

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 28TH JUNE 2006 / 7TH ASHADHA, 1928

Ins.APP.No. 13 of 2003()

IC.15/2000 of EMPLOYEES INSURANCE COURT, ALAPPUZHA

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APPELLANT:

SEBASTIAN PAUL, NEDUMKANDATHIL HOUSE,
CHERANALLUR P.O., KOOVAPPADY VIA.,
ERNAKULAM DISTRICT.

BY ADV. SRI.K.ANAND (A.201)
SMT.LATHA KRISHNAN

RESPONDENTS:

THE REGIONAL DIRECTOR,
ESI CORPORATION, REGIONAL OFFICE,
THRISSUR-20.

BY ADV. SRI.P.SANKARANKUTTY NAIR, SC, ESI CORPN

THIS INSURANCE APPEALS HAVING BEEN FINALLY HEARD
ON 28/06/2006, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

K.HEMA, J.

INSURANCE APPEAL.NO.13 OF 2003

Dated this the 28th day of June, 2006

JUDGMENT

The appellant is one of the licensees of toddy shop Nos. TS 23 and TS 24 of Perumbavaoor range. He received notices, Exhibits P8 and P9 dated 1.2.2000 from the Corporation determining provisionally the amount of contribution payable in respect of the employees of the establishment/factory. According to the appellant, his establishment is not covered under the provisions of Section 2 (12) of the Employees State Insurance Act ('the Act', for short) and hence he is not liable to pay the amount demanded as per Exhibits P8 and P9. Therefore, raising various contentions, he filed an application as I.C.15 of 2000 before the Employees Insurance Court.

2. The respondent Corporation filed a detailed written statement and contended that the appellant is liable to pay the amount and that his establishment is covered under the provisions of the Act. Before the court below, documentary evidence was adduced on behalf of either side, but no oral evidence was adduced. Exhibits P1 to P10 series were marked on the side of the appellant

and Exhibits D1 to D6 were marked on the side of the respondent-Corporation. On an analysis of the evidence adduced in the case, the Insurance Court found that TS Nos.11, 23 and 24 are covered under the provisions of the ESI Act and the respondent was directed to give fresh date for filing objections and for personal hearing and to finalise the assessment as per law and realise the amount so assessed. This appeal is filed against the said order.

3. A reading of the application filed by the appellant would go to show that he has sought for a declaration that the appellant has no liability to pay the amount as claimed by the respondent, as per Form C8 notices dated 1.2.2000 which are marked as Exhibits P8 and P9. A reading of Exhibits P8 and P9 shows that the respondent-Corporation itself has not decided whether the appellant was liable to pay contribution as stated in Exhibits P8 and P9. As long as the liability is not concluded, there is no question of giving a declaration that the appellant is not liable to pay the amount as stated in Exhibits P8 and P9. Exhibits P8 and P9 show that the Corporation has only made a proposal to realise certain amounts stated therein and the respondent has also proposed to determine the amount of contribution payable in respect of employees of the appellant's factory/establishment under Section 45A of the Act.

4. The appellant was also given 15 days time to show cause why the assessment should not be made as proposed in the notices. He was also afforded an opportunity of hearing as per the said notices and a date has also been fixed for hearing and final statement. Therefore, it can be easily found that the Corporation itself had not decided or determined the amount of contribution which is payable by the appellant in respect of his establishment. In the above circumstances, no dispute has arisen between the appellant and the Corporation regarding the appellant's liability to pay the contribution.

5. A reading of Section 75 of the Act would go to show that the Insurance Court gets jurisdiction to decide an issue of the nature specifically stated in Section 75(1)(a)(2)(h). When the question is with respect to the contribution as referred to in the application filed by the appellant, the Insurance Court can go into the question and decide the issue only if a dispute has arisen. In this case, no dispute has arisen. The appellant has no case that the appellant responded to the notices, Exhibits P8 and P9 and filed any written statement or availed of the opportunity given to him for a personal hearing.

6. Admittedly, no order is passed under Section 45A of the Act, as proposed to be taken by virtue of Exhibits P8 and P9. Therefore, even according to the Corporation, the contribution has not been determined, as per Section 45A of the Act. A reading of Section 75 would show that it is only when a dispute arises in respect of the contribution payable or recoverable under the Act between the employer and the Corporation that a decision can be taken by the Insurance Court in accordance with the provisions of the Act. But a mere assertion or an allegation made in Exhibits P8 and P9 notices that the appellant's establishment is a factory which is covered under Section 2(12) of the Act, will not be sufficient to constitute a 'dispute' as stated in Section 75 of the Act. A dispute arises only when there is assertion and denial. But there was no denial by the appellant before approaching the Insurance Court for a declaration. The appellant had sufficient opportunity to raise a dispute in accordance with the opportunity given to him as per Exhibits P8 and P9.

7. In the above circumstances, the court had no jurisdiction to decide whether the appellant has any liability to pay the amount as claimed by the respondent as per Exhibits P8 and P9. In other words, this application is premature and the Insurance Court does

not get any jurisdiction to decide the issue, since there is no dispute, in respect of contribution which is payable or recoverable under the Act between the appellant and the respondent-Corporation as stated in Section 75 of the Act.

8. Unfortunately, the Insurance Court has held that TS Nos.11, 23 and 24 are covered under the ESI Act. The Insurance Court has also directed the respondent to finalise the assessment as per law and realise the amount so assessed. These directions are evidently illegal. It is for the Corporation to decide whether the appellant's establishment is covered or not, while passing an order under Section 45A of the Act, after hearing the appellant as per the proviso to Section 45A of the Act. The court having held that the appellant's establishment is covered under the ESI Act, the main dispute which could arise between the appellant and the Corporation has already been decided by the Insurance Court, even before the dispute arose. This has caused serious prejudice to the appellant. The fact whether the appellant's establishment is covered under the Act or not, is one of the main disputes which can be raised by the appellant before the Corporation and this is bound to be decided by the Corporation under Section 45A of the Act. A decision taken by the Court on the issue cannot be sustained. The

application filed by the appellant ought to have been dismissed as premature cannot be sustained. The order under challenge is, therefore, liable to be set aside and I do so.

In the result, the order under challenge is set aside and the application filed by the appellant also is dismissed on the ground that the Insurance Court has no jurisdiction to decide the issue in the light of the observations already made in this judgment. It is made clear that the appellant is free to raise all contentions and dispute relating to coverability, liability to pay contribution etc., at the appropriate stage before the Corporation and a decision may be taken by the Corporation untrammelled by the findings and observations made in the impugned order.

This appeal is allowed.

K.HEMA, JUDGE

vgs.

K.HEMA, J.

INS.A.NO.13 OF 2003

JUDGMENT

28.6.2006