

(1968) 03 KL CK 0020
In the High Court Of Kerala
Case No : Criminal A. No"s. 2 to 13of 1968

State of Kerala

APPELLANT

Vs

V. M. Patel

RESPONDENT

Date of Decision : 22-03-1968

Acts Referred:

Factories Act, 1948 — Section 1, 10, 100, 101, 102

Citation : (1968) KLJ 412

Hon'ble Judges : T. C. Raohavan, J

Bench : Single Bench

Advocate : S. A. Nagendran, N. Krishna Pillai, P. A. Mohammed, C. P. Sudhakara Prasad, N.N.D Pillai, P. C. Abraham and D. A. Kammath in Cr. Appeal Nos. 2 to 13 of 1968, for the Respondent

Final Decision : Allowed

Judgement

T. C. Raohavan, J.—The question involved in all these cases is one of jurisdiction; and the Industrial Tribunal has decided that it has no jurisdiction to hear the cases. The State contests the correctness of the said decision. The State Government by notification in the official gazette u/s 85(1) of the Factories Act declared that to the establishments in these cases (the several respondents) sections 1 to 26, 28 to 115, 117 and 118 of the Act should apply. Before the Industrial Tribunal it was urged by the counsel of the respondents that since section 2(m) of the Act containing the definition of "factory" was a so made applicable to these establishments, the intention of the State to apply the provisions of the Act had been frustrated. This contention has been accepted by the Industrial Tribunal; and the correctness or otherwise of that decision is the question to be decided by me.

2. Section 85(1) gives the State Government power to declare by gazette notification that all or any of the provisions of the Act shall apply to any place wherein a manufacturing process is being carried on with or without the aid of power notwithstanding that 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, the persons working therein are not employed by the owner thereof but are working with the permission of or under agreement with such owner. Under the definition of "factory" u/s 2(m), for an establishment to become a factory three ingredients are essential: one, a manufacturing process must be carried on in the establishment; two, the persons employed therein must not be less than a particular number; and three, the persons so employed must be "workers" as defined by section 2(1) and not independent contractors. By section 85(1) what the legislature intends to do is to give power to the State Government to bring, by notification, within the ambit of the Act establishments which do not comply with the essentials, or have the ingredients, of having a particular number of persons working in them and the persons so working being "workers" and not independent contractors: in other words after the notification, the ingredient of a manufacturing process being carried on in the establishments alone need be present. The section says that "all or any of the provisions of the Act" may be made applicable. It is evident that if a notification is made by the State Government that all the provisions of the Act are made applicable to a particular establishment, the notification must be good. If the contention urged by the respondents in these cases is accepted, such a notification will tip invalid; in other words, such a notification will not effectuate the intention of the State Government. (In fact, the counsel of the respondents has contended that such a notification is invalid.) I do not think that the intention of the legislature in enacting section 85 was this: the intention could only be that after a notification u/s 85 (1) was made and all the provisions of the Factories Act were made applicable to an establishment, the only essential that the establishment should satisfy thereafter to come within the mischief of the Act was that a manufacturing process was being carried on there. In other words, the purpose of the notification u/s 83(1) was to relax the rigidity of the definition of "factory": and this cannot be frustrated if the notification applies all the provisions of the Act. It cannot also be argued that because all the provisions of the Act inclusive of the definition section are made applicable, the notification is ineffective or infructuous. After a notification u/s 85(1) "factory" will be as contemplated by that section and no more by the definition: thereafter, such of the other sections that apply to the particular establishment from among the sections made applicable by the notification will apply. Sub-section 2 of section 85 makes the position clear. The argument of the petitioners' counsel, which found favor with the Industrial Tribunal, appears to be ingenious: but the result of accepting it will, in my opinion, end in begging the question or reasoning in a vicious circle. This could never have been the intention of the legislature when it enacted section 85. I may also point out that what has in effect been done by the present notification is to apply all the provisions of the Factories Act excepting sections 27, 116 and 120. Section 27 deals with factories for pressing cotton, which cannot apply to these establishments: section 116 relates to factories belonging to the Central or any State Government, which cannot also apply to these establishments: and section 120, the repealing section, is immaterial for these

establishments. Thus, the notification falls squarely within section 85(1); and the notification is good.

3. The criminal appeals are allowed. Still, the question remains whether a manufacturing process is being carried on in these establishments. That question has to be decided; and the cases have also to be disposed of according to law. For that purpose the cases are sent back to the Industrial Tribunal.