

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

THURSDAY, THE 10TH DAY OF SEPTEMBER 2015/19TH BHADRA, 1937

WP(C).No. 13030 of 2012 (C)

PETITIONER:

**SALEENA DEVI, AGED 45 YEARS,
W/O.V.S.UDAYA KUMAR, THAMARASSERIL HOUSE,
CHENGALAM SOUTH P.O, KOTTAYAM TALUK,
KOTTAYAM DISTRICT.**

BY ADV. SRI.B.RAJEEV KOYICKAL

RESPONDENT(S):

- 1. THE STATE OF KERALA,
REP.BY THE CHIEF SECRETARY,
GOVT.SECRETARIAT, THIRUVANANTHAPURAM 695 001.**
- 2. THE KERALA MOTOR TRANSPORT WORKERS
WELFARE FUND BOARD,
REP.BY ITS DISTRICT EXECUTIVE OFFICER,
K.M.T.W.W.F BOARD, COLLECTORATE P.O,
KOTTAYAM - 691 001.**
- 3. KERALA MOTOR TRANSPORT WORKERS
WELFARE FUND BOARD,
REP.BY ITS DISTRICT EXECUTIVE OFFICER,
KERALA M.T.W.W.F.BOARD, COLLECTORATE P.O,
KOLLAM - 691 001.**
- 4. THE REGIONAL TRANSPORT OFFICER,
REP.BY ITS SECRETARY, R.T.A KOTTAYAM - 686 001.**

**R1 & R2 BY SENIOR GOVT. PLEADER SRI.S.SUDHEESH KUMAR
R2 & R3 BY SRI.K.S.MANU (PUNUKKONNOOR), SC**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 10-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

mbr/

APPENDIX

PETITIONER(S) EXHIBITS:

- EXHIBIT P1. THE TRUE COPY OF THE R.C BOOK OF TEMPO TRAVELLER BEARING REG.NO.KL.07.AK.4389 OWNED BY THE PETITIONER.
- EXHIBIT P2. TRUE COPY OF THE R.C BOOK OF KL.07.AK 4389 SHOWING THE OWNERSHIP OF MANAGER, RAJA MEMORIAL SCHOOL, THENKARA, MANNARKAD.
- EXHIBIT P3. TRUE COPY OF THE CLEARANCE CERTIFICATE DATED 1.12.2011 ISSUED BY RTO, MANNARKAD.
- EXHIBIT P4. TRUE COPY OF THE PERMIT ISSUED BY RTO KOTTAYAM TO THE PETITIONER DATED 5.8.2012.
- EXHIBIT P5. TRUE COPY OF THE INSURANCE CERTIFICATE OF KL-07-AK-4389 ISSUED BY THE NEW INDIA ASSURANCE CO.LTD, ALATHUR BRANCH DATED 10.11.2012.
- EXHIBIT P6. TRUE COPY OF THE PRINT OUT OF THE M.V DEPARTMENT KERALA SHOWING THE REGISTRATION DETAILS OF KL-07-KK-4389 TEMPO TRAVELLER.
- EXHIBIT P7. TRUE COPY OF THE PRINT OUT OF THE M.V DEPARTMENT KERALA SHOWING THE REGISTRATION DETAILS OF KL.07.AK.4389 DURING THE TIME SEPTEMBER 2006.
- EXHIBIT P8. TRUE COPY OF THE REGISTRATION DETAILS OF KL.07.AK.4389 PRINT OUT OF THE M.V DEPARTMENT KERALA DURING THE TIME MAY 2007.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

mbr/

ANIL K.NARENDRA, J.

W.P.(C)No.13030 of 2012

Dated this the 10th day of September, 2015

JUDGMENT

The petitioner is the registered owner of a TATA Tempo Traveller vehicle bearing registration No.KL-07 AK 4389, with effect from 17.11.2011. The petitioner has filed this Writ Petition seeking a writ of mandamus commanding the 3rd respondent to accept the Kerala Motor Transport Workers Welfare Fund Contribution from her with effect from 17.11.2011, the date on which she purchased the vehicle in question and also seeking a writ of mandamus commanding the 4th respondent to accept the road tax in respect of the aforesaid vehicle on receipt of payment of contribution to the Motor Transport Welfare Fund with effect from 17.11.2011 onwards. By order dated 18.9.2012 this Court granted an interim order directing the 4th respondent to accept the road tax for the vehicle in question provisionally, pending further orders, without insisting the production of receipt of the Kerala Motor Transport Workers Welfare Fund Contribution, within a period of two weeks.

