

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

THURSDAY, THE 5TH DAY OF FEBRUARY 2015/16TH MAGHA, 1936

Ins.APP.No. 11 of 2013

JUDGMENT DATED 23-02-2012 IN IC 14/2006 OF E.I.COURT, KOLLAM.

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APPELLANT/1ST RESPONDENT:

**THE JOINT DIRECTOR,
EMPLOYEES STATE INSURANCE CORPORATION,
DIVISIONAL OFFICE, KURUMPELIL AVENUE,
POLAYATHODU, KOLLAM - 691 001.**

BY ADV. SRI.T.V.AJAYAKUMAR

RESPONDENT(S)/APPLICANT AND 2ND RESPONDENT:

- 1. K.SUKUMARAN,
MANAGING PARTNER,
M/S. VALIYASSERIL CLAY WORKS,
KUTHIRAPANTHI, KOLLAM - 690 523.**
- 2. KARTHIKEYAN, S/O.PURUSHAN,
PUTHENTHARAYIL VEEDU,
VADAKKUNNUMURI WEST, KUTHIRAPANTHI P.O,
THAZHAVA, KARUNAGAPPALLY - 690 523.**

R1 BY ADV. SRI.B.MOHANLAL

**THIS INSURANCE APPEAL HAVING BEEN FINALLY HEARD
ON 05-02-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

mbr/

Ins.APP.No. 11 of 2013

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE I : TRUE COPY OF THE JUDGMENT DATED 14.12.2007 OF THE EI COURT, KOLLAM IN I.C.NO.14/06.

ANNEXURE II : TRUE COPY OF THE ORDER DATED 5.2.2009 OF THE EI COURT, KOLLAM IN I.C.NO.14.06.

RESPONDENT'S ANNEXURES: - NIL

/TRUE COPY/

P.S. TO JUDGE

mbr/

P.B. SURESH KUMAR, J.

Insurance Appeal No.11 of 2013

Dated this the 5th day of February 2015

J U D G M E N T

This is an appeal preferred against the decision in I.C.No.14 of 2006 on the file of the Employees Insurance Court, Kollam. The Joint Director of the Employees State Insurance Corporation, hereinafter referred to as 'the Corporation' for short, is the appellant.

2. The first respondent was running a factory engaged in the manufacture of wire-cut bricks. On 03.04.2002, there was an inspection in the premises of the factory of the first respondent by the Insurance Inspector attached to the Corporation. Based on the report submitted by the Insurance Inspector, the first respondent was initially given an intimation that his factory is covered under the provisions of the Employees State Insurance Act, hereinafter referred to as 'the Act' for short. Later, the Corporation initiated proceedings under Section 45A of the Act against the first respondent for determination of the contributions payable by him and

issued a notice to him directing him to show cause why the contributions as proposed in the notice shall not be determined as due. The application referred to above was filed challenging the said notice.

3. The Corporation contested the application contending mainly that the application is not maintainable.

4. The Insurance Court, without considering the objection as to the maintainability of the application, allowed the application and came to the conclusion that the first respondent has not employed more than nine employees for wages at any point of time in his factory and that therefore his factory is not liable to be covered under the Act. The Corporation is aggrieved by the said decision of the Employees Insurance Court and hence this appeal.

5. Heard Sri.T.V.Ajayakumar, the learned counsel for the appellant and Sri.B.Mohan Lal, the learned counsel for the first respondent.

6. The learned counsel for the appellant

contended that the question whether the factory of the first respondent is liable to be covered under the Act or not is an issue which is to be decided by the Corporation, if an objection to that effect is raised and that therefore an application cannot be filed before the Insurance Court challenging the decision of the Corporation to cover a factory under the Act before the contributions payable are determined in a proceedings under Section 45A of the Act. He relied on the decision of this Court in **Muthoot Pappachan Consultancy & Management Services v. E.S.I. Corporation** [2012 (3) KLT 452] in support of his contention.

7. It is beyond dispute that though the first respondent was issued a notice intimating coverage, the amounts due from him as contributions have not been determined as provided for under Section 45A of the Act. This Court in **Muthoot Pappachan Consultancy & Management Services v. E.S.I. Corporation** (supra) held that such an application is not maintainable.

Paragraphs 24 and 25 of the said decision read as follows:

“24. In the absence of a dispute as stated in S.75(1)(g), in respect of contribution payable or recoverable under the Act the application filed under S.75(1)(g) will be premature. Therefore, if no order is passed under S.45A(1) of the Act, an application filed under S.75(1)(g) of the Act cannot be entertained by the Insurance Court in cases in which contribution is not paid in respect of an establishment, on the ground that it is not covered under the Act.

25. To sum up, I hold that a joint reading of Sections 77, 45A and 45B of the Act makes it abundantly clear that in cases in which contribution is not paid on the assertion that the establishment is not covered under the Act, an application under S.75(1)(g) of the Act in respect of contribution payable or recoverable will not be maintainable, unless an order is passed by the Corporation under S.45A(1) of the Act, determining the amount of contribution payable under the Act. It also follows that in such cases the Insurance Court will have no jurisdiction to decide the question of coverage under the Act, unless an order is passed under S.45A(1) of the Act.”

In the light of the said decision of this Court, the impugned order is liable to be set aside and I.C.No.14 of 2006 on the file of the Insurance Court, Kollam is liable to

be dismissed as premature and it is ordered accordingly. It is made clear that if the first respondent had not raised any objection to the notice issued to him by the Corporation for the determination of contributions payable by him as provided for under Section 45A of the Act, he shall be afforded a further opportunity by the Corporation to prefer objections to the proposal to determine the contributions payable by him, before finalising the proceedings initiated against him under Section 45A of the Act. It is also made clear that the dismissal of I.C.No.14 of 2006 will not affect the right of the first respondent to challenge the order, if any, issued by the Corporation under Section 45A of the Act in accordance with law.

Sd/-
P.B. SURESH KUMAR
JUDGE

NS

/True Copy/

P.A to Judge