IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

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

WP(C).No. 2982 of 2015 (W)

PETITIONER :

NITHIL, AGED 28 YEARS,
S/O. VALSALAN, 9/625, THATTARIVEETTIL HOUSE,
MEPPADI, WAYANAD.

BY ADV. SRI.M.JITHESH MENON

RESPONDENTS :

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1. THE DISTRICT EXECUTIVE OFFICER,
   KERALA MOTOR TRANSPORT WORKERS WELFARE FUND BOARD,
   ANAPALAM JN, KALPATTA, WAYANAD - 673 121.

2. THE REGIONAL TRANSPORT OFFICER
   (TAXATION OFFICER) WAYANAD,
   REGIONAL TRANSPORT OFFICE, CIVIL STATION, KALPATTA,
   WAYANAD, PIN - 673 121.

3. THE ASSISTANT PROVIDENT FUND COMMISSIONER,
   (ENFORCEMENT), EMPLOYEES PROVIDENT FUND ORGANISATION,
   SUB REGIONAL OFFICE, BHAVISHYANIDHI BHAVAN, KALOOR,
   KOCHI - 17.

4. T.S.SUDHEER,
   S/O. SUBRAMANIAN P.K., H.N 6/458, THOPPILPARAMBIL (H),
   MALAYATOOR, NEELEESHWARAM P.O, KALADY,
   ANGAMALY, ERNAKULAM - 683 574.

R3 BY ADV. DR.S.GOPAKUMARAN NAIR (SR.)
R3 BY ADV. SRI.A.RAJASIMHAN,SC,EPF ORGANISATION
BY GOVERNMENT PLEADER SRI.V.K.RAFEEQ
BY SRI.P.M.HABEEB

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

WP(C).No. 2982 of 2015 (W)

APPENDIX

PETITIONER'S EXHIBITS :-

P1 - TRUE COPY OF THE REGISTRATION CERTIFICATE SHOWING THE TRANSFER OF OWNERSHIP TO THE PETITIONER'S NAME WITH EFFECT FROM 30.12.14.
P2 - TRUE COPY OF THE REGISTRATION PARTICULARS OF THE VEHICLE SHOWING THAT THE 4TH RESPODENT WAS THE PREVIOUS OWNER.
P3 - TRUE COPY OF THE CHALAN DT. 16.12.14.
P4 - TRUE COPY OF THE ENDORSEMENT REGARDING PAYMENT OF TAX TILL 31.12.14 DATED NIL.
P5 - TRUE COPY OF THE JUDGMENT IN WPC NO. 9701/2011 DT. 31.3.11.
P6 - TRUE COPY OF THE JUDGMENT IN WPC 12201/2012 DT. 05.6.12.
P7 - TRUE COPY OF THE INTERIM ORDER WPC NO. 16893/2014 DT. 08.7.14.

RESPONDENTS' EXHIBITS :- NIL.

True copy

P.A to Judge

ANIL K.NARENDRAN, J.

W.P.(C)No.2982 of 2015

Dated this the 9th day of September, 2015

JUDGMENT

The petitioner is the registered owner of a contract carriage bearing registration No.KL-41/B.8463, which was transferred in his name with effect from 30.12.2014, as evident from Ext.P1 certificate of registration. Ext.P2 certificate of registration would indicate that the aforesaid vehicle was previously registered in the name of the 4th respondent till 29.12.2014. It is stated in the Writ Petition that the 4th respondent is part of a family concern under the name and style "Sisira Travels" and the said concern is covered under the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the EPF Act'), which is evident from Ext.P3 challan showing remittance of contribution by M/s.Sisira Travels for the month of December, 2014. Based on the payment effected vide Ext.P3, the motor vehicle tax in respect of the vehicle in question for the quarter commenced on 1.10.2014 till 31.12.2014 was accepted, which is evident from Ext.P4.