2. Today, when the case was taken up for final hearing, it was brought to my notice that the issue raised in this writ petition is covered against the petitioner by the judgment of this Court in ***Ummar v. Joint Regional Transport Officer [2014 (4) KLT 358]***. Paragraph 3 of the judgment reads thus:

"3. The effect of the amendment brought about by the Amendment Act of 2005 was that, from 7.6.2005, the production of receipt of remittance of welfare fund contribution became an essential precondition for making payment of tax in respect of the vehicle, under the Kerala Motor Vehicles Taxation Act, 1976. Further, the arrears of amounts due from employers came to be recognised as a charge on the vehicle, in the event of a transfer by the employer of vehicles that were owned by him, and in respect of which there were amounts due under the 1985 Act. The resultant position was that, in respect of transfer of vehicles, effected by persons who had defaulted on payment of their dues under the 1985 Act, prior to 7.6.2005, the liability to pay the dues would continue to be with the transferor and would not pass with the vehicle to the transferee of the vehicle. For those transfers effected after 7.6.2005, however, the liability of the transferor under the 1985 Act, came to be recognised as a charge on the vehicle, by virtue of the amended S.10 of the Act, and consequently, would pass on to the transferee of the vehicle for the purposes of

recovery under the 1985 Act. The legality of the insistence, by the authorities under the Kerala Motor Vehicles Taxation Act, for a clearance, by the owner of the vehicle, of the welfare fund dues of the erstwhile owner, would, therefore, have to be examined in the light of the above statutory changes and the enquiry would have to be as to whether the transfer of the vehicle took place before the date of the amendment to the Kerala Motor Transport Workers Welfare Fund Act, 1985 or after that date. In my view, in cases where the transfer of the vehicle was effected prior to 7.6.2005, the liability of the erstwhile owner of the vehicle in respect of the amounts due under the 1985 Act would continue to be with him and the authorities would not be justified in proceeding against the transferee for realisation of those dues. In the case of transfers effected after 7.6.2005, however, 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 1985 Act. No doubt 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 rights of the parties in these Writ Petitions would, accordingly, have to be determined on the basis of the above legal position and accordingly, the Writ Petitions are disposed with the following directions:

- 1. In those cases where the transfers of the vehicles have been effected prior to 7.6.2005, the liability to discharge the welfare fund dues under the 1985 Act would continue to be with*

the erstwhile owner of the vehicle and accordingly, the authorities under the 1985 Act would have to proceed against such owners for realisation of the dues. As a consequence, the insistence by the Motor Vehicles Taxation Authorities, for discharge of liabilities of the erstwhile owner, as a precondition for accepting tax from the subsequent owner, would have to be declared as illegal and I do so.

2. In cases where the transfer of the vehicle has been occasioned after 7.6.2005, the liability of the erstwhile owner of the vehicle, in respect of the dues under 1985 Act, would be a charge on the vehicle and go along with the vehicle to the transferee of the vehicle. Accordingly, the transferee of the vehicle would be liable to discharge the dues of the erstwhile owner under the 1985 Act. In such cases the action of the authorities under the Kerala Motor Vehicles Taxation Act insisting on a clearance of the erstwhile owner's dues, by the subsequent owner, as a condition for accepting tax from him, is held to be legal and valid and the notices, if any issued in that regard, are sustained.

3. In cases covered by (2) above, wherever the transferee has effected payment of dues pertaining to the erstwhile owner, it shall be

open to the said transferee to proceed against the erstwhile owner, for realisation of the amounts paid on behalf of the erstwhile owner and in discharge of the latter's liability under the 1985 Act.

4. The demands that have been made against the petitioners, which have been held to be legal and valid in this judgment, shall be satisfied by the petitioners within a period of one month from the date of receipt of a copy of this judgment. As it is noticed that, during the pendency of the Writ Petition, the petitioners have all been permitted to effect payment of motor vehicle tax by way of interim orders of this Court and, therefore, no further directions are required in that regard.

3. Since the issue raised in this Writ Petition is squarely covered against the petitioner, I find absolutely no ground to grant the reliefs prayed for.

In the result, this Writ Petition fails and the same is dismissed.

Sd/-

ANIL K.NARENDRAN, JUDGE

skj