

Annamma Joseph Vs State of Kerala

Court: High Court Of Kerala

Date of Decision: Nov. 10, 2014

Acts Referred: Factories Act, 1948 " Section 2(m), 3(1)(b), 85
Kerala Building Tax Act, 1975 " Section 3(1)(b), 3(2)

Hon'ble Judges: A.K. Jayasankaran Nambiar, J

Bench: Single Bench

Advocate: V.K. Sunil and Ajey Thomas, Advocate for the Appellant; Lilly K.T., Government Pleader, Advocate for the Respondent

Judgement

A.K. Jayasankaran Nambiar, J.

The petitioner is the proprietor of a unit engaged in the manufacture of bakery and confectionary

products. Exts. P2 and P3 are licences issued under the Factories Act, 1948 to the petitioner for the manufacture of bakery items and

confectionary items respectively. It is the petitioner's case that it employs nine workers in the bakery manufacturing unit and 19 workers in the

confectionary manufacturing unit. When the petitioner constructed a new building in May, 2001, for use as a factory, it submitted Ext. P4 return

before the 3rd respondent Tahsildar indicating that it was making a claim for exemption from the provisions of the Kerala Building Tax Act on the

ground that the building was used principally as a factory. By Ext. P6 communication, the petitioner was informed by the 3rd respondent that the

exemption sought for could not be granted since the petitioners building did not come within the definition of factory under the Factories Act, in that

it did not have either 10 or 20 workers as contemplated for factories running with and without the aid of power respectively. It was also pointed

out that the issue had been referred to the Government for a decision in terms of Section 3(2) of the Kerala Building Tax Act. Thereafter by Ext.

P9 order dated 07.03.2007, the petitioner was informed that the building could not be granted the exemption from the provisions of the Kerala

Building Tax Act insofar as it did not come within the definition of factory under Section 2(m) of the Factories Act, 1948. Ext. P9 is impugned in

the writ petition.

2. A counter affidavit has been filed on behalf of the respondents wherein Ext. P9 order passed by the Government is sought to be justified on the

ground that the definition of factory under Section 2(m) of the Factories Act clearly contemplates that there had to be an engagement of at least 10

or 20 workers depending upon whether the factory was run with the aid of power or without the aid of power. In the instant case, it was found that

the factory employed less than the number of workers stipulated in Section 2(m) of the Factories Act and consequently could not be considered as

a factory for the purposes of that Act. Further, since the Kerala Building Tax Act did not contain a separate definition for factory, the State

Government was of the opinion that the definition applicable for the purposes of the Factories Act, 1948 would govern the grant of exemption

under the Kerala Building Tax Act as well.

3. I have heard Sri. V.K. Sunil, the learned counsel for the petitioner as also the learned Government Pleader appearing on behalf of the

respondents.

4. On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I find that this is a case where the

claim for exemption by the petitioner has been rejected by Ext. P9 order solely for the reason that the building used by the petitioner, although

principally used as a factory, did not meet the requirements contemplated in the definition of factory under Section 2(m) of the Factories Act,

1948. The learned counsel for the petitioner would point out that, under the Factories Act, other than Section 2(m) which defines a Factory for the

purposes of the said Act, Section 85 empowers the State Government to declare, by Notification in the official Gazette, that all or any of the

provisions of the Factories Act, 1948 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 what is contemplated under Section 2(m) of the

Act or the persons working therein are not employed as the owner thereof but working with the permission of or under the agreement with such

owner provided that the manufacturing process is not being carried on by the owner only with the aid of his family. The said provision also makes it

clear that once a place is so declared, it shall be deemed to be a factory for the purposes of the Act and the owner shall be deemed to be the

occupier and any person working therein a worker for the purposes of the said Act. It is specific case of the petitioner that by SRO 1679/93,

issued by the State Government in exercise of its powers under Section 85 of the Factories Act, 1948, units engaged in the manufacturing of

bakery and confectionary products and employing three or more persons but less than 10, when power is used, and five or more persons but less

than 20, when power is not used, have also been deemed to be factories for the purposes of the Factories Act, 1948. It is therefore contended

that the 1st respondent, while passing Ext. P9 order, omitted to look into this aspect of the matter and rejected the application for exemption solely

on the ground that the building of the petitioner did not satisfy the requirements in the definition of factory under Section 2(m) of the Factories Act,

1948. I find force in this contention of the petitioner. By virtue of the notification aforementioned, issued by the State Government in exercise of the

powers under Section 85 of the Factories Act, 1948, it is clear that the petitioner's building would also have to be treated as a factory for the

purposes of the Factories Act, 1948. By virtue of the Division Bench decision of this Court in State of Kerala Vs. Joseph D'Cunha, , it is open to

the Government to confine the exemption under Section 3(1)(b) of the Kerala Building Tax Act to only such buildings as are principally used as a

factory, and which answer to the description of factory under the Factories Act, 1948. In the case at hand, the Notification referred to above has

the effect of bringing the building, put up by the petitioner, within the definition of factory under the Factories Act 1948. That being the case, there

is no scope for excluding the petitioner's building, from the purview of the exemption that is contemplated under Section 3(1)(b) of the Act, solely

on the ground that the building does not answer to the description of a factory as defined under S. 2(m) of the Factories Act, 1948. The petitioner

would, however, have to establish that the number of workers employed by her in the building was as specified in the Notification and therefore,

for this limited purpose, the matter is sent back to the 1st respondent for verification on this aspect and the grant of exemption, if the petitioner is

found to have satisfied the said condition. To enable the 1st respondent to pass fresh orders in the matter, I quash Ext. P9 order passed by him.

The 1st respondent shall pass fresh orders in the matter, after hearing the petitioner, within a period of two months from the date of receipt of a

copy of this judgment.