

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 19TH DAY OF MARCH 2015/28TH PHALGUNA, 1936

WP(C).No. 4024 of 2010 (C)

PETITIONERS:

1. REJI PAUL, KALLANKOORIL HOUSE,
NJARALLOOR KARA, KIZHAKKAMBALAM P.O.
2. SANDHYA YADAVE, MANATHUPADAM HOUSE,
VILANGU P.O., VILANGUKARA, PIN-683 561.
3. JENSON JOHN, MUDAKKALAIL HOUSE,
KIZHAKKAMBALAM P.O., THAMARACHAL KARA.
4. SUNI THAMBI, AGED 35 YEARS,
THANIKKAL HOUSE, KIZHAKKAMBALAM.
5. SARA KUTTY KURIAKOSE,
AGED 50 YEARS, MANNALIYCKA HOUSE, KIZHAKKAMBALAM P.O.
POYYAKUNNAM KARA.
6. M.J.THOMAS, AGED 47 YEARS,
MADATHIPARAMBIL HOUSE, KIZHAKKAMBALAM P.O.
PAZHANGANAD KARA.
7. REENAMOL VARGHESE, AGED 32 YEARS,
KARIMBI HOUSE, KIZHAKKAMBALAM P.O., POYYAKKUNNAM KARA.
8. BABY PAUL, AGED 47 YEARS,
THAZHATHE THEKKUMMATTATHIL HOUSE, NJARALLOOR
KIZHAKKAMBALAM P.O.
9. M.V.MATHAI, AGED 46 YEARS,
MANAYATH HOUSE, KUMARAPURAM P.O., ERUMALY KARA.
10. JOHNNY.N.P., AGED 40 YEARS,
NEETTUMKARA HOUSE, POYYAKKUNNAM KARA
KIZHAKKAMBALAM P.O.

11. GIJO JOSEPH, AGED 40 YEARS,
VADASSERY HOUSE, PAZHANGANAD, KIZHAKKAMBALAM P.O.
12. RIJU K.MATHEW, AGED 27 YEARS,
KALLANKOORIYIL HOUSE, NJARALLOOR KARA
KIZHAKKAMBALAM P.O.
13. CHANIKUTTY JOSEPH, AGED 52 YEARS,
PANDAPARAMBIL HOUSE, THAMARACHAL, KIZHAKKAMBALAM P.O.
14. ANEESH ANTONY, AGED 22 YEARS,
KANJIRATHINGAL HOUSE, THURUTHIKARA, KIZHAKKAMBALAM.
15. BENNY.T.M, AGED 43 YEARS,
THAZHATHE THEKKUMMATTATHIL HOUSE, NJARALLOOR KARA
KIZHAKKAMBALAM P.O.
16. SINDHU BISSY, AGED 32 YEARS,
NARAKATHUKUDY HOUSE, VILANGU P.O., VILANGU.
17. N.P.VARGHESE, AGED 80 YEARS,
NEETTINGARA HOUSE, KIZHAKKAMBALAM P.O.
18. BABY.M.V, AGED 52 YEARS,
MUTTATHOTTIL HOUSE, KIZHAKKAMBALAM P.O.
19. PETER PAULOSE, AGED 36 YEARS,
ANJILIVEETIL HOUSE, KIZHAKKAMBALAM, THAMARACHAL KARA.
20. REJI KURIAKO, AGED 34 YEARS,
PANIDIYIPPILLY HOUSE, KIZHAKKAMBALAM, NJARALLOOR KARA.
21. DEEPAK THOMAS, AGED 25 YEARS,
THEKKANATH HOUSE, THURATHUKARA, KIZHAKKAMBALAM P.O.
22. P.P.PREMKUMAR PADMANABHAN NAIR,
AGED 45 YEARS, PILLAVEEDU, ERUMELY KARA
KUMARAPURAM P.O.
23. SUSAN VARGHESE, AGED 43 YEARS,
MUTTAVANCHERRY HOUSE, VILANGU P.O., OORAKADU KARA.

