

CIRCULAR NO – 087/2023

Date: 10.08.2023

**THE HON'BLE SUPREME COURT UPHOLDS THE JUDGMENT OF
THE DIVISION BENCH OF KARNATAKA HIGH COURT**

**NO PROHIBITION FOR ENGAGING CONTRACT LABOURERS IN
CANTEENS IN FACTORIES**

1. Section 46 of the Factories Act mandates that at the factory employing 250 or more workers shall provide and maintain canteen at the factory. Majority of the employers had outsourced to the contractors or other service providers for running the canteen in the factory premises on contract basis.
2. In 1997, Government of Karnataka by a notification No.KAE-6LWA:97 dated 11.04.1997 prohibited employment of contract labour in industrial canteens in exercise of the power conferred on the Government under Section 10(1) and (2) of the Contract Labour (Regulation and Abolition) Act 1970 (CLRA Act for short), on the basis of the recommendation of State Contract Labour Advisory Board.
3. The above notice impacted more than 700 factories in the State of Karnataka and the said factories had to discontinue the arrangement of running the canteen through the contractor. The impact in essence was that the management were to provide and maintain the canteen



at the factory directly. It also means that the contract labourer working in canteen would become permanent employees of the principal employer.

4. About 40 Managements aggrieved by the above notification challenged the validity of the notification on multiple grounds by filing writ petition before the Hon'ble High Court of Karnataka. All the writ petitions were referred to Division Bench. The Division Bench after elaborate hearing by its order dated 30.03.1998 dismissed all the writ petitions. Some of the managements filed the special leave petition before the Supreme Court. The State Government appeared before the Supreme Court and stoutly defended the notification. Supreme Court dismissed the special leave petition on 02.02.2001. The review petition filed by some of the employees was also dismissed by the Supreme Court on 19.04.2001.
5. After these legal proceedings came to an end, the trade unions in the State urged the State Government to implement the notification and insisted the management for prosecuting the management under Section 23 of the Contract Labour (Regulation and Abolition) Act for engaging contract labour even after prohibition.
6. While the matter stood thus, the Karnataka Employers Association made a representation to the Commissioner of Labour on 24.03.2011 to initiate measures to withdraw the notification dated 11.04.1997. Delegation of employers and led by Mr.B.C.Prabhakar President of





Karnataka Employer's Association and other Organizations in Karnataka including CII, BCCI, FKCCI met then Chief Minister Sri S.M.Krishna and appraised the points urged by KEA in its representation dated 24.03.2011 and appealed to him to withdraw the notification dated 11.04.1997. It was also pointed out that this notification is impacting investment in Karnataka as in the neighbouring states there is no prohibition for outsourcing canteen at the factory. Rescinding of such retroactive notification would attract more investment and factory managements may concentrate better on the core activities of the company.

7. The Government of Karnataka on the basis of the representation made by the KEA and the advisory board under the CLRA Act issued notification dated 01.08.2001 under which the earlier notification dated 11.04.1997 was rescinded.
8. The Trade Unions challenged the notification dated 01.08.2001 by filing writ petition before the Hon'ble High Court. The Learned Single Judge by his order dated 13.04.2005 allowed the writ petition and quashed the rescinding notification dated 01.08.2001.
9. KEA along with other employers challenged the decision of the Learned Single Judge by filing appeal before the Division Bench of the Hon'ble High Court.
10. The Division Bench consisting of Justice Sri N.Kumar and Justice Sri.Ravi Malimat by order dated 24.03.2011 upheld the action of the





Government of Karnataka in rescinding the notification dated 11.04.1997 by issuing notification dated 01.08.2001. Consequence thereof is that the Managements were permitted to engage contract labourers in the canteen provided and maintained at the factories employing 250 or more workers.

11. The trade unions who were party to the above appeal have filed special leave petition before the Supreme Court. The court has issued notices to the Respondents. But did not stay the orders of the Division Bench. The employers were continuing to outsource running of canteen by engaging contractors or service providers.
12. The Civil Appeals came up for hearing before the Supreme Court on 10.08.2023 i.e. today. The Supreme Court after hearing the parties, dismissed the Civil Appeal.
13. Consequence of the dismissal of the special leave petition is that the employers in factories who are required to provide and maintain at the factories employing 250 or more workers are permitted to outsource the running of the canteen by engaging contractors or service providers.

For KARNATAKA EMPLOYERS' ASSOCIATION
Sd/
[B C Prabhakar]
President



+91 9449183208



Bengaluru, Karnataka



kea@kea.co.in