
(2001) 12 KL CK 0050
In the High Court Of Kerala
Case No : W.A. No. 3824 of 2001

Suseelan

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 03-12-2001

Acts Referred:

Kerala Toddy Workers Welfare Fund Act, 1969 — Section 14, 15, 2, 4

Citation : (2002) 1 ILR (Ker) 236 : (2002) 1 KLJ 16

Hon'ble Judges : B.N. Srikrishna, C.J.;M. Ramachandran, J

Bench : Division Bench

Advocate : Aysha Youseff, for the Appellant; C.K. Abdul Rahim, Government Pleader and K.K. Babu, for the Respondent

Final Decision : Allowed

Judgement

B.N. Srikrishna, C.J.—Appeal admitted. Notice made returnable forthwith. Respondents 1 to 4 waive service through learned Government Pleader. Respondents 5 and 6 waive service through Mr. K.K. Babu, Standing Counsel for the Kerala Toddy Workers' Welfare Fund Board. By counsel, appeal called out for hearing and heard.

2. The appellant is the Secretary of the Karthikappally Taluk Chethu Vyavasaya Tozhilali Sahakarana Sangham Ltd. No. A.1071. The said society is a co-operative society registered under the provisions of the Kerala Co-operative Societies Act, formed for the purpose of conducting business in toddy. The members of the said society are toddy workers and toddy tappers. The said society obtained a licence to carry on toddy business in a certain shop in Kayamkulam Excise Range for the year 2001-2002. Under the provisions of the Kerala Toddy Workers' Welfare Fund Act every employer is required to contribute certain prescribed percentage of the wages to a provident fund constituted u/s 4 of the said Act. There was persistent default in making such contributions, both from employer's and employees' contributions, though deducted. Consequently, a notice was issued to the appellant for payment of the defaulted amount which runs into about Rs.

10,10,667/-. The amount not having been paid by the appellant, revenue recovery proceedings were taken against him vide Exts. P1 and P2. The appellant challenges the said revenue recovery proceedings by his Original Petition. The learned Single Judge while dismissing the Original Petition directed certain amount to be paid by the appellant. Being aggrieved, the appellant is before us in appeal.

3. The only question which has been strongly urged before us is that, merely because the appellant happened to be the Secretary of the Co-operative Society, there is no personal liability of the Secretary which can be enforced at the instance of respondents 5 and 6. This contention appears to be justified.

4. The learned counsel for respondents 5 and 6 strongly relies on the provisions of Section 2(c) of the Kerala Toddy Workers' Welfare Fund Act to contend that the moment a toddy licence is issued in favour of the society. The President, Secretary and every office-bearer becomes individually "employer" of the workers, and, consequently, all of them are liable for making contributions u/s 4 of the said Act. Section 2(c) defines the expression "employer" as under.

"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".

We are unable to accept the contention that this definition in any way imposes a personal liability on the office-bearers of the co-operative society. The whole idea behind giving a corporate status to the co-operative society is to ensure that the society becomes a juristic person enabled to conduct business. It is true that, more often than not, office-bearers elected to such co-operative societies mismanage them and incur liabilities for the societies. That, however, does not turn the liabilities of the Co-operative Society into personal liability of the office-bearers, unless there is a specific statutory provision to the effect. As far as the definition of "employer" in Section 2(c) is concerned, it applies to a person who "employs" workers. It cannot be disputed that the person who employs workers is the society, in the instant case, and not any office-bearer of the society. Again, the "contributions" declared u/s 4 of the Act are payable by the "employers".

5. In contrast, Section 15 of the Act specifically provides for personal liability. It provides that if the person committing an offence under the Act is a company, every officer of the company who is in the default as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Explanation (a) defines the expression "company" to mean any body corporate and includes a firm, a Co-operative Society or other association of individuals. Under Clause (c) of the explanation "officer" of the company includes office-bearers of a co-operative society. Section 14 imposes a penalty for contravention of the provisions of the Act. A reading of these sections

suggest that, where the statute intended to impose a liability on the office bearers of a co-operative society personally, it has done so by an express provision. The intention of the statute appears to be to foist only penal liability on the office-bearers whose default results in the co-operative society committing offences punishable under the Act. We do not see any provision in this Act which imposes civil liability on the office-bearers of the society, nor have we been shown any provision of any other Act, including the Co-operative Societies Act, under which such liability can be foisted on individual office-bearers.

6. In the result, we are of the view that the appellant cannot be made personally liable for the default of the Co-operative society. The revenue recovery proceedings taken against the appellant in his personal capacity are thoroughly misconceived, illegal and untenable.

Hence, we allow the Writ Appeal, set aside the order of the learned Single Judge and quash Exts. P1 and P2 by holding that the appellant is not personally responsible for the dues of the Karthikappally Taluk Chethu Vyavasaya Sahakarana Sangham Limited.

Respondents 5 and 6 are at liberty to proceed against the appellant or other office-bearers of the said society to prosecute them in accordance with the provisions of the Act and to take any other appropriate action as desired to recover the dues from the said Karthikappally Taluk Chethu Vyavasaya Sahakarana Sangham Limited.

7. No order as to costs.