

K. Loganathan Vs. State of Karnataka and Another

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Court : Karnataka

Decided On : Sep-01-1997

Judge : R.P. Sethi, C.J. and;S.R. Bannurmah, J.

Acts : [Industrial Disputes Act, 1947](#) - Sections 2 and 36-B; [Constitution of India](#) - Article 226

Appeal No. : Writ Petition No. 2194 of 1997(L)

Appellant : K. Loganathan

Respondent : State of Karnataka and Another

Advocate for Def. : Sri A.V. Srinivasa Reddy, Additional Government Advocate,
;Sri R. Gururajan and ;Sri M.L.N. Reddy, Advs

Advocate for Pet/Ap. : Sri N.G. Phadake and ;Smt. Meera Bai, Advs.

Judgement :

R.P. Sethi, C.J.

1. Notification No. SWL 289 LLD 90(1), presumably issued under Section 36-B of the Industrial Disputes Act (hereinafter called the 'Act'), exempting the respondent-2 from the purview of the Act, was challenged by the appellant and the Union of the Employees by way of writ petition, alleging the same to be without jurisdiction and contrary to law. The writ petition was dismissed after the learned Counsel

appearing for the respondent-establishment stated that the management had no objection in petitioner's seeking adjudicating their rights before an appropriate forum under the Act, if and when the dispute is raised with respect to the termination of the service of the worker. The order of the learned Single Judge is stated to be against law because it has allegedly failed to consider the scope of Section 36-B of the Act. It is contended that after the respondent-establishment had not pressed the impugned notification it was obligatory for the learned Single Judge to have allowed the writ petition and quashed the impugned notification. It is submitted that so long as the notification exists, no provisions of Act could be invoked by the aggrieved workmen, as by consent no jurisdiction can be conferred upon the Board, Court or Tribunal constituted under the Act. Even according to the concession made on behalf of the respondent-Establishment, the workmen at the most can raise disputes with respect to their termination but cannot approach the forums under the Act for their monetary or other entitlements.

2. Section 36-B of the Act provides:

'Power to exempt.--Where the appropriate Government is satisfied in relation to any industrial establishment or undertaking or any class of industrial establishments or undertakings carried on by a department of that Government that adequate provisions exist for the investigation and settlement of industrial disputes in respect of workmen employed in such establishment or undertaking or class of establishments or undertakings, it may, by notification in the Official Gazette, exempt, conditionally or unconditionally such establishment or undertaking or class of establishments or undertakings from all or any of the provisions of this Act'.

3. The aforesaid section appears to have been enacted in view of the pronouncements made by the Constitutional Courts that the sovereign functions of the State do not fall within the ambit of definition of 'industry' and as large number of undertakings or industrial establishments are carried on by the State, they have to be protected despite the fact that they are deemed to be 'industry' under the Act. In order to obviate the confusion of duplication of procedure for settling the dispute, the aforesaid section was incorporated conferring powers upon

appropriate Government to exempt industrial establishments or undertakings established and carried on by a department of the Government. The respondent-Institute is admittedly not an establishment or undertaking carried on by the Government or any of its department. The power of exemption vesting in the Government authorises to grant exemption only to the establishments, undertakings, class of establishments or undertakings carried on by any department of that Government and it has no power to exempt any undertaking or establishment carried on by private enterprise or any other Government.

4. The learned Counsel appearing for the respondent-establishment has vainly attempted to persuade us to hold that the words 'carried on by a department of that Government', refers to the undertakings and not to other industrial establishments mentioned in the preceding part of the section. We do not find any force in this submission of the learned Counsel and are of the opinion that the words herein above referred to have to be read *egusdem generis* to all industrial establishments or undertakings carried on by a department of the Government. No distinction appears to have been made between the industrial establishments or undertakings. Any other interpretation would defeat the purpose for which the section was enacted. The words used in the section are clear and unambiguous and cannot be interpreted in any other manner. We are therefore satisfied that the impugned notification issued by the respondent-State exempting the respondent-establishment from the purview of the Act was contrary to the provisions of Section 36-B and thus without jurisdiction. Upon a limited concession made on behalf of respondent-establishment, the learned Single Judge was not justified to dismiss the writ petition. The appeal is accordingly allowed by setting aside order of learned Single Judge.

5. Rule is made absolute.

6. Impugned Notification No. SWL 289 LLD 90(1), is quashed holding it not to be applicable to the workmen of respondent-establishment.