



2025:KER:20877

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

MONDAY, THE 10TH DAY OF MARCH 2025 / 19TH PHALGUNA, 1946

INS.APP NO. 12 OF 2023

AGAINST THE JUDGMENT DATED IN IC NO.35 OF 2021 OF
EMPLOYEES INSURANCE COURT, ALAPPUZHA

APPELLANT/APPLICANT

SRI P.N. UMA SHANKAR
AGED 53 YEARS
SECRETARY, KERALA ELECTRICAL WIREMEN AND
SUPERVISORS ASSOCIATION, THRIPUNITHURA, 1ST
FLOOR ,TTB YOGAM BEHIND SREEPOORBATHREYEESA
TEMPLE, THRIPUNITHURA, PIN - 682301

BY ADV JACOB CHACKO

RESPONDENTS/OPPOSITE PARTIES

- 1 THE DEPUTY DIRECTOR (INCHARGE)
E.S.I. CORPORATION, ST. FRANCIS CHURCH ROAD,
KALOOR, PIN - 682017
- 2 THE ASST DIRECTOR
ESI CORPORATION AT ST. FRANCIS CHURCH ROAD ,
KALOOR, PIN - 682017
- 3 SRI. VINODKUMAR K.L
EMPLOYEES REPRESENTATIVE, KOMHAKATIL HOUSE,
THEKKUMBHAGAM, THRIPUNITHURA P.O, PIN - 682303
- 4 SRI. JAYACHANDRANT.C
REPRESENTATIVE OF THE NEWLY JOINED EMPLOYEES,
THEKKEPUTHENPURACKALHOUSE, THIRUVANIYOOR
P.O., PUTHECRUZ, PIN - 682308



BY ADVS.
ADARSH KUMAR
MATHEWS JOSEPH
B.V.JOY SANKAR (K/1195/1995)
SHASHANK DEVAN (K/000585/2018)

THIS INSURANCE APPEAL HAVING BEEN FINALLY HEARD ON
18.12.2024, ALONG WITH Ins.APP.2/2024, THE COURT ON
10.03.2025 DELIVERED THE FOLLOWING:



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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

MONDAY, THE 10TH DAY OF MARCH 2025 / 19TH PHALGUNA, 1946

INS.APP NO. 2 OF 2024

AGAINST THE JUDGMENT DATED IN IC NO.35 OF 2021 OF
EMPLOYEES INSURANCE COURT, ALAPPUZHA

APPELLANT/OPPOSITE PARTY NO.1 AND 2

- 1 THE DEPUTY DIRECTOR (INCHARGE)
E.S.I. CORPORATION, ST. FRANCIS CHURCH ROAD,
KALOOR , PIN - 682017
- 2 THE ASSISTANT DIRECTOR
E.S.I. CORPORATION, ST. FRANCIS CHURCH ROAD,
KALOOR ., PIN - 682017

BY ADVS.
ADARSH KUMAR
SHASHANK DEVAN

RESPONDENTS/APPLICANTS AND OPPOSITE PARTY NOS.3 AND 4

- 1 SRI. P. N. UMA SHANKAR, SECRETARY,
KERALA ELECTRICAL WIREMEN AND SUPERVISORS
ASSOCIATION, THRIPIUNITHURA, 1ST FLOOR, TTB YOGAM
BEHIND SREEPOORBATHRAYEESA TEMPLE, THRIPIUNITHURA.,
PIN - 682301
- 2 SRI. VINODKUMAR K.L
EMPLOYEES REPRESENTATIVE, KOMHAKATIL HOUSE,
THEKKUMBHAGAM THRIPIUNITHURA P.O, PIN - 682301



3 SRI. JAYACHANDRAN T.C.,
REPRESENTATIVE OF NEWLY JOINED EMPLOYEES,
THEKKEPUTHENPURACKAL HOUSE, THIRUVANIYOOR P.O. ,
PUTHENCRUZ ., PIN - 682308

BY ADV JACOB CHACKO

THIS INSURANCE APPEAL HAVING BEEN FINALLY HEARD ON
18.12.2024, ALONG WITH Ins.APP.12/2023, THE COURT ON
10.03.2025 DELIVERED THE FOLLOWING:



JUDGMENT

These two appeals challenge the same judgment dated 16.02.2023 in I.C. No. 35 of 2021 of the Employees Insurance Court (EI Court), Alappuzha. Since the parties and the issues to be considered are the same in the both appeals, they are heard and disposed of together. Parties are hereinafter referred to as per their status in the original proceedings before the EI Court.

