

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 23RD DAY OF JUNE 2015/2ND ASHADHA, 1937

Ins.APP.No. 95 of 2011 ()

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AGAINST THE ORDER IN E.I.C. 6/2006 OF EMPLOYEE'S INSURANCE COURT,
KOZHIKODE
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APPELLANT/RESPONDENT NO.1 :

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THE REGIONAL DIRECTOR,
E.S.I. CORPORATION
THRISSUR.**

BY ADV. SRI. P. SANKARANKUTTY NAIR

RESPONDENTS/APPLICANT/RESPONDENTS NO. 2 AND 3 :

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1. SOFTWARE ASSOCIATES,
CHEROOTTY ROAD, CALICUT – 673 011
REPRESENTED BY ITS MANAGING PARTNER
DULEEP SAHADEVAN.**

**2. SMT. SUDHESHNA S.,
SENIOR PROGRAMMER,
SOFTWARE ASSOCIATES,
'MASCOT', NADAKKAVU,
CALICUT – 673 011.**

**3. SMT. SHIJINA T.,
SENIOR PROGRAMMER,
SOFTWARE ASSOCIATES,
'MASCOT', NADAKKAVU
CALICUT – 673 011.**

**R1 TO R3 BY ADVS. SRI.V.V.SURENDRAN
SMT.RESMI NANDANAN**

**THIS INSURANCE APPEAL HAVING BEEN FINALLY HEARD ON 23-06-2015,
ALONG WITH INS. APP. No. 105/2011, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:**

Mn

P.B.SURESH KUMAR, J.

Ins. Appeal Nos.95 & 105 of 2011

Dated this the 23rd day of June, 2015

JUDGMENT

The common order by which the Employees' Insurance Court, Kozhikode disposed of two applications filed under Section 75 of the Employees' State Insurance Act ('the Act', for short), is under challenge in these appeals. The Regional Director of the Employees' State Insurance Corporation ('the Corporation', for short) is the appellant.

2. E.I.C.Nos.6 and 7 of 2006 were filed by two establishments engaged in the development and sale of software. The Insurance Court found that the establishments of the applicants would not come within the definition of 'factory' as provided for under Section 2(12) of the Act, as they do not undertake any manufacturing process. The applications were, accordingly, allowed and

the proceedings initiated by the Corporation to bring the employees engaged by the establishments within the purview of the Act were set aside. The Corporation is aggrieved by the said decision of the Insurance Court.

3. Heard the learned counsel for the Corporation.

4. An identical issue came up for consideration before this Court in Ins. Appeal No.40 of 2009 and this Court, on a comparison of the definition of 'factory' as contained in the Act as also in the Factories Act, held that establishments engaged in the development and sale of software would certainly come within the ambit of 'factory' as defined under Section 2(12) of the Act. Paragraphs 6 and 7 of the above judgment read thus:

“6. The learned Employees Insurance Court Judge had considered and held that according to him the applicant is engaged in the development of software which involves alteration of magnetic field into tape/floppy in order to store the software and then is marketed as a final product. So, it can be seen that it is by tapping of the magnetic field scientifically and

altering it the end product is obtained. The article or substance when used in larger dimension will take in this also. Therefore when a process is established and used for converting or altering an article or a substance and end product is obtained, certainly it will come within the ambit of man process as defined under the Factories Act.

7. Now as discussed by me earlier, explanation to the word factory regarding the date processing unit is not available under the Employees State Insurance Act. The Employees State Insurance Act is a self contained statute wherein the factory is defined and help is sought from the Insurance Act to define the word manufacturing process. So the explanation that is given in the Insurance Act cannot be read into the definition of factory under the Employees State Insurance Act where it is specifically excluded. This is a case where as stated earlier there is a process of manufacturing wherein electrical energy is used and more than 10 persons are employed and, therefore, it satisfies all the ingredients to attract the definition of a factory under the ESI Act and, therefore, the finding of the learned Insurance Judge that it is an establishment that will come under the coverage of the ESI Act has to be sustained and I do so. So far as other materials, in all aspects the order of the Employees Insurance Court is sustained. Parties are

directed to bear their respective costs.”

In the light of the decision of this Court in Ins. Appeal No.40 of 2009, the impugned common order is liable to be interfered with.

In the result, the appeals are allowed, the impugned common order is set aside and E.I.C.Nos.6 and 7 of 2006 on the file of the Employees' Insurance Court, Kozhikode are dismissed.

P.B.SURESH KUMAR, JUDGE.

smm