IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 20TH DAY OF JANUARY 2015/30TH POUSHA, 1936

Ins.APP.No. 10 of 2013 ()

IC 4/2005 of EMPLOYEES INSURANCE COURT, KOLLAM

APPELLANT(S)/IST RESPONDENT:

THE REGIONAL DIRECTOR, ,
EMPLOYEES STATE INSURANCE CORPORATION PANCHDEEP BHAVAN
NORTH SWARAJ ROUND, TRICHUR

BY ADV. SRI.T.V.AJAYAKUMAR

RESPONDENT(S)/APPLICANT AND RESPONDENTS 2 AND 3:
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1. P.KARTHIKEYAN,
   S/O PADMANABHAN, PROPRIETOR, VISHNU WIRECUT BRICKS
   THAZHAVA, KARUNAGAPPALLY 690518

2. SHAJI,
   S/O SASIDHARAN, KANDATHIL HOUSE, KADATHOOR P.O
   THAZHAVA, KARUNAGAPPALLY 690518

3. RAVEENDRAN,
   S/O GOVINDAN, MEENATHIL HOUSE, KADATHOOR P.O
   THAZHAVA, KARUNAGAPPALLY 690518

R1 BY ADV. SRI.K.RAVEENDRAN
R3 BY ADV. SRI.S.SUDHEESHKAR

THIS INSURANCE APPEAL HAVING BEEN FINALLY HEARD ON 20-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.B.SURESH KUMAR, J.

Ins. Appeal No.10 of 2013

Dated 20th January, 2015.

J U D G M E N T

The order on I.C.No.4 of 2005 on the file of the Employees Insurance Court, Kollam, is under challenge in this appeal.

2. The first respondent is running a wire-cut brick manufacturing unit. On 3.4.2002, there was an inspection in the premises of the establishment of the first respondent by the Insurance Inspector attached to the Employees State Insurance Corporation ('the Corporation' for short). According to the Corporation, in the said inspection, it was revealed that 10 persons were employed in the establishment of the first respondent and since power is used for the manufacturing process in the establishment, the same is liable to be covered under the Employees State Insurance Corporation Act, 1948 ('the Act' for short). It is seen that on the basis of the inspection held on 3.4.2002, proceedings have been initiated by the Corporation under Section 45A of the Act, for determination of the contributions payable by the first respondent. Ext.B6 is the order issued by the designated authority under the Act

determining the contributions payable by the first respondent for the period from 3.4.2002 to 31.3.2003. Ext.A5 is another order issued by the designated authority under the Act, determining the contributions payable by the first respondent for the period from 1.4.2003 to 31.3.2004. When proceedings were initiated for recovery of the amounts covered by Exts.A5 and B6 orders, the first respondent instituted the proceedings referred to above before the Insurance Court, seeking a declaration that his establishment is not liable to be covered under the Act.

3. The Corporation filed a written objection in the proceedings, contending inter alia that in the inspection held on 3.4.2002, it was revealed that 10 employees were being engaged in the establishment and therefore, the establishment is liable to be covered.

4. The Insurance Court came to the conclusion that the establishment of the first respondent is not liable to be covered under the Act. The Corporation is aggrieved by the said decision of the Insurance Court and hence this appeal.

5. The specific case of the first respondent before the Insurance Court was that he started the establishment in

the year 1996 as a small scale industry and that he had never employed more than 6 persons in the establishment at any point of time. According to him, he is maintaining statutory records such as muster rolls, wages registers etc. from the year 2001 onwards and that the Inspector of the Corporation had not visited the establishment on 3.4.2002, as claimed by the Corporation. On the contrary, as noticed above, the specific contention of the Corporation is that on 3.4.2002, there was an inspection in the premises of the establishment and in the inspection, it was revealed that the first respondent had engaged more than 10 employees in the establishment and therefore, the establishment is liable to be covered under the Act.

6. It is settled that the initial burden is on the first respondent to satisfy that he had not employed the qualified number of 10 persons for wages in the establishment at any point of time. In order to prove the case set up by the first respondent, he himself was examined as AW1 and produced Exts.A1 to A12 documents. Exts.A1 series are the muster rolls and A2 series are the wage registers maintained by the first respondent in his establishment. The Insurance Court noticed

that Exts.A1 and A2 series documents do not indicate that the first respondent had engaged the qualified number of employees in his establishment at any point of time. Exts.A9 and A10 are the two letters sent by the first respondent in response to the notices issued by the Corporation. In Exts.A9 and A10, the first respondent had categorically denied the allegation made by the Corporation that he had employed 10 persons on 3.4.2002 when the inspection was held. The Corporation had examined the Inspector who conducted the inspection in the premises of the first respondent on 3.4.2002, as RW1. Ext.B1 is the inspection report prepared by RW1 on 3.4.2002. Except Ext.B1, there is nothing on record to show that 10 or more employees were engaged by the first respondent in his establishment at any point of time. The issue therefore, is whether the Corporation is justified in bringing the establishment of the petitioner under the purview of the Act, based on Ext.B1 report of the inspector. It is seen that the particulars of the employees found at the premises of the first respondent was recorded in Ext.B1 by RW1 on head count basis, as there were no other records in the establishment at the time of inspection in relation to the employees named therein. In Ext.B1, two among the workers are shown as witnesses to the preparation of the said list. As observed earlier, the definite contention of the first respondent is that the persons named in the list are not the persons employed in the establishment. Summonses were issued at the instance of the Corporation to examine the employees who were cited as witnesses to Ext.B1 list. The summons issued to one among them viz., Shaji, S/o.Kunjupillai, Shaji Nivas, Thazhava was returned with the endorsement “not known”. Though the remaining witness, viz., Shaji, S/o.Sasidharan, Kandathil House, Kadathoor P.O., Thazhava, Karunagappally, appeared before the Insurance Court and gave evidence as RW2, he stated in his evidence that though he had gone for the work on 3.4.2002, there was no inspection on that day in the premises of the establishment. RW2 is admittedly a person engaged in the establishment of the first respondent and his name appears in Exts.A1 and A2 series documents. Despite the specific contention raised by the first respondent that the persons named in Ext.B1 list excluding the persons whose names appear in Exts.A1 and A2 series documents, have nothing to do with the establishment, the Corporation had not taken any steps to summon and examine the remaining employees in Ext.B1 list. In the said circumstances, I do not find any reason to interfere with the factual finding rendered by the Insurance Court that the first respondent had not employed in his establishment the qualified number of workers to bring the establishment under the Act. No question of law much less any substantial question of law arises for consideration in this appeal. The appeal in the circumstances is liable to be dismissed and it is accordingly, dismissed.

Sd/-

P.B.SURESH KUMAR, JUDGE.

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(true copy)