2. Ins. App No. 12 of 2023 is filed by the Secretary of the Kerala Electrical Wiremen and Supervisors Association. He challenges the judgment of the EI Court to the extent that it declared the members of the said Association who had been shown as employees cannot be registered under the Employees' State Insurance Act ('ESI Act' for short) as they are self-employed persons. On the other hand, Ins. App No. 2 of 2024 has been filed by the ESI Corporation challenging the judgment to the extent that it revoked the Corporation's cancellation of the applicant Association's ESI Code number.

3. The contentions of the applicant in brief are as follows: Applicant Association is registered as a charitable society under the Travancore-Cochin Literary and Charitable Societies Act, 1955. It undertakes various electrical works at the premises of its



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customers, which include Government organisations and private individuals. For this purpose, the applicant used to employ qualified electricians. Since the members of the applicant are themselves qualified electricians, some of them undertake works allotted to the applicant. Applicant has a PAN number and its membership exceeds the threshold required for registration as an establishment under the Employees State Insurance Act, 1948 (hereinafter referred to as 'the ESI Act'). Hence, the applicant preferred an online application through the ESIC portal for registration under the ESI Act. Upon the uploading of online application, the applicant was allotted an ESI code number. Another association with the same name as the applicant then approached the District Court Ernakulam filing O.S. No. 11 of 2021 seeking an injunction against the registration of the applicant under the ESI Act. While so, on 16.01.2019, a Social Security Officer (SSO) of the 1st and 2nd Opposite parties, visited the premises and conducted an inspection of the records. The applicant was instructed by the SSO to remit the arrears of contribution and the applicant complied with the same by submitting copies of the audited balance sheets and Profit and Loss Account duly certified by the Chartered Accountant. In the year 2018, the applicant noted that its ESIC portal had been temporarily blocked by the 1st and 2nd opposite parties. Since the



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applicant was informed that the blockage was due to non-production of the registration certificate as envisaged under the Kerala Shops and Commercial Establishments Act, the same was obtained and duly produced. The applicant had thus complied with all directions issued by respondents 1 and 2 from time to time and had remitted all contributions, interests and other demands. Hence the applicant requested the 1st and 2nd opposite parties to restore the status of the applicant's portal, so as to enable them to comply with the requirements with respect to all its employees. The said request was not however acceded to and two more inspections by the SSO were carried out on the premises of the applicant on 01/02/2021 and 03/02/2021. The applicant had during the same, explained to the SSOs that it had employees of its own who undertake work on its behalf and the said works were executed under the direct supervision of the members of the applicant. The details of the work executed by each employee of the applicant and the respective amounts billed were being properly accounted. The respective receipts were shown to the SSOs. It is however admitted by the applicant that some of its employees also happened to be its members. This is only because the members of the applicant are primarily qualified licenced electricians. As regards queries as to why the customer's names were not shown in the receipts maintained and with



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respect to the non-existence of work agreements between the applicant and customers prior to 08/03/2021, it is stated that the applicant had provided due explanations to the 1st and 2nd opposite parties vide its letter dated 09/03/2021. Notwithstanding the same, without even considering the said explanations, the 1st and 2nd opposite parties, vide order dated. 09.03.2021 cancelled the ESI Code number that had earlier been allotted to the applicant. Though a letter dated 12/03/2021 was submitted by the applicant to the said opposite parties requesting for reopening of the portal, the applicant was informed that the final report of the SSOs was being awaited. Though the applicant followed it up with another letter dated 20/04/2021 they were served with a registered letter dated 28/04/2021 from the 2nd opposite party *inter alia* informing that the ESI code number of the appellant cannot be reinstated and that the reason for cancellation had already been intimated vide letter dated 17/03/2021. Copy of the said letter dated 17/03/2021 was provided to the applicant subsequently, on request.

