

(1959) 01 KL CK 0012
In the High Court Of Kerala

Marimuthu Chettiar

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

Date of Decision : 22-01-1959

Acts Referred:

Factories Act, 1948 — Section 2(m), 85(1)

Citation : (1959) 2 LLJ 500

Hon'ble Judges : M.S. Menon, J

Bench : Single Bench

Judgement

1. The question involved in this petition is whether Ex. P. 1, a notification of the Government of Kerala dated 8 November 1957, is valid or not. The notification reads as follows :-

In exercise of the powers conferred by Section 85(1) of the Factories Act, 1948 (Central (Act LXIII of 1948), and in supersession of all previous notifications on the subject, the Government of Kerala hereby declare that the provisions of the said Act specified in Col. (4) of the schedule hereto annexed, shall apply to any place in the State of Kerala wherein any manufacturing process specified in the corresponding entry in Col. (2) and described in Col. (3) thereof is carried on notwithstanding that

(i) the number of persons employed therein is less than ten, if working with the aid of power, and less than twenty, if working without the aid of power; or

(ii) the persons working therein are not employed by the owner thereof but are working with the permission of or under agreement with, such owner:

Provided that the manufacturing process is not being carried on by the owner only with the aid of his family.

SCHEDULE

Provisions of the Sl. No. Manufacturing process Description Factories Act, 1948, made applicable (1) (2) (3) (4) 1 Manufacturing of beedi... ...Employing 10 or

more 1 to 20, 32, 33, 34, 35, 38, 39, but less than 20 per- 40, 41, 44, 45, 50, and 51 to sons on any one day, 118. and using no power. 2 Dyeing or printing of cloth ... Do. ... 1 to 10, 16, 18, 42, 62, 67 to 84, 88 to 90, 92 to 115, 117 and 118 3 Handloom weaving of cotton Do. ... 1 to 10, 16, 18, 42, 62 to 84, textiles. 88 to 90, 92 to 115, 117 and 118. 4 Manufacture of coir mats and Do. ... Do. mattings. 5 Manufacture of safety matches. Do. ... 1 to 10, 16, 18, 38, 62, 67 to 84 88 to 90, 92 to 115 and 118. 6 Printing on paper or book- Employing 10 or more 1 to 11, 18, 42, 51 to 53, 61 to binding but less than 20 per- 63, 67 to 84, 88 to 90, 92 to sons or any one day, 115, 117 and 118. and using no power. 7 Manufacture of ornaments or Do. ... 1 to 10, 16, 18, 38, 62, 67 to 84, jewels. 86 to 90, 92 to 115, 117 and 118. 8 Tanning and treating of hides Do. ... 1 to 13, 16 to 18, 51 to 56, 61 and skins. to 63, 67 to 84. 88 to 90, 92 to 115, 117 and 118. 9 Repairs and maintenance of Do. ... 1 to 10, 16, 18, 42, 62. 67 to automobiles. 84, 88 to 90, 92 to 115, 117 and 118. 10 Manufacture or repairs of Employing 5 or more but 1 to 10. 16, 18, 21 to 24, 42, machinery or machine parts, less than 10 persons on 62. 67 to 81, 88 to 90, 92 to or manufacture of any other any one day and using 115, 117 and 118. metal, metal products includ- power. ing metal founding. 11 Repairs and maintenance of Do. ... Do. automobiles. 12 Ball milling Do. ... Do. 13 Printing on paper or bookbind- Do. ... Do. ing. 14 Rice hulling, grinding or powder- Do. ... 1 to 10, 16, 18, 21 to 24, 25, ing of corns or seeds or crush- 42, 45, 62, 67 to 84, 88 to 90, 92 ing of copra or oilseeds. to 115, 117 and 118. 15 Spinning, weaving, knitting or Do. ... 1 to 10, 16 to 18, 21 to 23, 62, finishing or any textiles includ- 67 to 84, 88 to 90, 92 to 115, ing hosiery. 117, 118. 16 Sawing timber or wood Do. ... 1 to 10, 11, 13, 16, 18, 21 to 23, 32, 33, 38 to 40, 45, 62, 67 to 84, 88 to 90, 92 to 115, 117 and 118. 17 Filling bottles with aerated Employing any number 1 to 10, 11, 13, 21, 62, 67 to water. of persons not exceed- 84, 87 to 90, 92 to 115, 117 ing 9 persons, where and 118. power is used or nineteen persons where power is not used. 18 Retreading of tyres. ... Do. ... 1 to 10, 11, 18, 21, 31, 62 67 to 84, 88 to 90, 92 to 115, 117 and 118.

