

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

THURSDAY, THE 25<sup>TH</sup> DAY OF JULY 2024 / 3RD SRAVANA, 1946

WP(C) NO. 22691 OF 2013

PETITIONER/S:

C.K. SASIDHARAN, AGED 63 YEARS

[REDACTED]

BY ADVS. SRI.M.G.KARTHIKEYAN  
SRI.NIREESH MATHEW

RESPONDENT/S:

1 THE WELFARE FUND INSPECTOR  
KERALA TODDY WORKERS WELFARE FUND BOARD

[REDACTED]

2 BINESH

[REDACTED]

3 BIJESH

[REDACTED]

4 STATE OF KERALA, REPRESENTED BY SECRETARY (LABOUR &  
REHABILITATION), GOVT.SECRETARIAT

[REDACTED]

BY ADVS. SRI.RENIL ANTO,SC,KTWWF BOARD; SRI.JOY GEORGE, SC,  
KERALA TODDY WORKERS WELFARE FUND BOARD; SRI SANTHOSH  
KUMAR

THIS WRIT PETITION (CIVIL) HAVING RESERVED ON 21.06.2024, ALONG  
WITH WP(C).23564/2013, THE COURT ON 25.07.2024 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

THURSDAY, THE 25<sup>TH</sup> DAY OF JULY 2024 / 3RD SRAVANA, 1946

WP(C) NO. 23564 OF 2013

PETITIONER/S:

C.K.SASIDHARAN, AGED 63 YEARS

BY ADVS. SRI.M.G.KARTHIKEYAN; SRI.NIREESH MATHEW

RESPONDENT/S:

- 1 THE WELFARE FUND INSPECTOR  
KERALA TODDY WORKERS WELFARE FUND BOARD
- 2 BINESH.
- 3 BIJESH.
- 4 STATE OF KERALA  
REPRESENTED BY SECRETARY (LABOUR & REHABILITATION), GOVT.  
SECRETARIAT

BY ADVS.SRI.RENIL ANTO,SC,KTWWF SHRI.G.SANTHOSH KUMAR,  
SC, KTWWFB, SRI.JOY GEORGE, SC, KERALA TODDY WORKERS  
WELFARE FUND BOARD; SRI G SANTHOSH KUMAR

THIS WRIT PETITION (CIVIL) HAVING RESERVED ON 21.06.2024, ALONG  
WITH WP(C).22691/2013, THE COURT ON 25.07.2024 DELIVERED THE FOLLOWING:

“C.R.”

J U D G M E N T

[WP(C) Nos.22691/2013, 23564/2013]

Heard Mr M G Karthikeyan learned Counsel for the petitioner, and Mr G Santhosh Kumar learned Standing Counsel for the respondents.

2. These two writ petitions have been filed for similar reliefs relating to two different series of toddy shops. The orders impugned are dated 11.12.2017. The facts and the issues in these writ petitions are almost the same and, therefore, the facts of W.P.(C) No.23564/2013 are taken note of.

3. The petitioner, a senior citizen, was working as an employee of respondent nos. 2 and 3, the licensees of the Toddy Shop nos. 135 to 138 of the Kuttanadu Excise range.

These respondents were the successful bidders for these toddy shops, along with shop nos.119 to 122. The 1<sup>st</sup> respondent passed the final determination order under Section 8 of the Kerala Toddy Workers Welfare Fund Act 1969 (for short 'Act of 1969') making the petitioner also liable to pay welfare funds for the toddy shops. The petitioner, aggrieved by the said determination order by the 1<sup>st</sup> respondent, filed an appeal before the 4<sup>th</sup> respondent. The Appellate Authority, *vide* Ext.P2 order dated 31.03.2005, remanded the matter back to the 1<sup>st</sup> respondent for *de novo* enquiry and passing a fresh order in accordance with the law.

4. On remand, the 1<sup>st</sup> respondent issued Ext.P4 final determination order dated 11.12.2007, fastening the liability to pay welfare fund in respect of toddy shop no.135 in Kuttanadu Excise range for the Abkari Year 2000-01 on the petitioner on the ground that the shop was actually conducted by the petitioner. The petitioner challenged the said order

preferring an appeal before the 4<sup>th</sup> respondent. However, the 4<sup>th</sup> respondent, *vide* Ext.P6, has rejected the appeal and these orders are the subject matter of challenge in these writ petitions before this Court.

