IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

THURSDAY, THE 12TH DAY OF FEBRUARY 2015/23RD MAGHA, 1936

Ins.APP.No. 46 of 2011 ( )

AGAINST THE JUDGMENT IN IC 11/2003 of EMPLOYEES' INSURANCE COURT, KOLLAM DATED 12-10-2010

APPELLANT/OPPOSITE PARTY:

THE REGIONAL DIRECTOR,
EMPLOYEES STATE INSURANCE CORPORATION, SWARAJ ROUND
THRISSUR.

BY ADV. SRI.T.V.AJAYAKUMAR

RESPONDENT(S)/APPLICANT AND 2ND OPPOSITE PARTY:

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1. THE MANAGING PARTNER,
M/S.NARMADA TAILORING & EMBROIDERY INSTITUTE
NARMADA SHOPPING COMPLEX, KOWDIAR, TRIVANDRUM-695003.

2. SMT.SOBHA G.,
AVITTOM, T.C.4/1170(S), KOWDIAR
TRIVANDRUM-695003.

R1 BY ADV. SRI.GOPAKUMAR R.THALIYAL
R1 BY ADV. SRI.M.S.VIJAYACHANDRAN BABU
R2 BY ADV. SRI.T.S.RAJASENAN

THIS INSURANCE APPEAL HAVING BEEN FINALLY HEARD ON 12-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JV

P.B.SURESH KUMAR, J.

Ins.App.No.46 of 2011
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Dated this the 12th day of February, 2015

JUDGMENT

The decision in IC No.11/2003 on the file of the Insurance Court, Kollam is under challenge in this appeal. The Regional Director of the Employees' State Insurance Corporation (hereinafter referred to as 'the Corporation' for short) is the appellant.

2. The first respondent is the Managing Partner of the firm M/s.Narmada Tailoring & Embroidery Institute. The establishment of the first respondent is engaged in tailoring and embroidery works. On 21.11.2002 and 29.11.2002, there were inspections in the premises of the said establishment by the Inspectors attached to the Corporation. The Inspectors who have conducted the inspections in the premises of the establishment reported to the Corporation that power is being used for the activities of the establishment and 14 employees were found working in the establishment at the time of inspections. On the basis of the reports of the Inspectors, the Corporation issued a notice directing the first respondent to comply with the provisions of the Employees' State Insurance

Act (hereinafter referred to as 'the Act'). Since the said direction was not complied with, proceedings under Section 45A of the Act was initiated for determination of the contributions payable by the establishment. On receipt of notice in the proceedings under Section 45A of the Act, the first respondent filed the Insurance Case referred to above seeking a declaration that they are not liable to be covered under the Act. According to the first respondent, there are only two permanent employees in the establishment and others who were found employed in the premises were persons working on piece rate basis. It was also their case that power is not being used for the activities in the establishment.

3. The first respondent gave evidence as AW-1. He has also produced Exts.A1 to A6 documents in support of the contentions raised by him in the application. One of the Inspectors of the Corporation who conducted the inspection in the premises of the establishment of the first respondent gave evidence as RW-1. Exts.B1 to B5 documents were also produced by the Corporation in support of the contentions raised by them. Among the documents produced by the Corporation, Exts.B1 and B2 are the reports of the inspections held on 21.11.2002 and 29.11.2002.

4. The Insurance Court, though found that the first

respondent had employed 14 employees in his establishment, allowed the application holding that the Corporation has not substantiated their stand that power is being used in the establishment. The Corporation is aggrieved by the said decision of the Insurance Court and hence this appeal.

5. Exts.B1 and B2 are the inspection reports. In Exts.B1 and B2, it is categorically stated that one electric iron box and one sewing machine with electric motor were being used in the premises. RW-1 is one of the Inspectors who conducted inspection in the premises of the establishment. He reiterated in his evidence that power was being used in the establishment for the activities carried on therein. The evidence tendered by RW1 is not seen discredited in any manner. The view taken by the Insurance Court that there is no evidence to show that power was used in the premises to carry on the tailoring activities, in the circumstances, is perverse.

In the result, the appeal is allowed, the impugned order is set aside and IC No.11/2003 on the file of the Employees' Insurance Court, Kollam is dismissed.

SD/-
P.B. SURESH KUMAR,
JUDGE

JV