

**(2021) 11 KL CK 0020**  
**In the High Court Of Kerala**  
**Case No : Writ Appeal No. 1333 Of 2021**

State Of Kerala

APPELLANT

Vs

Anil Babu

RESPONDENT

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**Date of Decision :** 02-11-2021

**Acts Referred:**

**Citation :** (2021) 11 KL CK 0020

**Hon'ble Judges :** P.B.Suresh Kumar, J;C.S.Sudha, J

**Bench :** Division Bench

**Advocate :** V. Manu, B.Pramod

**Final Decision :** Dismissed

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## Judgement

P.B.Suresh Kumar, J

1. This writ appeal is directed against the judgment dated 02.07.2020 in W.P.(C) No.15123 of 2014. Respondents in the writ petition are the appellants. Parties and exhibits are referred to in this judgment as they appear in the writ petition for convenience.

2. Petitioner was the licensee of a few toddy shops under the Cherthala Excise Range during 1996-1997. Proceedings have been initiated by the respondents against the petitioner for realisation of interest on delayed payment of fee for inter-district transport of toddy. The petitioner challenged the proceedings in W.P.

(C) No.14973 of 2005 mainly on the ground that the issue relating to the liability of the petitioner to pay interest on delayed payment of fee for inter-district transport of toddy, is covered in his favour by the decision of this Court in W.A.No.1027 of 2005. The stand of the respondents in the said writ petition was that S.L.P.No.4212 of 2007 preferred before the Apex Court by the State against the judgment in W.A.No.1027 of 2005 was pending and therefore, the issue is not concluded. This Court allowed the said writ petition on 23.07.2008, subject to the condition that the respondents will be entitled to recover the disputed

interest, if the claim is upheld by the Apex Court in the pending appeal. It was also directed by this Court that the respondents should not issue any fresh notice to the petitioner for the disputed interest or if any notice for the disputed interest is already issued, to withdraw the same and proceed for recovery only if the Apex Court upholds the levy.

3. W.P.(C) No.15123 of 2014 from which this appeal arises was instituted by the petitioner alleging that although S.L.P.No.4212 of 2007 arose from W.A.No.1027 of 2005 was dismissed as withdrawn later, proceedings have been initiated for realisation of the disputed interest covered by Ext.P6 judgment. The prayer in the writ petition, in the circumstances, was for quashing the notices issued by the respondents to the petitioner in this regard. The stand of the respondents in the writ petition was that the levy of the disputed interest was interfered with by this Court in a batch of writ appeals including W.A.No.1027 of 2005 and that though S.L.P.No.4212 of 2007 referred to in Ext.P6 judgment was dismissed as withdrawn later, the levy was upheld by the Apex Court in the appeals preferred against the remaining writ appeals and insofar as the levy was upheld, the proceedings initiated against the petitioner for realisation of the disputed interest is in order.

4. The fact that the levy of the disputed interest was upheld by the Apex court in a few matters later is not disputed by the petitioner. But it has come out that in matters where the levy was upheld, the Apex court has directed the respondents to extend the benefit of the Amnesty Scheme which was then in force to the parties involved in the said cases.

5. The learned Single Judge found that insofar as it was held by this court in Ext.P6 judgment that the respondents are entitled to recover the disputed interest from the petitioner only if the levy is upheld by the Apex court in S.L.P.No.4212 of 2007 and insofar as the levy has not been upheld in S.L.P.No.4212 of 2007, the respondents are not entitled to recover the disputed interest covered by the said judgment from the petitioner. It was also found by the learned Single Judge that even assuming that the petitioner is bound by the order of the Apex Court upholding the levy, he was entitled to settle the liability availing the benefit of the Amnesty Scheme, and the said benefit has not been extended to him. It is seen that in the course of the proceedings, on a query from the Court as to whether the benefit of the Amnesty Scheme could be extended to the petitioner as done in the case of other similarly placed persons in whose cases the levy was upheld by the Apex court, the respondents took the stand that it is not possible to extend at this distance of time the benefit of Amnesty Scheme to the petitioner. In the circumstances, the learned Single Judge has also found that in the peculiar facts of the case, the petitioner is also entitled to the benefit of the incertitude. In the aforesaid circumstances, the learned Single Judge allowed the writ petition and quashed the impugned notices. The respondents are aggrieved by the decision of the learned Single Judge and hence, this appeal.

6. Heard the learned Government Pleader for the appellants, the respondents in the writ petition and the learned counsel for the respondent, the petitioner in the writ petition.

