

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 10TH DAY OF FEBRUARY 2015/21ST MAGHA, 1936

Ins.APP.No. 83 of 2011

E.I.C 29/2005 OF EMPLOYEES' INSURANCE COURT, KOZHIKODE

APPELLANT(S)/1ST RESPONDENT :

**THE REGIONAL DIRECTOR,
EMPLOYEES STATE INSURANCE CORPORATION,
SWARAJ ROUND NORTH, THRISSUR-680 020.**

BY ADV. SMT.T.D.RAJALAKSHMY, S.C

RESPONDENT(S)/APPLICANT & SUPPL.RESPONDENTS 2 & 3 :

- 1. MANAGING PARTNER,
M/S.GAYATHRI INTERNATIONAL, EDODI, NEAR NEW BUS STAND,
BADAGARA, KOZHIKODE, PIN-673 101.**
- 2. SRI K.M.SREEDHARAN (MANAGER,GAYATHRI INTERNATIONAL),
KRISHNAKRIPA, KAINATTY, MUTHUNGAL WEST POST, VATKARA,
KOZHIKODE, PIN-673 101.**
- 3. SRI.VENUGOPALAN P., (MANAGER, P.S SECURITY AGENCY),
VADAKKE PARAMBATH HOUSE, POST SIDHA SMAJAM,
VATAKARA, PIN-673 101.**

R1 BY ADV. SRI.P.RAMAKRISHNAN

R2 BY ADVS. SRI.C.ARUN PRASANTH

SRI.A.S.BRIJESH

SMT.ROOPA RAMACHANDRAN

R3 BY ADV. SRI.RAJESH NAIR

**THIS INSURANCE APPEAL HAVING BEEN FINALLY HEARD
ON 10-02-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

Msd.

P.B.SURESH KUMAR, J.

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Insurance Appeal No.83 of 2011.
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Dated this the 10th day of February, 2015.

J U D G M E N T

The decision of the Employees' Insurance Court, Kozhikode in E.I.C.No.29 of 2005 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 preferred E.I.C.No.29 of 2005 seeking a declaration that the establishments of M/s.Gayathri International are not liable to be covered under the Employees State Insurance Act, hereinafter referred to as 'the Act' for short. The case set up by the first respondent in the application is that M/s.Gayathri International is a partnership firm running three business units namely, Gayathri Lodge, Gayathri Hotel and Gayathri Bar and that the firm has not employed more than five employees at any point of time in its establishments.

According to them, based on the report of the inspector attached to the Corporation, the Deputy Director of the Corporation issued a coverage notice to the establishment. It is also alleged that proceedings were initiated thereafter for determination of the contributions payable by them to the Corporation in respect of its employees under the Act .

3. The Corporation filed objection to the application, contending inter alia that twelve employees were found employed in the premises of the establishments of the first respondent at the time of inspection on 2.9.2004 and that therefore they are liable to be covered under the Act.

4. The Insurance Court, on an appraisal of the materials on record, found that the first respondent has employed twelve employees in its establishments as contended by the Corporation. Nevertheless, the Insurance Court declared that the establishments of the firm are not liable to be covered under the Act as there is no evidence to show that power had been used by the firm for the

activities carried on in the establishments. The Corporation is aggrieved by the said decision of the Insurance Court and hence this appeal.

5. The first respondent gave evidence before the Insurance Court as PW1. PW1 has stated that power is not used for the activities carried on in the establishments of the firm. He has also stated that equipments like grinder, freezer, fridge etc., are not used in the premises.

6. No doubt, it is settled that for holding an establishment as a factory within the meaning of Section 2 (12) of the Act, it must be established that some work or process is carried on in any part of the establishment that amounts to manufacturing and that in case the number of persons employed in the establishment is less than twenty, but more than ten, it must also be established that the manufacturing process in the establishment is being carried on with the aid of power. Coming to the facts of this case, it is admitted that the establishment is running a hotel. True,

in a case where a contention is raised that no power is used in the establishment for the activities carried on in the premises, the Corporation must establish the fact that power is being used for the activities carried on in the premises. The Act being a piece of social welfare legislation intended to benefit the employees, I am of the view that the mere omission on the part of the Corporation in adducing evidence to show that power is used in the establishment in a case of this nature should not result in absolving the establishment from its obligations under the Act. In the circumstances, I deem it appropriate for the benefit of the employees to give yet another opportunity to the Corporation to adduce evidence in this case.

7. In the result, the impugned decision of the Insurance Court to the extent it holds that power is not used for the activities carried on in the premises, is set aside and the Insurance Court is directed to consider the issue as to whether power is used by the firm in its establishments,

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afresh, after affording the parties yet another opportunity to adduce evidence.

This appeal is allowed as above.

**Sd/-P.B.SURESH KUMAR,
(Judge)**

Kvs/-

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PA TO JUDGE.