

(1966) 11 KAR CK 0006
In the Karnataka High Court
Case No : Civil Rv. Petition No. 435 of 1965

R.T.J. Albuquerque

APPELLANT

Vs

District Judge, South Kanara and Another

RESPONDENT

Date of Decision : 14-11-1966

Acts Referred:

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

Citation : AIR 1968 Kar 84

Hon'ble Judges : T.K. Tukol, J

Bench : Single Bench

Judgement

(1) The short question that arises for consideration of this revision petition is whether the notification No. 596 dated 3-7-1951 published at page 982 of Part I, "Fort St. George Gazette" issued by the Governor of Madras is applicable to the industrial concern in question so as to attract the application of the Payment of Wages Act.

(2) It is not disputed that the petitioner-concern has only three workmen who are engaged in the process of re-boring and evolve-grinding of automobile engines so as to make them fit for use as automobiles. Since this concern cannot come under the definition of "Factories" as contained in Section 2(m) of the Factories Act, 1948, we have to see whether as stated by the learned District Judge in appeal, the concern is one which could fall within the ambit of the aforesaid notification.

That notification reads:--

"In exercise of the powers conferred by Section 1(5) of the Payment of Wages Act, 1936, and in supersession of Public Works Department Notification No. 227 dated 26th of September 1942 published at p. 1008 of Part I of the "Fort St. George Gazette" dated 6th of October 1942, His Excellency the Governor of Madras hereby extends the provisions of the said Act to the payment of wages to all classes of persons employed in industrial establishments within the meaning

sub-clause (f) of clause (2) of Section 2 of the said Act which have been or may be declared to be factories u/s 85 of the Factories Act. 1948."

(3) It is obvious from the wording of this notification that the provisions of the Payment of Wages Act, 1936, have been made applicable to all classes of persons employed in industrial establishments within the meaning of sub-clause (f) of Cl(s) of Section 2 of the said Act and which have been declared to be "Factories" or may be declared to be "Factories" u/s 85 of the Factories Act, 1948. In the opinion of the learned District Judge the clause "may be declared to be factories" is equivalent to factory which is "capable to being so declared". In my opinion, the interpretation is manifestly wrong. Section 85(1) of the Factories Act empowers the State Government to declare any notification in the Official Gazette that all or any of the provisions of the Act shall apply to any place wherein a manufacturing process is carried on with or without the aid of power or is so ordinarily carried on, notwithstanding that the number of persons employed therein is less than ten, etc. The power to declare by notification under this section solely vests with the State Government. If it is interpreted that factories which are capable of being declared to be factories fall within the purview of notification, there would be a clear infringement on the power and jurisdiction vested in the State Government. Such an interpretation render the position uncertain and the entire matter about the applicability of the provisions of the Act would be fully dependent upon the interpretation which the Court or any authority dealing with the matter might put upon the notification. Such a result is to intended by the clear provisions of Section 85(1) of the Factories Act.

(4) In my opinion, the notification obviously applies to all Industrial concerns which had already been declared at the date of the notification as Factories u/s 85 of the Factories Act. The notification would also be applicable to such of the concerns that may be declared as factories after the date of the said notification. Such a declaration has to be made by the State Government. it is not shown to me that concerns of the type we are dealing with in this application have been declared after the aforesaid notification to be factories u/s 85 of the Factories Act. 1948.

(5) The result of this conclusion is that the Payment of Wages Act has not been made applicable to an industrial concern of the type possessed by the petitioner. Both the Courts were wrong in holding that they had jurisdiction to deal with the matter and in awarding the retrenchment compensation to the respondent.

(6) For the reasons aforesaid, the application is allowed and the order passed by the authority appointed under the Payment of Wages Act and confirmed by the District Judge in appeal is set aside and the respondent's petition is dismissed. The parties will bear their own costs. The dismissal of the petition would not in any way prejudice the respondent in pursuing such other remedy as is open to him under the law.

(7) Application allowed.