IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 6TH DAY OF FEBRUARY 2015/17TH MAGHA, 1936

W.P.(C).No.2552 of 2010 (T)

PETITIONER(S):-

JOSEPH, S/O. DR.DANIEL JOHN,
MEKKATTU VEEDU, CHENNITHALA SOUTH P.O.,
THRIPPERUMTHURA, MAVELIKKARA.

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

RESPONDENT(S):-
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1. SUB-REGIONAL TRANSPORT OFFICER,
SUB-R.T.O.'S OFFICE, MAVELIKKARA.

2. THE DISTRICT EXECUTIVE OFFICER,
KERALA STATE MOTOR TRANSPORT WORKERS WELFARE FUND BOARD,
*[PATHANAMTHITTA].

*PATHANAMHITTA IS CORRECTED AS “ALAPPUZHA” AS PER ORDER
DATED 3.2.2010 IN I.A.NO.1366/10.

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

** ADDL.R4. MR.K.P.ANILKUMAR, PARTNER, M/S.KANAKA POLYMERS,
SHOKAPURAM, ALUVA, ERNAKULAM DISTRICT.

** ADDITIONAL 4TH RESPONDENT IS IMPLEADED AS PER ORDER ON
I.A.NO.1555 OF 2010 DATED 3.2.2010.

R1 BY GOVERNMENT PLEADER SRI.R.RANJITH.
R2 BY STANDING COUNSEL SRI.C.K.JAYAKUMAR.
R3 BY STANDING COUNSEL SRI.P.RAMAKRISHNAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
06-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C).NO.2552 OF 2010-T

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1	PHOTOCOPY OF THE REGISTRATION PARTICULARS OF THE NO.KL-07-AS-7601.
EXT.P2	PHOTO COPY OF THE REGISTRATION PARTICULARS OF VEHICLE NO.KL-07-AS-7601 AFTER TRANSFERRING THE OWNERSHIP TO THE PETITIONER.
EXT.P3	PHOTO COPY OF THE RECEIPT DATED 23.01.2009 ISSUED BY THE 3RD RESPONDENT.

RESPONDENT'S EXHIBITS:-
--------------------------------------- NIL.

VKU/- (TRUE COPY)

P.S. TO JUDGE.

K. Vinod Chandran, J.

W.P(C) No.2552 of 2010-T

Dated this the 06th day of February, 2015

JUDGMENT

The above writ petition has been filed for a mandamus, directing the 2nd respondent to accept the welfare fund under the Kerala Motor Transport Workers' Welfare Fund Act, 1985 [for brevity "the Welfare Fund Act"] for the period prospective to the petitioner's purchase of the vehicle.

2. The petitioner's contention is that the motor vehicle bearing registration No.KL-07-AS-7601 was registered in the name of the additional 4th respondent, who, according to the petitioner, remitted contribution in respect of the vehicle upto date; in support of which Exhibit P3 has been produced. The petitioner is said to have purchased the vehicle and got transfer of the same on 09.06.2009. The petitioner wanted to remit welfare fund, which would not be accepted unless the arrears towards the welfare fund are remitted with the Board. Therefore, the present writ petition for appropriate direction.

3. By the 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.

4. It is admitted in the writ petition that the vehicle was transferred to the name of the petitioner on 09.06.2009. According to the petitioner, there are no arrears due under the Welfare Fund Act from the previous owner. Since the transfer itself was made

after the amendment, if there are any dues towards the Welfare Fund from the previous owner, a charge on the vehicle subsists even after the transfer.

5. However, if the petitioner approaches the authorities concerned within a period of one month from the date of receipt of a copy of this judgment, the said authority shall, in the event of there being any dues towards Welfare Fund from the previous owner, permit the petitioner to settle the amounts due under the Welfare Fund Act, with interest, in six equal monthly instalments; for the purpose of remitting tax in respect of the vehicle and for release of the encumbrance on the vehicle. Needless to say, the petitioner would be entitled to proceed against the previous owner for recovery of the arrears, if any, remitted by him, in appropriate proceedings.

The writ petition is disposed of with the above observations.

Sd/-
K.Vinod Chandran
Judge.

vku/-

(true copy)