

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN**

THURSDAY, THE 23RD DAY OF OCTOBER 2014/1ST KARTHIKA, 1936

WP(C).No. 28558 of 2013 (T)

PETITIONER(S):

**M.G. RAVEENDRAN NAIR, AGED 70,
S/O. LATE SREE GOPALA PILLAI
MATTATHIL THEKKETHIL HOUSE, KOTTA P.O.
PATHANAMTHITTA DISTRICT-689 504.**

BY ADV. SRI.N.J.MATHEWS

RESPONDENT(S):

- 1. THE STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY
STATE SECRETARIAT, THIRUVANANTHAPURAM-695 001.**
- 2. THE SECRETARY
DEPARTMENT OF POWER, STATE SECRETARIAT
THIRUVANANTHAPURAM-695 001.**
- 3. KERALA STATE ELECTRICITY BOARD
VYDYUTHI BHAVAN, PATTOM, THIRUVANANTHAPURAM-695 004
REPRESENTED BY ITS SECRETARY.**
- 4. THE ASSISTANT ENGINEER
ELECTRICAL SECTION, KERALA STATE ELECTRICITY BOARD
MULAKKUZHA-689 505.**
- 5. THE EXECUTIVE ENGINEER
KERALA STATE ELECTRICITY BOARD, CHENGANNUR-689 121.**
- 6. THE DEPUTY TAHSILDAR (R.R.)
PATHANAMTHITTA-689 649.**

**R3-R5 BY ADV. SRI.RAJU JOSEPH (SR.)
R3-R5 BY ADV. SRI.K.T.PAULOSE, SC, KSEB
BY GOVERNMENT PLEADER SRI.S.JAMAL
BY SRI.JAICE JACOB,SC,KERALA STATE ELECTRICITY BOARD**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23-10-2014,
ALONG WITH WP(C) NO.17300/13 & WA NO.1848/12, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:**

**ANTONY DOMINIC,
K.RAMAKRISHNAN &
ANIL K. NARENDRAN, JJ.**
=====

**WP(C) Nos.17300 & 28558/13
&
Writ Appeal No. 1848 of 2012**
=====

Dated this the 23rd day of October, 2014

O R D E R

Antony Dominic, J.

Contention of the consumers of the Kerala State Electricity Board that the proceedings initiated against them for recovery of the amounts are in respect of debts, the recovery of which is barred by the law of limitation, has given rise to the writ appeal and writ petitions.

2. When WP(C) Nos.17300/13 and 28558/13 came up before the learned single Judge, doubting the correctness of the judgment in ***Inspector, Toddy W.W.F. Board v. Vijayan*** (2009 (1) KLT 410), these cases were referred to a Division Bench. The writ petitions and WA No.1848/12 were considered by a Division Bench, which, by its order dated 18th of July, 2014 agreed that the judgment in ***Vijayan's case*** (supra) required reconsideration. It is accordingly that these cases are coming up for consideration of the Full Bench.

3. **Vijayan's case** (supra) arose under the Toddy Workers Welfare Fund Act, 1969. Considering Section 9 of the said Act and the provisions of the Kerala Revenue Recovery Act, a Division Bench of this Court held that the amounts due under the Toddy Workers Welfare Fund Act is public revenue due and that 30 years provided under Article 112 of the Limitation Act is applicable for its recovery. It is the correctness of these conclusions in the judgment which are to be reconsidered.

4. In **Vijayan's case** (supra), the Division Bench of this Court followed the earlier Division Bench in **Kerala Motor Transport Workers Welfare Fund Board v. William Raynold** (2004 (3) KLT 1083) rendered in the context of Section 10 of the Kerala Motor Transport Workers Welfare Fund Act and held thus in para 7 and 8 of the judgment;

"7. In Kerala Motor Transport Workers Welfare Fund Board v. William Raynold (2004 (3) KLT 1083), a Division Bench of this Court considered the impact of S.10 of the Motor Transport Workers Welfare Fund Act. Division Bench held that S.10 of the said Act provides that the arrears due from an employer under the Act could be recovered in the same

manner as an arrear of public revenue due on land. It was specifically held that when S.10 declares that the arrears due from an employer under the Act could be recovered in the same manner as arrears of public revenue due on land, it follows that all the provisions of the R.R. Act would become applicable. Division Bench therefore, went on to hold that the arrears due from the employer under the said Act is arrears of public revenue due on land and it could be recovered by resorting to the provisions of the R.R. Act. Division Bench indicated that this is the view that was taken in Baby v. State of Kerala & Ors. (1981 KLT 510).

