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. 17696 of 2015 (J)

PETITIONER(S):

MUHAMMED SALIH, AGED 28 YEARS,
S/O.PAREEKUTTY, NO.610/1625, VALAPPIL HOUSE,
IRINGALLUR, OLAMANNA, KOZHIKODE-673 014.

BY ADV. SRI.O.D.SIVADAS.

RESPONDENT(S):
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1. REGIONAL TRANSPORT OFFICER,
   KOZHIKODE-673 001.

2. DISTRICT EXECUTIVE OFFICER,
   KERALA MOTOR TRANSPORT WORKERS WELFARE FUND,
   KOZHIKODE-673 001.

3. SANTHOSH KUMAR, S/O.VASU,
   AGED 54 YEARS, 32/1266, PUTHUKUDI HOUSE,
   KOTTAPARAMBU, KOZHIKODE.

R1 BY SR. GOVT. PLEADER SRI.S. SUDHEESH KUMAR.
R2 BY ADV. SRI.NAVEEN. T, SC.

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

rs.

WP(C).No. 17696 of 2015 (J)

APPENDIX

PETITIONER'S EXHIBITS:-

P1- TRUE COPY OF THE REGISTRATION CERTIFICATE OF BUS NO.KL-58-171.

P2- TRUE COPY OF THE CERTIFICATE DATED 13.08.2013 ISSUED BY THE ASSISTANT PROVIDENT FUND COMMISSIONER, KOZHIKODE EVIDENCING COVERAGE OF M/S.GOLDEN DELUXE BUS SERVICE UNDER EPF.

P3- TRUE COPY OF THE INTERIM ORDER DATED 12.09.2014 MADE IN W.P[C]NO.23834/2014.

P4- TRUE COPY OF THE RECEIPT NO.74 DATED 16.09.2014 ISSUED BY THE 2ND RESPONDENT IN FAVOUR THE 3RD RESPONDENT.

RESPONDENT'S ANNEXURES:- NIL.

//TRUE COPY//

P.A. TO JUDGE

rs.

ANIL K.NARENDRAN, J.

W.P.(C)No.17696 of 2015

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Dated this the 10th day of September, 2015

JUDGMENT

The petitioner is a bus operator and registered owner of a bus bearing registration No.KL-58-171, which was transferred in his name with effect from 24.12.2014, as evident from Ext.P1 certificate of registration. The vehicle in question was purchased from the 3rd respondent. It is stated in the Writ Petition that before effecting transfer of ownership of the vehicle in the name of the 3rd respondent the vehicle in question was under the ownership of M/s.Golden Deluxe Bus Service, Vengara and the said concern is covered under the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the EPF Act'), which is evident from Ext.P2 certificate dated 13.8.2013 issued by the Assistant Provident Fund Commissioner, Kozhikode. The motor vehicle tax in respect of the vehicle in question for the quarter commenced from 1/2014 to 9/2014 was accepted, which is evident from Ext.P4, which was made pursuant to Ext.P3 interim order passed by this Court in W.P.(C)No.23834 of 2014 obtained by the 3rd respondent.

2. It is stated in the Writ Petition that, after the transfer of ownership of the vehicle in the petitioner's name with effect from 24.12.2014, he is bound to make contribution to the 2nd respondent and pay motor vehicle tax to the 1st respondent from the quarter, which commenced from 1.1.2015. However, the 1st respondent will accept motor vehicle tax only on production of proof regarding payment of contribution to the 2nd respondent. Though the petitioner was prepared to pay contribution with effect from 24.12.2014, the 2nd respondent has not accepted the same. It was in such circumstances, the petitioner has filed this Writ Petition before this Court seeking a writ of mandamus commanding the 2nd respondent to accept contribution from him under the Kerala Motor Transport Workers Welfare Fund Scheme, for the quarter commenced on 1.1.2015, in respect of the bus bearing registration No.KL-58-171. He has also sought for a writ of mandamus commanding the 1st respondent to accept the motor vehicle's tax in respect of the aforesaid vehicle for the quarter commenced on 1.1.2015 on production of proof regarding payment before the 2nd respondent.

3. On 22.6.2015 this Court passed the following interim order:-

> "Considering the nature of the issue involved, I am of the view that, without prejudice to the Board to dispute the right of the petitioner to contribute, there shall be an interim order as

> prayed for. It is made clear that, the petitioner is liable to pay the entire contribution which is liable to be paid in respect of the vehicle as on today from October 2014. On payment of contribution as above, the Motor Vehicle Tax shall be accepted from the petitioner."

4. I heard the arguments of the learned counsel for the petitioner, the learned Standing Counsel for the Welfare Fund Board and the learned Government Pleader appearing for the 1st respondent.

5. It is relying on Ext.P2 certificate issued by the Assistant Provident Fund Commissioner, Employees Provident Fund Organisation, the petitioner is contending that the establishment M/s.Golden Deluxe Bus Service in which the 3rd respondent is associated is covered under the provisions of EPF Act during the relevant period. The learned Government Pleader on instructions would submit that the tax in respect of the aforesaid vehicle upto 9/2014 has been paid and accepted by the 1st respondent on production of proof regarding payment of contributions under the EPF Scheme. The learned Standing Counsel for the 2nd respondent would submit that, the petitioner may be directed to produce sufficient materials before the 1st respondent to prove payment of contribution under the EPF Scheme for the period upto 24.12.2014.

6. I have considered the rival submissions made at the Bar.

7. In **Hymavathi K.V. Vs. Special Deputy Tahsildar and others (2008 (3) KLT 807)** a Division Bench of this Court held that, in view of the proviso appended to Section 4 of the Kerala Motor Transport Workers Welfare 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 Worker's Welfare Fund Act.

8. In the case on hand, the fact that the establishment in which previous owner of the vehicle is associated is covered under the provisions of the EPF Act is evident from Ext.P2 certificate. The learned Government Pleader has also submitted on instructions that, the motor vehicle tax in respect of the vehicle in question was accepted upto 9/2014 on verification of proof regarding payment of contributions under EPF Scheme as on that date.

9. Now, based on the interim order passed by this Court in this Writ Petition the petitioner has paid welfare fund contributions in respect of the vehicle in question and thereafter he has also paid motor vehicle tax in respect of the said vehicle.

10. In such circumstances, this Writ Petition is disposed of directing the petitioner to produce sufficient materials before the 2nd

respondent, namely the District Executive Officer of the Welfare Fund Board to substantiate the fact that no contribution is payable to the welfare fund in respect of the vehicle in question till 24.12.2014, since the establishment in which the previous owner of the vehicle is covered by the provisions of the EPF Act. The petitioner shall produce such materials before the 2nd respondent within a period of one month from the date of receipt of a certified copy of this judgment. The 2nd respondent shall consider the same, with notice to the petitioner and issue an appropriate order regarding the liability, if any, of the vehicle in question for payment of welfare fund for the period till 24.12.2014. Such orders shall be passed, within a further period of three months from the date of production of a certified copy of this judgment. Excess payment, if any, made by the petitioner towards welfare fund contribution shall be refunded based on such orders passed by the 2nd respondent.

Till such an order is passed, interim order granted by this Court shall continue to be in force.

Sd/-
ANIL K.NARENDRAN, JUDGE

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