

ITEM NO.101

COURT NO.14

SECTION XI-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 4039-4053/2009

KOMALAN ETC. ETC.

Appellant(s)

VERSUS

THE STATE OF KERALA REP. BY SECRETARY TAXES(A)
DEPARTMENT AND ORS. ETC.

Respondent(s)

([PART HEARD BY : HON'BLE PAMIDIGHANTAM SRI NARASIMHA AND HON'BLE
ARAVIND KUMAR, JJ.]

IA No. 23841/2024 - APPROPRIATE ORDERS/DIRECTIONS

IA No. 100019/2019 - EARLY HEARING APPLICATION

IA No. 16/2013 - INTERVENTION APPLICATION

IA No. 1/2013 - INTERVENTION APPLICATION

IA No. 113245/2022 - INTERVENTION/IMPLEADMENT

IA No. 11425/2023 - VACATING STAY)

WITH

C.A. No. 4581-4593/2010 (XI-A)

C.A. No. 5910-5911/2010 (XI-A)

C.A. No. 7345/2010 (XI-A)

C.A. No. 10054-10057/2010 (XI-A)

C.A. No. 5078/2011 (XI-A)

C.A. No. 7223-7224/2011 (XI-A)

C.A. No. 6760/2012 (XI-A)

C.A. No. 8653/2009 (XI-A)

C.A. No. 4730/2010 (XI-A)

SLP(CrI) No. 3263-3266/2011 (II-B)

(IA No. 9179/2013 - PERMISSION TO FILE ANNEXURES

IA No. 40049/2013 - PERMISSION TO PRODUCE ADDITIONAL DOCUMENTS

IA No. 8354/2011 - STAY APPLICATION)

S.L.P.(C)...CC No. 1233/2016 (XI-A)

(FOR CONDONATION OF DELAY IN FILING ON IA 1/2016

IA No. 1/2016 - CONDONATION OF DELAY IN FILING)

C.A. No. 5391/2009 (XI-A)
C.A. No. 5392/2009 (XI-A)
C.A. No. 1125-1129/2010 (XI-A)
C.A. No. 8506-8508/2009 (XI-A)
C.A. No. 8509/2009 (XI-A)
C.A. No. 7650/2009 (XI-A)
C.A. No. 8652/2009 (XI-A)
C.A. No. 4986-4987/2009 (XI-A)
C.A. No. 8337-8339/2009 (XI-A)
C.A. No. 2245-2251/2010 (XI-A)
C.A. No. 2441-2442/2010 (XI-A)

Date : 01-05-2024 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA
HON'BLE MR. JUSTICE ARAVIND KUMAR

For Appellant(s) Mr. S.P. Chaly, Sr. Adv.
Mr. P.V. Dinesh, Sr. Adv.
Ms. Urvashi Chauhan, Adv.
Nishe Rajan Shonker, Adv(NP)(SC for Kerala)

Mr. Roy Abraham, Adv.
Ms. Reena Roy, Adv.
Mr. Adithya Koshy Roy, Adv.
Ms. Rajni Ohri Lal, Adv.
Mr. Yaduinder Lal, Adv.
Mr. Himinder Lal, AOR

Mr. Nishe Rajen Shonker, AOR
Mr. Ranjith K. C., AOR
Mr. Vishal Arun, AOR

Mr. Bobby Augustine, Adv.
Ms. Iram Naaz, Adv.
Mr. Sriram P., Adv.
Mr. Vishnu Shankar M., Adv.
Ms. Athira G. Nair, Adv.

M/S. Lawfic, AOR

For Respondent(s) Mr. R. Sathish, AOR
Mr. Ramesh Babu M. R., AOR
Mr. Shibu Devasia Olickal, AOR
Ms. Bina Madhavan, AOR

Mr. P.V. Surendranath, Sr. Adv.
Mr. Harshad V. Hameed, AOR
Mr. Dileep Poolakkot, Adv.
Mrs. Ashly Harshad, Adv.
Mr. Sawan Kumar Shukla, Adv.
Mr. Shivam Sai, Adv.

Mr. Jogy Scaria, AOR
Mr. G. Prakash, AOR
Mr. Naresh Kumar, AOR
Mr. K. Rajeev, AOR

Mr. V. K. Biju, AOR
Mrs. Ria Sachthey, Adv.
Mr. Chetanya Singh, Adv.

UPON hearing the counsel the Court made the following
O R D E R

1. In pursuance of our oral direction on 18.04.2024, a letter of the Additional Chief Secretary to the learned Advocate General is placed before. The letter is as follows:

"No. GI/70/2024-Taxes Taxes(G)Department
23-04-2024, Thiruvananthapuram, From
Additional Chief Secretary to Government

To

Advocate General,
Ernakulam.