8. We are in respectful agreement with the view expressed by the Division Bench in Kerala Motor Transport Workers Welfare Fund Board v. William Raynold (2004 (3) KLT 1083). We take note of the fact that S. 9 of the Toddy Workers Welfare Fund Act is in pari materia with S.10 of the Motor Transport Workers Welfare Fund Act. We are of the view that S.9 of the Act, by a fiction declares that the amounts due under the Act are liable to be treated as arrears of land revenue. Thus, by virtue of the declaration made under S.9 of the Act, amounts which are otherwise not land revenue stricto sensu are deemed to be land

revenue and recoverable as such. Thus, the period of limitation applicable in relation to the amounts due under the Act will be the period prescribed in relation to the amounts due to the Government. If that be so, the entry applicable in this behalf in relation to amounts due under the Act, would be Art.112 of the Limitation Act, and not Art.113 of the Act. Thus, the longer period of limitation prescribed under the former namely thirty years would be available in relation to the amounts due under the Act, by the virtue of S.9 of the Toddy Workers Welfare Fund Act. In that view of the matter, it is clear that the proceedings initiated in the year 2005, evidenced by Exts.P1 and P3, would not be barred by limitation. We are unable to sustain the findings of the learned single Judge."

5. Section 9 of the Toddy Workers Welfare Fund Act provides that any amount due from the employer in pursuance of the provisions of the Act or the scheme thereunder may, if the amount is in arrear, be recovered together with interest thereon at the rate of nine per cent per annum in the same manner as an arrear of land revenue. The Division Bench held that this section by a fiction declared that the amounts due under the Act are,

though not arrears of land revenue *stricto sensu*, deemed to be arrears of land revenue and are recoverable as such. It is further held that therefore the period of limitation applicable for recovery of the amounts due under the Act is the longer period prescribed in relation to the amounts due to the Government under Article 112 of the Limitation Act and not Article 113 of the Act.

6. While considering the correctness of this judgment, we have to examine two issues. One is whether by a mere declaration made by Government under Section 71, the amounts thus declared to be recoverable under the Revenue Recovery Act would get the character of “public revenue due on land” as defined in Section 2(j) of the Kerala Revenue Recovery Act. The second is whether in a case where such a declaration is made, the provisions of Article 112 of Limitation Act are attracted in order to get the benefit of longer period of limitation.

7. While considering these questions, we should first make reference to the relevant provisions of the Kerala Revenue Recovery Act. Section 2(j) of the Act defines “public revenue due on land” as the land revenue charged on the land and includes all other taxes, fees and cesses on land, whether charged on land or

not and all cesses or other dues payable to Government on account of water used for the purposes of irrigation. Section 3 provides that public revenue due on any land shall be the first charge on that land, the buildings upon it and on the produce thereof. Section 5 provides the manner in which the arrears of public revenue due on land are to be recovered. Section 71 of the Revenue Recovery Act provides that the Government may, by notification in the Gazette declare, if they are satisfied that it is necessary to do so in public interest, that the provisions of the Act shall be applicable to the recovery of amounts due from any person or class of persons to any specified institution or any class or classes of institutions, and thereupon all provisions of the Act shall be applicable to such recovery. It was in exercise of the powers under Section 71, the Government of Kerala have issued SRO No.1297/1985 declaring that the provisions of the Revenue Recovery Act shall be applicable to the recovery of the amounts due to the Kerala Toddy Workers Welfare Fund Board, Thiruvananthapuram.

