IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 15TH DAY OF JULY 2015/24TH ASHADHA, 1937

WP(C).No. 7332 of 2013 (N)

PETITIONER:

K.SADASIVAN, AGED 60,
S/O.LATE KUMARA PILLAI,
PROPRIETOR HOTELPRASANTHI,
PARASSALA, THIRUVANANTHAPURAM.

BY ADV. SRI.K.B.PRADEEP

RESPONDENTS:

1. THE STATE OF KERALA
REP. BY THE SECRETARY, TAXES DPEARTMENT,
GOVERNMENT OF KERALA
THIRUVANANTHAPURAM PIN - 695 001.

2. KERALA ABKARI WORKERS WELFARE FUND BOARD,
KCP BUILDING, ARYASALA,THIRUVANANTHAPURAM
REPRESENTED BY ITS SECRETARY PIN - 695 001.

3. THE WELFARE FUND INSPECTOR, OFFICE OF THE WELFARE
FUND INSPECTOR, THIRUVANANTHAPURAM PIN - 695 001.

4. THE DEPUTY COMMISSIONER OF EXCISE,
OFFICE OF THE DY.COMMISSIONER OF EXCISE,
THIRUVANANTHAPURAM PIN - 695 001.

R2 & R3 BY ADVS. SRI.ROY CHACKO
SRI.RENIL ANTO
R1 & R4 BY GOVERNMENT PLEADER SRI.G.GOPAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WP(C).No. 7332 of 2013 (N)

PETITIONER'S EXHIBITS :

EXT.P-1 THE TRUE COPY OF THE RULE 5(4A) NO DUE CERTIFICATE DATED 15.2.2006

EXT.P-2 THE TRUE COPY OF THE ORDER OF WITHDRAWAL OF ATTACHMENT DATED 2.9.2006

EXT.P-3 THE TRUE COPY OF THE NON DUE CERTIFICATE DATED 14.6.2005 ISSUED BY THE KERALA TODDY WORKERS WELFARE FUND BOARD

EXT.P-4 THE TRUE COPY OF THE NON DUE CERTIFICATE DATED 25.5.2006 ISSUED BY THE KERALA TODDY WORKERS WELFARE FUND BOARD

EXT.P-5 TRUE COPY OF THE RULE 5(4A) NO DUE CERTIFICATE WITH NO.56122

EXT.P-6 TRUE COPY OF THE RULE 5(4A) NO DUE CERTIFICATE WITH NO.59495

EXT.P-7 THE TRUE COPY OF THE RULE 5(4A) CERTIFICATE WITH NO.4519

EXT.P-8 TRUE COPY OF THE NOTICE DATED 8.3.2013

EXT.P-9 TRUE COPY OF THE LETTER DATED 26.6.2004 ISSUED BY CHIEF WELFARE FUND INSPECTORS OFFICE TO THAHSILDAR (RR)

EXT.P-10 TRUE COPY OF THE LETTER DATED 24.8.2006 ISSUED BY VILLAGE OFFICER, KUNNATHUKAAL TO REVENUE RECOVERY OFFICER

EXT.P-11 TRUE COPY OF THE LETTER ISSUED BY TAHSILDAR (RR), NEYYATTINKARA, THIRUVANANTHAPURAM DATED 2.7.2002 ADDRESSED TO THIRD RESPONDENT

EXT.P-12 TRUE COPY OF THE LETTER DATED 11.12.2002 ISSUED BY THIRD RESPONDENT TO TAHSILDAR (RR), NEYYATTINKARA, THIRUVANANTHAPURAM

EXT.P-13 TRUE COPY OF THE CHALAN DATED 22.11.2002 EVIDENCING REMITTANCE OF RS.47094/-I ISSUED BY THE TRIVANDRUM DISTRICT CO-OPERATIVE BANK LTD.

