

BEFORE THE HON'BLE HIGH COURT OF KERALA, ERNAKULAM
W.P.(C) No. 25901 of 2018

Vilasini : Petitioner
Vs.
State of Kerala & others : Respondents

MODERNISATION OF TODDY SHOPS

REPORT SUBMITTED BY Adv. R.T. PRADEEP, AMICUS CURIA
APPOINTED BY THE COURT AS PER ORDER DATED 9.10.2019

1. Toddy rich in sugar and Glucose which generate alcohol on fermentation is a revitaliser as well as light intoxicant. It is perceived to relax the toiling masses on being physically exhausted after a day's work. The food and dishes mainly tapioca and fish curry as accessories to the drink prepared in a traditional way are spicy and savoring the taste buds. The toddy shops are traditionally functioned in sheds roofed and partitioned with cadjan leaves. The toddy tapped from coconut and palmyrah by tappers is collected in the morning and sold by evening as it doesn't have life span beyond 24 hours for consumption.

2. By advent of time, State stepped in to regulate the activity of tapping and vending toddy by including toddy under the purview of The Abkari Act of the year 1967. The Act and Rules framed thereunder contemplated protective and welfare measures for toddy tappers and workers in toddy shops. Provisions were inbuilt to reap revenue by State in regulating the activity.

3. The consumption of toddy which once reckoned as a healthy drink with light intoxicating strength for the working class had changed its complexion by advent of time. The toddy shops became the den of criminals and anti-social elements. As the Act and Rules do not provide for the specifications of toddy shops nor its amenities for the consumers, toddy shops imbibed shabby look and are stinking in filth being housed in unhygienic circumstances which invited the wrath of people residing in the neighbourhood. The people by and large opposed the move to license a toddy shop nearby one's residential house infringing his privacy as nobody want to have an establishment with ugly look and posing threat to clean and hygienic environment.

4. When the State banned arrack shops on 1.4.1996, artificial and spurious toddy made of obnoxious and harmful chemicals with very high intoxicating strength matching with banned arrack was sold through licensed toddy shops under the guise of natural toddy. The Act and Rules made it obligatory to the licensee of toddy shops to take coconut trees 50 in number or Palmyrah trees 100 in number or choondappana 20 in number for the purpose of tapping after remitting tree tax and undertaking the obligation to pay the wages and welfare contributions of toddy tappers and workers of toddy shop. Toddy tapping imposed as a statutory obligation on the licensee which in reality found to be a cover up to sell spurious and adulterated toddy.

5. It is pertinent to submit that a toddy tapping worker has to climb the tree on three times in a day to tap and collect toddy. This is seldom done by the tapping worker. Namesake tapping of toddy is

undertaken and the spurious toddy is sold through the toddy shops. The tapping workers in the roll without doing any work is getting their due on adjustment with licensee of toddy shops.

6. The public flocked on toddy shops and consumed the illicit toddy as a substitute of arrack. The high intoxicating strength of illicit toddy made the consumers unconscious and walking in an inebriated condition which seem to be routine causing real nuisance to the people residing in the locality of toddy shops infringing their privacy. This image of toddy shop militated the public to oppose the situs of toddy shop nearby one's house whereby causing affront to his privacy.

7. Now the tapping for toddy is only a camouflage for the sale of illicit toddy. There are 5185 licensed toddy shops in the State. Now the bulk tapping of toddy is from Palghat District in places adjoining to the border of Tamilnadu. The consumption in the toddy shops far outweigh the production. Therefore it is a truth that spurious toddy is sold through licensed toddy shops under the purported authority of law. As a matter of fact, the law enforcing agencies is winking their eyes to the stark reality of vending spurious toddy through licenses toddy shops.