8. A combined reading of the provisions of the Revenue Recovery Act and Section 10 of the Motor Transport Workers

Welfare Fund Act show that Section 10 of the latter Act only provides the manner in which the amounts due under the Act are to be recovered. Likewise, Section 71 of the Revenue Recovery Act only enables the Government to issue a notification making the provisions of the Revenue Recovery Act applicable for the recovery of amounts due to institutions. These provisions show that even in spite of a declaration and a notification issued under Section 71, the nature of the debt that is due to be recovered under the machinery of the Revenue Recovery Act does not get altered to a public revenue due on land. Instead, the fiction created is only for the purpose of making the provisions of the Revenue Recovery Act applicable for the recovery of the amounts due to the institution notified under Section 71 of the Revenue Recovery Act. Such a change in the character of debt is not contemplated in the scheme of either of these statutes.

9. In this context, it is relevant to turn to the judgments that were relied on by both sides before us. In ***Baby v. State of Kerala*** (1981 KLT 510), the question for consideration was whether the employer from whom amounts were due under the Toddy Workers Welfare Fund Act was liable to be arrested under

Section 65 of the Revenue Recovery Act, 1968. In this case, after referring to the provisions of Section 9 of the Toddy Workers Welfare Fund Act and also the provisions of the Revenue Recovery Act, the learned single Judge drew a distinction between “public revenue due on land” and other amounts which are not so deemed but recoverable under the Revenue Recovery Act. This is evident from para 7 and para 8 of the judgment, which are extracted below for reference.

“7. 'Public revenue due on land' is defined under S.2 (j) of the R R. Act as follows:

" 'Public revenue due on land' means the land revenue charged on the land and includes all other taxes, fees and cesses on land, whether charged on land or not, and all cesses or other dues payable to the Government on account of water used for purpose of irrigation."

S. 3 creates a charge in respect of public revenue due on land. It says:

"The public revenue due on any land shall be the first charge on that land, the buildings upon it and on the produce thereof."

S. 2 (j) is an inclusive and comprehensive definition which ropes in all taxes, fees and cesses on land, whether charged on land or not,

and cesses and dues on account of water used for irrigation, so that they all are, in addition to land revenue charged on land, treated as public revenue due on land; and by operation of S.3, they shall be the first charge on the land. All these items coming under S.2 (j) are public revenue due on land. Amounts which are by fiction of law treated as if they were public revenue due on land or land revenue are also public revenue due on land. The distinction between 'public revenue due on land' and other amounts which are not so deemed but recoverable under the R. R. Act appears to be that in respect of the former, a charge is automatically created by reason of S.3, whereas in the case of the latter S.3 is not attracted. But both are amounts recoverable under the R. R. Act. This was the distinction that was emphasised by the Madhya Pradesh High Court in construing like provisions.

8 Likewise, money due under S.9 of the Welfare Fund Act is not public revenue due on land and S.3 creating a charge under the R. R. Act is not attracted, although the amount as such is recoverable as in the case of any other land revenue, which would mean that, land revenue being part of the definition of public revenue due on land, it is recoverable by any of the

modes prescribed for recovery of the latter. The object of the R. R. Act is to recover not only public revenue due on land to which S.3 is attracted, but also all other amounts declared to be recoverable under the Act. Money due under the Welfare Fund Act is of that character. But it does not enable the Recovering Officer to claim priority over other creditors."

10. Subsequently, a Division Bench of this Court rendered its judgment in **A.K.Nanu & Ors.v. State of Kerala** (1987 (2) KLT 921), where the question considered was whether the debts barred under the law of limitation could be recovered by a financial institution notified under Section 71 of the Revenue Recovery Act. The Division Bench considered the issue and answered the question in the negative holding thus in para 6 and 7 of the said judgment thus;

"6. In the absence of a provision creating a substantive right to recover time-barred debts, the Act providing for summary recovery does not avail once the period prescribed for recovery under the Limitation Act has expired. The Act only provides for easy recovery, not recovery at any time. Time is necessarily limited, unless of course the legislature provides to the contrary.