4. Aggrieved by the same the applicant moved the EI Court Alappuzha, under Section 75 read with Section 77 of the ESI Act *inter alia* seeking a declaration that the applicant establishment continues to qualify for coverage as a shop under the ESI Act and that the 1st and 2nd opposite parties are not authorised to deny



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any social security benefits to the applicant's employees who are eligible for benefits by virtue of their contributions already remitted. The restoration of ESI benefits to all the employees of the applicant was also sought.

5. The EI Court took the matter into file and issued an interlocutory order in favour of the applicant with respect to the registration of some of its members. Thereafter, issues were framed and parties adduced evidence. Exts. A1 to A25 were marked by the applicant and Exts. D1 to D7 were marked from the side of the opposite parties. No witnesses were examined by either side.

6. After hearing both sides, the EI Court rendered a judgment dated 16.02.2023 finding as follows:

“(i) The cancellation of the ESI code number of the applicant establishment is hereby revoked.

(ii) It is declared that the members who are now shown as employees cannot be registered under the ESI Act as the self-employed persons are not permitted to register as per the Act and the registration granted for those members and continued as per the interim order shall stand cancelled after the completion of the present wage period.

(iii) Needless to say, the applicant association can register its own employees under ESI Act if they are intending to conduct electrical contract business themselves in accordance with the law as they have already registered as a shop under the Shops and Commercial Establishments Act.”



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7. Aggrieved by the said judgment of the EI Court, both the applicant and opposite parties 1 and 2 have filed the above-mentioned appeals suggesting their own sets of substantial questions of law. While the applicant is aggrieved by the said judgment to the extent it finds that the members of the applicant who are shown as employees cannot be registered under the ESI Act since self-employed persons are not permitted to be registered under the said Act, the 1st and 2nd opposite parties impugn the judgment of the EI Court in toto terming it as unsustainable in law.

8. This Court admitted the appeals and granted an interim order, which was extended from time to time. The following substantial questions of law are raised for consideration:

“(1) Whether the EI Court erred in interpreting the term ‘employee’ under Section 2 (9) of the ESI Act as not to include self-employed persons who have formed themselves into an association and had registered as a Society under the Travancore Cochin Charitable Societies Act?

(2) Whether registration under the Shops and Commercial Establishment Act by itself would entitle an



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entity to registration under the ESI Act, irrespective of the nature of the activity being carried on?

(3) Can a voluntary registration made under the Act be subjected to scrutiny/verification and if found not meeting the mandates of the ESI Act be revoked by the competent officers of the ESI Corporation?”

9. Heard Sri. Jacob Chacko, Advocate, for the applicant and Sri. Adarsh Kumar, Advocate, for the 1st and 2nd opposite parties in the respective appeals.

Contentions of the applicant in brief:

- The order impugned had been issued by the 1st opposite party without authority or competence. It ought to have been set aside on the said ground itself. Reliance is placed on Section 94 (A) of the ESI Act to buttress the said contention.
- Neither the Director nor the competent authority had delegated the power to the 1st respondent to issue the orders impugned before the EI Court by the applicant.
- The finding of the EI Court that self-employed persons cannot be treated as employees and hence they are not eligible for registration under the ESI Act is against the mandates of the Act.



