SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Narayana Vs. State of Karnataka

Narayana Vs. State of Karnataka

SooperKanoon Citation : sooperkanoon.com/385196

Court : Karnataka

Decided On : Nov-07-1995

Reported in : ILR1995KAR3569

Judge : G.P. Shivaprakash, J.

Acts : Karnataka Tax On Professions, Trades, Callings and Employments Act, 1976 - Sections 29

Appeal No. : W.P. No. 36227 of 1995

Appellant : Narayana

Respondent : State of Karnataka

Advocate for Def. : Vidya, HCGP

Advocate for Pet/Ap. : G. Krishna Murthy, Adv.

Disposition : Petition dismissed

Judgement :
ORDER

Shivaprakash, J.

1. The petitioner is an employee working in respondent-Bank. It seems the wife of the petitioner has 'undergone sterilization operation' in the year 1989.

2. In this Petition, the petitioner on the basis of the Notification dated 30.3.1994, published in the Karnataka Gazette dated 31.3.1994, claims exemption from payment of Professional Tax. Copy of the said Notification is produced and marked as Annexure-B. The text of the Notification reads as hereunder:

'No. FD.12.CPI 94 (III) Bangalore, dated 30th March 1994. KARNATAKA GAZETTE (EXTRAORDINARY), dated 31st March 1994.

In exercise of the powers conferred by Section 29 of the Karnataka Tax on Professions, Trades, Callings and Employments Act, 1976 (Karnataka Act 35 of 1976), the Government of Karnataka, hereby exempts with effect from the First day of April 1994, the tax payable under the said Act by a person having single child and who has undergone sterilization operation, subject to production of a certificate from the District Surgeon, Government Civil Hospital, for having undergone such operation.'

3. From the correspondence between the petitioner and respondents 2 to 4, it appears the petitioner claimed exemption from payment of Professional Tax on the basis that he is a Hindu by religion, and in law he could have only one wife and she has undergone sterilization operation after bearing a child; therefore there is no possibility of he having one more child and thus he becomes entitled to the benefit under the Notification exempting him from payment of Professional Tax.

4. From a plain reading of the Notification, it is evident that the exemption from payment of Professional Tax is given to a person having a single child and who has undergone sterilization operation. There is nothing in the Notification to imply that such exemption could be claimed by the spouse of the person who has undergone sterilization operation. There is no reference to marriage between two persons for the non-sterilized person to claim vicarious benefit of exemption upon the sterilization of the other. Under the Notification the exemption is only for the person who has a single child and who gets sterilized thus forgoing the power of procreation.

5. It would be unrealistic to contend that men cannot have another child merely because their wives are sterilized and that they belong to a faith for whom

monogamy is the Rule of Law.

6. Our marriages have become fragile and it is no more just once in a life time event. Divorces and re-marriages are all common events now, Therefore, I do not see any substance in the submission made on behalf of the petitioner by the learned Counsel Sri G. Krishna Murthy that the petitioner cannot possibly have one more child under any circumstances. Possibility is one thing and incapability is another thing. What is contemplated under the Notification is incapability of a person, having a single child, to procreate by subjecting himself/herself to sterilization.

7. Hence, this Petition is rejected at the Preliminary Hearing stage after prolonged hearing of the learned Counsel for the petitioner and Smt. Vidya, learned HCGP who was directed to take notice for respondents 1 to 3.

8. The view I have taken accords with the view taken by another Bench of this Court in W.P.No. 30185/1995 which was dismissed on 22.8.1995 Md. Zabeer Saida v. Anjuman and Ors.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com