The question in each case is whether the statute in question has created a substantive right or liability providing, in respect of a debt, a period of limitation different from what is prescribed under the Limitation Act or has altogether removed the bar of limitation in respect of such a debt. If the answer were to be in the affirmative, the bank's counsel would be right in his submission on the point. But we do not read the relevant provisions of the Act creating any such right. The Act creates a special procedure, but not a substantive right to overcome limitation. As stated by the Lahore High Court in AIR. 1924 Lahore 53 and cited with approval by the Privy Council in AIR 1933 PC 63:

“.....the section does not create new liabilities or confer new rights, but merely creates a summary procedure for enforcing existing liabilities.....”

7. The Government Pleader, supporting the contention of the bank, submits that by reason of the notification under S.71, the money due to the bank has become public revenue and, therefore, the shorter period of limitation applicable to an ordinary debt cannot be applicable to such a debt. We do not agree. The Section only provides for a machinery for recovery of money due to the notified

institution. It treats the debt as if it were public revenue for the purpose of recovery and does not convert it into public revenue. The debt, for that reason, does not assume the attributes of public revenue, for there is no qualitative change in its character. As stated by Madhavan Nair, J. in Kunhamina Umma v. Paru Amma, 1967 KLT 596:

“.....It is pertinent to remember here that the Revenue Recovery Act deals only with the process of recovery of revenue and not with (the) incidence of revenue.....”

(emphasis supplied)

11. Again yet another Division Bench of this Court in its judgment in **Subhadra v. State of Kerala** (1995 (1) KLT 32) considered the question whether a property assigned in favour of the plaintiff can be proceeded against and sold under the Revenue Recovery Act for the realisation of dues outstanding from her husband under the Kerala Toddy Workers Welfare Fund Act. While answering this question, Division Bench referred to the judgment in **Baby's case** (supra) and drew distinction between the dues falling under the category of public revenue due on land and other dues declared to be recoverable as arrears of land

revenue. This is clear from paragraph 6 of the judgment, where it is held thus;

“6. From S.9 of the Welfare Fund Act, it is clear beyond doubt that the amount due under that Section is statutorily declared to be recoverable as land revenue and as such can be recovered through any of the modes prescribed for recovery under the R.R. Act. The object of the R.R. Act is to recover not only ‘public revenue due on land’ but also land revenue and all other amounts declared to be recoverable under that Act by any other law for the time being in force. Money due under the Welfare Fund Act though not public revenue due on land as defined under S.2(j) of the RR Act, will certainly fall under the category of other amounts declared to be recoverable under RR Act by the Welfare Fund Act.”

12. The issue again came up for consideration before a Full Bench of this Court in **Kerala Fisheries Corporation v. P.S.John** (1996(1) KLT 814) where the applicability of the provisions of the Revenue Recovery Act for the recovery of the debts barred under the Limitation Act was considered and the Full Bench held thus in paragraph 19 of the judgment.

“19.....The question is what would be the

position of an institution brought in by the declaration notified under S.71 of the Act. S.71 indicates that it is on the satisfaction of the Government that it was necessary to do so in public interest that the declaration contemplated by S. 71 of the Act could be notified. The institutions declared by Notification under S. 71 of the Act thus far, also give a clear indication that the Notification under S. 71 of the Act is issued only in respect of institutions that are public institutions and most of them are instrumentalities of the State. S.71 of the Act itself indicate that the Notification itself is to be issued in public interest. Therefore, by a fiction, the amounts due to the institution notified under the Section is treated on a par with the amounts due to the Government in terms of S. 68 of the Act. By giving full play to the fiction so created, we think that under the Act, the period of limitation prescribed for recovery of the debts to those institutions notified under S. 71 of the Act would also be 30 years as provided under Art. 112 of the Limitation Act. It is no doubt true that Art. 112 of the Limitation Act, 1963, would not by itself apply to such institutions and applies only to the Governments. But in our view, by the issuance of the Notification under

S.71, the Act, by a fiction treats the amounts due to those institutions on a par with the amounts due to the Government.”