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- Since members were directly employed by the applicant which is a covered establishment, and were working at the customer's premises under the direct supervision of the members of the applicant, they are qualified to be treated as employees. The EI Court erred in failing to take note of the same.
- There is no prohibition in the ESI Act that self-employed persons cannot be treated as employees. As long as the persons are directly employed within the premises of the establishment or in its extended premises, under the supervision of the establishment, such persons qualify to be treated as employees provided they receive wages under the threshold of the wage ceiling stipulated under the Act.
- Reliance is placed on the dictum laid down in **Kunnathunadu C.C. Co-Operative Society v. Regional Director ESIC** (1989 (1) KLT 506), where it was held that a co-operative society is a separate legal entity distinct from its members and that a society employing its members for wages is covered by the ESI Act. It is also contended that the said dictum had been upheld in **K.R. Anitha and others v. Regional Director, ESI Corporation and another** [(2003) 10 SCC 303]
- The documents produced by the applicant were not properly



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appreciated. The EI court failed to look into the Auditor report produced as Ext. A7. The wage register and details of employees and their payment details were not properly considered. There has been a total non appreciation of evidence produced by the applicant. The cancellation of the registration of the employees of the appellant by the EI Court was thus erroneous.

- The testimonials submitted by the SSOs were not properly appreciated or considered by the EI Court. It had been categorically stated therein that all the 19 persons whose names were reflected in the attendance and wage registers are employees and they were all registered under the Act.
- The written statement filed by the 3rd opposite party who is a representative of the employees was not properly appreciated by the EI Court.
- It had been specifically averred by the 3rd opposite party on behalf of the employees that they are qualified electricians who undertake work at the customer's premises. They were not maintaining written work orders and used to canvas work through personal acquaintances and cash received from the customers was accounted in the association against the name of the respective member. Subsequently, the association would pay the member in cash. This



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arrangement is one that entitles the member to be qualified as an employee under Section 2 (9) of the ESI Act.

Contentions of the 1st and 2nd opposite parties in brief:

- The applicant is not an establishment eligible for coverage under the ESI Act. It is just an association/ society and the persons engaged for work are not employees but just members of the association/ society.
- There exists no employer-employee relationship between the applicant and its members.
- The applicant had obtained ESI registration by subterfuge and deception.
- Members of the applicant are neither 'employees' as defined under Section 2(9) of the ESI Act nor 'persons employed' in satisfaction of the notification under Section 1 (5) of the Act. They do not satisfy the definition of 'immediate employer' under Section 2 (13) of the Act since the members have not undertaken the execution of any work of the applicant association.
- The code number allotted to the applicant society was deactivated as it was found that the coverage claimed was not genuine.
- The EI Court has in the impugned order contradicted itself.



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After having found that the members of the applicant who are shown as 'employees' are not 'employees' as defined under Section 2 (9) of the ESI Act, the EI court ought not to have concluded that since the applicant has a registration under the Shops and Commercial Establishments Act can register its own employees provided they are intending to conduct electrical contract business themselves. This finding militates against the provisions of the ESI Act.

- Once the EI Court declared that persons employed by the applicant are not employees as envisaged under the ESI Act, the coverage of the establishment becomes void *ab initio* for non-compliance with the statutory minimum employee strength needed for coverage of an establishment as stipulated under Section 1(5) of the Act. The EI court hence erred in revoking the cancellation of the applicant's ESI Code number.
- Applicant had during the SSO inspection only produced the attendance register and wayer register. It is admitted that general ledger, cash book and vouchers were not maintained for the year 2017-18. The items and statements would prove that the applicant association has not engaged in any item of work. No bills, vouchers and ledger accounts are produced. No documentary evidence in the form of work orders has



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been produced. Payments are made in cash only and the same is made by customers to the members directly. Basic details like location of work, address of the work premises etc are not maintained. Work orders were purportedly given over telephone and no records existed to prove the works undertaken.

