On September 18, 1986, an order u/s 45-A of the Employees State Insurance Act, 1948 was issued by stating that even though opportunity of

personal hearing was given, the same was not availed by the respondent establishment and considering the objections alone the said order was

passed.

5. The respondent, on receipt of the said order dated September 18, 1986 sent a representation on November 18, 1986 and disputed the claim of

the Corporation and requested to re-inspect the books of claim as to the correctness of the claim made by the Inspector. However, the appellant

addressed three letters to the District Collector, Chengalpet, on December 17, 1986 seeking recovery of a sum of Rs. 8,770 u/s 45-B and

therefore the appeal was filed challenging the order passed u/s 45-A of the Employees State Insurance Act, 1948.

6. The ground raised before the ESI Court are that the respondent establishment having disputed the claim, the appellant is bound to give

opportunity of hearing to follow the principles of natural justice as contemplated u/s 45-A(1) proviso. But, no notice for personal hearing was

served on the respondent establishment before passing the order u/s 45-A.

7. The said petition was resisted by the appellant by filing counter affidavit stating that the respondent establishment failed to remit the contributions

for the security staff and labour charges and the respondent was directed to submit written explanation and appear before the authority on October

21, 1986. The respondent establishment failed to avail the opportunity of personal hearing and therefore the order u/s 45-A was passed on

September 18, 1986 determining the contribution as Rs. 7,274.85 with interest for the period from January 27, 1985 to June 20, 1986. The reply

dated May 19, 1986 was considered and therefore there is no illegality in the order passed u/s 45-A. It is further stated that the respondent establishment having not availed the opportunity of personal hearing, is not entitled to contend that the principles of natural justice is violated. Since the order u/s 45-A was passed, recovery order was issued by the District Collector u/s 45-B of the Act.

8. The Employees State Insurance Court framed the following questions:

(1) Whether the three notices issued by the first respondent claiming a sum of Rs. 57.25,- Rs. 1143.27 and Rs. 7,569.50 in all amounting to Rs.

8,770.02 and interest for the period from April, 1979 to June, 1981 and October, 1983 to June 30, 1986 respectively are correct?

(2) Whether the order of the first respondent u/s 45-A of the ESI Act dated December 17, 1986 directing the second respondent to recover a sum of Rs. 8,770.02 being contribution is liable to be set aside?

(3) To what relief?

9. The Manager-cum-Accounts Officer was examined as P.W. 1 and the Proprietor Ram Prasad was examined as P.W. 2 and on behalf of the

ESI Corporation, the Inspector, who made inspection was examined as P.W. 1 and the Inspection report was marked as Exhibit B-1. Subsequent

reports were also marked as exhibits on the side of the appellants. The Inspection report in question was marked as Exhibit B-5, prepared by

P.W. 1.

10. The main thrust of the argument advanced before the ESI Court was that the Labour Charges reflected in the payments were made to

independent workers, employed by the respondent establishment for doing different jobs on materials supplied by the respondent, chosen by the

independent workers or self-employed persons and therefore those employees, who worked independently and outside the respondent's factory

cannot be treated as employees of the respondent establishment as there is no control and supervision.

11. On the question of security expenses, the respondent explained that they were employed as Security men through Security Agency, who

themselves pay contribution to the ESI Corporation for the Security-men employed by them. Therefore the respondent establishment cannot be

made liable to pay contribution for the wages paid to such Security men because

already contribution is paid by the "Security Agency. Exhibit A-I

describes the various jobs carried out by self-employed persons, chosen by the respondent through independent contractors or sub-contractors.

Exhibit A-12 i.e. letter dated November 21, 1986, sent by the National Security Service to the respondent establishment, wherein it was declared

that three Security-men were deputed to the respondent establishment for doing security job and in respect of these Security-men, the said

National Security Services itself was paying ESI Contribution regularly. The ESI Court also found that the said stand having been taken, it is

incumbent on the part of the Inspector, ESI Corporation to verify the said factual aspect from the National Security Services and Exhibit B-5

eventhough deals with Labour Charges, does not give clear picture of the expenses incurred and serving of notice for personal hearing to the

respondent on May 21, 1986 was also not proved. C-18 notice and Exhibit A-2 does not stipulate any date for personal hearing. Based on the

said factual aspects, ESI Court allowed the petition.

12. In this appeal the following substantial questions of law were framed:

(a) Whether the issues as framed by the lower Court can be sustained in law?

(b) Whether the admitted facts as regards independent workers were not sufficient to attract Section 2(9) of the E.S.I. Act?

(c) Whether the finding of the lower Court as regards security services can be sustained in law?

(d) Whether the finding of the lower Court can be sustained in law as regards three letters dated December 17,1986 in the absence of any

evidence thereto?

13. From the perusal of the order of the ESI Court and the respondent having not been given personal hearing as found by the ESI Court,

definitely there is violation of statutory provision contained in Section 45-A(1) proviso. For proper appreciation Section 45-A is extracted

hereunder,

45-A. Determination of contributions in certain cases.-(1) Where in respect of a factory or establishment no returns, particulars, registers or

records are submitted, furnished or maintained in accordance with the provisions of Section 44 or any Inspector or other official of the;

Corporation referred to in Sub-section (2) of Section 45 is prevented in any manner by the principal or immediate employer or any other person,

in exercising his functions or discharging his duties u/s 45, the Corporation may, on the basis of information available to it, by order, determine the

amount of contributions payable in respect of the employees of that factory or establishment.

Provided that no such order shall be passed by the Corporation unless the principal or immediately employer or the person in charge of the factory

or establishment has been given a reasonable opportunity of being heard.

14. The respondent establishment also gave specific evidence to show that Security-men are already covered under the ESI Act by their employer

viz., National Security Services and once the same is established, it is incumbent on the part of the ESI Corporation to verify the same and

proceed further in the matter. Once the order passed u/s 45-A is found unsustainable, the order of recovery, which is a consequential order passed

u/s 45-B also cannot be sustained.

15. In view of my above finding, I am of the view that the findings given by the ESI Court cannot be treated as perverse and the order passed is

legal and valid.

There is no merit in the civil miscellaneous appeal and the same is dismissed. No costs.