13. By this judgment, the Full Bench also overruled the judgment of the Division Bench in **Nanu's case** (1987(2) KLT 921).

14. The issue was considered by the Apex Court in its judgment in **State of Kerala v. V.R.Kalliyankutty** (1999(2) KLT 146) where the Apex Court held that the Revenue Recovery Act only provides a machinery for the speedy recovery of debts which are legally recoverable and that it did not create any new rights or liabilities. This is clear from para 8 to 10, 14 and 16 of the judgment, which are extracted below for reference;

“8. Looking to the object of S.71 we have to examine whether time-barred claims of the State Financial Corporation and the banks can be recovered under it. Is the object only speed of recovery or is it also enlargement of the right to recover? The respondent- institutions rely on the words amounts due to S.71 as encompassing time-barred claims also. Now, what is meant by the words amounts due used in S.71 of the Kerala Revenue Recovery Act as

also in the notifications issued under S.71? Do these words refer to the amounts repayable under the terms of the loan agreements executed between the debtor and the creditor irrespective, of whether the claim of the creditor has become time-barred or not? Or do these words refer only to those claims of the creditor which are legally recoverable? An amount due normally refers to an amount which the creditor has a right to recover. Wharton in Law Lexicon defines due as anything owing; that which one contracts to pay to another. In Blacks Law Dictionary, 6th Edn. at page 499 the following comment appears against the word due. The word due always imports a fixed and settled obligation or liability; but with reference to the time for its payment there is considerable ambiguity in the use of the term, the precise signification being determined in each case from the context. It may mean that the debt or claim in question is now (presently or immediately) matured and enforceable, or that it matured at sometime in the past and yet remains unsatisfied, or that it is fixed and certain but the day appointed for its payment has not yet arrived. But commonly and in the absence of any qualifying expressions, the word due is

restricted to the first of these meanings, the second being expressed by the term overdue and the third by the word payable. There is no reference in these definitions to a time-barred debt. In every case, the exact meaning of the word due will depend upon the context in which that word appears.

9. In the case of Hansraj Gupta & Ors. v. Dehra Dun - Mussoorie Electric Tramway Co. Ltd. (AIR 1933 PC 63) the Privy Council was required to interpret the words money due under S.186 of the Companies Act, 1913. S.186 deals with the recovery of any money due to the Company from a contributory. Interpreting the words money due, the Privy Council said that the phrase would only refer to those claims which were not time-barred. It noted that the section is concerned only with moneys due from a contributory. A debtor who is not a contributory is not affected by it. Moneys due from him can be recovered only by a suit in the company's name. Secondly, the section creates a special procedure for obtaining payment of moneys. It is not a section which purports to create a foundation upon which to base a claim for payment. It creates no new rights. Thirdly, the power of the court to order payment under that Section is discretionary. It

may refuse to act under that section, leaving the liquidator to sue in the name of the company. Therefore, the respondent under the procedure of S.186 cannot be deprived of some defence or answer open to him in a suit for the same moneys.

10. The same reasoning would apply in the present case also. The Kerala Revenue Recovery Act does not create any new right. It merely provides a process for speedy recovery of moneys due. Therefore, instead of filing a suit, (or an application or petition under any special Act), obtaining a decree and executing it, the bank or the financial institution can now recover the claim under the Kerala Revenue Recovery Act. Since this Act does not create any new right, the person claiming recovery cannot claim recovery of amounts which are not legally recoverable nor can a defence of limitation available to a debtor in a suit or other legal proceeding be taken away under the provisions of the Kerala Revenue Recovery Act. In fact, under S.70 of the Kerala Revenue Recovery Act it is provided that when proceedings are taken under this Act against any person for the recovery of such sum of money due from him, such person may, at any time before the commencement of the sale of

any property attached in such proceedings, pay the amount claimed and at the same time deliver a protest signed by himself to the officer issuing the demand or conducting the sale as the case may be. Sub-s. (2) of S.70 provides that when the amount is paid under protest the order issuing the demand or the officer at whose instance the proceedings have been initiated, shall enquire into the protest and pass appropriate orders. If the protest is accepted, the officer disposing of the protest shall immediately order the refund of whole or part of the money paid under protest. Under Sub-S.(3) of S.70, the person making a payment under protest shall have the right to institute a suit for the refund of the whole or part of the sum paid by him under protest.

