IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 29TH DAY OF JULY 2015/7TH SRAVANA, 1937

WP(C).No. 2870 of 2015 (G)

PETITIONER(S):

EMIL B.K.,
S/O.LATE KUNJU KUNJU,
RESIDING AT BALLIPADATH HOUSE,
CHOORNIKKARA, THAIKKATTUKARA, ALUVA 683 106.

BY ADVS.SRI.G.HARIHARAN
SRI.PRAVEEN.H.
SMT.N.C.SALINI
SMT.K.S.SMITHA
SRI.C.RADHAKRISHNAN
SMT.V.S.SANGEETHA.

RESPONDENT(S):

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1. THE SECRETARY,
REGIONAL TRANSPORT AUTHORITY,
CIVIL STATION, ERNAKULAM 682 030.

2. REGIONAL TRANSPORT AUTHORITY,
ERNAKULAM, REPRESENTED BY ITS SECRETARY- 682 030.

*R3 IMPLEADED

R3 M/S. SHRIRAM TRANSPORT FINANCE CO-LTD.,
4TH FLOOR, MATHEWSONS SQUARE,
HIGH SCHOOL JUNCTION, EDAPPALLY,
KOCHI - 682 029.

(*ADDITIONAL R3 IS IMPLEADED AS PER ORDER DATED 13/02/2015 IN IA NO.2286/2015.)

R1,2 BY GOVERNMENT PLEADER SMT.ANITHA RAVEENDRAN
R3 BY ADV. SRI.C.HARIKUMAR
R3 BY ADV. SMT.C.B.ANUROOPA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S)' EXHIBITS :

EXHIBIT P1. COPY OF THE REGULAR PERMIT DATED 15.07.09 ISSUED BY THE RESPONDENT IN THE NAME OF THE PETITIONER TO OPERATE ON THE ROUTE ALUVA PERUMPADAPPU.

EXHIBIT P2. COPY OF THE RENEWAL OF APPLICATION FOR RENEWAL OF PERMIT DATED 02.08.14 FILED BY THE PETITIONER BEFORE THE RTA ERNAKULAM.

EXHIBIT P3. COPY OF THE LEASE AGREEMENT EXECUTED BY THE PETITIONER RELATING TO BUS NO.KL.3M.6262.

EXHIBIT P4. COPY OF THE INFORMATION OF DEMAND MADE AGAINST THE PETITIONER RELATING TO BUS NO.KL.04.R.7968.

EXHIBIT P5. COPY OF THE INFORMATION GIVEN BY THE IST RESPONDENT'S OFFICE ON 31.07.14.

EXHIBIT P6. COPY OF THE ONE SUCH INTERIM ORDER DATED 04.06.14 MADE IN WPC 12426/14 BY THIS HONOURABLE COURT.

EXHIBIT P7. COPY OF THE PROCEEDINGS NO.C4/128389/2014/E DATED 30.10.14.

RESPONDENT(S)' EXHIBITS :

EXHIBIT R3(A). COPY OF THE FINANCIAL STATEMENT DATED 25/02/2015 OF SHRIRAM TRANSPORT FINANCE COMPANY LTD.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 2870 of 2015

Dated this the 29th day of July, 2015.

JUDGMENT

Ext.P4 demand as well as Ext.P7 order of the RTA, Ernakulam (the second respondent) are under challenge in this writ petition.

2. The petitioner is a bus operator and registered owner of bus No.KL-04 R-7968 which was covered with a regular permit valid upto 14.7.2014 to operate on the route Aluva - Perumpadappu. On the eve of expiry period of regular permit, the petitioner made Ext.P2 application dated 2.8.2014 for renewal of permit to operate on the route between Aluva and Perumpadappu with Bus No.KL-3 M-6262 instead of Bus No.KL - 4 R-7968. The vehicle mentioned in Ext.P2 viz. Bus No.KL-3 M-6262 was taken on lease by the petitioner from one Mr. Aliyar of Edathala North, Aluva vide lease agreement dated 27.7.2014 for operating on the route in question. In the meantime, the respondent had issued a communication dated

8.7.2014 addressed to the petitioner calling upon him to produce NOC from the financier for considering the application for renewal of permit. The petitioner was also issued with Ext.P4 communication dated 31.7.2014 demanding him to pay a sum of Rs.4,04,263/- being tax from 1.1.2011 to 30.6.2014. It is pointed out that the petitioner is not liable to pay the tax demanded as above in view of the fact that the vehicle in question has not been operated for the last three years and also on account of the fact that another vehicle was conducting substitute service in place of the vehicle in question. It is a fact that from 16.5.2011 onwards other vehicles viz, bus No.KL-7-BF-6074 and KL-7-AH-3441 have conducted substitute service on the route in question from 16.5.2011 to 9.7.2014; it is alleged. The petitioner had preferred an objection dated 27.8.2013 against Ext.P4 demand seeking reconsideration of the matter taking note the decision rendered in **Mini Dileep v. Regional Transport Officer** [2013 (3) KLT 97]. Thereafter, the application for renewal of permit was rejected by the second respondent vide Ext.P7 proceedings dated 30.10.2014. The petitioner further alleges that he is highly aggrieved by the adamant stand taken by the respondents in not considering Ext.P2 application for renewal of Ext.P1 permit with vehicle No.KL-3 M-6262 on the ground of belated application and non-production of NOC from the financier and also on account of the demand for payment of tax when substitute services have been conducted by other operators on the route in question on the strength of successive temporary permit. It is with this background, the petitioner has come up before this Court.

