

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 15TH DAY OF JULY 2015/24TH ASHADHA, 1937

Ins.APP.No. 1 of 2011 ()

(I.C.NO. 46/2004 OF EMPLOYEES' INSURANCE COURT, KOZHIKODE)

APPELLANTS/RESPONDENTS:

- 1. THE REGIONAL DIRECTOR,
E.S.I CORPORATION,THRISSUR.**
- 2. THE AUTHORISED OFFICER, ESI CORPORATION,
THRISSUR.**
- 3. THE RECOVERY OFFICER, ESI CORPORATION,
THRISSUR.**

BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL

RESPONDENT/APPLICANT:

**M/S.PVS TOURIST HOME,
REPRESENTED BY IT'S MANAGING PARTNER
K.GANGADHARAN, S/O.SANKARAN NAIR,
P.V.S VILLA, TALAP, KANNUR, PIN- 670 001.**

BY ADV. SRI.P.V.SURENDRANATH

**THIS INSURANCE APPEAL HAVING COME UP FOR ADMISSION
ON 15-07-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

sts

P.B.SURESH KUMAR, J.

Ins.Appeal.No.1 of 2011

Dated this the 15th day of July , 2015

JUDGMENT

The decision of the Employees' Insurance Court, Kozhikode in E.I.C No.46 of 2004 is under challenge in this appeal. The Regional Director of the Employees' State Insurance Corporation ('the Corporation' for short) and two other officers of the Corporation are the appellants.

2. The respondent is a tourist home. There exists a bar attached restaurant in the building where the respondent tourist home is functioning. The Corporation clubbed the tourist home and the bar as one unit for the reason that a few rooms in the tourist home are let out to the bar, and covered the employees in the establishments under the

Employees' State Insurance Act ('the Act' for short). The proceedings initiated against the respondent was challenged by them before the Employees Insurance Court. The contention of the respondent before the Employees Insurance Court was that they have absolutely no connection with the bar, which is treated as the principal employer and that merely for the reason that a few rooms in the tourist home are let out to the bar, the employees of the tourist home cannot be treated as the employees of the bar for the purpose of coverage under the Act.

3. The evidence in the case consists of the oral testimonies of PWs.1 and 2 and Exts.P1 to P36 on the side of the respondent/applicant and the oral testimonies of DWs.1 and 2 and Exts.D1 to D4 on the side of the Corporation.

4. The Insurance Court, on an appraisal of the materials on record, found that though electric energy is used by the bar for its operation, it is engaging only seven

employees and therefore, they do not come within the definition of the 'factory', as defined under the Act. The Insurance Court also found that merely for the reason that the bar had taken on lease a few rooms of the respondent tourist home, the employees of the tourist home cannot be treated as the employees of the bar under the immediate employer namely, the tourist home, for the purpose of coverage under the Act by reckoning the total number of employees in the two establishments. Consequently, the Insurance Court allowed the application and declared that the 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. Heard the learned counsel for the appellants and the learned counsel for the respondent.

6. As noticed above, the case of the Corporation is that in so far as a few rooms in the tourist home run by the respondent are taken on lease by the bar functioning in the

same building, the employees of the tourist home are liable to be treated as the employees of the bar. As rightly found by the Insurance Court, there is no connection between the establishment which is running the bar and the establishment which is running the tourist home. The only connection is that the establishment which is running the bar has taken on lease a few rooms in the tourist home. In order to determine the coverage, what is to be seen is as to whether the employees sought to be covered are employees as defined under Section 2(9) of the Act. The Corporation has no case that the employees of the tourist home are engaged exclusively for the functioning of the bar. They have also no case that the employees of the tourist home are being supervised by the management of the bar. As such, merely for the reason that a few rooms in the tourist home are taken on lease by the management of the bar, its employees cannot be considered as the employees of the principal employer, namely, the bar, as defined under

Section 2(9)of the Act. The decision of the Employees Insurance Court, in the circumstances, is in order.

Therefore, the appeal is devoid of merits and the same is, accordingly, dismissed.

P.B.SURESH KUMAR, JUDGE.

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