14. In our view if such a wide interpretation is put on the words amount due under the Kerala Revenue Recovery Act, there is every likelihood of the provisions of Art.14 being attracted. This Court in the case The Director of Industries, U.P. and Ors.v. Deep Chand Agrawal (Supra) justified the special procedure for recovery of certain debt under the U.P. Public Moneys (Recovery of Dues) Act, 1965 on the ground that the amounts which were advanced by the State or by the financial

institutions were for the economic betterment of the people of that State. Speedy recovery of these amounts was necessary so that these amounts could be re-utilised for the same public purpose. It is doubtful if the public purpose would extend to granting exemption to these claims from the statute of limitation. The law of limitation itself rests on the foundations of public interest. The Courts have expressed at least three reasons for supporting the existence of statutes of limitation; (1) that long dormant claim have more of cruelty than justice in them; (2) that a defendant might have lost the evidence to disprove a stale claim; and (3) that persons with good causes of action should pursue them with reasonable diligence. (See Halsbury 4th Edition Vol. 28 paragraph 605). In Nav Rattanmal & Ors. v. State of Rajasthan (AIR 1961 SC 1704) the Statutes of Limitation have been considered as Statutes of Repose and Statutes of Peace. The generally accepted basis for such statutes is that they are designed to effectuate a beneficent public purpose. Whether public purpose of speedy recovery would outweigh public purpose behind a statute of limitation is a moot point. But we need not examine this aspect any

further in view of our interpretation of the words amounts due in S.71.

16. There is no question, however, in the present case of any payment voluntarily made by a debtor being adjusted by his creditor against a time barred debt. The provisions in the present case are statutory provisions for coercive recovery of amount due. Although the necessity of filing a suit by a creditor is avoided, the extent of the claim which is legally recoverable is not thereby enlarged. Under S.70(2) of the Kerala Revenue Recovery Act the right of a debtor to file a suit for refund is expressly preserved. Instead of the bank or the financial institution filing a suit which is defended by the debtor, the creditor first recovers and then defends his recovery in a suit filed by the debtor. The right of the parties are not thereby enlarged. The process of recovery is different. An Act must expressly provide for such enlargement of claims which are legally recoverable, before it can be interpreted as extending to the recovery of those amounts which have ceased to be legally recoverable on the date when recovery proceedings are undertaken. Under the Kerala Revenue Recovery Act such process of recovery would start with a written requisition

issued in the prescribed form by the creditor to the Collector of the District as prescribed under S.69(2) of the said Act. Therefore, all claims which are legally recoverable and are not time barred on that date can be recovered under the Kerala Revenue Recovery Act.

15. Thus, **Kalliyankutty** (supra) has approved the principles laid down by the Division Bench in **Nanu's case** (supra) and the Full Bench judgment in **Kerala Fisheries Corporation's case** (supra) is no longer good law.

16. Reference was made to few other judgments laying down the principle that even if a debt is made recoverable under the provisions of the Revenue Recovery Act, that would not in any manner alter the nature of the debt. In **Builders Supply Corpn. v. Union of India** (AIR 1965 SC 1061), where referring to the provisions of Section 46(2) of the Income Tax Act (Act 11 of 1922), the Apex Court considered this question and held thus in paragraph 28;

“28. We have referred to this decision, because it brings out emphatically the real character of the provisions prescribed by Section 46(2). Section 46(2) does not deal with the doctrine of

the priority of Crown debts at all; it merely provides for the recovery of the arrears of tax due from an assessee as if it were an arrear of land revenue. This provision cannot be said to convert arrears of tax into arrears of land revenue either; all that it purports to do is to indicate that after receiving the certificate from the Income-tax officer, the Collector has to proceed to recover the arrears in question as if the said arrears were arrears of land revenue. We have already seen that other alternative remedies for the recovery of arrears of land revenue are prescribed by sub-sections (3) and (5) of S. 46. In making a provision for the recovery of arrears of tax, it cannot be said that S. 46 deals with or provides for the principle of priority of tax dues at all; and so, it is impossible to accede to the argument that S. 46 in terms displaces the application of the said doctrine in the present proceedings.”