8. The Division Bench of this Hon'ble Court came heavily on Government in allowing sale of illicit toddy through licensed toddy shops and said emphatically to stop the vending of toddy under the regulatory regime of State which is reported in Sudheesh Vs. Excise Commissioner 2012 (4) KHC 176. Para 3 and 4 of Judgment is extracted below:-

"3. There are around 400 retail shops of Beverages Corporation selling beer which has alcohol content less than that of toddy, and

therefore to our mind, the Government's justification to continue toddy shops to provide liquor with low percentage of alcohol lacks any merit. Toddy whether genuine or not may be little cheaper than beer because unlike beer there is no accountability of production or tax component in the value of toddy which is invariably found to be spurious in the cases booked by Police and Excise and brought to Courts. In our view, the Government should not worry about the financial capacity of ordinary and poor people to afford to switch over from toddy to beer because alcohol is not compulsory part of diet of human beings and in our view it is to be treated as a luxury which people with disposable income only can afford. The main cause of domestic problems in the State in the case of the poor and the low income group is alcohol consumption by the head of the family which robs much of his daily earning leaving hardly anything to take care of his family and for the education of his children. Therefore, if sale of toddy is stopped in the State, then availability of cheap spurious liquor in the State can be contained liberating large number of poor people from their drinking habit. Bottled liquor even with low percentage of alcohol like beer and wine are manufactured by Companies with brand names and it is not easy to duplicate it. Therefore, one way of effective implementation of prohibition of arrack and spurious liquor in the State is stoppage of toddy business in the State.

4. The Excise Commissioner has expressed apprehension against loss of employment of thousands of people stated to have

been employed in toddy business. Kerala is reported to have 13 lakhs of migrant labourers working in various sectors mainly in construction industry and even in farm work in village areas earning Rs.300/- to Rs.500/- a day. Unemployment in Kerala is always related to Government employment and in reality there is hardly anybody unemployed in Kerala in the sense, that those who want to work can always find a job. If arrack workers could be rehabilitated without any difficulty on prohibition of arrack business 15 years back, we see no reason why the Government should worry about toddy workers all of whom can easily find alternate employment in Kerala under the present dispensation. In our view, the Government should conduct a serious study and audit of the number of persons on rolls as toddy workers for various benefits and those actually and really employed as toddy workers, and if this is done they will know that only very few people, most of whom are above middle age, are engaged in toddy business, and new generation are not taking up toddy tapping as a profession. We therefore feel it is high time the Government should think of discontinuing toddy business in the State to save poor people from the evils of alcohol and to prevent camouflaged sale of arrack and other spurious liquor in the name of toddy. We wish a bold decision will be taken by the Government in the near future liberating Emerging Modern Kerala from this disgraceful business carried on everywhere on road side."

9. The Government came out with Abkari Policy 2017-2018 as per G.O. (MS) No.43/2017 dated 30.6.2019 pursuant to the interventions

by the Apex Court. The policy which comprehend toddy wine, beer and foreign liquor underlined that total prohibition of liquor is practically impossible and abstinence from liquor through awareness shall be the theme. The Government made out the following guidelines for the toddy tapping sector in the policy:-

- (i) Toddy shall be sold through the licensing system by grouping together 5 to 7 toddy shops;*
- (ii) One individual person shall not be permitted to be licensee of more than two groups;*
- (iii) Toddy shops shall be sold once in three years;*
- (iv) The Co-operative Societies of workers shall be given priority in selling toddy shops;*
- (v) Those toddy shops which cannot be sold shall be given on rent to the committees of toddy tappers/shop workers;*
- (vi) The yearly rental of toddy shops shall continue without change;*
- (vii) The number of tapping trees for each shop shall continue without change;*
- (viii) The licensee of toddy shops of former years shall be given preference in those places where there are no Co-operative Societies;*
- (ix) New licence shall not be allowed to those who committed default towards Welfare Fund;*

- (x) Those taking licence of toddy shops shall submit guarantee for the amount equivalent to Welfare Fund of former year;
- (xi) Special permission shall be granted for hotels above three star classification to supply pure toddy;
- (xii) Steps shall be taken to ensure cleanliness in toddy shops, modernization, protection of industrial labour and production of value added products;
- (xiii) Toddy Board shall be constituted and functioned with the laudable objective for protection of labour and life security of workers engaged in toddy industry and to redress the practical difficulties in tapping pure toddy;
- (xiv) To take steps to remove liquor vending centres from the side of National and State Highways in compliance with orders passed by Supreme Court;
- (xv) To take steps to amend the Abkari Rules befitting to the times;

It is incumbent upon Excise Commissioner and Managing Director of Kerala State Beverages Corporation to take steps to implement the abkari policy.