- Even from the contentions put forth by the applicant, it follows that the President of the applicant Association is the purported employer. The members purportedly receive their salary from contractors or independent house owners. Such kind of slipshod arrangement cannot qualify the applicant to be registered as an establishment under the ESI Act or to seek the members of the applicant Association to be registered as 'employees' under Section 2 (9) of the Act.
- Merely obtaining registration under the Shops and Commercial Establishment Act does not qualify the applicant association as a shop. Reliance is placed on the dictum laid down by the Hon'ble Supreme Court in **Board of Control of Cricket in India v. Regional Director, Employees State Insurance Corp. & Anr.** (2022 SCC Online SC 1116)



Discussion and Analysis:

10. It is relevant to note that the applicant's registration under the ESI Act is a voluntary one. Unlike situations where an establishment would contend that it does not fall within the purview of the ESI Act and would thus seek to be excluded from the obligations flowing therefrom like, payment of contributions under the Act, here the applicant Association has voluntarily sought to be covered under the Act claiming that it engages in electrical contract business and has its own employees. It had vide online registration obtained an ESI Code too. It possesses certificates of registration as a Society under the TC Act as also under the Shops Act. Applicant association thus aspires to remain registered as an establishment under the ESI Act so as to enable its 'employees' to avail of the benefits of such registration. The SSO inspection carried out in the premises of the applicant association revealed, a different story - which is however stoutly denied and disputed by the applicant. It turned out that the persons registered as employees by the applicant are actually the members of the applicant Association itself who are already self-employed. They are directly engaged by their respective customers who call them for work. Payments for their services too, are made by the customers directly without any involvement whatsoever of the applicant Association. These self-employed



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persons, merely because they chose to form an Association cannot claim to be registered as applicants employees under the ESI Act. There is scant evidence to show that the applicant Association is the employer and the persons registered are employees, meeting the mandates of the Act. The opposite parties 1 and 2 thus allege that the applicant Association had obtained the ESI code based on subterfuge and deception. Purportedly, there is another Association of electrical wiremen and Supervisors bearing a similar name as that of the applicant Association and the rivalry between them had led to litigations presently pending before the District Court, Ernakulam. Thus, shorn of all legal pretensions, are these appeals only an offshoot of the bitter feud between two associations of electrical wiremen, one attempting to obliterate the other using an ESI registration code which it uses as a leveraging point to attract members to itself to the others detriment?

11. Though such an insinuation is evidently noted in the submissions put forth by the learned counsel for the 1st and 2nd opposite parties, I do not propose to look for an answer to the said question and would rather confine to answer the substantial questions drawn herein above and thus to decide the legal sustainability of the findings arrived at by the EI Court. This is done bearing in mind that the ESI Act is a beneficial legislation



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that brings succour to millions of genuine employees employed in various establishments covered under the ESI Act and once the statutorily ordained mandates under the Act are satisfied, an 'establishment' as covered by the Act cannot be denied registration arbitrarily. At the same time, it should also be ensured that the beneficial coverage under the Act cannot be extended to those who are not legally entitled thereto and the welfare measures, precious and limited as they are, cannot be permitted to be squandered or misused at the hands of ineligible and unscrupulous persons.

12. I note that as part of the voluntary registration process which is done online, the applicant had been allotted an ESI Code. At the time of such registration, the applicant Association was only a Society registered under the TC Act. Subsequently, registration under the Shops Act, has also been acquired by it. By virtue of the voluntary registration thus undertaken, some of the members of the association had managed to obtain registration under the ESI Act as 'employees' of the applicant Association. Pursuant to the SSO inspections carried out in the premises of the Association and the consequent reports submitted, the ESI code of the applicant was cancelled finding that the mandates for registration under the ESI Act have not been met by the 'employees' of the applicant Association. The prime reason stated



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in the said respect is that the so-called 'employees' registered by the applicant Association are actually its members who are self-employed electricians/electrical wiremen and supervisors individually and independently engaged in their own avocation and there is no reliable material to show that the said members are the employees of the applicant association. Be that as it may, it may be relevant here to examine the definition of an employee under Section 2(9) of the ESI Act. It reads as follows:

"employee" means any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies and-

(i) who is directly employed by the principal employer on any work of, or incidental or preliminary to or connected with the work of, the factory or establishment whether such work is done by the employee in the factory or establishment or elsewhere; or

(ii) who is employed by or through an immediate employer on the premises of the factory or establishment or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment; or

