

Prasad Vs. State of Kerala

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Court : Kerala

Decided On : May-25-1999

Reported in : (1999)IILLJ1018Ker

Judge : Ar. Lakshmanan, Acting C.J. and; S. Sankarasubban, J.

Acts : Kerala Toddy Worker's Welfare Relief Fund Contribution Act, 1969 - Sections 8(5); Limitation Act - Sections 5

Appeal No. : O.P. No. 1919/1996

Appellant : Prasad

Respondent : State of Kerala

Advocate for Def. : K.K. Baba and; P.K. Ravikrishnan, Adv.

Advocate for Pet/Ap. : K. Babu Thomas, Adv.

Disposition : Appeal dismissed

Judgement :

Ar. Lakshmanan, Ag. C.J.

1. The matter arises in a very short compass. The first appellant is a casual labourer in agriculture and appellants 2 to 4 are registered toddy tappers. Sixth respondent was the licensee and contractor of toddy shops 12 to 21 of 1993-94 of

Adimaly Excise Range in Idukki District. According to the appellants, the sixth respondent had actually conducted the shops and, therefore, he is liable to pay Toddy Workers' Welfare Fund Contribution under Kerala Toddy Workers' Welfare Fund Contribution Act, 1969. According to them, the sixth respondent remitted some amount and defaulted payment of the balance. They contended that since they were not involved or connected in any manner with the conduct of the toddy shops licensed in favour of the sixth respondent, they are not liable to pay any contribution.

2. Ext. P1 is the order passed by the original authority and Exts. P2 and P2(a) are the appeals before the Government. Ext. P3 is the petition submitted by the first appellant for condonation of delay and Ext. P4 series are the orders passed by the Government rejecting the appeals on the ground of limitation. Challenging the rejection of the appeals on the ground of limitation, appellants preferred OP 17274 of 1996 to quash Exts. P5 and P4 series and for a mandamus directing the first respondent to consider and dispose of Ext. P2 series and Ext. P3 on merits. A further prayer to declare the provisions of Section 8(5) of the Kerala Toddy Workers Welfare Act to the extent they did not provide for entertainment of appeals after the expiry of 60 days as illegal, unconstitutional and unsustainable on account of deprivation of rights of appeal was also sought for. The learned single Judge rejected the Original Petition for the reasons stated in his judgment. However, the learned Judge has permitted the appellants to take up the matter before the appropriate authorities for proper enquiry. Aggrieved by the above judgment, the present Writ Appeal has been filed.

3. The grounds raised in the Original Petition were reiterated before us also. We have heard counsel appearing on either side.

4. As already noticed, learned counsel for the appellants challenges Section 8(5) of the Kerala Toddy Workers Welfare Act as arbitrary since according to counsel, the said section does not provide for entertainment of appeals after the expiry of 60 days and, therefore, an account of deprivation of rights of appeal, the said provision has to be declared as unconstitutional, arbitrary and illegal. Under Section 8(1), the Chief Welfare Fund Inspector or any other Welfare Fund

Inspector authorised by him in this behalf may, by order, determine the amount due from any employer under the provisions of the Act or of the Scheme and for this purpose may conduct such inquiry as he may deem necessary. Section 8(5) provides for preferring an appeal to the Government or any other authority as may be specified by the Government against the order passed under Sub-section (1) of Section 8 within 60 days from the date of receipt of the order. It further provides that the decision taken by the Government or such other authority on such appeal shall be final.

5. In the instant case, the order was passed by the Welfare Fund Inspector in exercise of his powers under Section 8(1) of the Act on February 25, 1995. The said order was received by the appellants on different dates during May 1995. As already noted, Section 8(5) contemplates an appeal to the Government within 60 days from the date of receipt of the order. In the instant case, the appeals were filed on February 29, 1996 after a long delay which were rejected by the Government under the impugned order (Ext. P4 series). In our opinion, the contention raised by the learned counsel for the appellants challenging Section 8(5) of the Act has no force. As already noticed, the period of limitation has been provided under this special statute. The special statute does not contain a provision making the provisions of Section 5 of the Limitation Act applicable. Therefore, the question of condonation of delay invoking that provision does not arise at all. In the instant case, the period has already been prescribed under the statute. There is no inherent right of appeal as contended by the appellants.

6. A Division Bench of this Court comprising of MALIMATM, C.J. and BHASKARAN NAMBIAR, J. has, under similar circumstances, rejected the contention put forth before it in W.A. 206 of 1989. The learned Judges were of the view that in the absence of any provision for condonation of delay, this Court can hardly grant any relief under Article 226 of the Constitution of India. Another Division Bench comprising of U.P. s INGH, C.J. and one of us (SANKARASUBBAN, J) has also rejected a similar appeal under the same circumstances. We are in agreement with the opinions expressed by the two Division Benches referred to above. We, therefore, dismiss the Writ Appeal. No costs.

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