

---

**(2012) 02 KL CK 0058**  
**In the High Court Of Kerala**  
**Case No : WP (C) .No. 19960 of 2010 (T)**

Sanjay M

APPELLANT

Vs

The Tahsildar (RR), Thalassery. and Others

RESPONDENT

---

**Date of Decision :** 29-02-2012

**Acts Referred:**

Kerala Toddy Workers Welfare Fund Act, 1969 — Section 2

**Citation :** (2012) 02 KL CK 0058

**Hon'ble Judges :** Antony Dominic, J

**Bench :** Single Bench

**Advocate :** C.P. Peethambaran, for the Appellant; Noble Mathew, Sr. Government Pleader for R1, Sri. Renil Anto, SC, KTWFF Board, for R2 and Sri. K. Mohanakannan, for R3, Smt. A.R. Pravitha and Smt. Rashmi Ravindran, for the Respondent

---

## Judgement

Antony Dominic, J.—Challenge in the writ petition is against the revenue recovery proceedings initiated by the respondent against the petitioner and his sister for the liability of their deceased mother towards the toddy workers welfare fund dues for the period 1998-1999. According to the petitioner his deceased mother along with another were the successful bidders of 52 toddy shops in Thalassery Excise Range during 1998-1999. It is stated that although they were the licensees, they had assigned the right to various persons including the party respondents herein and the husband of the 3rd respondent. It is stated that after enquiry the 2nd respondent fixed the liability for welfare fund dues on the persons who actually conducted the shop and Exts. P4 and P5 are two such orders. However, payments were defaulted and the petitioner's mother also expired soon thereafter.

2. Subsequently, revenue recovery proceedings were initiated against the petitioner and other legal heirs of his mother as per Ext.P7 for the realization of RS. 19,79,289/- . It is at this stage the writ petition has been filed contending that the shops in question were run by the party respondents and therefore the

liability should be recovered from them.

3. Going by the definition of "employer" as contained in Section 2(c) of the Kerala Toddy Workers Welfare Fund Act, licensee and also actual employer are employers of the toddy workers employed in a toddy shop and it is the responsibility of such employer to discharge the liability that is due. In so far as the case of the petitioner that his mother had assigned the right to conduct the shops to certain other persons. This very issue has been considered by the Division Bench of this Court in Welfare Fund Inspector V. Jaya (2006 (3) KLT 988), where it has been held thus;

It can thus be seen that so long as there is prohibition for transfer of licence, the licensee continues to be the owner and the principal employer of the shop by virtue of the specific inclusive definition of the term "employer" under S.2(c). As a matter of fact, when the business in an abkari shop conducted which mandates a licence to be issued and so long as the licence is not surrendered and continues to be in favour of the petitioners, whatever arrangement they had made with any intermediaries will not absolve their liability under the Act. Thus they are jointly and severally liable along with the employer satisfying the first limb of the definition clause. Hence, if there is any default in payment of the dues, it will be open to the authorities to proceed to recover the said amount from the licensees after exhausting their remedies against the person found to have employed the persons and directly pays wages to them. When the legislature in its wisdom with a view to enlarge the scope of the definition has roped in "licensees of the shop" also under the definition of the expression "employer", the court while interpreting the statute can't go beyond the statute and undo the legislative intent. It is a settled principle of law that if a term stands defined in the Act, the said term is to be given the same meaning whenever it is needed in the Act, unless a contrary intention is expressed. Where the definition is an inclusive definition, the word not only bears its ordinary, popular and natural sense whenever that would be applicable, but it also bears its extended statutory meaning. However, it is quite unusual to say that a statutory definition does not mean or include what it plainly means or include, particularly when its application to the various provisions of the Act does not present much difficulty. To the extent the learned Single Judge has held that the licensee cannot be held liable, we set aside the judgment.

4. Thus the Division Bench of this court has construed the definition as an inclusive one and also held that if it is accepted that it was a person other than the licensee who actually conducted the shop, such person is also an employer for the purpose of the Act and that it will be open to the authorities to proceed to recover the amount from the licensee after exhausting the remedies against the person who is found to have employed the workers in the toddy shops and paid wages. Therefore, if as stated by the petitioner, by Exts. P4, P5 and other similar orders the 2nd respondent has held respondents 3 to 10 and the husband of the 3rd respondent as the actual employers, the recovery proceedings should first be

directed against such persons and the petitioner or other legal representatives of the mother can be proceeded only thereafter. In this case there is nothing to indicate that recovery proceedings were attempted against the party respondents and no counter affidavit to that effect has been filed by the official respondents.

In such circumstances, the writ petition will stand disposed of directing that the 2nd respondent will initiate recovery proceedings against the persons who actually employed the toddy workers and recovery will be continued against the petitioner or other legal representatives of the deceased mother only in the event of failure to recover dues from the other employers.