(iii) whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered into a contract of service;

and includes any person employed for wages on any work connected with the administration of the factory or establishment or any part, department or branch thereof or with the purchase of raw materials for, or the distribution or sale of the products of, the factory or establishment or any person engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961, or under the standing orders of the establishment; but does not include-



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(a) any member of the Indian naval, military or air forces; or

(b) any person so employed whose wages (excluding remuneration for overtime work) exceed such wages as may be prescribed by the Central Government:

PROVIDED that an employee whose wages (excluding remuneration for overtime work) exceed such wages as may be prescribed by the Central Government] at any time after (and not before) the beginning of the contribution period, shall continue to be an employee until the end of that period;]

It would also be relevant to reproduce Section 1(6) of the Act which stipulates as follows:

(6) A factory or an establishment to which this Act applies shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time falls below the limit specified by or under this Act or the manufacturing process therein ceases to be carried on with the aid of power.

The question thus is whether the above mandates of Section 2(9) of the Act are met by the members of the applicant Association who are self-employed electricians. Further, would the issuance of an ESI Code upon voluntary registration online, entitle the applicant's Association to claim to remain as a covered establishment by virtue of Section 1(6) of the Act?

13. Based on the judgment rendered in ***Kunnathunadu*** (supra), it has been contended by the applicant Association that a Co-operative Society is a separate legal entity distinct from its members and that a Society employing its members for wages is covered by the ESI Act. I am however not convinced to accept the



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said contention in favour of the applicant Association as the factual circumstances differ. On the other hand I would deem the dictum laid down in ***Kunnathunadu*** (supra) as one that supports the contention of the opposite parties 1 and 2 concerning self employed persons. Even the facts leading to the said case are substantially different from the one at hand as it did not concern a voluntary registration and was a case where coverage was objected or resisted. In ***Kunnathunadu*** (supra), this Court had while considering the question whether an industrial co-operative society can contend that its members are not employees and can thus contest the coverage, held as follows:

"We find it difficult to accept the reasoning of the Andhra Pradesh High Court that the members of the Society working for the society for wages are not its employees. An "employee" as per the definition in Section 2(9) of the Act is a person employed for wages, and the expression "wages" is defined in Section 2(22) to mean "all remuneration paid or payable in cash to an employee, if the contract of employment, express or implied, were fulfilled...". The society is a separate legal entity distinct from its members and if members work for wages for the society they are its employees within the meaning of that expression in the Act."

This Court, in ***Kunnathunadu*** (supra), further concluded that the question to be inquired by the EI Court is whether the Society's members are, in fact, employees and whether a contract of employment of members by the society is established. If, the society's members are working under the self-employment



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scheme and receiving remuneration, it had been unequivocally held that they cannot be treated as 'employees' within the meaning of the Act. This proposition is now seen settled in law. [see **P.M. Patel & Sons and Ors. v. Union of India and Ors.** [AIR 1987 SC 447]; **E.S.I. Corporation v. Vattiyoorkavu H.W. Co-Operative Society** [1996 SCC Online Ker 295]; **Regional Director, Employees State Insurance Corporation v. Taj Textiles Industrial Co-operative Society Ltd.** (1980 SCC Online Ker 25)] Though reliance was sought to be placed on the dictum in **K.R. Anitha** (supra), nothing to buttress or support the contentions of the applicant is noted therein.

14. What follows from the above is exactly what had been concluded by the EI Court in the impugned judgment. As long as the applicant Association is not able to prove with the support of legally reliable evidence that its members, whom its terms as its employees, are not self-employed persons indulging in their avocation independently thus failing to meet the mandates of Section 2 (9) of the Act, the applicant association has no right to seek the retention and continuance of its registration under the ESI Act. The EI Court had thus rightly interpreted the term 'employee' under Section 2(9) of the ESI Act as not including the members of the applicant association who were found to be self-employed persons.



