

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.9 of 2011

**(AGAINST THE ORDER DATED 18-10-2010 IN IC 152/2009 OF THE EI COURT,
PALAKKAD).**

APPELLANT/APPELLANT:

**THE REGIONAL DIRECTOR,
E.S.I.CORPORATION,
NORTH SWARAJ ROUND,
THRISSUR.**

BY ADV. SRI.T.V.AJAYAKUMAR

RESPONDENTS/APPLICANT:

- 1. M/S.VIJAYA PROCESS & ENGINEERING
CONSTRUCTIONS,5/435,PARA ROAD,
KANJIKODE,PALAKKAD - 678621,
REP. BY PROP.K.N.VIJAYAN.**
- 2. MR.HARI,S/O.ARU,PUTHANPURA HOUSE,
VENGODI,ELAPPULLY POST,PALAKKAD - 678622.**
- 3. BABU,S/O.MANIYAN,THAMARAKULAM,
KANJIKODE P.O.,PALAKKAD - 678621.**

**R1 BY ADVS.SRI.N.RATHEESH
SMT.SUMA RATHEESH**

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

pk

P.B.SURESH KUMAR, J.

Ins. Appeal No.9 of 2011.

Dated 20th January, 2015.

J U D G M E N T

The decision in I.C.No.152 of 2009 on the file of the Employees' Insurance Court, Palakkad is under challenge in this appeal. The Regional Director of the Employees' State Insurance Corporation is the appellant.

2. The first respondent instituted the proceedings referred to above challenging a notice issued by the Employees State Insurance Corporation ('the Corporation' for short), directing them to pay contribution in respect of their employees under the Employees State Insurance Act ('the Act' for short). According to the first respondent, they do not have the qualified number of employees in the establishment and that therefore they are not liable to be covered under the Act.

3. The parties have adduced evidence in support of their respective contentions. Ext.B1 is the inspection report submitted by AW3, an Inspector of the Corporation. In Ext.B1, the names of fifteen persons who were found employed in the establishment at the time of inspection are furnished. One Prakasan has signed Ext.B1, as the Manager of the

establishment. The fact that the establishment would come under the purview of the Act, if they had engaged fifteen employees, is not disputed. On the other hand, the first respondent disputed the genuineness of Ext.B1. According to them, the signature of Prakasan in the said document is not genuine. They had also moved an application for comparison of the disputed signature contained in Ext.B1. The Insurance Court referred the disputed signature for comparison to an expert and the expert opined that it was not possible to compare the disputed signature on account of its dissimilarity with the admitted signatures. With the available materials, the Insurance Court came to the conclusion that the Corporation has not established that the first respondent had engaged the qualified number of employees to attract the provisions of the Act and consequently allowed the application.

4. Aggrieved by the said decision, the appellant preferred Insurance Appeal No.84 of 2007 before this Court. This Court noticed that the signatures sent for comparison by the Insurance Court with the disputed signature were not contemporaneous signatures, but signatures taken after the dispute and that therefore the procedure adopted by the

Insurance Court for sending disputed signature for comparison was not correct. This Court also noticed that the photocopy of the attendance register produced by the Corporation in support of their contention is a document which is not admissible in evidence. This Court, in the circumstances, set aside the decision of the Insurance Court and remitted the matter for fresh consideration, after affording the parties an opportunity to adduce evidence. It was clarified that the burden of proving the attendance register rests on the Corporation and the comparison of the signature has to be mooted and done by the establishment. Paragraph 3 and the operative portion of the judgment of this Court in Ins. Appeal No.84 of 2007 read thus :

“3. Ext.B1 is the preliminary inspection report submitted by AW3. There names of 15 persons with their daily wages are furnished. According to the Corporation, the applicant's Manager Sri.Prakasan has counter signed the list of employees furnished in Ext.B1. The applicant would contend that Prakasan is not the Manager and he is only the brother and he was nowhere in the premises on the alleged date. The signature in Ext.B1 as well as signature in the post acknowledgment Ext.B3(a) was denied. When such situation arose, the court below referred the matter for comparison of signature of Sri.Prakasan. For the same purpose, some admitted signatures of him were taken from the court and along with the disputed signature were sent for comparison. The expert opined that it is not possible to compare because of the dis-similarity. It was observed by the scientific expert that while the admitted signatures exhibit reasonable

consistency and freedom in writing the specimen standards were seen to be written slowly and tremulously, and questioned and standard signatures were written in entirely different design. I find that the court below committed an error in sending the signature, that is taken after the dispute has arisen for comparison of signature with the disputed signature. The Apex Court always had cautioned that when signatures are sent for comparison the signature must relate to a contemporaneous period or at an earlier period so that the design to change the signature or handwriting may not be there. What the lower court has done is to take the signature after the dispute has started. The comparison of signature was requested by the applicant itself, but the admitted signature was taken after the dispute had arisen. So, I feel that a better methodology has to be adopted by attempting to get the signature of Sri.Prakasan at a similar point of time just prior to the dispute or of an earlier period which is an admitted signature then send it for examination by an expert. The next document is a photocopy of the attendance register. When an application was filed to get the original of the attendance register, the establishment had pleaded that it was not traceable. When the original is lost, secondary evidence is admissible and it can be established by summoning the persons, who had alleged to have signed in the attendance register. So, it is also one of the methods to prove that factor.

So considering the peculiar circumstances of the case, I am inclined to interfere and give an opportunity to both parties to substantiate their respective contentions. The order passed by the court below is set aside and the matter is remitted back to the E.I.Court for fresh consideration in line with the direction given above. For the said purpose, parties are directed to produce both documentary as well as oral evidence in support of their respective contentions. Needless to say that the burden of proving the attendance register, which is produced by Corporation rests on it and not on the other side. Comparison of

signature has to be mooted and done by the establishment who had earlier moved the application. The insurance court is directed to fix a date of appearance for the parties and issue notice to them and thereafter proceed in accordance with law.”

5. After the remand, the parties have not adduced any evidence. Nevertheless, the Insurance Court allowed the application of the first respondent holding that since further evidence was not adduced by the parties, a different conclusion cannot be arrived at on the same set of facts. The materials on record are not seen discussed in the light of the findings and observations made by this Court.

6. The view taken by the Insurance Court cannot be accepted. The judgment in Ins.Appeal No.84 of 2007 indicates that this Court was of the view that the first respondent has not established its case that Ext.B1 is not a genuine document, as otherwise, there is no reason why an opportunity should be given to them to substantiate their contention that the signature of Prakasan contained in the said document is not his genuine signature. Likewise, this Court also found that the attendance register produced by the Corporation cannot be accepted in evidence being a photocopy and that if at all they rely on the said document, the same has to be proved by adducing secondary evidence. Since the parties have not

adduced any further evidence after the remand, the Insurance Court should have decided the materials on record in the light of the findings rendered by this Court in the said appeal. This having not been done, the impugned order is liable to be set aside and I do so.

In the result, the impugned order is set aside and the matter is remitted to the Insurance Court for fresh consideration, after affording the parties an opportunity to adduce evidence, if they choose to do so.

Sd/-

P.B.SURESH KUMAR, JUDGE.

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