

(1984) 03 KL CK 0031
In the High Court Of Kerala
Case No : O.P. No. 2234 of 1984

Mariam Augusthy and another		APPELLANT
	Vs	
The District Collector and Others		RESPONDENT

Date of Decision : 19-03-1984

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1984) KLJ 253

Hon'ble Judges : P.C. Balakrishna Menon, J

Bench : Single Bench

Advocate : M.N. Sukumaran Nair, N.A. Muralidharan, B. Raman Pillai, Sunny Varghese, S. Gopakumaran Nair and S. Vijayakumar, for the Appellant; N. Raghava Kurup and P.B. Radhakrishnan, for the Respondent

Final Decision : Allowed

Judgement

P.C. Balakrishna Menon, J.—This O.P. is to quash Exts.P2 and P3 orders of the 2nd respondent, the Inspector, Toddy Workers' Welfare Fund. Kottayam and also to issue a writ of mandamus directing him to issue the clearance certificate applied for by the petitioners so as to enable them to participate in the public auction of toddy retail shops proposed to be held on 20-3-1984. The two petitioners are mother and son who had made separate applications to the 2nd respondent, the Inspector, Toddy Workers Welfare Fund for the issue of clearance certificates showing that the petitioners are not defaulters in respect of contributions to the Toddy Workers Welfare Fund. Ext. P1 dated 13-2-1984 is a copy of the affidavit filed in support of the application submitted by the 1st petitioner for the issue of the clearance certificate. There is no dispute before me that both the petitioners had applied for clearance certificates to enable them to participate in the public auction of the privilege to vend toddy in retail shops in the Kottayam District. Exts. P2 and P3 are the orders of the 2nd respondent rejecting the applications submitted by the petitioners for the issue of clearance certificates to them. The reason mentioned in these orders is that Esthappan

Augusthy, husband of the 1st petitioner and father of the 2nd petitioner, is a defaulter in regard to contributions to be paid to the Toddy Workers Welfare Fund. It is also stated that two of the sons of the 1st petitioner who are the brothers of the 2nd petitioner are also defaulters and hence the clearance certificates applied for cannot be granted to the petitioners. As per sub-rule (4A) of Rule 5 of the Kerala Abkari Shops (Disposal in Auction) Rules, 1974 no person liable to be contributed to the Toddy Workers' Welfare Fund shall be allowed to participate in the auction for toddy unless he produces from the Welfare Fund Inspector concerned a certificate to the effect that he has remitted before the date of auction the arrears of contribution payable upto the 31st day of December of the preceding year." The respondents have no case that the petitioners themselves are defaulters. The learned counsel for the 2nd respondent submits that Esthappan Augusthy, husband of the 1st petitioner and father of the 2nd petitioner, is a defaulter in making contributions to the Toddy Workers Welfare Fund and proceedings had been taken against him for the recovery of the dues from him. It is also submitted that Esthappan Augusthy died and for the reason of his death the petitioners are also liable as his legal representatives to pay the arrears of contribution due from him. There is a further submission by Shri N. R. Kurup on behalf of the 2nd respondent that two other sons of the 1st petitioner who are the brothers of the 2nd petitioner are also defaulters and the 2nd respondent the Toddy Workers Welfare Fund Inspector in his discretion had decided not to grant the clearance certificates to the petitioners and this Court in proceedings under Article 226 of the Constitution will not interfere with such discretion exercised by the 2nd respondent.

2. The 2nd respondent is a statutory authority and he is bound to discharge the duties and functions vested in him under the Kerala Abkari Shops (Disposal in Auction) Rules 1974. There is no discretion in the matter of issue of clearance certificates. The only question to be considered by the 2nd respondent when a clearance certificate is applied for is as to whether the applicant is a defaulter to the Welfare Fund. If it is found that the applicant is not a defaulter, the 2nd respondent is bound to issue the clearance certificate. The applicant has also a right for the certificate if it is found that he is not a defaulter within the meaning of the Rules. Merely for the reason that the sons of the 1st petitioner and the brothers of the 2nd petitioners are defaulters, it is not a ground to hold that they are also defaulters. The mere fact that the husband of the 1st petitioner and the father of the 2nd petitioner was a defaulter and proceedings had been taken against him for realisation of the amounts due from him is also not a ground to hold that the petitioners are defaulters. They do not become defaulters on the death of the defaulter. The legal consequence is only that the authorities concerned are entitled to proceed against the properties of the deceased defaulter in the hands of his legal representatives. The legal representatives thereby do not become defaulters. For the aforesaid reasons I quash Exts. P2 and P3 and direct the 2nd respondent to issue the clearance certificates applied for to enable the petitioners to take part in the public auction of the privilege to

vend toddy in retail shops in the Kottayam District. The O.P. is allowed as above. There will be no order as to costs.