
(1990) 01 KL CK 0017
In the High Court Of Kerala
Case No : Second Appeal No. 45 of 1984

Raman Madhavan

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 09-01-1990

Acts Referred:

Kerala Toddy Workers Welfare Fund Act, 1969 — Section 17A, 8

Citation : (1990) 2 ILR (Ker) 152 : (1991) 2 LLJ 544

Hon'ble Judges : Sukumaran, J;Shamsuddin, J

Bench : Division Bench

Advocate : K.N. Narayana Pillai, for the Appellant; K.K. Babu and A. Shahul Hameed, Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Sukumaran, J.—The appellant is aggrieved by the concurrent adverse decisions of the Courts below by which the suit had been dismissed as not maintainable. The view was taken on a preliminary issue after the parties had presented their pleadings and the Court had raised the issues.

2. The skeletal facts necessary to consider the contention of the appellant may now be stated.

3. The appellant had connections with abkari business. He was licensee of a toddy shop during the year 1974-75. Proceedings initiated under the Kerala Toddy Workers' Welfare Fund Act, 1969 (hereinafter referred to as "the Act") resulted in order casting a liability on him. According to the State and the statutory authorities dealing with Toddy Workers' Welfare Fund, he was an employer of the workmen in the toddy shop and as such bound to make the contributions as enjoined under the statutory scheme. The order has become final. The appellant had not challenged the order by resort to Article 226 of the Constitution. He, however, thought that a suit could be filed and relief could be obtained.

4. The defendants raised a threshold objection, about a bar to Civil Court's jurisdiction forged by Section 17-A of the Act. That objection was upheld by the trial Court. The appeal before the District Court was unsuccessful. The appellant then came to this Court, assailing the view of the Courts below as unjustified in law.

5. The scope and ambit of Section 17-A of the Act is no longer *res integra*. Two reported decisions already cover the field. Kadar, J. dealt with this question in *Toddy Workers Welfare Fund Inspector v. G. Vasudevan* 1983 KLJ 54. The ultimate conclusion was that a suit is barred having regard to the statutory scheme. Four years later, the same question was raised before this Court. The same view was taken by Balakrishna Menon, K. in *Kunjappan Vs. Toddy Workers' Welfare Fund Inspector*, The jurisdiction objection was upheld. (The earlier decision in 1983 K.L.J. 54 (*supra*) however, does not appear to have been brought to the notice of our learned Brother Balakrishna Menon, J., when he rendered the above decision).

6. In the light of the settled legal position, the contention urged before this Court, could have been ordinarily disposed of without any difficulty whatever. However, an unreported order of a learned single Judge of this Court, in C.R.P. No. 707 of 1988, inspired the appellant to paint a flowery picture on a flummery contention. One of us (Sukumaran, J.) referred the case of consideration by a Bench of this Court.

7. Our learned Brother Radhakrishna Menon, J., felt that the earlier decisions on the point were distinguishable. According to the learned Judge, the existence of an employer-employee relationship had been admitted there. This assumption, with greater respect, is not correct. The Judgment in *Kunjappan Vs. Toddy Workers' Welfare Fund Inspector*, (*supra*), does not give any indication one way or the other, on the question of employer- employee relationship. There is, however, no scope for any doubt as regards the decision rendered by Kadar, J., in 1983 K.L.J. 54 (*supra*). The decision in 1983 K.L.J. 54 did not proceed on the basis of the admitted employer-employee relationship. (On the contrary). That is evident from the passage reading:

"The point that arises for decision in the suit and the point raised by the learned Munsiff for determination whether the plaintiff is an employer or occupier under the Act is a matter to be decided, determined and settled under the Act. The Civil Court has, therefore, no jurisdiction to decide or to determine such questions".

8. It is unnecessary for this Court to attempt, over again, a summary of the statutory scheme, or a condensation of the legal principles relating to the ouster of jurisdiction of a Civil Court. The landmark decisions have been referred to in *Kunjappan Vs. Toddy Workers' Welfare Fund Inspector*, (*supra*). Two other subsequent decisions of the Supreme Court can be added to the list, if need be. *Raja Ram Kumar Bhargava (Dead) by Lrs. Vs. Union of India (UOI)*, ; *Babu Ram and Others Vs. Gram Sabha Buhavi and Another*, The very many decisions of the

apex Court have given a flood of light for any one to move about with safety and certitude. A Tribunal of limited jurisdiction has the duty and authority to decide on matters connected with its very jurisdiction. When internal remedies are adequately provided, a party has to work out his remedies, ordinarily, under the framework of that enactment. He has also a constitutional facility for redressal of grievance by invocation of Article 226 of the Constitution. Implied bar of jurisdiction can, therefore, be inferred in given situations.