7. The learned Government Pleader contended that the impugned judgment has been rendered by the learned Single Judge on a misreading of Ext.P6 judgment. It was pointed out that the interdiction of the proceedings against the petitioner in terms of Ext.P6 judgment was subject to the condition that he is liable to pay the disputed interest if the levy is upheld by the Apex Court, and not subject to the outcome of S.L.P.No.4212 of 2007. It was pointed out that in the matter of passing the impugned judgment, the learned Judge was proceeding on the wrong premise that the interdiction of the proceedings in terms of Ext.P6 judgment was subject to the outcome of S.L.P.No.4212 of 2007. According to the learned Government Pleader, insofar as the levy was upheld undisputedly by the Apex Court in the appeals preferred against the writ appeals decided along with W.A.No.1027 of 2005, the learned Judge ought to have found that the petitioner is liable to pay the disputed interest. It was also argued by the learned Government Pleader that the view taken by the learned Judge that the petitioner has not been given the benefit of the Amnesty Scheme is also unsustainable since it was for the petitioner to apply for the benefit of the said Scheme. It was also pointed out that the subject matter of the writ petition was not only the disputed interest, but also the amounts payable by the petitioner towards fee on inter-district transport of toddy and there was no justification therefore, for the learned Judge to interdict the recovery of the said amounts.

8. On a query from the court, it was pointed out by the learned Government Pleader that when the matter was pending before the Apex court, most of the similarly placed persons including the licensee involved in W.A.No.1027 of 2005 have settled their liability by availing the benefit of the Amnesty Scheme and it is in the said circumstances that S.L.P.No.4212 of 2007 was happened to be dismissed as withdrawn.

9. We have examined the contentions advanced by the learned Government Pleader.

10. Ext.P6 is a short judgment which reads thus:

"The question raised i.e. petitioner's liability for interest on transport fee of toddy is decided in favour of the petitioner vide judgment in W.A. No.1027/2005. According to the petitioner, transport fee is paid and contest is only with regard to interest. In view of the judgment in the Writ Appeal, interest if any due from the petitioner cannot be recovered. However, since Government Pleader submitted that SLP No.4212/2007 is filed against Writ Appeal judgment, this W.P. is allowed subject to the condition that respondents will be entitled to recover interest, if the claim is upheld by the Supreme Court in the appeal pending before it. There will also be direction to the respondents not to issue any fresh notice for interest or if any notice for interest is already issued, to withdraw the

same and proceed for recovery only if the Supreme Court upholds the levy. If any amount other than interest is payable by the petitioner, the same can be recovered after issuing notice

containing details thereof."

As discernible from the extracted judgment, what is brought to the notice of the learned Judge at the time of hearing is that the judgment of this court in W.A.No.1027 of 2005 has not become final in as much as S.L.P.No.4212 of 2007 preferred against the same was pending consideration before the Apex court. The judgment does not indicate that this Court was apprised of the fact that the issue was considered in a batch of matters including W.A.No.1027 of 2005 and special leave petitions preferred before the Apex court against the judgments in all such cases were also pending. In other words, Ext.P6 judgment can be understood only as one permitting the respondents to realise the disputed interest from the petitioner if the levy is upheld in S.L.P.No.4212 of 2007. We, therefore, do not find any infirmity in the finding rendered by the learned Single Judge that insofar as S.L.P.No.4212 of 2007 was dismissed, the petitioner is entitled to the benefit of Ext.P6 judgment which is binding on the respondents.

11. As noted, there is no dispute to the fact that in the matters in which the levy was upheld, the Apex Court has directed the respondents to extend the benefit of the Amnesty Scheme to the licencees involved in those matters. Even assuming that the petitioner is bound by the said decision, the respondents ought to have informed the petitioner then and there about the liability, and extended the benefit of the Amnesty Scheme to him also. Instead, admittedly, proceedings have been initiated long after the expiry of the time prescribed under the Amnesty Scheme, for realisation of the amounts covered by Ext.P6 judgment. It is taking note of the disadvantage in which the petitioner was placed in such a situation, the learned Single Judge took the view that even assuming that the petitioner is bound to pay the disputed interest on the basis of the decision of the Apex court upholding the levy, he is entitled to the benefit of incertitude, and it is having regard to the said circumstance as well that the writ petition was allowed. In the peculiar facts of this case, we do not find any infirmity in the said view of the learned Single Judge.

12. It is seen that there was absolutely no interdiction in terms of Ext.P6 judgment in recovering any amount from the petitioner other than the disputed interest in the light of the categoric clarification therein that if any amount other than interest is payable by the petitioner, the same can be recovered after issuing notice containing details thereof. Insofar as the impugned judgment deals only with the disputed interest covered by Ext.P6 judgment, we do not think that the same would in any way affect the right of the respondents to realise any amount other than the disputed interest from the petitioner covered by the issue involved in W.A.No.1027 of 2005, if the respondents are entitled to realise the same in accordance with law.

In the circumstances, there is no merit in the writ appeal and the same is, accordingly, dismissed.