2. Section 85 of the Factories Act, 1948, is in the following terms:

(1) The State Government may, by notification in the official gazette, declare that all or any of the provisions of this Act shall apply to any place wherein a manufacturing process is carried with or without the aid of power or is so ordinarily carried on, notwithstanding that -

(i) the number of persons employed therein is less than ten, if working with the aid of power and less than twenty if working without the aid of power, or

(ii) the persons working therein are not employed by the owner thereof but are working with the permission of, or under agreement with, such owner:

provided that the manufacturing process is not being carried on by the owner only with the aid of his family.

(2) After a place is so declared, it shall be deemed to be a factory for the purposes of this Act, and the owner shall be deemed to be the occupier, and any person working therein a worker.

Explanation - For the purposes of this section, "owner" shall include a lessee or mortgagee with possession of the premises.

The petitioner's oil mill which is worked with the aid of power but employs less than ten persons is covered by entry 14 of the schedule to the notification. It is common ground that if the notification is not sustained by the provisions of Section 85, then the action threatened against the petitioner for violation of Factories Act, 1948, by the respondent 2 (the Chief Inspector of Factories and Boilers, Trivandrum) is unwarranted and that Ex. P. 2, his notice in that behalf dated 12 July 1958, has to be quashed by an appropriate writ or direction from this Court.

3. The validity of Section 85 is not in controversy before me. In 1958 II L.L.J. 667 such a contention was raised but without success. The Court said:

The purpose of the Factories Act is the regulation of labour, the extent of the application of the Act necessarily depending very largely on local conditions. In such circumstances we do not think that the authority given to the State Government by Section 85, to apply the provisions of the Act to a place which is not technically a factory but in which a manufacturing process is carried on, can be held to be an unconstitutional delegation of legislative powers.

The contention of the petitioner is not that Section 85 is invalid but that the section empowers only a notification to the effect that the Act shall apply to "specific" places and not a "general" one like Ex. P. 1.

4. Section 2(m) of the Factories Act, 1948, defines the expression "factory" as follows:

"factory" means any premises including the precincts thereof-

(i) whereon ten or more workers are working, or were working 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, or

(ii) whereon twenty or more workers are working or were working 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 does not include a mine subject to the operation of the Mines Act, 1952 (XXXV of 1952), or a railway running shed.

and what Section 85 does is to empower the State Governments to treat other places also as factories for the purposes of the Act provided the conditions of that section are satisfied. As pointed out in *The State Vs. Alisaheb Kashim Tamboli*, the combined effect of Section 2(m) and Section 85 is that there may

be a factory if a place satisfies the requirements of Section 2(m) and there may also be a factory if the conditions of Section 85 are satisfied.

5. in 1953 I L.L.J. 20 the validity of a notification of the Government of Madras in the following terms came up for consideration :

In exercise of the powers conferred by Section 85(1) of the Factories Act, 1948 (Central Act LXIII of 1948), His Excellency the Governor of Madras declares that all the provisions of said Act shall apply to any place wherein a manufacturing process is carried on without the aid of power or is so ordinarily carried on and ten or more but less than twenty persons are employed.