9. In the present case, there is an explicit bar contained u/s 17-A. The section reads:

"Bar of jurisdiction of Civil Courts - No Civil Court shall have jurisdiction to settle, decide or deal with any question or to determine any matter which is by or under this Act required to be settled, decided or dealt with or to be determined by the Government or the Board of the Chief Welfare Fund Inspector or any Welfare Fund Inspector".

10. The bar is attracted if the matter to be decided is one which comes within the range of matters to be settled, decided or dealt with under the enactment. The range is paraded by the provisions of Section 8. The relevant portion of Section 8 reads:

"Determination of amounts due from employers: (1) The Chief Welfare Fund Inspector or any other Welfare Inspector authorised by him in this behalf may, by order, determine the amount due from any employer under the provisions of this Act or of the scheme and for this purpose may conduct such inquiry as he may deem necessary. (4) No order shall be made under sub-section (1) unless the employer has been given a reasonable opportunity of being heard.

(5) Any person aggrieved by an order under Sub-section (1) may prefer an appeal to the Government or any other authority as may be specified by the Government within sixty days from the date of receipt of the order and the decision of the Government or of such authority on such appeal shall be final".

11. It is in the context of the above Section that the inquiry is made: Is the existence of employer-employee relationship a matter which arises for enquiry u/s 8? The answer is in the affirmative. So felt Kader, J. while deciding 1983 K.L.J. 54 (supra). The relevant passage reads:

"The point that arises for decision in the suit and the point raised by the learned Munsiff for determination whether the plaintiff is an employer or occupier under the Act is a matter to be decided, determined and settled under the Act. The Civil Court has, therefore, no jurisdiction to decide or to determine such question".

We are in respectful agreement. The statement of principles by Kader, J., shortly but succinctly, is in tune with the general principles distilled from decided cases.

12. Our learned brother Radhakrishna Menon, J., also took the view that if there be a dispute regarding the employer-employee relationship, it would not, by

itself, scuttle further enquiry by the statutory functionary. That authority will have to labour on the additional aspect arising for decision in the light of the dispute on the jural relationship of employer-employee. This is evident from the observation of Radhakrishna Menon, J., as contained in paragraph 6, reading:

"The enquiry contemplated u/s 8 is regarding the quantum of the dues an employer is bound to remit to the Fund. In the course of enquiry, no doubt the authority concerned can also decide as to whether a particular person is an employer although he is not a licensee within the meaning of the Act".

13. There is, therefore, consensus in the views about the matters which could be settled, decided or dealt with u/s 8. The existence of employer-employee relationship is also within its purview. If that be so, Section 17-A is immediately and easily attracted. The Court complex is closed to anyone who abandons the safer course and better path of statutory remedy provided by the statute itself. He may knock at the gate of the Court, but to no purpose.

14. It would then follow that even in cases where employer-employee relationship is in dispute, the decision of the authorities under the Toddy Worker's Welfare Fund Act, which have attained finality under the Act or otherwise, will totally bar the jurisdiction of the Civil Court. The view taken by our learned Brother Radhakrishna Menon, J., in CR.P. No. 707 of 1988 to the extent it strikes a different note, does not lay down the correct law. There was hardly any justifying circumstance to distinguish the case or discard the ratio of the decision in 1983 K.L.J. 54 (supra).

15. Coconut palms lend enchantment to the view of the land in this State, The beauty of the toddy palm was noted by a constitutional architect even in the midst of his hectic activities in the early days of endless discussions on transfer of powers. (Montague noted in his diary how he was shown "the beauties of the Toddy palm which are certainly very lovely with their tall, close-set palms..... (See "An Indian Diary" by Edwin S. Montague, Page 6). The lives of the toddy workers were, however, beset with hardships and hazards. Their life was one of unmitigated toil and tears, at least until recently. Benefits under the Welfare Fund Act is one of their valuable statutory bounties. A feeding field of social amenity should not be converted into a breeding ground of litigation by the curial construction burdened with sadistic strain. A tricking benefit cannot be permitted to be dried up by a liability on the part of the employee to fight for his right endlessly and in different fronts. The conclusion we have reached, and in the company of our brother Judges, Justice Kader and Justice Balakrishna Menon, is thus comforting to Court's conscience.

16. Counsel for the appellant made another submission that even in the face of a provision like Section 17-A, a decision is assailable if it is one rendered in flagrant violation of the principles of natural justice. Such a contention was not taken in the trial Court. This is evident from the contentions as are referred to, and the discussion that followed, a paragraph 6 of the judgment of the trial

Court. In the first appellate Court, only one point was urged and that related to the bar of Section 17-A. The contention is distinct and different from a complaint founded on the violation of the principles of natural justice. In that view of the matter, it is not open to the appellant to urge for the first time such a contention, before this Court. A second appellate court should not be enthusiastic to encourage projection of such desperate and delayed contentions.

In the result, we find no ground whatever to disturb the judgment and decrees of the courts below. The appeal is devoid of merit and it is accordingly dismissed with costs.