IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 3RD DAY OF SEPTEMBER 2015/12TH BHADRA, 1937

WP(C).No. 11824 of 2011 (C)
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NAME AND ADDRESS OF THE PETITIONER(S) :

ABDUL HAMEED, HOUSE NO.33/1095-E,
KALAVATH, KUTTIKATTUPARAMBU, CHALIKKAVATTOM,
VENNALA P.O., ERNAKULAM DISTRICT.

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

NAME AND ADDRESS OF THE RESPONDENT(S) :
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1. **REGIONAL TRANSPORT OFFICER,**
   R.T.O'S OFFICE, CIVIL STATION, ERNAKULAM DISTRICT, PIN- 682 030.

2. **THE DISTRICT OFFICER,**
   KERALA STATE MOTOR TRANSPORT WORKERS WELFARE FUND BOARD, ERNAKULAM, PIN- 682 030.

3. **FAISAL V.A., VELAKKOTTU PUTHENPURA,**
   ADOOPARAMBU, MOOVATTUPUZHA P.O.,
   ERNAKULAM DISTRICT- 686 661.

R1 BY SR.GOVERNMENT PLEADER SRI.SAIDALAVI
R2 BY ADV. SRI.P.RAMAKRISHNAN, S.C

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Msd.

WP(C).No. 11824 of 2011 (C)

APPENDIX

PETITIONER(S)' EXHIBITS :

EXHIBIT P1: **A PHOTOCOPY OF THE REGISTRATION PARTICULARS OF THE ABOVE VEHICLE BEARING NO.KL-07-BB-1038.**

EXHIBIT P2: **A PHOTOCOPY OF THE TAX RECEIPT OF THE ABOVE VEHICLE BEARING NO.KL-07-BB-1038.**

EXHIBIT P3: **A PHOTOCOPY OF THE PERMIT OF THE ABOVE VEHICLE BEARING NO.KL-07-BB-1038.**

RESPONDENT(S)' EXHIBITS :
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NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.11824 of 2011

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Dated this the 3rd day of September, 2015

JUDGMENT

The petitioner has come up before this Court alleging that the respondents have refused to accept the motor vehicles tax alleging non-payment of contribution towards motor transport workers' welfare Fund.

2. The petitioner purchased MGV Goods Carrier Truck bearing Reg. No.KL-07/BB-1038 (2005 model) from its previous owner, the third respondent. The petitioner alleges that when he approached the first respondent for payment of tax payable from 1.4.2011, the first respondent insisted for evidence showing payment of contribution towards motor transport workers' welfare Fund. The petitioner requested the second respondent to receive the welfare fund contribution payable to him from 1.4.2011. However, the second respondent demanded contribution for the last five years during the time which the welfare fund contribution was made essential before accepting vehicle tax. The petitioner tried to convince the third respondent regarding the non-availability to pay the welfare fund as he was not the owner of the vehicle in question

prior to 14.3.2011. The petitioner alleges that as the tax has been paid upto 31.3.2011, it is evident that the contribution towards the motor tax workers welfare fund should have been paid. It is with this background, the petitioner has approached this Court.

3. In the statement filed by the second respondent, they have contended as follows:

The petitioner has purchased medium goods carriage bearing from the third respondent and transferred the registration certificate with effect from 14.3.2011. After effecting the transfer of ownership of the above vehicle, the petitioner approached the second respondent to remit the welfare fund contribution from the month of March, 2011 onwards. The second respondent demanded from the petitioner the evidence for remitting the welfare fund contribution by the third respondent upto 14.3.2011. However, the petitioner did not produce the clearance receipt of welfare fund contribution remitted upto the preceding month as per the Kerala Motor Transport Worker's Welfare Fund Act, 2005.

It was further contended that on verification of the records, the vehicle now in the ownership of the petitioner was not registered with the second respondent. Therefore, the second respondent demanded contribution under the Kerala Motor Workers'

Welfare Fund Act for the periods from 20.2.2006, the date of registration till March, 2011, which is the date on which the petitioner became the owner of the above stage carriage. The petitioner had purchased the vehicle from the third respondent and changed the registration certificate to his name w.e.f 14.3.2011. Before changing the registration certificate into his name, the petitioner had to obtain clearance receipt of remitting the welfare fund contribution due to 14.3.2011 from previous owner. As per Section 10(2) of the Kerala Motor Transport Workers' Welfare Fund (Amendment) Act, 2005, if the employer transfers his vehicle before paying off any amount due under this Act in respect of the vehicle, the liability wherefore occurred before the date of the transfer, such amount shall be a charge on the vehicle so transferred. Since the former owner did not clear the welfare fund contribution, the petitioner has to remit the same from 20.2.2006 onwards in respect of the above vehicle purchased by the petitioner.

It was further contended that since the welfare fund contribution in respect of the vehicle has not been paid till date by the third respondent, the petitioner ought to have obtained clearance receipt of welfare fund contribution towards motor transport workers' welfare fund upto 14.3.2011 from the third respondent or in the alternative, the petitioner is liable to remit the amount as per the Kerala Motor Transport Workers' Welfare Fund Act. It is stated that as per Section 10(2) of the Motor Transport Workers' Welfare Fund (Amendment) Act, 2005 where an employer transfer his vehicle before paying welfare fund contribution due under this Act in respect of the vehicle, the liability acquired before the date of transfer, such amount shall be a charge on the vehicle so transferred. Since the third respondent has transferred the above vehicle without having the welfare fund contribution towards this respondent, the petitioner is liable to pay welfare fund contribution in respect of the period during which the third respondent was in ownership.

4. Arguments have been heard.

5. When the matter came up for hearing, the learned counsel for the second respondent invited my attention to a decision of this Court in **Ummar** v. **Joint Regional Transport Officer** [2014 (4) KLT 358] wherein it was held that the in case of transfers effected after 7.6.2005, the transferee of the vehicle would be liable to discharge the liability of the erstwhile owner of the vehicle in respect of the latter's dues under the 985 Act. Moreover the transferee in such cases would have a right to proceed against the

erstwhile owner for realisation of the amounts paid on his behalf. The learned counsel for the petitioner would submit that in the event of fixing responsibility of payment of welfare fund contribution on the petitioner, the petitioner be provided instalment facility.

Therefore, the writ petition is disposed of permitting the petitioner to approach the second respondent who shall inform the petitioner the exact amount due from him which shall be paid by the petitioner in six equal monthly instalments starting from 1.10.2015. In case the petitioner fails in remitting two instalments consecutively, it shall be open to the second respondent to proceed against him legally for realisation of the amounts.

Needless to say, after repaying the amounts due to the second respondent, the petitioner shall have the liberty to get the same realised from the erstwhile owner.

Sd/-
A.V.RAMAKRISHNA PILLAI
JUDGE

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