5. Learned Counsel for the petitioner submits that the petitioner was not a licensee of the toddy shops, and he was just an employee who assisted respondent nos. 2 and 3 in conducting the affairs of the toddy shop. He further submits that the petitioner is not liable to discharge the liability of the welfare fund in respect of the toddy shop in question. The petitioner, being a salesman, could not have been able to employ any other person. Hence, the liability of payment of welfare funds could not have been fastened on him.

5.1 In support of his submission, the learned Counsel for the petitioner has placed reliance on the judgment in the case of *Joseph Joseph v State of Kerala*<sup>1</sup>.

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<sup>1</sup> 2002 KHC 171

6. On the other hand, Mr G Santhosh Kumar, learned Standing Counsel, submits that the definition of 'employer' is wide enough and includes the license holder, as well, as the occupier of the shop. The petitioner had entered into an agreement with the shop of the licensees and Union officials. The petitioner was in a position to hire a person, and, therefore, the petitioner has been directly held responsible for remitting the welfare fund contribution in time. 'Employer' as defined in Section 2(c) of the Act of 1969 would mean any person who employs, directly or indirectly, other persons in the establishment.

6.1 The learned Standing Counsel has placed reliance on the judgment of this Court in *Sasi V v. State of Kerala*<sup>2</sup> to submit that as per Section 2(c) of the Act of 1969, the licensee or any other person who conducts the shop and collects the

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<sup>2</sup> 2016 KHC 694

welfare fund contribution from the workers come within the definition of 'employer'. The petitioner had collected the welfare fund contribution from the workers. Therefore, he was responsible for remitting the welfare fund amount of the workers working in the shop.

7. Section 2(c) of the Act of 1969 defines 'employer' as under:

**"2. Definitions:**

(c) "employer" means any person who employs, whether directly or through another person, or whether on behalf of himself or any other person, one or more employees and includes any person who has a licence for the manufacture distribution, storage or sale of toddy under the Abkari Act for the time being in force;"

7.1 'Employee' is defined under Section 2(d) of the Act of 1969 thus:

"(d) "employee" means any person who is employed for wages in connection with the tapping, manufacture, transport, storage or sale of toddy and who gets his wages directly or indirectly from the employer and includes any

person employed by or through a contractor or through an agent in or in connection with the tapping, manufacture, transport, storage or sale of toddy;”

7.3 The Toddy Workers’ Welfare Fund is contemplated under Section 3, which provides that the Government may by notification in the Gazette, frame a scheme to be called the Kerala Toddy Workers’ Welfare Fund Scheme for the establishment of a fund under this Act for the employees. The contributions are required to be made under Section 4 and the responsibility for making the contributions to the fund is on the employer at the rate of 8% of the wages for the time being payable to each of the employees. The employee’s contribution is to be equal to the contribution payable by the employer.

8. The respondents have not brought on record anything to substantiate that the petitioner was in a position to employ any person without the consent and approval of the



licensees. It is not in dispute that the petitioner was not the licensee, but he was an employee of the licensee. The license for the toddy shop was granted in favour of respondents 2 and 3.

9. The Supreme Court, in the judgment in *Joseph Joseph* (supra), has held that merely because the person is associated with the conduct of the business of an establishment or shop, it cannot be said that he had employed workers on his own behalf.

9.1 Paragraphs 6 and 7 of the said judgment are extracted hereunder:

“6. A perusal of S.2(c) m, any person, whether directly or through any other person or whether on behalf of himself or any other person, as employer. The employment by any person can be for himself or for any other person. Merely because the person is associated with the conduct of the business of an establishment or shop, it cannot be said that he had employed the workers on his own behalf. There may be cases where it can be shown that besides the owner any other person conducting the business of the said shop may employ

workers on his own behalf and not on behalf of original owner. But in the absence of proof to the contrary, particularly in view of the statement of principal employer that he had employed the workers, the intermediary persons could not be held to be the employer of the workers who were employed for the conduct of the business in the shop covered under the Act. Law presupposes the conduct of a legal business and cannot be interpreted in a manner which frustrates the object of the Act and results in not only miscarriage of justice but violation of the statutory provision of law. If, under the Rules, the licensee was not authorised to lease out or sublet the whole or any portion of the privilege or licence granted to him for conducting the Abkari business, holding the appellants as employer with respect to the licensee's shop would amount to facilitate the violation of the Kerala Abkari Shops Act, and the Rules framed thereunder. Such an interpretation is not called for as it is against the public policy. In any particular case, where the authorities find that besides the licensee any other person conducting the business in a licenced premise under the Abkari Act and the Rules framed thereunder is also liable to contribute to the fund under the Act, they are under the legal duty to assert and positively hold that such persons were the employers vis-a-vis the workers and that they were conducting the business either with the legal authority of the licensee or the licensing

authority. The High Court has taken a general view of the matter without reference to the purpose and object of the Act and the law under which the licence to run the shop was granted. The impugned judgment is thus not sustainable.

