IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 20TH DAY OF FEBRUARY 2015/1ST PHALGUNA, 1936

Ins.APP.No. 51 of 2012 ()

IC 17/2009 of E.I.COURT, KOLLAM

APPELLANT/APPELLANT :

RADHAKRISHAN PILLAI
PROPRIETOR, SOLO BEDS, MUKHATHALA
KOLLAM-691577

BY ADVS.SRI.M.GOPIKRISHNAN NAMBIAR
SRI.P.GOPINATH
SRI.P.BENNY THOMAS
SRI.K.JOHN MATHAI

RESPONDENT/RESPONDENTS :

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1. THE ASSISTANT DIRECTOR,
   EMPLOYEES STATE INSURANCE CORPORATION
   KURUMPELI AVENE, POLAYATHODE, KOLLAM-691021

2. RECOVERY OFFICER
   EMPLOYEES STATE INSURANCE CORPORATION, KOLLAM-691021

3. RAJAMMA
   SOLO BEDS, MUKHATHALA , KOLLAM-691577

4. SINDHU
   SOLO BEDS, MUKHATHALA KOLLAM-691577

5. SHEEJA,

SOLO BEDS, MUKHATHALA KOLLAM-691577

6. THULASI

SOLO BEDS, MUKHATHALA KOLLAM-691577

7. MINI

SOLO BEDS, MUKHATHALA KOLLAM-691577

8. SUDHEESH

SOLO BEDS, MUKHATHALA KOLLAM-691577

9. VISWANATHAN,

SOLO BEDS, MUKHATHALA KOLLAM-691577

10. MANOJ

SOLO BEDS, MUKHATHALA KOLLAM-691577

11. BOSE FRANCIS

SOLO BEDS, MUKHATHALA KOLLAM-691577

12. VIPIN

SOLO BEDS, MUKHATHALA KOLLAM-691577

13. BINU

SOLO BEDS, MUKHATHALA KOLLAM-691577

14. SUNIL

SOLO BEDS, MUKHATHALA KOLLAM-691577

15. KRISTAFAR

SOLO BEDS, MUKHATHALA KOLLAM-691577

R1,R2 BY ADV. SRI.T.V.AJAYAKUMAR

THIS INSURANCE APPEAL HAVING BEEN FINALLY HEARD ON 20-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.B.SURESH KUMAR, J.

Insurance Appeal No.51 of 2012

Dated 20th February, 2015.

J U D G M E N T

The decision in I.C.No.17 of 2009 on the file of the Employees' Insurance Court, Kollam is under challenge in this appeal. The applicant in the proceedings before the Insurance Court is the appellant.

2. The applicant is the proprietor of an establishment engaged in the manufacture of bed. The Employees' State Insurance Corporation, hereinafter referred to as 'the Corporation' for short has covered the establishment of the applicant under the Employees' State Insurance Act, hereinafter referred to as 'the Act' for short, alleging that 13 employees were found employed in the establishment of the applicant in the course of an inspection held in the premises of the establishment on 21.7.2008. The contributions payable by the applicant in respect of his employees as per the provisions of the Act were also assessed by the Corporation invoking its powers under Section 45A of the Act. The applicant challenged the decision of the Corporation in bringing his establishment under the Act before the Insurance Court. The case set up

before the Insurance Court by the applicant was that the applicant had not employed more than nine employees in the establishment at any point of time.

3. The Corporation filed written objection in the proceedings before the Insurance Court contending that in the surprise inspection held in the premises of the establishment on 21.7.2008 by the Inspector attached to the Corporation, it was revealed that the applicant was employing 13 employees in his establishment.

4. The applicant gave evidence as AW1. Exts.A1 to A4 are the documents produced by the applicant. Among the said documents, Ext.A1 is the order issued by the Corporation against the applicant, invoking Section 45A of the Act. Ext.A2 is the muster roll claimed to have been maintained by the applicant in the establishment during the year 2008-2009. Likewise, Ext.A3 is the wages register claimed to have been maintained by the applicant in the establishment during 2008-2009.

5. The Inspector of the Corporation who has inspected the premises of the applicant gave evidence as RW1. Exts.B1 to B8 are the documents produced by the Corporation.

6. The Insurance Court found that the applicant failed to substantiate his case and consequently, dismissed the application. The applicant is aggrieved by the decision of the Insurance Court and hence this appeal.

7. Heard the learned counsel for the appellant as also the learned counsel for the Corporation.

8. The learned counsel for the appellant contended that the appellant has been maintaining statutory records like muster roll, wages register etc. and the same should have been given due weight by the Insurance Court. According to the learned counsel, the Insurance Court should not have accepted the version of the Inspector of the Corporation that the applicant was employing more than the qualified number of employees in his establishment in preference to the statutory registers like muster roll, wages register etc.

9. As noticed by the Insurance Court, the specific case of the applicant was that he has never employed more than nine employees in his establishment. He relied on Ext.A2 muster roll and Ext.A3 wages register to substantiate the said contention. True, Exts.A2 and A3 do not indicate that the applicant had engaged more than nine employees in his

establishment. Ext.A4 is another document relied on by the applicant to contend that he has not engaged more than nine employees in the establishment. Ext.A4 series are the licences obtained by the applicant from the Factories and Boilers Department on condition that the applicant shall not employ more than nine employees in his establishment. Exts.A2 and A3 are documents maintained by the applicant. As such, no sanctity can be attributed to the said documents. As far as Ext.A4 series licences are concerned, the fact that the applicant had obtained licence for the activity carried on by him on condition that he shall not employ more than nine employees does not lead to the inference that the applicant had not employed more than nine employees at any point of time. RW1 is the Inspector who conducted inspection in the premises of the establishment of the applicant on 21.7.2008. RW1 had categorically stated in his evidence that at the time of his inspection 13 employees were found employed in the establishment of the applicant. Ext.B8 is the letter obtained by the Inspector from the applicant on 21.7.2008. In Ext.B8, the applicant has stated that he is employing 13 persons in his establishment. The applicant has not established that Ext.B8 is vitiated in any manner, whatsoever.

In the aforesaid facts and circumstances, there is no question of law, much less substantial question of law involved in this matter and the appeal is accordingly, dismissed.

Sd/-

P.B.SURESH KUMAR, JUDGE.

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(true copy)