17. Similar view has been taken by a learned single Judge of this Court referring to the provisions of the Revenue Recovery Act in **Abraham Jacob v. Thomas J.Nidhiri** (2008 (2) KLT 204) where the learned single Judge held thus in para 5.

“5. By virtue of S.28 of the Abkari Act, arrears under that Act will be treated as arrears of land

revenue but, they do not become public revenue due on land as defined in S.2(j) of the RR Act and therefore, would not fall within S.3 for a preferential first charge."

18. Another learned single Judge considered the very same question in **Anandan K. and another v. State of Kerala and Others** (2009 (4) KHC 1002) where, the learned single Judge has also taken the very same view thus;

"The terminology used in the above provisions makes it crystal-clear that, the amounts sought to be realised from the 6th respondent (stated as due in respect of the loss caused to the Block Panchayat pursuant to clause 12 of the R5(h) agreement; the amounts stated as due to the Toddy Workers' Welfare Fund or the amount stated as to be realised by way of 'fine' in connection with the dishonour of the cheque issued by the said respondent and forming the subject-matter of a case filed before the concerned Magistrate's Court under Section 138 of the Negotiable Instruments Act) do not have the colour and characteristic so as to make it "public revenue due on land" as defined under Section 2(j) of the Act."

19. **William Raynold** (supra) was a case where the

Division Bench considered the question whether proceedings under Section 65 of the Revenue Recovery Act could be initiated against a defaulter of the dues under the Motor Transport Workers Welfare Fund Act. After referring to the respective enactments, though the Bench upheld the proceedings initiated, certain observations made in the judgment are apparently contradictory and needs to be clarified. In paragraph 10 of the judgment it is stated that;

"It is true that the term " public revenue due on land" has been defined in Cl.(j) of S.2 of the Revenue Recovery Act and that the amounts due under the Act do not fall within this definition but that does not mean that the amount due under the Act cannot be recovered under the Revenue Recovery Act.

.....It would follow that Cl.(j) of S.2 of the Revenue Recovery Act would not require any amendment and that this clause will be deemed to include the arrears due from the employer under the Act and such arrears will partake the character of "arrears of public revenue due on land" because of the declaration under S.71 of

the Revenue Recovery Act".

20. In our view, the observation in the latter sentence of the judgment does not militate against the former one and was made only to explain that because of the notification issued under Section 71 of the Revenue Recovery Act, the arrears would partake the "character" of arrears of public revenue due on land and was not meant or intended to hold that the arrears would be deemed to be public revenue due on land as defined in section 2 (j) of the Act. This is all the more so because the Bench has drawn support to its conclusion from the the precedents in ***Baby's case*** (supra) and ***Subhadra's case*** (supra).

21. In ***Vijayan's case*** (supra), Division Bench has referred to the earlier judgments in ***Baby's case*** (supra) and ***William Raynold's case*** (supra). ***Kalliyanikutty's case*** (supra) also is referred in the judgment. It is despite noticing these judgments that in ***Vijayan's case*** (supra) the Division Bench came to the conclusion that by virtue of Section 9 of the Toddy Workers Welfare Fund Act and a notification issued under Section 71 of the Revenue Recovery Act, amounts which are otherwise not land revenue *stricto sensu* are deemed to be public revenue due on

land and recoverable as such. The Division Bench further held that for recovery of such debts, the provisions of Article 112 of the Limitation Act is applicable. In our view, such a conclusion is, not only unwarranted by the principles laid down in both these judgments, but the conclusion should have been to the contrary. In fact, the Division Bench has overlooked the distinction between the public revenue due on land and other amounts which are not so deemed but recoverable under the Revenue Recovery Act, which has been clearly drawn in these judgments.