10. The Table-II of the Abkari Policy 2017-2018 provide the details of toddy shops

District	Total toddy shops	Renewed the year 2016-2017	Licensed toddy shops	Licensed toddy shops functioning	Department Management toddy shops
1	2	3	4	5	6
Thiruvananthapuram	112	61	13	12	0

Kollam	233	114	75	69	5
Pathanamthitta	113	36	42	32	10
Alappuzha	574	471	472	471	25
Kottayam	632	579	550	516	34
Idukki	237	225	212	203	12
Ernakulam	655	510	594	473	86
Thrissur	723	658	610	557	65
Palakkad	809	761	773	761	12
Malappuram	259	177	99	91	17
Kozhikkode	208	197	193	185	11
Wynad	53	46	53	46	6
Kannur	384	355	381	353	29
Kasaragod	193	165	167	144	28
Total	5185	4355	4234	3913	340

It shall be ensured that pure toddy shall alone be sold through toddy shops. Strict inspection shall be done for this purpose.

The tapping of 50 coconut trees or 100 Palymrah or 25 Choondappana for each shop contemplated in the existing law shall be mandatorily followed and this system will continue.

Tree tax was remitted for 5,51,614 coconut trees, 17,172 Palymrah, 25,428 Choondappana for the year 2016-2017 in the State. The quantity of toddy from this is 10,69,977 litres.

It take long delay in getting result of chemical analysis of sample of toddy sent for examination. The system of analysis will be expanded to avert delay.

Steps shall be taken to legally validate the analysis of mobile testing laboratory functioning under Excise Department.

11. The steps envisaged to re-define the toddy sector under the Abkari Policy of the year 2017-2018 are still in limbo without any positive step for its implementation after an elapse of more than two years. The

salient features of the policy contemplated are worth to re-shape the toddy sector by infusing modernization and curbing the evils attached to it.

12. The report of Justice M. Ramachandran Commission stated that toddy industry is dying. The youth is not taking the job of toddy tapping as a means of livelihood due to its lackluster. According to the Commission, there is scarcity of consumers for pure toddy commensurating with the quantum of production. The statistics of toddy production would meet the demand in the market.

13. The modernization of toddy shops involve two things. First thing is that pure toddy shall be made available in the shops whose purity shall be ensured by all means. Secondly the present look of toddy shops shall be changed.

14. To ensure supply of pure toddy in toddy shops, the tapping of trees on daily basis by tappers has to be ensured. The Toddy Board contemplated under the policy shall take the obligation of procurement, collection and distribution of toddy. The licensees shall be relieved of the obligation of supply of toddy. Accordingly toddy tappers shall be placed under the dispensation of Toddy Board rather than on licensees. This would result in wiping out bogus toddy tappers. The collection centres have to be opened up under the aegis of Toddy Board by placing under each centre clusters of toddy shops. It should be the obligation of the Board to procure and collect toddy from tappers and distribute to the toddy shops. The youth will be attracted on providing decent pay packet, security of tenure and employment under Government agency. Woman and transgenders shall also be given training to become tappers and their

due representation shall be maintained. The Government had already given training for procurement of Neera from coconuts. The manufacture and distribution of Neera didn't reach the decided target and now at a vanishing point. The trainees for procurement of Neera can be given the clarion call to become toddy tappers. The toddy sold in toddy shops would be of pristine purity and quality which shall be inspected on daily basis by having mobile laboratories attached to each centre. The unconsumed toddy after being fermented beyond the intoxicating strength of 8.1% shall be collected back by the Toddy Board and converted to value added products.

15. The second thing of facelift of toddy shops can be achieved by classification of toddy shops based on amenities and situs. The architecture of toddy shops based on classification has to be formulated by the Government by blending tradition and modernity. The specifications of toddy shops shall include facilities for toddy parlour, restaurant, toilet facilities, parking area, specific provision for woman and transgenders. The food to be served in toddy shops shall be statutorily catalogued and standard of food has to be prescribed. The architectural design of toddy shops if statutorily provided based on classification shall ensure uniformity throughout the State and would be safe citadel for relaxation by drink and food. Nevertheless tourists will be attracted on ensuring safety and quality.

