IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 30TH DAY OF JANUARY 2015/10TH MAGHA, 1936

W.P.(C).No.72 of 2010 (H)

PETITIONER(S):-

KALESH, S/O.MR.MANI,
435/9, ANDURUTHI HOUSE, VEMBALLOOR, PATHAZHAKKADU,
S.N.PURAM GP, KODUNGALLUR, THRISSUR DISTRICT - 680014.

BY ADVS.SRI.C.A.MAJEED
SRI.K.H.ASIF.

RESPONDENT(S):-
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1. REGIONAL TRANSPORT OFFICER,
   RTO'S OFFICE, CIVIL STATION, AYYANTHOLE, THRISSUR.

2. SUB REGIONAL TRANSPORT OFFICER,
   KODUNGALLUR, THRISSUR DISTRICT.

3. THE DISTRICT OFFICER,
   KERALA STATE MOTOR TRANSPORT WORKERS WELFARE FUND BOARD,
   THRISSUR.

4. THE DISTRICT OFFICER,
   KERALA STATE MOTOR TRANSPORT WORKERS WELFARE FUND,
   KOTTAYAM.

R1 & R2 BY GOVERNMENT PLEADER SRI.T.J.MICHAEL.
R3 & R4 BY STANDING COUNSEL SRI.K.S.MANU.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

W.P.(C).NO.72 OF 2010-H

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1	TRUE PHOTOCOPY OF THE REGISTRATION PARTICULARS OF VEHICLE NO.KL-05-J-991.
EXT.P2	TRUE PHOTOCOPY OF THE REGISTRATION PARTICULARS OF VEHICLE NO.KL-05-J-991 AFTER TRANSFERRING THE OWNERSHIP TO THE PETITIONER.
EXT.P3	TRUE PHOTOCOPY OF THE CHALAN SHOWING MONTHLY CONTRIBUTION TOWRDS PROVIDENT FUND BY THE PREVIOUS OWNER TOWARDS JULY,2009.
EXT.P4	TRUE PHOTOCOPY OF THE CERTIFICATE DATED 17.12.2009 ISSUED BY THE PREVIOUS OWNER.

RESPONDENT'S EXHIBITS:-
-- NIL.

VKU/- (TRUE COPY)

K. Vinod Chandran, J.

W.P(C) No.72 of 2010-H

Dated this the 30th day of January, 2015

JUDGMENT

The petitioner seeks to be absolved of the liability under the Kerala Motor Transport Workers' Welfare Fund Act, 1985 [for brevity "the Welfare Fund Act"]. The contention of the petitioner is that the motor vehicle bearing registration No.KL-05-J-991 was purchased only on 07.09.2009 and for the previous period, the earlier registered owner was assessed under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 [for brevity "EPF Act"].

2. Neither the earlier owner nor the EPF Organization is made a party in the writ petition. The petitioner relies on Exhibit P4, certificate issued by the previous owner, and Exhibit P3, a challan issued by the EPF Organization. This Court cannot rely on a certificate issued by an earlier registered owner to absolve the petitioner from the liability. Nothing is discernible from Exhibit P3 as to who are the employees covered and whether the persons employed in the vehicle were covered under the EPF Act. In such circumstance, the contentions in the writ petition cannot be entertained.

3. The petitioner was granted an interim order to enable him to pay the welfare fund contribution from 07.09.2009 onwards.

4. By Amendment Act 23/2005, effective from 07.06.2005, Section 8A and sub-section (2) of Section 10 were introduced in the Welfare Fund Act. Section 8A mandated a clearance certificate from the Board for acceptance of motor vehicles tax. Sub-section (2) of Section 10 created a charge on the vehicle for the arrears of tax on the vehicle. The issue of amendment and the liability prior to the amendment were considered in ***Ummer v. Joint R.T.O.*** **[2014 (4) KLT 358]**. This Court held that if the transfer is effected after the amendment, then necessarily the transferee of the vehicle would be liable to discharge the liability of the erstwhile owner of the vehicle in respect of the previous owner's dues under the Welfare Fund Act to enable payment of motor vehicle tax as also release the encumbrance by way of charge created on the vehicle. The transferee was held to be entitled to proceed against the erstwhile owner for realisation of the amounts paid on his behalf.

5. Thus, there is a charge created on the vehicle by the afore-mentioned amendment, to the Welfare Fund Act. In such circumstances, unless the petitioner convinces the authority that contribution towards the employees of the vehicle have been made to the EPF Organization under the provisions of the EPF Act, the petitioner cannot be absolved of the liability under the Welfare Fund Act. The petitioner would be entitled to approach respondents 3 and 4 and produce sufficient evidence to substantiate his contentions. The same shall be done within a period of one month from today; if not, the petitioner shall be proceeded for recovery.

The writ petition is dismissed with the above observation.

Sd/-
K.Vinod Chandran
Judge.

vku/-

[true copy]