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15. The next question to be considered concerns the contention of the applicant that though it had placed before the EI Court, sufficient legally reliable material to substantiate their contention that their members who had been registered under the ESI Act were actually its employees, the EI court had failed to properly appreciate such evidence. I note that the EI Court had in the impugned judgment dealt in *extenso* with the evidence produced while considering Issue No. I. Though it had been vehemently contended by the learned counsel for the applicant that the EI Court had failed to look into some of the evidence produced like the Audited Reports and also had erroneously appreciated some of the documents that had been put forth before the court by the applicant, I note that it is not open to this Court in appeal to verify the correctness of the factual appreciation arrived at by the EI Court. Based on the documents produced, whether there was sufficient material to conclude that there was an employer-employee relationship between the applicant association and its members is a matter of appreciation of evidence produced and not a question of law. Whether there was enough factual evidence to show that members of the applicant are its 'employees' as well, has been decided on the basis of assessment of evidence by the EI Court. A perusal of the impugned judgment would reveal that a thorough and detailed



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appreciation of evidence and detailed reasoning for the decision arrived at had been rendered by the learned judge. I do not propose to re-appreciate that evidence. Further, no perversity has been pointed out by the applicant in the impugned judgment nor has it been shown that the decision rendered, could not have been arrived at on the basis of the material available before the EI Court.

16. Now I proceed to consider the challenge put forth by the 1st and 2nd Opposite parties to the revocation of the applicant's ESI Code number and in concluding that the applicant association can register its own employees under the ESI Act, if they are intending to conduct electrical contract business themselves in accordance with the law as they have already registered themselves as a shop in accordance with the Shops and Commercial Establishments Act. The trump card putforth by the applicant is the registration that it has subsequently obtained as a shop under the Shops Act. By virtue of the same the requirements to be an establishment covered by the ESI Act has been purportedly met by the applicant. The EI Court too has apparently taken a view that the registration under the Shops Act augurs well for the applicant in seeking coverage under the ESI Act. It is however to be noted that the Hon'ble Supreme Court while interpreting the terms 'establishment' and 'shop' under the



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ESI Act in *the Board of Control of Cricket in India* (supra),
quoted with approval the dictum laid down in **Bombay Anand
Bhavan Restaurant v. ESI Corporation** [(2009) 9 SCC 61]
wherein it has been held as follows:

37. The term "establishment" would mean the place for transacting any business, trade or profession or work connected with or incidental or ancillary thereto. It is true that the definition in dictionaries is the conventional definition attributed to trade or commerce, but it cannot be wholly valid for the purpose of constructing social welfare legislation in a modern welfare State. The test of finding out whether professional activity falls within the meaning of the expression "establishment" is whether the activity is systematically and habitually undertaken for production or distribution of the goods or services to the community with the help of employees in the manner of a trade or business in such an undertaking. If a systematic economic or commercial activity is carried on in the premises, it would follow that the establishment at which such an activity is carried on is a "shop".
(emphasis supplied)

Thus, the basic features of a shop were culled out to be a business establishment where a systematic or organised commercial activity takes place regarding the sale or purchase of goods or services. It also includes an establishment that facilitates the above said transactions. It follows therefrom that the mere production of a registration certificate under the Shops Act will not entitle an entity to claim retention of the voluntary registration that it has obtained under the ESI Act. The 1st and 2nd opposite parties are legally entitled, nay duty bound, to enquire



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and ascertain whether the relevant registration meets the mandates of the ESI Act. If found ineligible and not meeting the requisite mandates, they are competent and bound to take steps in accordance with the law to weed out illegal and unscrupulous registrations obtained, if any.

17. That takes us to the contention of the applicant association regarding the competency of the 1st opposite party to issue the orders that were impugned before the EI Court including the one cancelling the ESI code that had been already been allotted. It had been vociferously argued by the learned counsel for the applicant that the 1st opposite party being only the Deputy Director (Incharge) of the ESI Corporation, is not empowered, authorised or competent in the said respect. Nothing legally reliable has been put forth to substantiate this contention. On the other hand, the learned counsel appearing for the 1st and 2nd opposite parties points to Section 94A of the ESI Act concerning delegation of powers and submit that the ESI Corporation, and, subject to any regulations made by the Corporation in the said behalf, the Standing Committee can direct that all or any of the powers and functions which may be exercised or performed by the Corporation or the Standing Committee, as the case may be, may, in relation to such matters and subject to such conditions, if any, as may be specified, be also



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exercisable by any officer or authority subordinate to the Corporation. In view of the above, I do not find the contention of the applicant that the 1st opposite party was not legally competent to issue the orders that were impugned before the EI Court, sustainable.

