

Pathological Labs in Kerala Covered Under ESI Act From 2007 & Not 2002- Supreme Court Dismisses ESIC Appeal

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The Supreme Court on Wednesday dismissed an appeal by the Employees' State Insurance (ESI) Corporation challenging a 2008 Kerala High Court order that had held that the provisions of The Employees' State Insurance Act, 1948 will be applicable to a pathological laboratory from 2007 and not from 2002, by virtue of a 2007 government notification specifying that medical institutions would come under the Act.

The case of the ESI Corporation was that the respondent (Endocrinology and Immunology Lab) establishment would be covered by a notification issued in 1976 by the State Government read with a circular issued by the Corporation in 2002. Rejecting this contention and dismissing the appeal of the Corporation, a division bench of Justice Hima Kohli and Justice Rajesh Bindal observed:

“...fact remains that there is a Notification issued on 06.09.2007 by the Government of Kerala covering medical institutions including pathological laboratories from that date. The aforesaid Notification was issued in consultation with the Corporation and with the approval of the Central Government. If the pathological laboratories were already covered under the Act, as is sought to be urged by the Corporation, there was no occasion to issue such a notification. This fact clearly establishes that even as per the understanding of the Corporation, pathological laboratories were not covered under the Act prior to that date.”

The question being considered by the Court was from which date, the respondent establishment, in the business of a pathological laboratory, will be covered under the Act.

The argument of the ESI corporation was that that the respondent will be covered under the Act due to the 1976 notification issued by the State Government through powers conferred under the Act. The corporation contended that the respondent would come under the definition of "shop". According to the 1976 notification, if 10 or more persons are employed in an establishment which included a “shop”, it will be covered under the Act. It was also contended that the 2002 Circular issued by the Corporation to cover pathological laboratories and diagnostic centres, would mean that the respondent would clearly come under the Act.

The Respondent argued that the 1976 notification did not cover the respondent as it is not a ‘shop’ where buying and selling takes place. It was argued that medical institutions including nursing homes, diagnostic centres and pathological laboratories employing 20 or more persons were brought under the Act only through the 2007 notification of the state government. The Apex Court however, rejected the contention of the appellant that respondent would be covered under the 1976 notification read with the 2002 Circular issued by ESI.

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Referring to the 2007 notification, the Apex Court concluded that pathological laboratories including the respondent were brought under the ambit of the Act only after the said notification:

“A perusal of the aforesaid notification shows that pathological laboratories were specifically covered under the provisions of the Act in terms of the aforesaid notification. In the case at hand, the respondent is running pathological laboratory and would be covered under the Act in terms of the, issued by the Government of Kerala. The order passed by the High Court is in terms of the aforesaid notification directing coverage of the respondent establishment from that date onwards, as undisputedly, 20 or more persons were found to be employed in the establishment.”

Case Title: E.S.I. Corporation V. M/S. Endocrinology and Immunology Lab, Civil

Appeal No.3368 Of 2012

Citation : 2023 LiveLaw (SC) 600

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