IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 4TH DAY OF FEBRUARY 2015/15TH MAGHA, 1936

Ins.APP.No. 35 of 2010 ( )

AGAINST THE ORDER IN IC 14/2008 of EMPLOYEES' INSURANCE, COURT, PALAKKAD DATED 24-08-2009

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APPELLANT/APPLICANT :

K.U.PAUL, AGED 72 YEARS,
S/O.ULAHANNAN PAUL,
FORMER MANAGING DIRECTOR,
PAULSON CHEMICALS,
(ERSTWHILE), KHANNA NAGAR,
KORATTY.

BY ADVS.SRI.C.S.MANU
SRI.S.K.PREMRAJ

RESPONDENT/OPPOSITE PARTY :

EMPLOYEES' STATE INSURANCE CORPORATION,
(REPRESENTED BY ITS REGIONAL DIRECTOR),
PANCHDEEP BHAVAN, NORTH SWARAJ ROUND,
THRISSUR-680 020.

BY ADV. SRI.K.SANDESH RAJA, SC, ESI CORPN

THIS INSURANCE APPEAL HAVING BEEN FINALLY HEARD ON 04-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

VS

P.B.SURESH KUMAR, J

Ins.Appeal.No.35 of 2010

Dated this the 4th day of February, 2015

JUDGMENT

The decision in I.C.No.14/2008 on the file of the Employees Insurance Court, Palakkad, is under challenge in this appeal. The applicant in the proceedings is the appellant.

2. The applicant is an establishment covered under the Employees State Insurance Act, 1948, ('the Act' for short). They have not paid the contributions payable under the Employees State Insurance Corporation ('the corporation' for short) in respect of their employees, for the period from 1.10.1992 to 31.12.1994. When proceedings were initiated for recovery of the said contributions amounting to Rs.26,953/-, the Insurance Case referred to above was filed by the applicant alleging that the establishment is closed down and that therefore, they have no liability to pay the contributions.

3. The Corporation filed objections to the application contending that the reason stated by the

applicant for non-payment of contributions is not sustainable in law.

4. The Insurance Court, on an appraisal of the materials on record, found that the applicant is liable to pay the amount demanded and consequently, dismissed the application with costs. It is aggrieved by the said decision, the applicant has come up in this appeal.

5. Heard learned counsel for the appellant and the learned Counsel for the respondents.

6. The only contention raised at the time of hearing is that the amount sought to be recovered from the applicant being the amount determined as due in a proceeding under Section 45A of the Act and since the claim was in respect of the contributions payable for the period from 1.10.1992 to 31.12.1994, the same is barred by the second proviso to Section 45A of the Act.

7. True, the second proviso to Section 45A of the Act provides that no order shall be passed by the Corporation invoking its power under Section 45A of the Act in respect of the period beyond five years from the

date on which contribution shall become payable. The said provision was introduced only with effect from 1.6.2010 by virtue of Act 18 of 2010. In so far as the amounts due from the applicant which is attempted to be recovered from them was determined by the Corporation in exercise of its power under Section 45A of the Act, long before the introduction of the second proviso to Section 45A of the Act, the said provision will not apply to the case of the applicant.

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

Sd/-
P.B.SURESH KUMAR
JUDGE

/TRUE COPY/

PA TO JUDGE

vs