18. Finally, I proceed to consider the question of whether an ESI Code allotted online could be cancelled by the competent officers of the ESI Corporation if the registration is later found to be not meeting the mandates of the ESI Act. The ESI code of the applicant Corporation was cancelled by the 1st opposite party vide the orders impugned before the EI Court on the ground that the mandates for registration under the Act had not been met. The EI Court has revoked the cancellation mainly on the premise that as per Section 1(6) of the ESI Act, reproduced above, once an establishment comes under the ESI Act, the same shall continue to be governed by the Act notwithstanding the fact that the number of employees employed therein anytime falls below the limits specified. The 1st and 2nd Opposite parties have strenuously contended that the EI Court erred in revoking the cancellation on the said premise. It is argued that the findings of the EI Court in the said respect contradicts its own earlier finding that the registration of the members of the applicant Association as employees using the ESI Code, is to be cancelled after the



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completion of the relevant wage period as they had been found to be self-employed persons. It is also the specific contention of the 1st and 2nd opposite parties that the ESI corporation, is not powerless when an ESI code is obtained online through voluntary registration and when a later enquiry duly carried on by officials, finds that the ESI code and registration had been procured in contravention of mandates of law they are competent to cancel the ESI code. As far as the ESI code allotted to the applicant Association is concerned, it is alleged to have been one obtained by subterfuge and deception. I note that the EI court has after detailed appreciation of the evidence produced, concluded that the registration granted to all members of the applicant association is fit to be cancelled and that none of the members of the association who are shown as employees could have been registered under the ESI Act. After having unequivocally concluded so, there is evident incongruity in the order of the EI Court revoking the decision of the 1st opposite party to cancel the ESI Code of the applicant association using which such registrations were effected. Once after due process, it has been concluded that an ESI code or a voluntary registration has been obtained by providing wrong information or suppression of facts, the duly competent officers of the ESI Corporation are entitled to cancel the same after following the legal mandates. It is noted



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that the cancellation of the ESI code was done after following due mandates and after hearing the applicant association. Once all the members who are registered as employees are found unfit and unqualified for such registration by the EI Court, the ESI code obtained online through voluntary registration by the said entity is fit and liable to be cancelled. ESI benefits and privileges are to be availed only by deserving persons. Just as we cannot lose sight of the fact that unscrupulous employers may want to avoid coming within the net of the ESI Act and would take on their rolls employees who would be coverable under the ESI Act just short of the mandatory number, there could be situations where the benefits under the Act may be attempted to be appropriated by persons who are not statutorily eligible for the same. Being a precious welfare measure, ESI benefits cannot be permitted to be squandered or siphoned away.

19. Thus, the substantial questions drawn hereinabove are answered in favour of the 1st and 2nd opposite parties and against the applicant Association.

Conclusion:

In view of the above discussion, these appeals are disposed of as follows:

- (1) Ins. Appeal No. 12 of 2023 is dismissed. No costs. All interlocutory Applications therein shall stand closed.



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(2) Ins. Appeal No. 2 of 2024 is allowed in part. The cancellation of the ESI Code of the applicant Association by the 1st opposite party is found proper and valid. The impugned order of the EI Court to the extent it revokes the cancellation of the ESI code of the applicant Association is set aside.

(3) However, the above does not preclude the applicant Association from seeking fresh registration under the ESI Act after meeting all legal mandates. If the applicant association prefers any such application, the ESI Corporation shall consider and dispose of the same in accordance with law.

Sd/-

SYAM KUMAR V.M.

JUDGE