**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR**

**WEDNESDAY, THE 9TH DAY OF SEPTEMBER 2015/18TH BHADRA, 1937**

**WP(C).No. 1071 of 2012 (H)**
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**PETITIONER(S):**
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**V.GOPALAN, AGED 68 YEARS,**
**S/O.KUNHIRAMAN, MULIPARAMBATH HOUSE**
**MOORIYAD AMSOM DESOM, P.O.MOORIYAD, KUTHUPARAMBA.**

**BY ADVS.SRI.V.V.ASOKAN**
**SRI.P.P.RAMACHANDRAN**

**RESPONDENT(S):**
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1. **THE REGIONAL TRANSPORT OFFICER AND TAXATION OFFICER,**
   **P.O.THALASSERY, KANNUR DISTRICT-670 645.**

2. **THE CHIEF EXECUTIVE OFFICER,**
   **THE MOTOR TRANSPORT WORKERS WELFARE FUND BOARD**
   **THIRUVANANTHAPURAM-695 001.**

3. **THE STATE OF KERALA,**
   **REPRESENTED BY ITS SERETARY, TRANSPORT DEPARTMENT**
   **SECRETRIAT, THIRUVANANTHAPURAM-695 001.**

**R2 BY ADV. SRI.P.RAMAKRISHNAN, SC,KMTWF BOARD**
**R BY GOVERNMENT PLEADER SRI.R.RANJITH**
**R BY SRI.P.RAMAKRISHNAN, SC,KMTWF BOARD**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

## APPENDIX

**PETITIONER'S EXHIBITS:**

**EXT.P1: COPY OF THE REGISTRATION CERTIFICATE NO.KL 58C 8328.**

**EXT.P2: COPY OF THE DRIVING LICENCE OF THE PETITIONER.**

**RESPONDENTS EXHIBITS: NIL.**

**//TRUE COPY//**

**P.S. TO JUDGE**

**A.K.JAYASANKARAN NAMBIAR, J.**
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**W.P.(C).NO.1071 OF 2012 (H)**
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**Dated this the 9th day of September, 2015**

**J U D G M E N T**

The petitioner, who is the registered owner of a lorry bearing registration No.KL 58C 8328, approached this Court aggrieved by the insistence of the 1st respondent to produce a receipt for payment of contribution under the Motor Transport Workers' Welfare Fund Scheme, as a condition for accepting tax in respect of the vehicle under the Kerala Motor Vehicles Taxation Act. It is the case of the petitioner in the writ petition that insofar as the petitioner was a self employed person, who was operating the lorry in question by himself, and he had crossed the age of 60 at the relevant time, he was not required to make any payment in respect of the vehicle under the Motor Transport Workers' Welfare Fund Scheme. The prayer in the writ petition is for a direction to the 1st respondent to receive the motor vehicle tax from the petitioner without insisting for production of receipt of remittance of the Welfare Fund contribution.

2. When the writ petition came up for admission, on 13.1.2012, this Court, by an interim order, permitted the petitioner to make

payment of the contribution under the Motor Transport Workers' Welfare Fund Scheme under protest, and on that basis, a direction was issued to the respondents to accept the payment of tax made by the petitioner. Counsel for the petitioner would submit that, acting on the direction of this Court, the petitioner made the payment of contribution under the Motor Transport Workers' Welfare Fund Scheme, under protest, and thereafter approached the 1st respondent for accepting the tax payment in respect of the vehicle. It is also stated that the 1st respondent accepted the tax payment made by the petitioner. The petitioner would now place reliance on the judgment of this Court in **Ta-Aleemul Islam Trust v. State of Kerala - [2009 (4) KLT 225]**, wherein, it was held that persons operating vehicles as self employed persons, and who have crossed the age of 60 years, cannot be compelled to effect any contribution under the Motor Transport Workers' Welfare Fund Act. The rationale in the said decision is seen at paragraph 7 of the judgment, which indicates that as per the provisions of the Scheme, under the aforementioned Act, a person above the age of 60 years, is not entitled to obtain membership under the Scheme, and therefore, a self employed person, who could not obtain membership under the Scheme, could not be expected to make a contribution to a Scheme of which he could not have been a beneficiary. Inasmuch as it is not in dispute in the instant case that the petitioner had crossed the age of 60 years on the date of filing the writ petition, and that he was a self employed person for the purposes of the Motor Transport Workers' Welfare Fund Act, I allow the writ petition by declaring that the petitioner is not required to pay contribution under the Motor Transport Worker's Welfare Fund Act and Scheme with effect from the date on which he attain the age of 60 years. The writ petition is thus allowed, by making the interim order absolute, and in the light of the above declaration, making it clear that the respondents shall forthwith refund the amounts paid by the petitioner towards Welfare Fund contribution, pursuant to the interim order dated 13.1.2012 of this Court.

**A.K.JAYASANKARAN NAMBIAR**
**JUDGE**

prp