

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

THURSDAY, THE 22ND DAY OF JANUARY 2015/2ND MAGHA, 1936

Ins.APP.No. 32 of 2014 ()

**AGAINST THE JUDGMENT IN IC 8/2009 OF EMPLOYEES INSURANCE COURT,
KOLLAM (INDUSTRIAL TRIBUNAL, KOLLAM)DATED 28-12-2013**

APPELLANTS/RESPONDENTS 1 AND 2:

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

**2. THE RECOVERY OFFICER,
E.S.I CORPORATION, KOLLAM.**

**BY ADVS.SRI.T.P.M.IBRAHIM KHAN, SC, ESI CORPN.
SRI.K.M.ABDUL MAJEED**

RESPONDENTS/APPLICANT AND RESPONDENTS 3 AND 4:

**1. S.SREEKUMAR
PROPRIETOR, M/S. MANI'S FAMILY MART
NEAR S.N. WOMEN'S COLLEGE, KOLLAM - 691 001.**

**2. SHAJI THOMAS
S/O. THOMAS THOMAS, CHIRAPURAYIDOM, M.N. NAGAR
EYYAYIL, MADAPPALLY P.O., CHANGANACHERRY - 686 543.**

**3. SANTHOSH MAHESWAR
S/O. MAHESWAR, RADHA MANDIRAM, C.P. JUNCTION
CHATHANNOOR, KOLLAM - 691 572.**

**R1 BY ADVS. SMT.V.P.ÆEMANDINI (SR.)
SRI.M.R.ANISON
SMT.K.P.GEETHA MANI**

**R2-R3 BY ADVS. SRI.K.SHAJ
SRI.S.SUNIL NARAYANAN
SRI.SAJJU.S
SRI.RENJIT GEORGE
SRI.S.VISHNU (ARIKKATTIL)**

**THIS INSURANCE APPEAL HAVING BEEN FINALLY HEARD ON 22-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

shg/

P.B.SURESH KUMAR, J.

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Ins. Appeal No.32 of 2014

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Dated this the 22nd day of January, 2015

JUDGMENT

The judgment in I.C.No.8 of 2009 on the file of the Employees Insurance Court, Kollam is under challenge in this appeal.

2. The first respondent is engaged in the retail sales of provision, grocery etc. According to him, till July 2006, he had not engaged the qualified number of employees in his establishment, warranting coverage of the establishment under the Employees' State Insurance Act, 1948 (hereinafter referred to as "the Act" for short). Nevertheless, it is stated that he used to pay contributions in respect of the employees engaged by him in the establishment to bring them under the coverage of the Act. While so, on 20.6.2008, it is stated that the Corporation issued a notice to the first respondent directing him to pay Rs.21,910/- towards short payment of the contributions payable by him for the period from May 2006 to July 2007. According to the first respondent, though he had denied the liability to pay the said amount, the Corporation initiated proceedings for recovery of the said amount from him and the

proceedings before the Insurance Court was instituted, in the said circumstances, seeking a declaration that he is not liable to pay the amount demanded as per notice dated 20.6.2008.

3. The Corporation filed a written objection opposing the relief sought for in the proceedings. It was contended by the Corporation in the written objection that the insurance Inspector of the Corporation who conducted a preliminary survey on 8.8.2006 reported that the first respondent was engaging 39 employees in his establishment and the establishment was covered on that basis. It was also contended by the Corporation that since the requirements under the Act were not complied with by the respondent even after the communication of the coverage intimation, the Inspectors attached to the Corporation visited the premises of the establishment and verified the records maintained by the first respondent and on verification of the records, it was found that the establishment was liable to be treated as covered from 21.5.2006 and it is on that basis that the notice impugned in the proceedings was issued.

4. In the proceedings, the first respondent gave evidence as AW1. An employee engaged by the first respondent in his

establishment was examined on his side before the Insurance Court as AW2. Exts.A1 to A6 documents were also produced on the side of the first respondent. There was no evidence on the side of the Corporation. The inspection and survey reports relied on by the Corporation in the written objection filed before the Insurance Court were also not produced.

5. On an analysis and scrutiny of the records produced by the first respondent as also the oral evidence adduced on his side, the Insurance Court came to the conclusion that the first respondent has not engaged the qualified number of employees in the establishment as claimed by the Corporation and consequently declared that the first respondent is not liable for payment of the contributions demanded by the Corporation for the period from May 2006 to July 2007.

6. As noticed above, the specific case of the first respondent is that his establishment was not covered up to July 2006 as he has not engaged the qualified number of employees. It is not disputed that thereafter the first respondent is paying contributions in respect of the employees in his establishment. It is also not disputed that even till July 2006, the first respondent was paying

contributions in respect of a few employees engaged by him, though the establishment was not covered under the Act. The notice impugned in the case was issued by the Corporation on the assertion that from 21.5.2006, the first respondent is engaging the qualified number of employees in his establishment. Even though such a contention was taken in the written objection filed before the Insurance Court, no material whatsoever was produced by the Corporation, despite the assertion made by the first respondent that he has not engaged more than nine employees at any point of time till July 2006. In the absence of any materials to indicate that the establishment of the first respondent had engaged the qualified number employees from 21.5.2006, the impugned order is perfectly in order.

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

Sd/-

**P.B.SURESH KUMAR
JUDGE**

/true copy/

P.A. to Judge

vpv