3. Subsequent to the filing of the writ petition, the additional third respondent who is the financier of the stage carriage was impleaded as additional third respondent.

4. In the counter affidavit filed by the first respondent, it is stated that the petitioner is the registered owner of the stage carriage bearing registration No.KL-4 R-7968 which was having a regular permit on the route between Aluva and

Perumpadappu, which was valid upto 14.7.2014. The permit holder submitted a belated application on 2.8.2014 for renewal of the permit. The vehicle was having a valid hire purchase agreement with M/s. Sreeram Finance Company. Since the permit holder did not produce NOC from the financier, the application was rejected by the RTA in its meeting held on 30.10.2014. In the meantime, the petitioner submitted an application for replacement of vehicle by offering another stage carriage. The said application was also rejected in view of the rejection of application for renewal of permit. It is pointed out that tax was in arrears with respect to the vehicle. Hence, demand notice for the period from 1.10.2011 to 31.12.2012 was issued to the petitioner on 24.7.2012, which was received by the petitioner. But no amount was paid. Under the said circumstances, revenue recovery proceedings were initiated to realize the amount due. The outstanding amount due at that point of time was Rs.1,75,175/-. Later, notice dated 28.5.2014 was issued to the petitioner to recover the tax arrears due for the period from 1.1.2013 to 31.3.2014. The said amount was also not paid. Total outstanding amount due as on 31.3.2014 is Rs.3,54,849/-. It is submitted that revenue recovery proceedings are going on to recover the amounts due.

5. The additional third respondent filed a counter affidavit, contending that with regard to the averments contained in paragraph 6 of the writ petition, the petitioner is not liable to pay tax in view of the fact that the vehicle was not operated is misleading, wrong and hence denied. The said contention is against the well settled principle of law on the subject. The other contentions taken by the petitioner in paragraph 7 of the writ petition that as another vehicle was operating on the route, he is not liable to pay tax is also unsustainable and is only to be rejected. Another contention taken by the petitioner relying on the decision reported in **Mini Dileep v. Regional Transport Officer [2013 (3) KLT 97]** is also unsustainable. It is submitted that the question regarding payment of motor vehicle tax has well been settled by the

decision of a Larger Bench of this court in **Jomon M. Arackal v. Tahasildar** [2015 (1) KLT 163 (LB)] in which it has been clearly held that no exemption can be granted unless application in Form G has been submitted in time by the registered owner. Hence the contention taken by the petitioner in this regard is only to be rejected. It is also pointed out that Ext.P6 has no application in the facts and circumstances of the case on hand.

6. Arguments have been heard.

7. The learned counsel for the petitioner would argue that no NOC is required from the financier in the case of replacement of the vehicle and therefore the rejection of the vehicle for want of production of NOC from the financier is improper. It is also argued that the vehicle bearing registration No.KL-4R-7968 has not operated for the last three years and another bus has been conducting service on the route in question on the strength of successive substitute temporary permits. The petitioner's argument is that he has

offered another vehicle in place of aforesaid stage carriage since the vehicle has not been operated for the last so many years and it was not road worthy, because of the non-use. According to the learned counsel for the petitioner, tax on a vehicle shall be levied only on vehicles which are used or kept ready for use in the State. As the vehicle has not conducted any service from 1.4.2011 onwards, the fitness certificate of the vehicle was also not renewed so far after its expiry, so submitted by the learned counsel for the petitioner. It is also pointed out that there is no proper demand for tax except the information given under the Right to Information Act.

8. As per Ext.R3(a) financial statement dated 25.2.2015 produced by the third respondent, who is the financier, as on 25.2.2015, an amount of Rs.17,66,440/- is due from the petitioner to the third respondent. The definite stand is that because of the dues in arrears, the petitioner's request for NOC was not heeded to by the third respondent. It was also pointed out that no application was preferred by the

petitioner seeking NOC from the financier as mandated under Section 51 of the Motor Vehicles Act.

9. The argument of the learned counsel for the petitioner that the petitioner is not liable to pay the tax in view of the fact that the vehicle is not operating cannot be upheld. The said contention is against the settled principles of law. Though the petitioner has placed reliance on the decision of this Court in **Mini Dileep v. Regional Transport Officer** [2013 (3) KLT 97], the question regarding the payment of motor vehicle tax has been settled by the decision of Larger Bench of this court reported in **Jomon M. Arackal v. Tahasildar** [2015 (1) KLT 163 (LB)], where in it has been observed that no exemption can be granted unless application in Form G has been submitted in time by the registered owner. Therefore, the contention taken by the respondent in this regard is only to be rejected.

On a consideration of the entire materials now placed on record, this Court is of the view that the petitioner is not entitled to get the relief as prayed for.

In the result, the writ petition fails and accordingly it is dismissed.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

Scl.