

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 4TH DAY OF FEBRUARY 2015/15TH MAGHA, 1936

W.P.(C).No.27449 of 2006 (P)

PETITIONER(S):-

LEELAMMA THOMAS, W/O. T.J.THOMAS, AGED 53 YEARS,
PANACHILAYIL HOUSE, KAROOR P.O.,
PIRAVAM, ERNAKULAM DIST.

BY ADVS.SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE
SRI.C.DEVANAND

RESPONDENT(S):-

1. STATE OF KERALA,
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT,
LABOUR & REHABILITATION (R) DEPARTMENT,
THIRUVANANTHAPURAM.
2. THE DISTRICT EXECUTIVE OFFICER,
KERALA MOTOR TRANSPORT WORKERS WELFARE FUND BOARD,
ERNAKULAM, PALARIVATTOM, KOCHI-23.
3. THE DEPUTY TAHSILDAR (R.R),
MUVATTUPUZHA TALUK, ERNAKULAM DIST.
4. THE VILLAGE OFFICER,
MANEED VILLAGE, ERNAKULAM DIST.

R1, R3 & R4 BY GOVERNMENT PLEADER SRI.MANOJ P.KUNJACHAN.
R2 BY STANDING COUNSEL SRI.P.RAMAKRISHNAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
04-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS: -

- EXT.P1: TRUE COPY OF THE DEED/AGREEMENT DATED 15.12.86
EXECUTED BY SMT.MINI MATHEW IN FAVOUR OF
MR.T.P.BALAKRISHNA PILLAI AND OTHERS IN RESPECT OF
THE BUS KRF 9214.
- EXT.P2 TRUE COPY OF THE PARTNERSHIP DEED DATED 29.05.89
EXECUTED AMONG T.P.BALAKRISHNA PILLAI AND OTHERS IN
RESPECT OF THE BUS KRF 9214.
- EXT.P2(a) TRUE COPY OF THE CERTIFICATE OF REGISTRATION OF THE
EXT.P2 PARTNERSHIP FIRM, DATED 02.09.89, ISSUED BY THE
REGISTRAR OF FIRMS, THIRUVANANTHAPURAM.
- EXT.P3 TRUE COPY OF THE DRIVING LICENCE OF T.P.BALAKRISHNA PILLAI
(PARTNER OF EXT.P2 PARTNERSHIP DEED).
- EXT.P3(a) - DO- IN RESPECT OF ANOTHER PARTNER BY NAME RAJU PETER.
- EXT.P3(b) - D0 - IN RESPECT OF ANOTHER PARTNER BY NAME
KARUNAKARA PILLAI.
- EXT.P3(c) TRUE COPY OF THE CONDUCTOR'S LICENCE OF
T.P.BALAKRISHNA PILLAI (PARTNER).
- EXT.P4 TRUE COPY OF THE DEED/AGREEMENT DATED 01.04.93
EXECUTED BY T.P.BALAKRISHNA PILLAI AND OTHER PARTNERS
IN FAVOUR OF PAILY, IN RESPECT OF THE BUS KRF 9214.
- EXT.P5 TRUE COPY OF THE INTERIM ORDER OF STAY DATED
01.04.91 ISSUED BY THE 1ST RESPONDENT IN RESPECT OF THE
YEAR 87-88.

- EXT.P5(a) TRUE COPY OF THE INTERIM ORDER OF STAY DATED
01.04.91 ISSUED BY THE 1ST RESPONDENT IN RESPECT OF
THE YEAR 88-90.
- EXT.P5(b) TRUE COPY OF THE INTERIM ORDER OF STAY DATED 01.04.91
ISSUED BY THE 1ST RESPONDENT IN RESPECT OF THE
YEAR 90-92.
- EXT.P6 TRUE COPY OF THE LETTER NO.B1.312/87 DATED 25.03.94
SENT BY THE 2ND RESPONDENT TO THE 3RD RESPONDENT
TO KEEP THE REVENUE RECOVERYT STEPS IN ABEYANCE.
- EXT.P7 TRUE COPY OF THE GO(Rt) NO.3538/03 LBR DATED 06.11.03
ISSUED BY THE 1ST RESPONDENT DISMISSING THE APPEALS
PREFERRED BY THE PETITIONER, FOR DEFAULT.
- EXT.P8 TRUE COPY OF THE JUDGMENT DATED 08.02.06 OF THIS
COURT IN W.A.NO.1777 OF 2005.
- EXT.P9 TRUE COPY OF THE G.O.9Rt0 NO.1129/06/LBR DATED 16.05.06
ISSUED BY THE 1ST RESPONDENT DISMISSING THE APPEALS
PREFERRED BY THE PETITIONER.

RESPONDENT'S EXHIBITS:-

NIL.

VKU/

(TRUE COPY)

K. Vinod Chandran, J.

W.P(C) No.27449 of 2006-P

Dated this the 04th day of February, 2015

JUDGMENT

The petitioner is aggrieved with the order passed in appeal, produced at Exhibit P9, assessing the petitioner to the contributions payable under the Kerala Motor Transport Workers' Welfare Fund Act, 1985 [for brevity "the Welfare Fund Act"] for the years 1987-88 to 1991-92.

