

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 13TH DAY OF FEBRUARY 2015/24TH MAGHA, 1936

WP(C).No. 35676 of 2003 (V)

PETITIONER :

**MARY THOMAS,
W/O. THE LATE THOMAS, AGED 44 YEARS,
MANAVALAN HOUSE, VADAKKUMBHAGAM VILLAGE,
SREEMOOLANAGARAM, ALUVA.**

**BY ADVS.SRI.B.SAJEEV KUMAR
SRI.M.K.THANKAPPAN**

RESPONDENT(S):

- 1. STATE OF KERALA,
REP. BY THE SECRETARY TO THE DEPARTMENT OF LABOUR &
REHABILITATION (S), GOVT. SECRETARIAT, THIRUVANANTHAPURAM.**
- 2. THE CHIEF EXECUTIVE OFFICER,
KERALA MOTOR TRANSPORT WORKERS WELFARE FUND BOARD,
THIRUVANANTHAPURAM.**
- 3. THE ADDL. DISTRICT EXECUTIVE OFFICER,
KERALA MOTOR TRANSPORT WORKERS FUND BOARD,
PALARIVATTOM, ERNAKULAM.**
- 4. THE DEPUTY TAHSILDAR (R.R), ALUVA TALUK.**
- 5. THE VILLAGE OFFICER, VADAKKUMBHAGOM VILLAGE,
ALUVA TALUK.**

**R1,R4 & R5 BY GOVERNMENT PLEADER SRI.V.K.RAFEEQ
R2 & R3 BY ADV. SRI.P.RAMAKRISHNAN, SC,KMTWF BOARD**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 13-02-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

sts

WP(C).NO.35676/2003

APPENDIX

PETITIONER'S EXHIBITS:

- P1 COPY OF THE PROVISIONAL ORDER NO.EE 710/PDO/90-95 DATED 10/03/03
PASSED BY THE 3RD RESPONDENT.
- P2 COPY OF THE STATEMENT OF OBJECTIONS DATED 25/03/03 SUBMITTED BY
THE PETITIONER BEFORE THE 3RD RESPONDENT.
- P3 COPY OF THE FINAL DETERMINATION ORDER NO.EE 710 FDO/90-95 DATED
20/5/03 PASSED BY THE 3RD RESPONDENT.

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.S.TO.JUDGE

sts

K. Vinod Chandran, J.

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W.P.(C)No.35676 of 2003

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Dated this the 13th day of February, 2015.

JUDGMENT

1. Petitioner challenges Ext.P3 order, by which the liability to pay contribution under the Kerala Motor Transport Workers' Welfare Fund Act, 1985, with respect to a vehicle bearing Reg.No.KBF 6192, was mulcted on her. Admittedly, notice was issued to her as the legal heir of one Thomas, her husband. The said Thomas is said to have expired on 19.4.1996 and the determination order is made on 20.05.03.
2. On a reading of Ext.P3, it is evident that, one Ramachandran was the registered owner of the vehicle. The allegation itself was that, the vehicle was operated by the deceased husband of the petitioner during the period 1990-95, on the basis of an agreement. The second respondent, who has passed Ext.P3

order, has proceeded on the basis of the evidence given by the registered owner that there was a transfer of the vehicle in the name of Thomas. There is absolutely no evidence produced before the authority to evidence such transfer. At the time, when the enquiry was conducted, the alleged owner in possession, being Thomas, was also not alive. The wife was issued with notice as the sole legal heir and determination order was passed at Ext.P3.

3. The counter affidavit of the Board discloses facts which are not available in the order. Though no reliance would be placed on such facts to sustain the order; the disparity is worth noticing. One V.G.Ramachandran is said to be registered owner against whom proceedings were said to have been taken under the Act of 1985 for the period 1986-90. An appeal was filed by the owner, which was rejected. On initiation of recovery, it is contended

that the registered owner produced an agreement of sale dated 21.04.1988; on 29.01.2003. The production of the sale deed on 29.01.2003; is projected as the reason for the delayed assessment: of the period 1990-95. There is no whisper about the agreement of 1988 in the determination order. Further, by 2003, when the said agreement is said to have come to the possession of the Board, the person who allegedly purchased the vehicle was no more.

4. There is no explanation as to why the registered owner did not produce the agreement earlier. It is to be noticed that, the wife cannot be mulcted with any liability of her husband and if at all any recovery could be effected, that could only be as against the assets left behind by the deceased. There also does not exist any liability which could be cast on the deceased husband of the petitioner. As was noticed earlier, the registered owner was one

Ramachandran and it was on his deposition that, the husband of the petitioner was found to be the actual owner, having ultimate control over the vehicle as an employer defined under the Act of 1985. There being no evidence to establish the ownership or the possession of the vehicle by the husband of the petitioner, there could be no liability mulcted on the husband under the Act of 1985. The agreement stated in the counter is not referred to in the order. The registered owner, definitely, would have the ultimate control over the vehicle and such valid presumption raised, on the basis of a certificate issued under the Motor Vehicles Act, 1988, cannot be upset on the mere self-serving statement of a registered owner that, another was actually in possession.

5. Learned counsel for the Board would submit that, it was on the deposition of the petitioner herself that the liability was mulcted

on the husband of the petitioner. The petitioner has raised serious dispute on the alleged statement made by her. The grossly delayed determination proceedings initiated long after the death of the alleged employer, is found to be invalid. Ext.P1 is found to be not sustainable. The same is set aside. Writ petition is allowed. The Board would have reserved its liberty to proceed against the registered owner. No costs.

K. Vinod Chandran, Judge.

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