

(2016) 12 KL CK 0034

In the High Court Of Kerala

Case No : I.A. No. 44 of 2008 (Against The Judgment In IC 160 Of 2001 of Employees Insurance Court, Alappuzha Dated 29-02-2008)

Regional Director ESI Corporation

APPELLANT

Vs

M/s. Jaymat Hotel Resorts Ltd.

RESPONDENT

Date of Decision : 15-12-2016

Acts Referred:

Employees State Insurance Act, 1948 — Section 45A, Section 75, Section 77

Citation : (2017) 2 LLJ 36

Hon'ble Judges : Mr. P.N. Ravindran and Dama Seshadri Naidu, JJ.

Bench : Division Bench

Advocate : Sri. P. Sankarankutty Nair, Advocate, for the Appellant; Sri. K. Moni, Advocate, for the Respondent

Final Decision : Allowed

Judgement

P.N. Ravindran, J.—The order passed by the Employees Insurance Court, Alappuzha on 29.2.2008 in I.C.No.160 of 2001 is under challenge in this appeal filed by the Regional Director, Employees State Insurance Corporation, Thrissur. The brief facts of the case are as follows:

2. M/s. Jaymat Hotel Resorts Ltd., a company incorporated under the Companies Act, 1956, entered into an agreement with M/s. International Housing Complex to construct buildings and other structures in a parcel of land belonging to it. As per the terms of the agreement, the work was to be executed in two phases. In the first phase, a club building with 22 cottage rooms and in the second phase, another building with 100 rooms were to be constructed. The agreement between M/s. Jaymat Hotel Resorts Ltd. and M/s. International Housing Complex was entered into on 14.9.1991. The first phase of the construction was completed by September 1994 and the business of the company commenced thereafter. The employees working in the establishment, 20 in number, were covered.

3. When the second phase of the construction started, DW-2, an insurance inspector in the service of the Employees State Insurance Corporation inspected the business establishment of the company on 16.5.1996 and submitted Ext.D-9 report. He found that the construction of the five star hotel is in progress. He also reported that the company is liable to pay contribution on the wages paid to the workers involved in the construction of the said hotel. Later, to be exact on 25.11.1997, DW-2 yet another insurance inspector inspected the very same premises and submitted Ext.D-8 report. He observed in his report that though 25 persons are employed for wages, only 20 persons have been covered under the Employees State Insurance Act, 1948 (hereinafter referred to as "the Act" for short) and 5 more persons are yet to be covered. He also reported that the company is liable to pay contribution in respect of the wages paid to the workers engaged in the construction of the hotel. After complying with the procedure prescribed in the Act, the Regional Director, Employees State Insurance Corporation, Thrissur passed an order of assessment on 20.9.2001 under section 45A of the Act, assessing the sum of Rs.7,49,452/- as contribution payable by the company in respect of the wages paid to workers engaged in the construction of the hotel. The company thereupon moved the insurance court by filing an application under section 75 read with section 77 of the Act, praying for a declaration that the assessment and demand as per order passed on 20.9.2001 is unsustainable. The company contended that the persons employed by M/s. International Housing Complex to construct the hotel building cannot be treated as its employees. Yet another contention raised was that the second stage of construction was not for the expansion of the first stage of business activities and therefore, the demand is illegal. The Employees State Insurance Corporation contended that its action is perfectly in order, having regard to the definition of the term "employee" occurring in section 2(9) of the Act.

4. Before the Employees Insurance Court, the Managing Director of the company was examined as PW-1 and the company produced and marked Exts.P-1 to P-6. On the side of the Employees State Insurance Corporation, two insurance inspectors, who had inspected the business establishment of the company while the hotel building was being constructed, were examined as DWs.1 and 2. The Employees State Insurance Corporation also produced and marked Exts. D-1 to D-9. After considering the rival contentions, the Employees Insurance Court held that the club and cottage rooms, which had already come into existence, constitute a separate establishment coverable under the Act, that it was covered and thereby, the law was complied with. The court below also held that the persons employed in the construction of the hotel building cannot be treated as persons employed in connection with or incidental to the work of the club and cottage and therefore, the demand made by the Employees State Insurance Corporation cannot be sustained. The application filed by the company was allowed and the impugned order was set aside. The Employees State Insurance Corporation has, aggrieved thereby, filed this appeal through its Regional Director at Thrissur. After the company moved the Insurance Court and before

the order impugned in this appeal was passed, the applicant company was ordered to be wound up by this court by order passed on 20.7.2002 in C.P.No.36 of 2012. The company however continued to be represented by its Managing Director. Even when this appeal was filed, the company was shown as represented by its Managing Director, though a provisional liquidator has been appointed by this court. Later, on application filed by the appellant as I.A.No.853 of 2013 the cause title of the memorandum of appeal was amended to state that the company is represented by the Official Liquidator of this court.

5. We heard Sri. K. Sandesh Raja, learned counsel appearing for the appellant and Sri. K. Mani, learned counsel appearing for the Official Liquidator. We have also gone through the pleadings and the materials on record. The short question that arises for consideration in the instant appeal is whether the workers engaged in the work of constructing the second stage of the project viz. the five star hotel can be treated as employees of the respondent company and contribution claimed under the Act. The court below took the view that the club and the cottage constitute a separate establishment coverable under the Act and has been covered and therefore, the employees engaged in the construction of a five star hotel in the second phase of the project cannot be said to be persons employed in connection with or incidental to the work of the club and the cottage. The issue raised is in our opinion no longer *res integra* and is covered by the decision of the Apex Court in *Regional Director, Employees' State Insurance Corporation, Madras v. South India Flour Mills (P) Ltd.* (AIR 1986 SC 1686). After a survey of the case law on the point and the relevant statutory provisions, the Apex Court held that the work of construction of additional buildings required for the expansion of a factory must be held to be ancillary, incidental or having some relevance to or link with the object of the factory. It was held that it is not correct to say that such work must always have some direct connection with the manufacturing process that is carried on in the factory, that the work of factory should also be understood in the sense of any work necessary for the expansion of the factory or establishment or for augmenting or increasing the work of the factory or establishment. In the instant case, the employees engaged in the construction of the hotel though it was not commissioned, were employed through the immediate employer, viz. the International Housing Complex. Going by the definition of the term "employee" occurring in section 2(9) of the Act even such employees are deemed to be employees employed in connection with the work of a factory or establishment to which the Act applies. In the light of the fact that the Act applied to the club and the cottage which were already functioning in the premises where a hotel building was being constructed as a part of the very same project, it cannot be said that the persons employed in the construction of the hotel are not persons employed in connection with or incidental to the work of the club and the cottage. A reading of the impugned order discloses that the attention of the court below was not drawn to the binding decision of the Apex Court in *South India Flour Mills (P) Ltd.* (*supra*). In the light of the authoritative pronouncement of the Apex Court, the order of the

court below cannot, in our opinion, be sustained.

We accordingly allow the appeal, set aside the impugned judgment passed by the Employees Insurance Court on I.C.No.160 of 2001 on 29.2.2008. Consequently, the order passed on 20.9.2001 by the Regional Director, Employees State Insurance Corporation on 20.9.2001 invoking the power conferred on him under section 45A of the Act shall stand restored. No costs.