IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 10TH DAY OF JULY 2015/19TH ASHADHA, 1937

WP(C).No. 19040 of 2015 (D)

PETITIONER :

WAYANAD DISTRICT DRIVERS CO-OPERATIVE SOCIETY LTD. NO.W 14,
REPRESENTED BY SECRETARY, KALPETTA,
WAYANAD-673 121.

BY ADV. SRI.P.N.MOHANAN

RESPONDENT(S):
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1. **GOVERNMENT OF KERALA,**
   REPRESENTED BY CHIEF SECTRETARY, SECRETARIAT,
   THIRUVANANTHAPURAM-695 001.

2. **REGIONAL TRANSPORT OFFICER,**
   CIVIL STATION, KALPETTA, WAYANAD-673 122.

3. **TRANSPORT COMMISSIONER,**
   SECRETARIAT, ROOM NO.130, II ND FLOOR,
   NORTH BLOCK, THIRUVANANTHAPURAM, M.G.ROAD,
   THIRUVANANTHAPURAM, KERALA,PIN- 695 001.

BY GOVERNMENT PLEADER SMT. K.A.SANJEETHA

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03-07-2015, THE COURT ON 10-07-2015 DELIVERED THE FOLLOWING:

sts

WP(C).No. 19040 of 2015 (D)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT-P1:	A TRUE COPY OF THE BYE-LAW OF THE SOCIETY.
EXHIBIT-P2:	A TRUE COPY OF THE FINANCIAL DETAILS OF THE SOCIETY.
EXHIBIT-P3:	A TRUE COPY OF THE LETTER DATED 6.5.2015 OF THE TRANSPORT COMMISSIONER.
EXHIBIT-P4:	A TRUE COPY OF THE JUDGMENT DATED 15.1.2015 IN W.P.(C) NO.18477/11.
EXHIBIT-P5:	A TRUE COPY OF THE ORDER DATED 3.6.2015 OF THE SECOND RESPONDENT.

RESPONDENT(S)' EXHIBITS & ANNEXURES:

ANNEX A	COPY OF THE CIRCULAR NO.13/2011.
ANNEX B	COPY OF THE CIRCULAR NO.14/2011.

/TRUE COPY/

P.A.TO JUDGE

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A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.19040 of 2015

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Dated this the 10th day of July, 2015

<u>JUDGMENT</u>

Under challenge in this writ petition is Ext.P5 order passed by the second respondent insisting for production of licence by the petitioner under the Money Lenders Act (for short, the Act).

2. Petitioner is the Secretary of Wayanad District Co-operative Society which is registered under the Kerala Co-operative Societies Act and Rules doing lending money for the purchase of motor vehicles such as autorickshaw, lorry, bus, car etc. The petitioner alleges that large number of purchasers are depending upon the petitioner as the interest rate is comparatively low. Since the very beginning of the registration of the society on 8.8.1983 the hypothecation was entered in the RC Book of the owner as and when the agreement of hire purchase is produced by the petitioner society before the registering authority. In the meanwhile, the third

respondent issued Ext.P3 order to all registering authorities to insist a licence under the Act to get hypothecation in the RC Book on the basis of a judgment of this Court which is in respect of a private financier.

3. The grievance of the petitioner is that when the society produced a hypothecation agreement to note in the RC Book, the same was turned down by Ext.P5 order directing to produce the licence under the Act. The petitioner alleges that the Money Lenders Act is not applicable to the Co-operative Society and the Co-operative Societies were excluded from the Act as they are registered under the KCS Act and doing business under the Act.

4. I have heard the learned counsel for the petitioner and the learned Government Pleader in the matter.

5. Evidently, the third respondent has issued Ext.P3 order to all the registering authorities to insist for a licence under the Act to get the hypothecation in the RC book on the basis of a judgment of this

Court which is in respect of a private financier. When the petitioner society has produced the hypothecation agreement to note in the RC Book, the same was turned down by Ext.P5 directing to produce the licence under the Act. The argument of the petitioner is that the Act is not applicable to a Co-operative Society. Therefore, the argument of the petitioner is that Ext.P5 is liable to be set aside.

6. Under Section 2(7) of the Act, co-operative society would not come under the purview of money lender and, therefore the society need not be registered under the Act. As per Rule 2(d) of the Central Motor Vehicle Rules, the financier need not get registration under the Act. If the agreement of hire purchase is produced before the registering authority, he is bound to record the same in the RC Book as provided under Section 51 of the Motor Vehicles Act. Sub-section (7) of Section 2 of Kerala Act XXXV/1958 defines a 'money-lender' as meaning a person whose main or subsidiary occupation is the business of advancing and realising loans, but, excludes a bank or

a co-operative society. This position has been upheld by this Court in **Damodaran** v. **State of Kerala** [1961 KLT 1101]. No contrary decisions are brought to my notice. Therefore, this Court is of the view that the petitioner is entitled to the relief prayed for.

In the result, the writ petition is allowed. Ext.P5 is quashed. Respondents 2 and 3 is directed to register the vehicle with hypothecation as an when the petitioner produces the agreement of hire purchase.

Sd/-
A.V.RAMAKRISHNA PILLAI
JUDGE

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