Sir,

Subject: Tax Department-Excise-CA 4039-4053/2009
arising from SP(C)No.11420-11434/2009 filed by Sri.
Komalam Vs. State of Kerala and CA No.4986-4987/2009
filed by Shri A.S. Joy and Others Vs. State of Kerala -
Instructions-Forwarding of-reg.

Ref.: 1 Your Letter No. SCICA 4039-4053/2009
dated 08.02.2024.

2. Letter No. EXC/2263/2024-XA1 dated 20.04.2024 from

the Excise Commissioner, Thiruvananthapuram.

I am to invite your attention to the reference 1st cited and the following facts are submitted for further necessary action:

1. In this respect it is submitted that the committee constituted under the chairmanship of Dr. T.N. Anirudhan, Professor and Head of the Department of Chemistry, University of Kerala, Kariyavattam had submitted a report recommending maximum strength of Ethyl Alcohol in coconut toddy as 9.59% V/V, Sago tree as 8.24% V/V and Palmyra as 8.13% V/V.

2. Whereas, in this respect it may be noted that in a report dated 05.08.1999 submitted by Dr. A. Krishnamurthi, former Chief Chemical Examiner to Government, it is categorically reported that, the toddy when it is collected afresh is called "sweet toddy" since it is sweet in taste. Sweet toddy contains about 12 to 17% weight by volume of Sucrose (sugar). However fermentation rapidly sets in during collection time itself by the action of yeast with the result ethyl alcohol is generated. Fermentation is the process by which sugars or carbohydrates are converted into ethyl alcohol by the action of yeast. The alcoholic fermentation continues and the strength of ethyl alcohol reaches a peak point within 36 to 48 hours. The alcoholic strength in fermented coconut toddy ranges from 4 to 8% by volume. The climatic conditions or seasonal changes have not been found to have any direct bearing on the alcoholic strength in toddy. Even though acetic fermentation starts after 24 to 30 hours, total acidification usually takes several weeks. Hence the alcoholic strength gradually goes down as the acetic fermentation caused by bacterial action gradually advances. Hence alcoholic strength will never increase with time of storage of toddy. Only the strength of acetic acid produced by acetic fermentation (the process of conversion of ethyl alcohol in to Acetaldehyde and then to acetic acid caused by bacterial fermentation) goes on increasing with lapse of time. Alcoholic strength above 8.1% by volume when found in toddy can only be due to "external addition" of ethyl alcohol. The externally added ethyl alcohol in the form of distilled liquor like arrack or spirit can only be considered as a "foreign substance" as far as natural toddy is concerned, to attract the definition of adulteration.

3. In a deposition made by Dr. A. Krishnamurthi, former Chief Chemical Examiner to Government before Hon'ble Justice T.K. Chandrasekhar Das commission it was stated that in "The Wealth of India, A Directory of India raw material and industrial products" Vol.II published by Council of Scientific and Industrial Research, Government of India, it is written that in fermented Toddy, Alcohol content is mentioned as 2 to 5.8% V.V., 5.8% by weight which is equivalent to maximum percentage of 7% by volume.

In another book Tropical Agricultural Series 'Coconuts; by R. Child, formerly director, coconut research institute, Ceylon and director, research institute East Africa, it is stated that Alcoholic content reaches 8.1% after 33 hours and in the study carried out 50 samples of fermented toddy, the alcohol content varied from 2.7% to 5.8% by weight that is equivalent to maximum 7% of Volume.

4. The Bureau of Indian Standards in their specification it is mentioned that, the Ethyl Alcohol content that toddy shall be between 5 to 8% by volume at 20°C when determined according to the prescribed methods. It is pertinent to note that the former Chief Chemical Examiner has categorically stated that, alcoholic strength above 8.1% by volume when found in toddy can only be due to "External Addition of Ethyl Alcohol". Hence it can be seen that, the alcohol content defined in all other documents except in the report of the committee constituted by the Government is maximum 8.1%.

5. Here, an in-depth study is need before finalizing the strength of toddy, since this has direct bearing on the public health. The BIS Standard has a national recognition, whereas the report of the expert committee constituted by the Government of Kerala confines to the State of Kerala. Whereas the facts of the matter are as above, we may submit before the Hon'ble Supreme Court that an in-depth study is needed to be conducted by a committee of experts from well known Institutes of national importance having expertise in Toddy/coconut related matter. Alternatively, Hon'ble Supreme Court may direct BIS to revisit the Indian Standard Specification of Toddy urgently. The above action will enable Government of Kerala to have decision on the matter of strength of toddy which is in the best interest of the Public Health."

2. In view of the opinion expressed by the Government in paragraph 5 of the above referred letter, we adjourn the case by four months to enable the Government to take the necessary decision for an in-depth study in a manner that the State considers fit and appropriate. On the basis of the report the State shall consider revisiting the Rules, if necessary.

3. Interim order(s) to continue.

4. List in the month of September, 2024.

(INDU MARWAH)
AR-CUM-PS

(NIDHI WASON)
COURT MASTER (NSH)