

IN THE SUPREME COURT OF INDIA
CIVIL APPELLAT JURISDICTION

CIVIL APPEAL NO. 6450 of 2000

T.P. Abdulla

.....Appellant

Versus

E.S.I. Corporation

.....Respondent

ORDER

In spite of due service, none appears on behalf of the respondent even at the second call.

We have heard the learned counsel for the appellant and examined the impugned order as well as the materials on record.

This appeal by special leave is filed against the judgment and order dated 12th of November, 1999 passed by the High Court of Kerala at Ernakulam in MFA No. 405/94 whereby the High Court had affirmed the order of the ESI Court holding that the establishment of the appellant, which is a hotel, is covered by the Employees State Insurance Act (for short "the Act").

Having heard the learned counsel for the appellant and after going through the judgment under appeal as well as the order of the ESI Court and other materials on record, we are unable to sustain the orders of the High Court as well as of the ESI
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court for the reasons stated hereinafter. It is not in dispute that the appellant is running a hotel at K.K. Road, Kottayam. It is also a concurrent finding of the High Court as well as of the ESI court that only ten persons are employed in the establishment of the appellant. The ESI court as well as the High Court came to a conclusion that the establishment of the appellant would be covered by the Act because it is a premises in which 10 persons are employed and is functioning with the aid of power. The High Court therefore held that since, admittedly, ten persons have been employed and the manufacturing process is carried on with the aid of power, the establishment of the appellant is covered by the Act.

Before this Court, the appellant has filed an application for permission to rely on a Notification issued by the State of Kerala under sub section 5 of Section 1 of the

Act, being Notification No. 16141/E2/75/LBR dated 27th of May, 1976. It is true that the aforesaid notification was not produced either before the ESI court or before the High Court. Considering the fact that no one is present to oppose the prayer of the appellant to permit the said Notification to be taken into consideration by this court and considering the nature of the order passed by the High Court holding that the establishment of the appellant is covered by the Act because 10 persons are employed and the manufacturing process is carried on with the aid of power, which is in effect clause 1 of the aforesaid notification, we allow the said application and permit the appellant to urge before this court as to whether in the light of the Notification (supra), the establishment of the appellant, which is admittedly employing only ten persons and which is a hotel would be covered by the Act or not. The Notification dated 27 th of May, 1976 is reproduced as under:-

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"GOVERNMENT OF KERALA

Labour (E) Department

NOTIFICATION

No. 16141/E2/75/LBR

Dated. Trivandrum, 27th May, 1976

S. R. P. No. 559/76.- In exercise of the powers conferred by sub-section 5 section 1 of the Employees' State Insurance Act, 1948 (Central Act 34, 1948), the Government of Kerala having already given six months' notice required thereunder, vide the Government of Kerala Notification No. 16141/E2/75/LBR dated 5.11.1975 published as S.R.O. No. 1070/75 in the Govt. Gazette dated 18.11.1975 hereby appoints the midnight of 29th May, 1975 as the date on which all the provisions of the said Act shall extend to all classes of establishments and in areas as specified in the schedule annexed hereto :-

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Any premises including the precincts thereof whereon 10 or more persons but in any case, less than twenty persons are employed or were employed for wages on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power or is ordinarily so carried on but excluding a mine, subject to the operation of the Mines Act, 1952 (Central Act 35 of 1952) or a railway running shed or an establishment which is exclusively engaged

Whole of the State of Kerala where the benefit provisions of Chapter IV, V and VI of the Act have already been brought into force by the Central Government under Section 1 (3) of the Employees' State Insurance Act, 1948 (Central Act 34 of 1948).

in any of the manufacturing process specified in clause (12) of Section 2 of the Employees' State Insurance Act, 1948 (Central Act 34 of 1948).

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2. Any premises including precincts thereof whereon 20 or more persons are employed or were employed for wages on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on but excluding a mine, subject to the operation of the Mines Act, 1952 (Central Act 35 of 1952) or a railway running shed or an establishment which is exclusively engaged in any of the manufacturing processes specified in clause (12) of Section 2 of the Employees' State Insurance Act, 1948 (Central Act 34 of 1948).

Whole of the State of Kerala where the benefit provisions of Chapter IV, V and VI of the Act have already been brought into force by the Central Government under Section 1 (3) of the Employees' State Insurance Act, 1948 (Central Act 34 of 1948).

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3. The following establishments, wherein 20 or more persons are employed or were employed for wages on any day of the preceding twelve months namely :

3. Hotels
4. Restaurants;
5. Shops;
6. Road Motor Transport Establishments;
7. Cinemas including preview theatres;
8. Newspapers establishments as defined in Section 2(d) of the working Journalists (Conditions of Service and Miscellaneous provisions) Act, 1955 (45 of 1955)"

Whole of the State of Kerala where the benefit provisions of Chapter IV, V and VI of the Act have already been brought into force by the Central Government under Section 1(3) of the Employees' State Insurance Act, 1948 (Central Act 34 of 1948), except the areas where the scheme has already been extended with effect from the midnight of 29th March, 1975 vide Notification No. 22877/E2/73/LBR dated 22.3.1975 published in the Kerala Gazette dated 25th March, 1975 as SRD No. 288/75."

From a bare reading of this notification, it is pellucid that all the provisions of the act shall extend to all classes of establishments and in the areas specified in the schedule annexed to the same. Clause 1 of this Notification says that any premises including precincts thereof where 10 or more persons were employed and in any part of which a manufacturing process is being carried on with the aid of power would be

(With appln(s) for urging addl. grounds)

Date: 11/10/2007 This Appeal was called on for hearing today.

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CORAM :

HON'BLE MR. JUSTICE TARUN CHATTERJEE

HON'BLE MR. JUSTICE P. SATHASIVAM

For Appellant(s)

Mr. P.K. Manohar, Adv.

For Respondent(s)

Mr. Vijay K. Mehta, Adv.(NP)

UPON hearing counsel the Court made the following
ORDER

The appeal is allowed in terms of the signed order.

There will be no order as to costs.

(Satish K.Yadav)
Court Master

(Phoolan Wati Arora)
Court Master

(Signed Order is placed on the file)