2. It is stated in the Writ Petition that, after the transfer of ownership of the vehicle in the petitioner's name with effect from 30.12.2014, he is bound to make contribution to the 1st respondent and pay motor vehicle tax to the 2nd respondent from the quarter, which commenced from 1.1.2015. However, the 2nd respondent will accept motor vehicle tax only on production of proof regarding payment of contribution to the 1st respondent. Though the petitioner was prepared to pay contribution with effect from 1.1.2015, the 1st respondent has not accepted the same. It was in such circumstances, the petitioner has filed this Writ Petition before this Court seeking a writ of mandamus commanding the 1st respondent to accept contribution from him under the Kerala Motor Transport Workers Welfare Fund Scheme, for the quarter commenced on 1.1.2015, in respect of the contract carriage bearing registration No.KL-41/B.8463. He has also sought for a writ of mandamus commanding the 2nd respondent to accept the motor vehicle's tax in respect of the aforesaid vehicle for the quarter commenced on 1.1.2015 on production of proof regarding payment before the 1st respondent. The petitioner is also relying on Ext.P5 judgment of this

Court in W.P.(C)No.9701 of 2011 and also Ext.P6 judgment in W.P.(C)No.12201 of 2012.

3. On 30.1.2015 this Court passed the following interim order:-

> "The petitioner is willing to pay the Welfare Fund contributions from 01.01.2015; the date of purchase of the vehicle from the 4th respondent, who is said to be covered under the Employees Provident Fund and Miscellaneous Provisions Act, 1952. On such contribution being paid, the first respondent shall issue clearance certificate provisionally, upon which the second respondent shall accept the tax also. It is made clear that the order will be provisional and the charge on the vehicle would survive, if the writ petition is eventually dismissed."

4. I heard the arguments of the learned counsel for the petitioner, the learned Standing Counsel for the Welfare Fund Board, the learned Government Pleader appearing for the 2nd respondent and the learned Standing Counsel for the 3rd respondent Provident Fund Commissioner.

5. The learned Standing Counsel for the 3rd respondent, namely, the Employees Provident Fund Organisation, on instructions would submit that the establishment M/s.Sisira Travels was covered

under the provisions of EPF Act during the relevant period. The learned Government Pleader on instructions would submit that the tax in respect of the aforesaid vehicle upto 31.12.2014 has been paid and accepted by the 2nd respondent on production of proof regarding payment of contributions under the EPF Scheme. The learned Standing Counsel for the 1st respondent would submit that, the petitioner may be directed to produce sufficient materials before the 1st respondent to prove payment of contribution under the EPF Scheme for the period upto 31.12.2014.

6. I have considered the rival submissions made at the Bar.

7. In **Hymavathi K.V. Vs. Special Deputy Tahsildar and others (2008 (3) KLT 807)** a Division Bench of this Court held that, in view of the proviso appended to Section 4 of the Kerala Motor Transport Workers Welfare Act, 1985, once an establishment, viz., motor transport undertaking is covered by the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 those Motor Transport Undertakings are kept out of Section 4 of the Kerala Motor Transport Worker's Welfare Fund Act.

8. In the case on hand, the fact that the establishment in which previous owner of the vehicle namely 4th respondent is an establishment covered under the provisions of the EPF Act is admitted by the learned Standing Counsel for the 3rd respondent. Similarly the learned Government Pleader has also submitted on instructions that, the motor vehicle tax in respect of the vehicle in question was accepted upto 31.12.2014 on verification of proof regarding payment of contributions under EPF Scheme as on that date.

9. Now, based on the interim order passed by this Court in this Writ Petition the petitioner has paid welfare fund contributions in respect of the vehicle in question from 1.1.2015 onwards, the date of purchase of the vehicle from the 4th respondent, and thereafter he has also paid motor vehicle tax in respect of the said vehicle.

10. In such circumstances, this Writ Petition is disposed of directing the petitioner to produce sufficient materials before the 1st respondent, namely the District Executive Officer of the Welfare Fund Board to substantiate the fact that no contribution is payable to the welfare fund in respect of the vehicle in question till

30.12.2014, since the establishment in which the previous owner of the vehicle, namely the 4th respondent is a part is covered by the provisions of the EPF Act. The petitioner shall produce such materials before the 1st respondent within a period of one month from the date of receipt of a certified copy of this judgment. The 1st respondent shall consider the same, with notice to the petitioner and issue an appropriate order regarding the liability, if any, of the vehicle in question for payment of welfare fund for the period till 30.12.2014. Such orders shall be passed, within a further period of three months from the date of production of a certified copy of this judgment.

Till such an order is passed, interim order granted by this Court shall continue to be in force.

Sd/-
ANIL K.NARENDRAN, JUDGE

skj