16. The following are the recommendations for modernization:-

- (i) *The Toddy Board envisaged in Abkari Policy of the year 2017-2018 shall be constituted and brought into force within such time fixed by this Hon'ble Court;*

- (ii) *The Toddy Board shall be conferred with the power, authority and obligation of procurement, collection and distribution of toddy to ensure sale of pure toddy in toddy shops;*
- (iii) *The toddy tappers shall be placed under the Toddy Board from whom toddy collected on daily basis through its established collection centres under which cluster of toddy shops according to manageable limits are to be placed under;*
- (iv) *The Toddy Board shall take coconut trees/ palymrah/choondappana for the purpose of tapping which would provide an income to distress coconut farmers;*
- (v) *Those underwent training for extracting Neera from coconut trees who are now unemployed due to non-production of Neera shall be given preference in engaging new toddy tappers;*
- (vi) *The payment of salary and other statutory contributions of toddy tappers shall be the responsibility of Toddy Board;*
- (vii) *The Toddy Board shall ensure fixity of tenure and pay packet for toddy workers to attract unemployed youth of the State. The women as well as transgenders shall be given due representation in engaging new toddy workers.*

- (viii) Training shall be imparted for toddy tapping and mechanization of toddy tapping to have hassle free tapping shall be resorted to.*
- (ix) The Toddy Board shall have mobile testing laboratory with statutory backing attached to each collection centre with routine checking on daily basis on each toddy shop to ensure adulteration free toddy and quality food;*
- (x) The toddy after reaching pinnacle of fermentation by crossing intoxicating strength of 8.1% of alcohol being unfit for consumption shall be collected back from the toddy shops by the Toddy Board and value added products shall be produced from such unconsumed toddy;*
- (xi) The toddy shops shall be classified based on amenities, places and architectural specifications;*
- (xii) The architectural specifications of toddy shops blending tradition and modernity for the purpose of classification shall ensure eco friendly and low cost construction without burdening the licensee;*
- (xiii) The architectural specifications shall provide natural lighting and drawing the nature into the building which shall be a cynosure to the eye;*
- (xiv) The toddy shops irrespective of classification shall have separate toddy parlour and restaurant with separate toilet facilities for gents and ladies as well as for*

physically handicapped persons. It shall have adequate facilities for parking of vehicles, disposal of food waste and sewage drains;

(xv) The toddy shops shall serve authentic traditional food subserving the quality prescribed. The food items shall be catalogued by prescribing quality. The mobile testing laboratory shall be conferred with authority to ensure the standard of food;

(xvi) The workers of toddy shop shall comprises of cook and suppliers. They shall be provided with uniform. The payment of salary and statutory contributions of toddy shop workers shall be the obligation of the licensee. Women as well as transgenders shall be given due representation in engaging toddy shop workers;

(xvii) The toddy shop shall maintain sufficient setback from the public road as well as from the rear and back portion so as to protect the privacy of the people residing in the neighbourhood.

The public outrightly opposing the situs of toddy shop nearby one's house when the rule does not prescribe any prohibited distance to be maintained with a dwelling house is on account of the nuisance likely to be caused. A facelift of toddy shops in accordance with the changing times would remove the stigma to a larger extent attached to it. It should be a place where the public transcending gender and sex, noble and layman should visit to have a healthy drink and food. The blemish cast on the

visitor of a toddy shop should give way. The recommendations for modernization of toddy shops are made with the avowed objective to ensure pristine pure toddy and authentic quality food and to bring public to the toddy shops as a place of relaxation by having good drink and food by providing good look to toddy shops. These measures are having greater impact in protecting the privacy of the people residing in the neighbourhood by changing their perception of toddy shops as a place of anti-socials in unhygienic circumstances.

So, this Hon'ble Court may be pleased to consider the above stated recommendations for modernization of toddy shops in safeguarding the privacy of persons residing in the neighbourhood.

Dated this the 29th day of October, 2019

R.T. PRADEEP
Advocate