IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 21ST DAY OF JULY 2015/30TH ASHADHA, 1937

Ins.APP.No. 35 of 2009

AGAINST THE ORDER IN I.C.NO.62 OF 2006 OF EMPLOYEES' INSURANCE COURT, PALAKKAD DATED 19-01-2009

APPELLANT(S)/OPP.PARTIES :
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1. E.S.I CORPORATION, PANCHDEEP BHAVAN,
   THRISSUR REPRESENTED BY ITS REGIONAL DIRECTOR.

2. THE RECOVERY OFFICER,
   OFFICE OF THE RECOVERY CENTRAL ZONE, E.S.I CORPORATION,
   REGIONAL OFFICE, THRISSUR-20.

BY ADV. SMT.T.D.RAJALAKSHMI, SC, ESI CORPN.

RESPONDENT(S)/APPLICANT :

M/S.W.H.D'CRUZ AND SONS, XLV/394,
IST FLOOR, OPP. ERNAKULAM WHARF, MAIN GATE,
COCHIN-682 003, REPRESENTED BY ITS PROPRIETOR,
P.A.JOSEPH STANELY.

BY ADVS. SRI.A.V.XAVIER
SRI.K.JOLLY JOHN

THIS INSURANCE APPEAL HAVING BEEN FINALLY HEARD ON 21-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Msd.

P.B.SURESH KUMAR, J.

Ins.Appeal. No.35 of 2009

Dated this the 21st day of July, 2015

JUDGMENT

The decision of the Employees' Insurance Court, Palakkad in I.C.No.62 of 2006 is under challenge in this appeal. The Employees State Insurance Corporation ('the Corporation' for short) and its Recovery Officer are the appellants.

2. The respondent is an establishment carrying on stevedoring, clearing and forwarding operations. They are functioning in a rented premises near Cochin Port Trust. On the basis of the materials gathered in the course of an inspection conducted in the premises of the respondent, proceedings were initiated by the Corporation to cover the employees engaged by the respondent under the Employees' State Insurance Act ('the Act' for short) and an order was passed determining the contributions payable by them for the period from 1.1.1988 to 31.1.1989. The said order was challenged by the respondent

before the Employees' Insurance Court ('the Insurance Court' for short) in I.C.No.73 of 1989. The contention raised by the respondent before the Insurance Court was that the employees engaged by them who are drawing more than Rs.1,600/- per month are not liable to be covered under the Act and that the remaining employees would not satisfy the requisite strength to cover the establishment under the Act. The Insurance Court disposed of I.C.No.73 of 1989 on 16.6.1994 directing the Corporation to conduct a re-verification of the records of the establishment and cover the establishment, if they have requisite number of employees in the establishment drawing less than the prescribed salary. The Insurance Court also directed that before conducting re-verification by the Corporation, an opportunity of hearing shall be given to the respondent and that the re-verification process shall be completed within three months from the date of the judgment.

3. The Corporation challenged the decision of the Insurance Court before this Court in M.F.A. No.1123 of 1994 and this Court dismissed the said appeal on 8.8.2001. Thereafter, on

5.11.2001, the Corporation called upon the respondent to submit their documents for verification. The respondent did not respond to the said direction. Consequently, the Corporation re-determined the coverage and the contributions for the period from 1.1.1988 to 31.3.1989 as per order dated 20.6.2002. The respondent challenged the said order before the Insurance Court in I.C.No.62 of 2006. The main contention raised by the respondent in I.C.No.62 of 2006 was that their establishment, being an establishment under the control and supervision of the Central Government, is not liable to be covered under the Act. The Insurance Court accepted the said contention and allowed I.C.No.62 of 2006. The Corporation is aggrieved by the said decision of the Insurance Court and hence this appeal.

4. Heard the learned counsel for the appellants as also the learned counsel for the respondent.

5. The learned counsel for the appellants contended that the establishment of the respondent cannot be treated as one under the control and supervision of the Central Government and therefore, they are liable to be covered as a 'shop' as per the

notification issued by the State Government on 22.3.1975 which was marked in the proceedings as Ext.B12.

6. Per contra, the learned counsel for the respondent contended that in so far as the respondent is engaged in stevedoring, clearing and forwarding within the Cochin Port Trust area, they are liable to be treated as an establishment under the control and supervision of the Cochin Port Trust. According to the learned counsel, the establishments under the control and supervision of the Cochin Port Trust are exempted from the purview of the Act. The learned counsel also contended that since the direction contained in the order passed by the Insurance Court in I.C.No.73 of 1989 to complete the re-verification has not been complied with within the time stipulated, the order issued based on the re-verification is unsustainable in law.

7. As noticed above, the contention of the learned counsel for the respondent is that they are not liable to be covered under the Act in the light of Exts.B10 and B11 notifications issued by the Central Government which is the

appropriate Government as far as the Port Trust is concerned. Section 2(1) of the Act which defines appropriate Government reads thus:

> "appropriate government" means, in respect of establishments under the control of the Central Government or a major port or a mine or oilfield, the Central Government, and in all other cases, the State Government;".

Going by the said definition, the Central Government is the appropriate Government only in respect of the establishments under the control of the Central Government or of a major port or a mine or oilfield. In all other cases, the State Government is the appropriate government. The establishment of the respondent is a partnership firm engaged in stevedoring, clearing and forwarding business. True, that they have to obtain permission from the Port Trust to carry on their business. The mere fact that a permission is required to be obtained from the Port Trust, it cannot be said that their establishment is under the control of the Port Trust. In the said circumstances, I have no hesitation to hold that the respondent is liable to be covered as a 'shop' as per Ext.B12 notification.

8. Ext.B1 is the order passed by the Insurance Court, Alappuzha in I.C.No.73 of 1989. Ext.B1 indicates that an outer time limit has been fixed by the Insurance Court while disposing of the matter for completing the re-verification of the records and passing consequential orders. The outer time limit fixed was two months from the date of the order. The Corporation has not conducted the re-verification within the outer time limit fixed by the Insurance Court. Instead, they chose to file an appeal against the said decision. Ext.B13 is the decision of this Court in the appeal preferred by the Corporation against Ext.B1 order. Ext.B13 does not indicate that this Court while dismissing the appeal preferred by the Corporation granted permission to the Corporation to continue the proceedings as directed by the Insurance Court. Nevertheless, it is seen that without seeking permission of the Insurance Court, the Corporation initiated proceedings pursuant to Ext.B1 order and finalised the proceedings by determining the contributions payable by the respondent for the period from 1.1.1988 to 31.3.1989 as per Ext.A2 order dated 20.6.2002. In this

connection, it is relevant to note that the Corporation could have sought the permission of this Court to continue the proceedings when the appeal preferred against the decision of the Insurance Court was disposed of. The Corporation could have also moved the Insurance Court for extension of time for complying with the directions contained in Ext.B1 order. They have not resorted to the said courses available to them. Instead after about 7 years, the Corporation chose to cover the establishment with effect from 1.1.1988. The Corporation can certainly initiate fresh proceedings to cover the establishment if they satisfy the requirements of the Act. But, in so far as the re-verification has not been done as directed in Ext.B1 order issued by the Insurance Court, Ext.A2 order cannot be held to be in accordance with law. Further, it would be a travesty of justice if the Corporation is permitted to cover an establishment in the year 2002 with effect from 1.1.1988.

In the result, the appeal is dismissed without prejudice to the right of the Corporation to initiate fresh proceedings against the respondent under the Act prospectively, if they satisfy the requirements of law.

P.B.SURESH KUMAR, JUDGE.

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