

(2014) 07 KL CK 0207
In the High Court Of Kerala
Case No : Ins. Appeal No. 61 of 2011

The E.S.I. Corporation

APPELLANT

Vs

Aswini Hospital

RESPONDENT

Date of Decision : 18-07-2014

Acts Referred:

Citation : (2014) 07 KL CK 0207

Hon'ble Judges : B. Kemal Pasha, J

Bench : Single Bench

Advocate : T.V. Ajayakumar, Advocate for the Appellant; M.B. Prajith and K.K. Premlal, Advocate for the Respondent

Judgement

B. Kemal Pasha, J.—Challenging order dated 03.01.2011 in I.C.No.67 of 2008 of the Employees' Insurance Court, Palakkad, the Employees' State Insurance Corporation("the ESI Corporation" for short) has come up in appeal.

2. On getting Form C-11 notice dated 05.10.2007 from the ESI Corporation, the 1st respondent herein filed I.C.67/2008 before the court below praying that any coercive steps should not be initiated against the applicant for the recovery of any contribution under the Employees' State Insurance Act, 1948 (hereinafter referred to as the "the ESI Act") as the applicant had filed an application before the Government of Kerala for exemption from the coverage of the ESI Act, and that even though the said application was dismissed by the Government, the applicant had preferred a review petition before the Minister concerned for the review of the order passed by the Government.

3. Even though the ESI Corporation has resisted I.C.No.67/2008 before the court below, it seems that the court below has passed the impugned order, which is per se illegal.

4. Heard the learned counsel for the appellant Sri.T.V.Ajayakumar and the learned counsel for the respondents Sri.K.K.Premlal. A review is not a matter of right. The question, whether such a review before the Minister is maintainable or

not, need not be considered at present; but it is not a right at all. The right has been crystallized as the Government of Kerala has passed an order rejecting the application for exemption. It seems that the court below has even gone to the extent of passing the impugned order by directing the ESI Corporation to approach the Minister and to make him to pass an order and to dispose of the review petition as if it is the duty on the part of the ESI Corporation to see that the review petition allegedly filed by the applicant is disposed of by the Minister. The impugned order is per se illegal and the court below is not at all justified in passing such an illegal order. The said order has resulted in substantial miscarriage of justice.

In the result, this appeal is allowed and the impugned order is set aside. I.C.No.67/2008 is dismissed. There is no order as to costs.