IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

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

WP(C).No. 17639 of 2012 (D)

PETITIONER(S):

C.K. ENATHY, S/O. MOHAMMED,
CHEMMAMKUZHIYIL HOUSE, PARAL,
THOOTHA. P.O., ANAMANGAD,
MALAPPURAM DISTRICT.

BY ADV. SRI.SAJU J.VALLYARA.

RESPONDENT(S):

THE DISTRICT EXECUTIVE OFFICER,
KERALA MOTOR TRANSPORT WORKERS WELFARE FUND BOARD,
MALAPPURAM-676 504.

BY ADVS. SRI.P.RAMAKRISHNAN, SC,
SRI.P.M.HABEEB.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 10-09-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

rs.

WP(C).No. 17639 of 2012 (D)

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1 COPY OF THE REGULAR PERMIT IN RESPECT OF STAGE CARRIAGE KL-58-A-5614.

EXT.P2 COPY OF THE SALE AGREEMENT EXECUTED BETWEEN THE PETITIONER AND ONE MOHAMMED ON 26/03/2012.

EXT.P3 COPY OF THE JOINT APPLICATION FOR TRANSFER SUBMITTED BEFORE THE REGIONAL TRANSPORT AUTHORITY, MALAPPURAM DATED 31/05/2012.

EXT.P4 COPY OF THE CERTIFICATE NO.KR/KK/23930/ENF.1(4)2011-12 DATED 24/02/2012 ISSUED BY THE ASSISTANT PROVIDENT FUND COMMISSIONER.

EXT.P5 COPY OF THE REQUEST DATED 13/07/2012 SUBMITTED BY THE PETITIONER BEFORE THE RESPONDENT.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

ANIL K.NARENDRAN, J.

W.P.(C)No.17639 of 2012

Dated this the 10th day of September, 2015

JUDGMENT

The petitioner is the owner of a stage carriage bearing Registration No.KL-58-A-5614, which he purchased from one C.K.Mohammed on the strength of Ext.P2 sale agreement dated 26.3.2012. Pursuant to that sale, the petitioner along with the erstwhile owner of the vehicle moved Ext.P3 joint application for transfer of Ext.P1 regular permit. The petitioner has approached this Court in this Writ Petition seeking a writ of mandamus commanding the respondent to accept the contribution under the Kerala Motor Transport Workers Welfare Fund Act in respect of stage carriage bearing registration No.KL-58-A-5614 for the period from 1.1.2012 onwards by considering the request made in Ext.P5. He has also sought for a declaration that no amounts are due under the Welfare Fund Act in respect of the aforesaid stage carriage upto January, 2012 as it was covered under the Provident Fund Act.

2. By order dated 13.8.2012 this Court passed an interim order directing the respondent to accept the contribution towards

Motor Transport Workers Welfare Fund from the petitioner in respect of the stage carriage bearing registration No.KL-58-A-5614 for the period commencing from 1.1.2012 onwards, subject to the result of the writ petition. It was also made clear that on payment of the contribution amount the respondent shall issue a certificate to the petitioner for payment of motor vehicle tax for the current quarter.

3. A statement has been filed on behalf of the respondent contending that, as per the documents produced along with the application submitted by the petitioner to bring the stage carriage in question under the Motor Transport Workers Welfare Fund Act from 1/12 onwards, the payment of contribution under the Employees Provident Fund Act is only for the period from 6/10 to 1/12, in the name of Asmas Transport. The date of 1st registration of the vehicle is on 11.2.2008 and the petitioner has not produced any document to show that there are no dues under the Kerala Motor Transport Workers Welfare Fund Act for the period from 11/2/2008 to 6/2010.

4. I heard the arguments of the learned counsel for the petitioner and also the learned counsel for the respondent.

5. In **Hymavathi v. Special Deputy Tahsildar (2008 (3) KLT 807)**, a Division Bench of this Court has held that, in view of the proviso appended to Section 4 of the Kerala Motor Transport Workers Welfare Fund 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 Workers Welfare Fund Act, 1985. Therefore, if the vehicle in question was owned by a motor transport undertaking which was covered by the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952, the respondent Board cannot demand payment of any contribution in respect of the said vehicle under the Kerala Motor Transport Workers Welfare Fund Scheme.

6. From the pleadings and documents on record it is seen that the vehicle in question, which was transferred in the name of the petitioner with effect from 1.1.2012 onwards was operated by an establishment covered by the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952, for the period from 6/10 to 1/12. The case of the respondent is that, the petitioner has

not produced any documents whatsoever to show that there are no dues in respect of the aforesaid vehicle, which was initially registered on 11.2.2008, for the period upto 6/10.

7. In **Ummar v. Joint Regional Transport Officer (2014 (4) KLT 358)**, a learned Single Judge of this Court has held as follows;

> "**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 were 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 were 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.

8. In the case on hand, the transfer of the vehicle to the previous owner as well as that to the petitioner occur subsequent to 7.6.2005. If that be so, if there is any liability towards the Kerala Motor Transport Workers Welfare Fund it will be having charge over the vehicle in question. Therefore it is for the petitioner to establish before the respondent with supporting materials that there is no liability in respect of the vehicle in question towards the Kerala Motor Transport Workers Welfare Fund for the period from 2/08 to 5/10.

9. In such circumstances, this writ petition is disposed of directing the petitioner to produce sufficient materials before the respondent to prove that there is no liability outstanding in respect of vehicle bearing registration KL-58-A-5614 towards contribution under the Kerala Motor Transport Workers Welfare Fund, for the period from 2/08 to 5/10. The petitioner shall produce materials before the respondent within a period of two months from the date of receipt of a certified copy of this judgment. On receipt of such materials, the respondent shall consider the same and pass appropriate orders thereon, with notice to the petitioner. Till such decision is taken the interim order granted by this Court shall continue to be in force.

Sd/-
ANIL K.NARENDRAN, JUDGE

skj