

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 9TH DAY OF FEBRUARY 2015/20TH MAGHA, 1936

WP(C).No. 17373 of 2007 (R)

PETITIONER :

**LUKA DEVASIA, MATTAPPALLIL,
TV. PURAM, VAIKOM.**

BY ADV. SRI.G.PRABHAKARAN

RESPONDENT(S):

- 1. THE DISTRICT EXECUTIVE OFFICER,
KERALA MOTOR TRANSPORT WORKERS WELFARE FUND BOARD,
KOTTAYAM.**
- 2. GOVERNMENT OF KERALA, REPRESENTED BY THE
COMMISSIONER AND SECRETARY TO LABOUR DEPARTMENT,
THIRUVANANTHAPURAM.**
- 3. THE DISTRICT COLLECTOR, KOTTAYAM.**
- 4. THE TAHSILDAR (R/R), VAIKOM.**

**R1 BY SRI.PRAMAKRISHNAN, SC,KMTWF BOARD
R2 TO R4 BY GOVERNMENT PLEADER SRI.V.K.RAFEEQ**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 09-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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APPENDIX

PETITIONER'S EXHIBITS:

- P1 COPY OF THE REGISTERED PARTNERSHIP DEED DATED 19/9/2002**
- P2 COPY OF THE FINAL DETERMINATION ORDER DATED 27/9/2003 FOR THE PERIOD 2002-2003**
- P3 COPY OF THE FINAL DETERMINATION ORDER DATED 3/10/2006 FOR THE PERIOD 2004-2005**
- P4 COPY OF THE APPEAL DATED 15/11/2002 AGAINST THE FINAL DETERMINATION ORDER FOR THE PERIOD 2002-2003**
- P5 COPY OF THE APPEAL DATED 13/10/2005 AGAINST THE FINAL DETERMINATION ORDER FOR THE PERIOD 2004-2005**

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.A.TO.JUDGE

sts

K.VINOD CHANDRAN, J

W.P.(C).No. 17373 of 2007

Dated 9th February, 2015

JUDGMENT

The petitioner, is the registered owner of two stage carriages, who seek to absolve himself from the liability under the Kerala Motor Transport Workers Welfare Fund Act, 1985 (for short 'the Welfare Fund Act') on the strength of Ext.P1. Ext.P1 is said to be a partnership deed executed on 19.09.2002 between the petitioner and 17 other persons. Purportedly the partnership deed was to carry on the business of stage carriage operations in the name "Mattappallil Travels", in which stage carriages bearing Nos. KDE 7891 and KL-5/L 1495 were also said to have been included. Those were the vehicles for which the present determination orders were passed. Admittedly appeals were filed from the determination orders and the same stood dismissed as per Ext.P6 with respect to

the petitioner's vehicle as also two other vehicles referred to in the partnership deed.

2. The definition of “employer” under the Act is a person, who has ultimate control of the vehicle. Admittedly, petitioner is the registered owner of the two vehicles for which determination orders have been passed and challenged before this Court. The registration certificate issued under the Kerala Motor Vehicles Act, 1988 (for short 'the Act of 1988') raises a presumption that the registered owner is in “ultimate control of the vehicle”. However, definitely, evidence could be produced to show that the “ultimate control” has been handed over by the registered owner to another or other third parties. The claim of partnership also could be maintained; however, not on the basis of the mere execution of a document.

3. The fact that the document was executed in stamp paper would not give it the sanctity it requires under law. The partnership as projected in Ext.P1 has not been registered as is required, which alone would confer legal identity on the Firm. Collusive exercise by the employer and the employees to absolve the liability of the employer under a welfare legislation cannot be entertained, especially since the welfare legislation seeks to provide succour to the employees in the unorganized sector, herein the motor vehicle employees. Hence, for reason of the partnership being not one which is registered and for reason of the petitioner being the registered owner of the vehicle, the liability would necessarily, have to be borne by the petitioner.

4. Further the learned Government Pleader has specifically pointed out to the averments in

the counter affidavit which indicate that assessment was done as deposed by the petitioner. The learned counsel appearing for the Kerala Motor Transport Workers Welfare Fund Board hands over the files, in which the deposition of the petitioner is found. The petitioner unequivocally admitted to the employment of persons in the stage carriage and also submitted that there are registers to evidence the wages paid, attendance and so on and so forth. The petitioner had also undertaken to produce the registers within one month. The partnership deed also was not produced before the Original Authority nor before the Appellate Authority.

5. For all the above reasons, the writ petition is found to be devoid of merit. However, in the circumstances of the writ petition pending from the year 2007, the 1st

respondent shall compute the arrears due as on today and shall intimate the petitioner by way of a communication through registered post. The petitioner shall also be granted six instalments to pay off the entire dues which grant of instalments shall be specified in the communication. Recovery proceedings shall be kept in abeyance on the petitioner complying with the instalments. If one default is committed recovery shall be proceeded with.

With the above rider, the writ petition would stand dismissed. Parties are left to suffer their respective costs.

Sd/-

K.VINOD CHANDRAN
Judge

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