EXT.P-14 TRUE COPY OF THE PROCEEDINGS DATED 22.11.2002 OF TAHSILDAR (RR), NEYYATTINKARA, THIRUVANANTHAPURAM

EXT.P-15 TRUE COPY OF THE LETTER ISSUED BY TAHSILDAR (RR), NEYYATTINKARA, THIRUVANANTHAPURAM DATED 25.11.2002 ADDRESSED TO THE VILLAGE OFFICER, KUNNATHUKAL

EXT.P-16 TRUE COPY OF THE CHALAN DATED 17.12.2002 EVIDENCING REMITTANCE OF RS.3,43,908/-I ISSUED BY THE OFFICE OF THIRD RESPONDENT

EXT.P-17 TRUE COPY OF THE LETTER ISSUED BY TAHSILDAR (RR), NEYYATTINKARA, THIRUVANANTHAPURAM DATED 17.12.2002 ADDRESSED TO THE VILLAGE OFFICER, KUNNATHUKAAL

RESPONDENT'S EXHIBITS:

EXT.R2(a) TRUE COPY OFR.R. LEDGER CERTIFIED BY THE THIRD RESPONDENT

DAMA SESHADRI NAIDU, J.

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W.P.(c) No. 7332 of 2013

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Dated this the 15th day of July, 2015

JUDGMENT

The petitioner, an Abkari Contractor, originally having FL-3 licence, applied for No-due certificate from the second and third respondents, so that he could have the renewal of his licence for the year 2013-2014. At that juncture, the respondents issued Exhibit P8 intimation to the petitioner to the effect that the petitioner had not paid the Abkari Workers Welfare Fund dues for the years 1991-1992 to 1994-1995, totaling to more than Rs.12,00,000/-.

2. Initially, this Court issued interim directions on three occasions enabling the petitioner to have No-due certificate for the Abkari years 2013, 2014 and 2015, the latest being 13th March, 2015.

3. The learned counsel for the petitioner has strenuously contended that the respondent authorities

having issued No-due certificates for subsequent periods, they cannot be permitted to contend that there are arrears for the years 1992-1994. He has also contended that in the subsequent years whenever a No-due certificate was issued, it was specifically mentioned that the petitioner was not in arrears of any amounts to be paid under whatever head of account. Incidentally, the learned counsel has also taken a plea that if it were to be assumed that the petitioner had been in arrears of any amount, the claim on the part of the respondents stood barred by limitation.

4. In response thereto, the learned Standing counsel for the respondents 2 and 3 has submitted that the principal grievance of the petitioner being that concerning the arrears under Exhibit P8, the petitioner had not been put on notice at any point of time, the very Exhibit P8, according to him, could be taken as a notice and that the petitioner is at liberty to submit his defence with regard to the demand made by the respondents under Exhibit P8.

5. The learned Standing Counsel has also contended that once a hearing takes place based on the reply submitted by the petitioner in response to Exhibit P8

demand, the authorities would take appropriate action whether the petitioner should be given a No-due certificate, as has been demanded.

6. In the facts and circumstances, having regard to the respective submissions of the learned counsel for the petitioner and the learned Standing Counsel for the respondents, this Court, without adverting to the merits of the matter, disposes of the writ petition declaring that Exhibit P8 shall be treated as a show cause notice rather than a demand notice; consequently, the petitioner is at liberty to file his defence concerning the demand made in Exhibit P8 by taking all the pleas legally available to him.

7. Once the petitioner submits his reply to Exhibit P8 show cause notice, the third respondent shall decide the issue, after affording an opportunity of personal hearing, if necessary, to the petitioner, as expeditiously as possible, at any rate, within a period of three months from the date of receipt of a copy of this judgment.

8. All further steps pursuant to Exhibit P8 shall be subject to the outcome of the enquiry to be conducted by the third respondent. Till the process of adjudication under

Exhibit P8 is completed, there shall not be any coercive steps *vis-a-vis* the petitioner concerning the alleged dues of Kerala Abkari Workers Welfare Fund.

With the above observation, this writ petition is disposed of. No order as to costs.

DAMA SESHADRI NAIDU
JUDGE

DMR/-