

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 11TH DAY OF MARCH 2015/20TH PHALGUNA, 1936

WP(C).No. 29080 of 2005 (J)

PETITIONER(S):

1. ABRAHAM KURIAN,
CHUNIYAMAKKEN HOUSE, MONIPPALLY, KOTTAYAM DISTRICT.
2. SHINY JOHNY, D/O.ABRAHAM KURIAN,
CHUNIYAMAKKEN HOUSE, MONIPPALLY, KOTTAYAM DISTRICT.

BY ADV. SRI.C.C.THOMAS (SR.)

RESPONDENT(S):

1. THE WELFARE FUND INSPECTOR,
KERALA TODDY WORKERS WELFARE FUND BOARD, KOLLAM.
2. SMT. K.VASANTHA KUMARI,
KOLLANDAZHIKKAKATHU PADINJATTETHIL HOUSE
VADAKKEVILA, KOLLAM.
3. P.A.MAJEED, GENERAL SECRETARY,
PATHANAPURAM TALUK CHETHU THOZHILALI UNION(CITU)
COMRADE HOUSE, PUNALLUR.
4. SRI. SURESHKUMAR BABU,
TODDY & ABKARI WORKERS CONGRESS (INTUC), PUNALUR.
5. O.SREEDHARAN, GENERAL SECRETARY,
PATHANAPURAM TALUK CHETHU THOZHILALI UNION(AITUC)
PUNALUR.
6. S.BIJU, GENERAL SECRETARY,
PATHANAPURAM TALUK MADHYA VYAVASAYA THOZHILALI
UNION(CITU), PATHANAPURAM.
7. V.C.BABU,
PATHANAPURAM TALUK MADHYA VYAVASAYA STAFF
ASSOCIATION(AITUC), THOLIKODE.P.O., PUNALUR.
8. JOY JOSEPH, S/O.LATE JOSEPH,
KALLARAKANIL HOUSE, VELIYANNOOR.P.O.
KOTTAYAM DISTRICT.

9. THE SECRETARY (LABOUR & REHABILITATION)
DEPARTMENT, GOVERNMENT SECRETARIAT, GOVT. OF KERALA
THIRUVANANTHAPURAM.

10. THE DEPUTY TAHSILDAR (RR),
PALA, KOTTAYAM DISTRICT.

BY SRI.RENIL ANTO, SC, KTWWF BOARD
BY ADV. SRI.THOMAS ABRAHAM
BY ADV. SRI.K.B.ARUNKUMAR
BY GOVERNMENT PLEADER SRI. R. RANJITH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
11-03-2015, ALONG WITH WPC. 13997/2006, WPC. 5700/2009, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 29080 of 2005 (J)

APPENDIX

EXHIBITS

P1- PHOTOCOPY OF THE OBJECTION FILED BY THE PETITIONERS
BEFORE R1 DATED 28.7.2004

P2- PHOTOCOPY OF THE FINAL DETERMINATION ORDER
NO.Q/E4/PATHANA 1-34/2000-1 DATED 30.10.2004 PASSED BY R1

P3- PHOTOCOPY OF THE APPEAL FILED BEFORE R9 DATED 22.12.2004

P4- PHOTOCOPY OF THE JUDGMENT DATED 10.3.2005 IN WP(C).7986 OF
2005 OF THIS HONOURABLE COURT

P5- PHOTOCOPY OF THE ORDER NO.GO.(Rt).2768/05/LBR DATED 3.10.2005
PASSED BY R9

K.VINOD CHANDRAN, J

W.P.(C).No. 29080/2005, 13997/2006 & 5700/2009

Dated 11th March, 2015

JUDGMENT

The petitioners in the above writ petitions are all concerned with the very same order of the Determination Officer under the Kerala Toddy Workers Welfare Fund Act, 1969 (hereinafter referred to as 'the Act') bearing No.Q/E4 Pathanapuram 1-34/2000-01 dated 30.10.2004 produced in all the writ petitions and impugned separately.

2. W.P.(C).5700/2009 is filed by the licensee. W.P.(C).29080 of 2005 is filed by the father and sister of one C.K.Saji, who is said to be the power of Attorney holder of the licensees. W.P.(C).13997 of 2006 is filed by one Joy Joseph who is said to have conducted the shop after the death of C.K.Saji. Parties are referred to by their names.

3. Admittedly, one K.Vasantha Kumari is the licensee of toddy shop Nos. 1 to 34 in Pathanapuram range. It is also not in dispute that C.K.Saji was the Power of Attorney of the licensee. The Power of Attorney died on 14.08.2000.

4. Initially, the question as to the liability of the father and sister of the Power of Attorney is to be considered. A reading of the impugned order would show that, the father and sister were said to be involved in the conduct of the shop only for reason of their having withdrawn about Rs.22,00,000/- remaining in the account of the deceased C.K.Saji. It is also contended that the legal heir ship certificate was obtained on the premise that the dues of the deceased under the Act had to be satisfied.

5. Specifically in paragraph 4(e) of the impugned order the Determination Officer refers to such withdrawal of Rs.22,75,000/- having been effected from the Bank. There is no dispute that the father and the sister are the only legal heirs of the deceased Saji. The Determination Officer has also found on enquiry that, the legal heirs of the deceased Saji had unequivocally stated before the authorities of the Bank that the amounts deposited were self-acquired amounts of Saji. It is on that premise that the proceedings were initiated against the legal heirs of the deceased Saji, they having succeeded to the assets of the deceased at least to the extent of the amounts retained in the savings account. No findings as to the father and sister of the deceased Saji having conducted the shop is evident.