22. Further, in **Baby's case** (supra), the learned Judge has held that the object of the Revenue Recovery Act is to recover not only public revenue due on land to which Section 3 is attracted, but also such amounts declared to be recoverable under the Act and that money due under the Welfare Fund Act is of that character. This is yet another important principle overlooked in **Vijayan's case** (supra).

23. In our considered view, the conclusion in **Vijayan's case** (supra) that in view of the provisions contained in Section 9 of the Toddy Workers Welfare Fund Act and the provisions of the Revenue Recovery Act, the amounts due under the Welfare Fund

Act is public revenue due on land, is not warranted on the basis of the principles laid down in the judgment in **Baby's case** (supra) or **Subhadra's case** (supra) or **William Raynold's case** (supra).

24. That apart, the judgment in **Vijayan's case** (supra) also shows that even though the judgment in **Kalliyanikutty's case** (supra) was noticed, the Division Bench did not apply the principles laid down therein. To sum up, **Vijayan's case** (supra) was decided wrongly applying the principles laid down in **Baby's case** (supra), **Subhadra's case** (supra) and **William Raynold's case** (supra) and without applying the principles laid down in **Kalliyanikutty's case** (supra).

25. There is yet another reason for coming to the conclusion that Article 112 of the Limitation Act has no application. Article 112 is a provision applicable for any suit by or on behalf of the Central Government or any State Government, including the Government of the State of Jammu and Kashmir. Therefore, to avail of the benefit of Article 112, the suit should be filed by the Government, either the State Government or the Central Government.

26. These are all cases where revenue recovery

proceedings were initiated at the instance of the Motor Transport Workers Welfare Fund Board and the Toddy Workers Welfare Fund Board established under the respective enactments. The question arise whether these Boards which are established under the parent statutes are Governments for the purpose of Article 112 of the Limitation Act. In our view, the answer should be in the negative. In fact, similar contention raised by Kerala State Backward Classes Development Corporation Ltd. was rejected by this Court in the judgment in WA No.220/2012 holding that to apply Article 112 of the Limitation Act, amount due has to be amounts due to the State. This judgment was confirmed by the Bench by dismissing RP No.801/12 by order dated 26/9/2014. It is also relevant to refer to the judgment of the Kings Bench in **Tamlin v. Hannaford** (1950 (1) K.B. 18), where at page 24, it has been held thus;

“ In the eye of the law, the corporation is its own master and is answerable as fully as any other person or corporation. It is not the Crown and has none of the immunities or privileges of the Crown. Its servants are not civil servants, and its property is not Crown property. It is as much

bound by Acts of Parliament as any other subject of the King. It is, of course, a public authority and its purposes, no doubt, are public purposes, but it is not a government department nor do its powers fall within the province of government."

27. This judgment has been followed by the Apex Court in **A.P. State Road Transport Corporation v. Income Tax Officer** (AIR 1964 SC 1486), **Heavy Engineering Mazdoor Union v. State of Bihar** (AIR 1970 SC 82), **Rustom Cavasjee Cooper v. Union of India** (AIR 1970 SC 564) and **Western Coalfields Ltd v. Special Area Development Authority, Korba** (AIR 1982 SC 697).

28. Therefore, by no stretch of imagination can a statutory body claim the benefit of the provisions contained in Article 112 of the Limitation Act.

29. For all the above reasons, we are unable to sustain the judgment in **Vijayan's case** (supra) and accordingly this judgment is overruled.

Since the only question that was referred for the consideration of the Full Bench was the correctness of the judgment in **Vijayan's case** (supra), we have answered that

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question alone. Since other issues are also raised in these cases, Registry is directed to post the writ petitions and the appeal before the appropriate Bench for disposal in accordance with law.

ANTONY DOMINIC, JUDGE

K.RAMAKRISHNAN, JUDGE

ANIL K. NARENDRA, JUDGE

Rp