

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 28TH DAY OF JANUARY 2015/8TH MAGHA, 1936

Ins.APP.No. 6 of 2014 ()

AGAINST THE JUDGMENT IN IC 133/2012 OF EMPLOYEES INSURANCE COURT,
ALAPPUZHA DATED 17-10-2013

APPELLANT:

THE DIRECTOR
E.S.I. CORPORATION, SUB REGIONAL OFFICE
MALU'S CPMPLX, ST.FRANCIS CHRUCH ROAD, KALOOR
COCHIN-682 017.

BY ADV. SRI.MVS.NAMBOOTHIRY

RESPONDENT:

M/S.SIENNA COLLEGE OF PROFESSIONAL STUDIES
EDAKOCHI, KOCHI-682 006, REPRESENTED BY ITS MANAGER
REV.FATHER JOHNSON CHIRAMEL.

R1 BY ADV. SRI.P.SANTHOSH (PODUVAL)
R1 BY ADV. SMT.R.RAJITHA
R1 BY ADV. SRI.K.D.SREEVISAKH

THIS INSURANCE APPEAL HAVING BEEN FINALLY HEARD ON
28-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SCL.

P.B.SURESH KUMAR, J.

Ins. Appeal No.6 of 2014

Dated this the 28th day of January, 2015.

JUDGMENT

The order passed by the Employees' Insurance Court, Alappuzha on I.C.No.133 of 2012 dated 17.10.2013, is under challenge in this appeal. The Director of the Employees' State Insurance Corporation ('the Corporation' for short) is the appellant.

2. The respondent is an establishment covered by the Employees' State Insurance Act, 1948 ('the Act' for short). They have not paid the contributions payable under the Act on time. The contributions payable by them for the period from April, 2008 to September, 2008, was paid by them only on 29.3.2010. Likewise, the contribution payable by them for the period from October, 2008 to March, 2009 was paid by them only on 20.4.2010. Again, the contribution payable by them for a period from April, 2009 to September, 2009 was paid by them only on 13.3.2010. The total contributions paid by them

for the said periods were to the tune of Rs.2,44,061/-. Proceedings under Section 85B of the Act was initiated, in the circumstances, by the Corporation for recovery of damages from the respondent for non-payment of the contributions for the aforesaid periods on time. Later, after affording to the respondent an opportunity of hearing, an order was passed on 10.8.2012 directing them to pay damages amounting to Rs.66,839/-. Aggrieved by the decision of the Corporation in imposing damages on them, the respondent instituted the proceedings referred to above before the Insurance Court. It was alleged in the petition filed before the Insurance Court that the establishment was brought under the purview of the Act only by virtue of the notification issued by the Government on 8.10.2007 and that the said notification was challenged by the respondent before this Court in a writ petition and the same was dismissed only on 3.7.2009. It was also alleged that the matter was taken up before the Apex Court and the Apex Court did not grant any interim order in the matter. According to them, since they could not obtain any interim order in the matter from the Apex Court, they paid the contributions on the aforesaid dates. It is stated by them that

the delay in paying the contributions, in the circumstance, was due to the bonafide belief that they are not liable to pay the contributions under the Act and since the matters concerning their liability to pay contributions were pending before this Court and before the Apex Court. In essence, the contention was that they are not guilty of any contumacious conduct in not remitting the contributions on time.

3. The Corporation contested the application. According to them, the reasons highlighted by the respondent for not remitting the contributions on time are not sufficient to deny the liability to pay the damages.

4. The Insurance Court, on an appraisal of the facts and circumstances, found that there is no material whatsoever to hold that the respondent is guilty of wilful omission or any contumacious conduct in the matter of paying the contribution payable under the Act. In the matter of arriving at the said finding, the Insurance Court noticed that the respondent was brought under the Act only by virtue of the notification published by the Government on 8.10.2007 and that they have challenged the notification before this Court and the matter was dismissed only on 3.7.2009. The Insurance Court also

noticed that the matter was taken up further by the respondent before the Hon'ble Supreme Court and the contributions were remitted when the respondent could not obtain any interim order in their favour from the Hon'ble Supreme Court.

5. It is settled that the proceedings under Section 85B of the Act is penal in nature and the same can be invoked only in cases where the employer is guilty of wilful omission or any contumacious conduct in paying the contributions on time. The facts and circumstances taken note of by the Insurance Court indicate that the respondent is not guilty of wilful omission or any contumacious conduct in not remitting the contributions on time.

There is, therefore, no merit in the appeal and the same is dismissed.

Sd/-
P.B.SURESH KUMAR,
JUDGE.

Scl.