6. This Court also does not find any other evidence as to the involvement of the father and

sister of the deceased in the management of the shop. The impugned order does not also speak of such involvement except the withdrawal of the aforesaid amounts. Even after the death of the Power of Attorney holder, there is nothing to show that his father or sister were involved in the Management of the shop. Hence, definitely the legal heirs of the deceased Power of Attorney holder can be proceeded against only to the extent of the liability of the deceased; that too as against the assets left behind by the deceased.

7. The deceased C.K.Saji as Power of Attorney holder of the licensee, was admittedly managing the shop from 01.04.2000 to 14.08.2000, ie, till the date of his death. The impugned order itself would show that on 05.06.2000, there were two deposits made of Rs.96,110/- and an interest of Rs.4315/- being the advance contribution due under the Act. Again, on

06.07.2000 and 04.08.2000 respectively, deposits of Rs.96,110/- was made, as advance contribution. Hence during the period in which the deceased Saji was in Management, advance contributions were regularly paid under the Act. Definitely, such advance contributions would be subject to a final determination order passed.

8. In such circumstances, in the peculiar fact situation, there has to be a determination as to the final liability of contribution under the Act between 01.04.2000 and 14.08.2000. Such determination shall be made and deduction shall be effected of the advance contribution made by Saji. If there are any amounts due, then, the legal heirs of the deceased Power of Attorney holder, being the petitioners in W.P.(C).29080 of 2005, would be liable only to the extent of the assets of the deceased to which they succeeded. As against the petitioners in W.P.(C).29080 of 2005, in the capacity of the legal

heirs of the Power-of-Attorney of the licensee, there shall be a fresh assessment made determining the liability between 01.04.2000. Demand shall be made on the petitioners if there is any further liability to be satisfied. Such satisfaction shall only be to the extent of the assets to which they succeeded.

9. W.P.(C).13997 of 2006 is filed by one Joy Joseph who is said to have conducted the shop after the death of Saji. Admittedly, he is the mother's brother of the deceased Power-of-Attorney holder. The specific contention of Joy Joseph is that it was the father of the deceased Saji who was conducting the shop and he was involved in it only as a representative of the father of the Power of Attorney holder. This Court has already found in the earlier writ petition that there is no evidence available to indicate that the father and sister of the deceased Power of Attorney holder was involved

in the business.

10. It is also pertinent that the Toddy Workers Welfare Fund Board has produced a settlement along with a memo dated 24.02.2015 wherein Joy Joseph is seen having participated in the settlement, as the employer of the toddy shops in the Pathanapuram range. Hence, Joy Joseph cannot be absolved of the liability. However, since it has been proved that till 14.08.2000, Saji was carrying on the business and Joy Joseph had no involvement in the said business till that date, no liability can be mulcted on Joy Joseph prior to 14.08.2000. The liability to satisfy the contributions for the period prior to 14.08.2000 has already been taken care of, in the directions issued in W.P. (C).29080 of 2005.

11. The Determination Officer under the Act shall hence, pass a fresh order for the

period between 14.08.2000 to 06.01.2001. Even the Board does not dispute the fact that the shop room was closed down after 06.01.2001.

12. In W.P.(C).5700 of 2009, a challenge is made by the licensee itself against the final determination order. Though any person who was managing the affairs of the shops and had engaged employees in the shop would be brought in under the definition of 'employer' under Section 2(c) of the Act, the licensee's liability cannot at all be effaced. The licensee having obtained a licence *de hors* the fact that the Management was entrusted to other persons, would be responsible for the conduct of the shop and would also be responsible for complying with the conditions in a statute especially, in this case, a Welfare Legislation. The contention of the licensee is that first proceedings would have to be taken against the person who was in occupation of the shop. The

learned counsel would also refer to a Division Bench decision of this Court in **Welfare Fund Inspector v. Jaya (2006 (3) KLT 988)** in which it was directed that, first proceedings are to be taken against the person who was in actual management.

13. This Court had expressed a doubt on the above proposition so laid down since that would go against the principle of joint and several liability. The matter has also been placed before a Division Bench for a re-look into the matter. However, that need not result in the present writ petition being kept pending since this Court is directing the final determination order to be recast as in the earlier two writ petitions. The contention of the licensee would be left open to be considered, after the determination order is passed. Definitely, the licensee would also have to be issued with a notice before such orders

are passed.

14. In the above circumstances, the impugned order is set aside only to facilitate a re-consideration, and only to the extent of the computation of amounts for the different periods. The directions herein above shall be complied with and separate assessment orders passed for the period between 01.04.2000 to 14.08.2000 and 14.08.2000 to 06.01.2001. The legal heirs of C.K.Saji, who are the petitioners in W.P.(C)29080 of 2005, as also the licensee, shall be issued with notice as to the determination with respect to the liability between 01.04.2000 and 14.08.2000. The petitioner in W.P.(C).13997 of 2006 and the licensee being the petitioner in W.P.(C).5700 of 2009 shall be issued with notice for determination of liability as per the Act for the period between 14.08.2000 and 06.01.2001.

15. It is made clear that the liability of the licensee as also C.K.Saji for the period between 01.04.2000 to 14.08.2000, and Joy Joseph and the licensee for the period between 01.04.2000 to 06.01.2001, as found in the impugned orders, are upheld. Modification is only to effect separate computation as directed herein above.

The writ petitions are disposed of. Parties are left to suffer their respective costs.

SD/-

K.VINOD CHANDRAN
Judge

Mrcs

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