

CASE NO.:
Appeal (civil) 1338 of 2002

PETITIONER:
JOSEPH JOSEPH & ORS.

Vs.

RESPONDENT:
STATE OF KERALA & ORS.

DATE OF JUDGMENT: 19/02/2002

BENCH:
U.C. Banerjee & R.P. Sethi

JUDGMENT:

SETHI, J.

Leave granted.

The Toddy Workers Welfare Fund Inspector, appointed under the Kerala Toddy Welfare Fund Act, 1969 (hereinafter referred to "the Act") held the appellants to be the employers of the workers employed for running the Toddy shop and thus liable to pay an amount of Rs.72,048/- and interest of Rs.23,641/- towards Welfare Fund. The appellants filed a writ petition in the High Court alleging that they were not the employers of the workers within the meaning of Section 2(c) of the Act as they themselves were the employees of Joy Kourian, respondent No.4 who was the licensee of the shop where the toddy was being sold. The High Court negatived their plea vide the judgment impugned, hence appeal.

It is not disputed that the business in the Abkari Shop No.68 of Erattupetta Range was being conducted by respondent No.4 with the help of the appellants. Respondent No.4 had been granted the licence and under Rule 6(23) of the Kerala Abkari Shops Disposal Rules, 2001 the licensee is obliged not to sell or otherwise transfer the privilege granted or the licence issued without the written consent of the Assistant Excise Commissioner concerned and subject to the confirmation of the Commissioner of Excise. No licensee can lease out or sub-let the whole or any portion of the privilege or licence granted to him. It is not alleged that any of the appellants was licensee or a partner or a family member of respondent No.4.

In the counter affidavit filed on behalf of the respondent No.2 it is conceded that the aforesaid Joy Kourian was the licensee of the toddy shop. In the inquiry conducted by the Inspector under the Act, the workers and the Trade Union officers had deposed that the shop was bid in auction by the respondent No.4 and that the actual business of the shop was being conducted and wages paid to the workers by V.T. Chacko, fifth respondent, C.T. Michael, second petitioner, Sunny Kurien, fourth petitioner, Joseph and Joseph, first petitioner and Joseph Sebastian, third

petitioner. The licensee Joy Kourian filed a statement before the authorities under the Act that he himself was conducting the toddy shop and alone was responsible to pay the welfare fund contribution. Despite his admission, the Welfare Fund Inspector held the appellants also liable for contribution to the welfare fund as they allegedly fell within the definition of "employer" under the Act. The respondent No.2 was of the opinion that the definition of employer would include the licensee as well as any other person conducting the business in the shop. It is further contended that a Division Bench of the High Court of Kerala in Writ Appeal No.1185 of 1993 had taken a similar view.

Section 2(c) of the Act defines "employer" as under:

"2(c) 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 license for the manufacture, distribution, storage or sale of toddy under the Abkari Act for the time being in force."

The High Court found that as the appellants were also running the business of the shop and had employed the workers, they shall be deemed to be the employers vis--vis those workers and liable to pay the contribution to the fund under the Act.

A perusal of Section 2(c) shows that it refers to the person who employs any person, whether directly or through any other person or whether on behalf of himself or any other person, as employer. The employment by any person can be for himself or for any other person. Merely because the person is associated with the conduct of the business of an establishment or shop, it cannot be said that he had employed the workers on his own behalf. There may be cases where it can be shown that besides the owner any other person conducting the business of the said shop may employ workers on his own behalf and not on behalf of original owner. But in the absence of proof to the contrary, particularly in view of the statement of principal employer that he had employed the workers, the intermediary persons could not be held to be the employer of the workers who were employed for the conduct of the business in the shop covered under the Act. Law pre-supposes the conduct of a legal business and cannot be interpreted in a manner which frustrates the object of the Act and results in not only miscarriage of justice but violation of the statutory provision of law. If, under the Rules, the licensee was not authorised to lease out or sub-let the whole or any portion of the privilege or licence granted to him for conducting the Abkari business, holding the appellants as employer with respect to the licensee's shop would amount to facilitate the violation of the Kerala Abkar Shops Act and the Rules framed thereunder. Such an interpretation is not called for as it is against the public policy. In any particular case, where the authorities find that besides the licensee any other person conducting the business in a licenced premises under the Abkari Act and the Rules framed thereunder is also liable to contribute to the fund under the Act, they are under the legal duty to assert and positively hold that such persons were the employers vis--vis the workers and that they were conducting the business either with the legal authority of the licensee or the licensing authority. The

High Court has taken a general view of the matter without reference to the purpose and object of the Act and the law under which the licence to run the shop was granted. The impugned judgment is thus not sustainable.

The appeal is accordingly allowed by setting aside the judgment impugned holding that in the instant case the appellants have not been proved to be employers vis--vis the workers and that respondent No.4 alone was the employer as admitted by himself. The said respondent is liable for making the contributions and paying the amount sought to be recovered vide the order passed by Toddy Workers Welfare Fund Inspector. The authorities shall be at liberty to take all necessary steps for effecting recoveries against respondent No.4. No costs.

.....J.

(U.C. Banerjee)

.....J.

(R.P. Sethi)

February 19, 2002