7. The appeal is accordingly allowed by setting aside the judgment impugned, holding that in the instant case, the appellants have not been proved to be employers vis-a-vis the workers and that respondent No. 4 alone was the employer as admitted by himself. The said respondent is liable for making the contributions and paying the amount sought to be recovered vide the order passed by Toddy Workers Welfare Fund Inspector. The authorities shall be at liberty to take all necessary steps for effecting recoveries against respondent No. 4. No costs.”

10. The case is from Abkari Year 2000-01. We are in 2024. The petitioner has aged, and it is stated that he is not keeping well. This writ petition was filed in 2013 when he was 63 years old. 11 years have passed since the filing of the writ petition. In view thereof, this Court is of the opinion that the petitioner was not an ‘employer’ as defined under Section 2(c) of the Act of 1969 and taking into account the judgment of the

Supreme Court in *Joseph Joseph* (supra), both the writ petitions are allowed. The impugned orders are set aside.

Sd/-

**DINESH KUMAR SINGH**

JUDGE

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APPENDIX OF WP(C) 23564/2013

PETITIONER EXHIBITS

Exhibit True English Translation of Ext.P1.

Exhibit True English Translation of Ext.P4.

Exhibit True English Translation of Ext.P6.

EXHIBIT P4. PHOTOCOPY OF THE FINAL DETERMINATION ORDER DATED 11.12.2007 PASSED BY THE 1ST RESPONDENT.

EXHIBIT P3. PHOTOCOPY OF THE REPLY DATED 07.06.2007 SENT TO THE 1ST RESPONDENT.

EXHIBIT P6. TRUE COPY OF THE ORDER PASSED BY THE 4TH RESPONDENT DATED 18.07.2013, GO(MS) NO.1311/2013/LABOUR DATED 18.07.2013.

EXHIBIT P5. PHOTOCOPY OF THE APPEAL MEMORANDUM DATED 11.01.2008 FILED BEFORE THE 4TH RESPONDENT.

EXHIBIT P2, PHOTOCOPY OF THE ORDER GO(RT)NO.793/05/LBR DATED 31.03.2005 PASSED BY THE 4TH RESPONDENT.

EXHIBIT P1. PHOTOCOPY OF THE FINAL DETERMINATION ORDER DATED 31.12.2001 PASSED BY THE 1ST RESPONDENT IN RESPECT OF TODDY SHOP NOS.135 TO 138.

APPENDIX OF WP(C) 22691/2013

RESPONDENT EXHIBITS

Exhibit-R1(a) True copy of the agreement dated 01/01/2001 along with its English translation.

PETITIONER EXHIBITS

Exhibit True English translation of Ext.P1.

Exhibit True English translation of Ext.P4.

Exhibit True English translation of Ext.P6.

EXT.P-4: PHOTOCOPY OF THE FINAL DETERMINATION ORDER DATED 11.12.2007 PASSED BY THE 1ST RESPONDENT.

EXT.P-1: PHOTOCOPY OF THE FINAL DETERMINATION ORDER DATED 29.9.2001 PASSED BY THE 1ST RESPONDENT IN RESPECT OF TODDY SHOP NOS. 119 TO 122.

EXT.P-6; TRUE COPY OF THE ORDER PASSED BY THE 4TH RESPONDENT DATED 18.7.2013 G.O(MS)NO.1309/2013/LABOUR DATED 18.7.2013.

EXT.P-2: PHOTOCOPY OF THE ORDER G.O(RT)NO.793/05/LBR DATED 31.3.2005 PASSED BY THE 4TH RESPONDENT.

EXT.P-3: PHOTOCOPY OF THE REPLY DATED 7.6.2007 SENT TO THE 1ST RESPONDENT

EXT.P-5: PHOTOCOPY OF THE APPEAL MEMORANDUM DATED 11.1.2008 FILED BEFORE THE 4TH RESPONDENT.