2. The petitioner admittedly was the registered owner of a vehicle bearing registration No.KRF 9214. The petitioner was proceeded with for assessment of the welfare fund. An assessment order was passed, which is not produced herein, assessing the petitioner to the said contribution. The petitioner's contention is that she has sold the vehicle to one Mini Mathew, who has transferred the vehicle in the name of one partnership firm in 1986 as per Exhibit P1. Admittedly the petitioner was a witness to the said agreement at Exhibit P1. The petitioner also relies on Exhibit P2, deed of partnership entered into between four

persons; one of whom has deposed before the authority that he is in fact the owner of the vehicle and the partnership is carrying on the operation of the vehicle, employing the partners of the vehicle.

3. The petitioner challenged the assessment made before the Government, which was rejected, against which the petitioner was before this Court. A learned Single Judge had allowed the writ petition and directed the assessment to be made afresh. The Board filed an appeal, in which Exhibit P8 judgment was passed. The petitioner was afforded an opportunity to adduce evidence in support of her case and the appeal was directed to be considered afresh.

4. Exhibit P9 was the appellate order passed in pursuance of Exhibit P8, wherein it was clearly stated that no documents in addition to those already examined were produced. The petitioner, however, controverts the same on the ground that in fact documents, numbered from Exhibits P2 to P4, were produced before the appellate authority. It is to be noticed that the Government has filed a counter affidavit, in opposition of

such contention. In any event, since the petitioner contends that Exhibits P2 to P4 documents were produced, it is proper that this Court examines such documents.

5. Exhibit P2 is a deed of partnership, in which one T.PBalakrishna Pillai is also a party. The sale, said to have been made by Exhibit P1, is long prior to the partnership deed. Exhibit P1 is a document executed in the year 1986 and the deed of partnership is in the year 1989. Hence, the contention that the partnership firm was carrying on the operations cannot be countenanced. It is also to be noticed that Exhibit P2 merely indicates a partnership deed and does not speak specifically of the operation of the vehicle which stands in the name of the petitioner herein.

6. Exhibit P3 is the driving licence of Balakrishna Pillai and Exhibit P3(a) is a driving licence of one Rajoo Peter. Exhibit P3(B) is, again, a driving licence of one Karunakaran Pillai. Exhibit P3(c) is the conductor licence of Balakrishna Pillai. The said documents only indicate that these persons were eligible to be employed in a stage carriage.

7. Exhibit P4 is a document in which the three partners are said to have sold the vehicle to one another. When Exhibit P2 partnership admittedly consists of four persons, the contention raised is that by Exhibit P4 document the partnership firm transferred the vehicle to one another. Further, it is to be noticed that but for producing certain documents allegedly executed in stamp paper, no evidence is produced to establish that the transfer in fact was effected as per the said documents. In such circumstance, the production of the said documents before the appellate authority would be of no consequence.

8. Much has been argued about the deposition of T.PBalakrishna Pillai; that, he had been operating the vehicle. The learned counsel appearing for the Board produced the original files, wherein the sworn statement given by Balakrishna Pillai on 24.2.1988 indicates that the said person had been working as a conductor in the bus. It is to be noticed that clause (e) of Section 2 of the Welfare Fund Act defines “employer” as, in relation to any motor transport undertaking, the person who has the “ultimate control over the affairs of the motor transport

undertaking". In the present case, but for producing certain agreements, the petitioner has failed to establish that the ultimate control is not with the petitioner.

9. The fact that the registration of the vehicle remains in the name of the petitioner is a compelling circumstance which would evidence the control of the vehicle to be with the petitioner herself. However, the petitioner, going by the definition, could very well establish that despite the registration remaining in the name of the petitioner, the vehicle in fact, was controlled by another person. For that there should be cogent reliable evidence to rebut the presumption which flows from the Registration Certificate. Mere production of agreements would not prove the same. For all we know, the documents may be executed in collusion with the employees, to evade from the liability under the Act. The Courts have to protect the interest of the employees; especially when they could not waive a benefit accruing under a welfare legislation; keeping in mind the fact that an employee, especially one in the status of a motor vehicle employee can be coerced into executing documents to sustain the employment

itself. Here the employee also did resile from his earlier statement of ownership.

10. The proceedings before the appellate authority would indicate that the petitioner has failed to establish the control being on “any other person”. The agreements produced by the petitioner does not establish the handing over of the vehicle as such and the authority under the Welfare Fund Act is not obliged to give any weight to the same. However, the agreements between the parties would definitely govern their relationships. The petitioner would have to satisfy the dues demanded under the Welfare Fund Act and the petitioner's remedy to recover the same from any other person, on the basis of the alleged agreement is left open.

The writ petition would stand dismissed. No costs.

Sd/-
K.Vinod Chandran
Judge.

vku/-

(true copy)