Ramaswami, J., said:

There can be no doubt that this Government order is illegal and ultra vires and beyond the powers conferred u/s 85, Factories Act. The State Government would have been within its powers if they notified particular named places as factories. But instead of doing so this Government order makes every place from Ganjam to Rameswaram generally as a factory provided there are more than 10 and less than 20 people employed and engaged in the manufacturing process without the aid of power. This practically renders nugatory the definition of a factory in Section 2(m) of the Act. The object of Section 2(m) in restricting the term "factory" to places which employ twenty or more persons engaging in a manufacturing process without the aid of power, is that small undertakings, most often practically family business, should not be subjected to the rigorous restrictions imposed by the Factories Act and that in fact such business would not be requiring the rigorous restrictions under the Factories Act. The Central legislature has at the same time contemplated that in particular places and in certain types of business run with less than twenty but more than ten persons without the aid of power conditions may exist calling for the application of the salutary provisions of the Factories Act in ensuring the welfare of the workers. The Central legislature has also certainly contemplated that the provisions of the Factories Act might get defeated by scrupulously keeping the number of workers down to 19. That is why power has been given to the State Governments to prevent the abuse of the limitations imposed in Section 2(m). This special power conferred on the State Government cannot be exercised in this manner and used as if it were a blank cheque to issue a Government order in the aforesaid terms.

I am certainly not concerned in this case with a notification of the type considered by the Madras High Court and it is therefore not necessary for me to come to a conclusion as to whether I agree with that decision or not.

6. Exhibit P. 1 is very similar to the notification considered and upheld in Ram Chandra Prasad and Another Vs. The State of Bihar and Others,

In exercise of the powers conferred by Sub-section (1) of Section 85 of the Factories Act, 1948 (XLIII of 1948), and in supersession of the notification No. IV/F1-1054/5IL-38, dated the 28 March .1951, the Governor of Bihar is pleased to

declare-

(a) that all the provisions of the said Act except those of Chaps. III, V, VI, VII and VIII and Rule 3 of the Bihar Factories Rules, 1950, shall apply to any place in the State of Bihar wherein any manufacturing process specified in the schedule hereto annexed is carried on, and

(b) that the provisions of Chaps. I, II and IV and of Sections 11 and 16 of Chap. III and Sections 42 and 50 of Chap. V of the said Act shall apply to any place in the State of Bihar wherein the manufacturing process of printing or composing is carried on, with or without the aid of power, or is so ordinarily carried on notwithstanding that

(i) the number of persons employed therein is less than ten if working with the aid of power, and less than twenty, if working without the aid of power, or

(ii) the persons working therein are not employed by owner thereof but are working with the permission, of, or under agreement with, such owner:

Provided that the manufacturing process is not being carried on by the owner with the aid of his family.

SCHEDULE

1. Sawing of timber,
2. Manufacture of ice.
3. Manufacture of oil.
4. Flour milling including grinding; or breaking of any other cereal or material.
5. Rice milling.
6. Dal milling.
7. Manufacture or repairs of machinery or machine parts or manufacture of any other metal product including metal founding.
8. Repairs and maintenance of automobiles.
9. Generation of electricity.
10. Manufacture of tea.
11. Spinning, weaving, knitting or finishing of any textile including hosiery.
12. Jute baling and pressing.

Raj Kishore Prasad, J., (with whom Rama-swami, C.J., agreed), dealt with the Madras decision as follows:

In my opinion, this decision does not apply to the present case. In the Madras case the nature of the manufacturing process was not specified, but it was left

vague, and very general. In the present case, however, in the schedule annexed to the notification, the several kinds of manufacturing processes have been particularized and specially mentioned therein.

In such circumstances, it cannot be said that the definition of a factory in Section 2(m) in the Act has been rendered nugatory ; on the other hand, it has been extended, and places which did not come u/s 2(m) have also been included by virtue of the notification u/s 85(1).

In my opinion, the special power conferred on the State Government u/s 85(1) of the Act has been exercised in the proper manner in accordance with the policy of the Act in order to achieve its object.

7. In the light of what is stated above, the validity of Ex. P. 1 has to be sustained and this petition dismissed. Judgment accordingly.

8. No costs.