IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 25TH DAY OF FEBRUARY 2015/6TH PHALGUNA, 1936

Ins.APP.No. 46 of 2013 ()

E.I.C 5/2009 of E.I.COURT, KOZHIKODE

APPELLANT/(APPLICANT):

M/S.SAVITHA FILM CITY,
PADANNAPALAM, PO CHALAD, KANNUR-14
REPRESENTED BY ITS PROPRIETOR K.E.JAS.

BY ADVS.SRI.P.RAMAKRISHNAN
SRI.T.C.KRISHNA

RESPONDENT(S)/(RESPONDENTS):

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1. THE REGIONAL DIRECTOR, ESI CORPORATION,
PANCHDEEP BHAVAN, NORTH SWARAJ ROUND, THRISSUR-20.

2. SRI.U.UMESAN,
M/S.SAVITHA FILM CITY, PADANNAPALAM, PO CHALAD
KANNUR-14.

3. SRI.SHAJI.M.P,
M/S.SAVITHA FILM CITY, PADANNAPALAM.P.O, CHALAD
KANNUR-14.

R1 BY ADV. SRI.P.SANKARANKUTTY NAIR, SC, ESI CORPN
R1 BY SMT.T.D.RAJALAKSHMY, SC, ESI CORPN.

THIS INSURANCE APPEAL HAVING BEEN FINALLY HEARD ON 19.02.2015, THE COURT ON 25.2.2015 DELIVERED THE FOLLOWING:

P.B.SURESH KUMAR, J.

Insurance Appeal No.46 of 2013

Dated 25th February, 2015.

J U D G M E N T

The decision in E.I.C.No.5 of 2009 on the file of the Court of the Employees Insurance Court, Kozhikode, is under challenge in this appeal. The applicant in the proceedings before the Insurance Court is the appellant.

2. The applicant is running a theatre complex. There was an inspection in the premises of the applicant on 17.4.2007 by an Inspector attached to the Employees State Insurance Corporation (hereinafter referred to as 'the Corporation', for short). In the inspection, it was revealed that the applicant was engaging more than 20 employees in his establishment for wages. Thereupon, the applicant was directed to comply with the provisions of the Employees State Insurance Act (hereinafter referred to as 'the Act' for short). The applicant has not complied with the direction issued by the Corporation. The contributions payable by the applicant in respect of the employees engaged by him in his establishment for the period from 17.4.2007 to 31.8.2008, in the circumstances, were

determined by the Corporation, after affording the applicant an opportunity of hearing as provided for under Section 45A of the Act. The application referred to above was filed in the circumstances, seeking a declaration that the establishment of the applicant is not liable to be brought under the Act. The case set up in the application is that the applicant has not employed the qualified number of employees for wages in his establishment.

3. The Corporation filed objection to the application contending inter alia that the applicant was found employing more than 20 employees in his establishment and therefore, he is liable to register his employees under the Act and pay contributions for them.

4. The Insurance Court, on an evaluation of the materials on record, found that the applicant had employed the qualified number of employees in his establishment and therefore, his establishment is liable to be covered under the Act. However, since the applicant raised a contention that the security staff engaged by the applicant are employees of another establishment and that the contributions are being paid by that establishment in respect of the said employees, the Insurance

Court directed the Corporation to re-determine the contributions payable by the applicant, holding that if contributions are already remitted in respect of those employees, the applicant is not liable to pay contributions in respect of them. The applicant is aggrieved by the said decision of the Insurance Court and hence this appeal.

5. Heard the learned counsel for the applicant as also the learned counsel for the Corporation.

6. As noticed by the Insurance Court, the applicant who is running a theatre complex was found employing 4 operators, 2 office staff, 2 cleaning staff, 3 canteen staff and 10 security staff in his establishment at the time of inspection on 17.4.2007. The fact that the aforesaid employees were being engaged in the establishment is not disputed by the applicant. The contention raised by the applicant before the Insurance Court was that the cleaning staff, canteen staff and security staff were not employed by him directly. As far as canteen staff are concerned, the case of the applicant is that the canteen is run by a contractor and the staff therein are the staff engaged by the contractor and the applicant has no control over them. As far as the security staff are concerned, the case of the

applicant is that they are being provided by an establishment called M/s.Canannore Industrial Security and that the workers of the said establishment are already covered by the provisions of the Act. As far as cleaning staff are concerned, the contention is that they are also being provided by an external agency. According to the applicant, the cleaning staff, security staff and canteen staff are therefore, not liable to be treated as his employees for the purpose of the Act.

7. It is now settled that so long as the employees are engaged in the premises of the establishment for the work of the establishment or for the work which is incidental to the purpose of the establishment, they are liable to be treated as employees of the establishment, even if they are employed indirectly through an immediate employer. True, if the immediate employer is remitting contributions in respect of the employees, the principal employer has no liability to pay contributions in respect of those employees. In the instant case, it is beyond dispute that the cleaning staff, security staff and canteen staff are persons employed in the premises of the establishment for the work of the establishment. If the work carried on by them cannot be considered as the work of the

establishment, the work carried on by them is certainly a work which is incidental to the purpose of the establishment. It is thus evident that the aforesaid workers are liable to be treated as workers of the establishment of the applicant. Since the applicant has taken up the contention that contributions are being remitted in respect of the security staff engaged by them by their employer, the Insurance Court has directed the Corporation to consider that aspect in the matter of determining the contributions payable by the applicant. There is therefore, no infirmity whatsoever in the order passed by the Insurance Court. There is no question of law, much less any substantial question of law arises for consideration in this appeal. The appeal is accordingly, dismissed.

Sd/-

P.B.SURESH KUMAR, JUDGE

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