IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 3RD DAY OF MARCH 2015/12TH PHALGUNA, 1936

Ins.APP.No. 11 of 2012 ()

AGAINST THE JUDGMENT IN IC 19/1996 of E.I.COURT,
KOLLAM, DATED 16-06-2011

APPELLANT/1ST RESPONDENT:-

REGIONAL DIRECTOR
EMPLOYEES STATE INSURANCE CORPORATION
PANCHADEEP BHAVAN, NORTH SWARAJ ROUND, THRISSUR.

BY ADV. SRI.T.V.AJAYAKUMAR

RESPONDENTS/APPLICANT AND RESPONDENTS 2 to 6:-
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1. GENERAL MANAGER
DHANY CONSUMERS (P) LTD., MINI TOWERS, S.R.M. ROAD
COCHIN-682018.

2. THE DISTRICT COLLECTOR,
KOLLAM PIN-691001.

3. BENADICT CRUZ,
AMALOLPHA, MATHELIL P.O, KOLLAM -691601.

4. VASANTHA C,
RENJITH BHAVAN, THEKKEVILA P.O, KOLLAM PIN-691016.

5. BALACHANDRAN PILLAI,
ORUMALOOR PADINJATTATHIL, VALLIKKEZHU, KAVANAD P.O
KOLLAM-PIN:691003.

6. ANITHAKUMARI B,
CHIRAKKARA VEEDU, KADAVOOR, PERINAD P.O
KOLLAM. PIN-691601.

R1 BY ADV. SRI.A.V.XAVIER
R2 BY GOVERNMENT PLEADER SRI.EGGY N.ELIAS.

THIS INSURANCE APPEAL HAVING BEEN FINALLY HEARD ON 03-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Kvs/-

P.B.SURESH KUMAR, J.

Ins.Appeal No.11 of 2012

Dated this the 3rd day of March, 2015.

J U D G M E N T

The decision of the Employees Insurance Court, Kollam in I.C.No.19 of 1996 is under challenge in this appeal. The Regional Director of the Employees' State Insurance Corporation, hereinafter referred to as 'the Corporation', for short, is the appellant.

2. M/s.Dhanya Consumers Private Ltd, hereinafter referred to as 'the establishment', for short, was an establishment covered under the Employees' State Insurance Act, hereinafter referred to as 'the Act', for short, with effect from 27/8/1987. The head office of the establishment was at Ernakulam and its branch was at Kollam. The establishment was brought under the Act clubbing the head office as also the branch. The clubbing of the two units was though challenged by the establishment in I.C. 50 of 1988 before the Insurance Court, the challenge was repelled by the court. Thereupon, the establishment was remitting contributions payable under the Act in respect of its employees. While so, according to the establishment, its head office was closed down during September 1988 and on the closure of the head office, the total number of employees came below the qualified number and thus the

establishment has gone out of the purview of the Act. However, the Corporation took the stand that in view of the provision contained in Section 1(6) of the Act, notwithstanding the closure of the head office, its Kollam unit is liable to be covered under the Act. The establishment has therefore, approached the Insurance Court for a declaration that its Kollam unit is not liable to be covered under the Act from September, 1989.

3. The Corporation contested the proceedings contending, inter *alia, that* the head office of the establishment was closed down only with effect from 1.11.1988 and therefore, in view of the provision in Section 1(6) of the Act, introduced with effect from 20.10.1989, the Kollam unit shall continue to be covered under the Act notwithstanding that the number of persons employed therein fell below the limits specified by or under the Act. It is specifically stated by the Corporation in the objection filed in the proceedings that the establishment had informed the Corporation by their letter dated 5.1.1989 that the head office was closed down with effect from 1.11.1988. In addition, it was also contended by the Corporation that in so far as more than 10 employees are being engaged in the Kollam unit of the establishment and since power is used in the establishment for the activities carried on therein, the reduction in the number of employees on account of the closure of the head office does

not affect the coverage of the Kollam unit under the Act.

4. The Insurance Court found that the head office of the establishment was closed down during September, 1988 itself and since Section 1(6) was introduced only one year thereafter, the establishment had gone beyond the purview of the Act by September, 1989. Consequently, the application of the establishment was allowed. The Corporation is aggrieved by the said decision of the Insurance Court and hence this appeal.

5. Section 1(6) of the Act introduced with effect from 20.10.1989 reads thus :

> 1. Short title, extent, commencement and application
>
> (6) A factory or an establishment to which this Act applies shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time falls below the limit specified by or under this Act or the manufacturing process therein ceases to be carried on with the aid of power.]

In view of the said provision, an establishment once covered under the Act shall continue to be governed by the Act notwithstanding that the number of persons employed therein at any time falls below the limit prescribed by or under the Act. It is beyond dispute that the said provision may not apply to an establishment which had gone beyond the purview of the Act on account of the reduction of the number of employees before its introduction. Since coverage is decided based on the number of persons employed during the previous one year, an establishment would go out of the coverage only if the strength of the employees goes below the qualified limit for a period of one year. If the case of the establishment that the head office was closed down during September, 1988 itself is accepted, they would go out of the purview of the Act by September, 1989 and since the provision in Section 1(6) was introduced only with effect from 20.10.1989, the case set up by them in the application has to be accepted. On the other hand, if the head office of the establishment was closed down only with effect from 1.11.1988, as contended by the Corporation, since within one year thereafter the provision in Section 1(6) was introduced, the Kollam unit will continue to be covered under the Act notwithstanding the reduction of the strength of the staff below the qualified limit. As rightly observed by the Insurance Court, though it was specifically contended by the Corporation in the written objection filed before the Insurance Court that the establishment had, by their letter dated 5.1.1989, informed the Corporation that the closure of the head office was only with effect from 1.11.1988, the said letter was not produced before the Insurance Court. It is on account of the said reason, the Insurance Court accepted the case set up by the establishment that the head office was closed down during

September, 1988. In this appeal, the Corporation had filed I.A.No.889 of 2015 to accept a photocopy of the letter claimed to have been sent by the establishment on 5.1.1989. The said interlocutory application was objected by the learned counsel for the establishment mainly on the ground that a photocopy of the letter cannot be accepted in evidence. The learned counsel for the Corporation submitted that they are prepared to produce the original before this Court. Since the entire controversy revolves around the date of closure of the head office of the establishment, I am of the view that this is a fit case where the Corporation shall be given yet another opportunity to substantiate their contention that the head office of the establishment was closed down only with effect from 1.11.1988, especially since the Act is a beneficial piece of legislation intended for the benefits of the employees.

In the result, the impugned order is set aside and the Insurance Court is directed to consider the case afresh after affording to the parties an opportunity to adduce evidence.

Sd/-

P.B.SURESH KUMAR,
JUDGE

Kvs

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PA TO JUDGE.