24. AVARACHAN JOSEPH, AGED 40 YEARS,
MUTTAMTHOTTIL HOUSE, KIZHAKKAMBALAM P.O.

25. SEHY MATHEW, AGED 37 YEARS,
PARACKAL HOUSE, KIZHAKKAMBALAM P.O., THURATHIKARA.

BY ADVS.SRI.A.X.VARGHESE
SRI.A.V.JOJO

RESPONDENT(S):

-
1. THE STATE OF KERALA, REP. BY
CHIEF SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM.
 2. THE SECRETARY TO GOVERNMENT,
DEPARTMENT OF TRANSPORT, SECRETARIAT
THIRUVANANTHAPURAM.
 3. THE SECRETARY TO GOVERNMENT,
DEPARTMENT OF LABOUR AND REHABILITATION, SECRETARIAT
THIRUVANANTHAPURAM.
 4. THE TRANSPORT COMMISSIONER,
TRANSPORT BHAVAN, KIZHAKKEKOTTA, THIRUVANANTHAPURAM.
 5. THE CHIEF EXECUTIVE OFFICER,
KERALA MOTOR TRANSPORT WORKERS WELFARE, FUND BOARD
BEACH ROAD, KOLLAM.
 6. THE DISTRICT EXECUTIVE OFFICER,
KERALA MOTOR TRANSPORT WORKERS WELFARE, FUND BOARD
ERNAKULAM DISTRICT.
 7. THE JOINT REGIONAL TRANSPORT OFFICER,
PERUMBAVOOR.

R1,R2,R3,R4&R7 BY ADV. GOVERNMENT PLEADER SRI S. SUDHEESH
R5&6 BY ADV. SRI.P.RAMAKRISHNAN, SC,KMTWF BOARD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
19-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: TRUE COPY OF THE GO(P) NO.98/2005/L.B.R DT 26.11.2005 INTRODUCING
SECOND AMENDMENT SCHEME

EXT.P2: TRUE COPY OF THE CIRCULAR ISSUED BY THE 3RD RESPONDENT UNDER THE
SCHEME DT 4.2.2006

RESPONDENTS EXHIBITS: NIL

TRUE COPY

P.A TO JUDGE

jma

K. VINOD CHANDRAN, J

W.P(C) No.4024 of 2010

Dated this the 19th day of March, 2015

J U D G M E N T

The petitioners are owners of light motor vehicles operated by themselves. The petitioners are aggrieved with the contribution under the Kerala Motor Transport Welfare Fund Act, 1985 since the petitioners who themselves are the owners and employees as defined under the Act, are obliged to make the contribution due from the employer as also from the employee. The issue is covered by a decision of this Court in W.P(C) No.3065/2010 dated 02.02.2015. Paragraph 4 and 5 in the said judgment are extracted herein:

4. With respect to the contention regarding self employed persons, it is to be noticed that by introduction of clause (j)(a) to Section 2 of the

Act, a specific definition of 'self employed persons' was brought into the Act. By paragraph 28 of the Scheme, the contributions were made mandatory even for such self employed persons. They would also get the benefits which enure to the employees under the Welfare Legislation. Hence, on the ground of self employment, no employer can insist that they would pay only the employer's contribution.

5. With respect to the other contention, it is to be noticed that the Welfare Fund Act is enacted to protect the employees in the un-organized sector, being those persons engaged in motor vehicles owned by individuals, Firms or other legal entities. In such circumstances, the contribution payable by the employee is to

be deducted from the salary and paid to the Welfare Fund Board. There can be no arbitrariness or illegality in such prescription since no liability as such is mulcted on the employer; but for the deduction of that contribution from the employee's salary. There is not rationale in the plea of the petitioners that they are obliged to satisfy only the employer's contribution. The employee's contribution directed to be paid by the employer is after deducting such amount from the wages of the employee.

In such circumstance, the writ petition would stand dismissed. However, the petitioner shall approach the authority within a period of three weeks from the date of receipt of copy of this judgment, and the petitioners shall be

given six installments to pay off the dues starting from 20.04.2015 and and thereafter; the due date of instalments falling on the 20th of each succeeding month. If default is committed in two consecutive instalments, then the recovery proceedings shall revive and continue.

Sd/-
(K. VINOD CHANDRAN, JUDGE)

jma //true copy//

P.A to Judge