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

WP(C).No.33774 of 2005 (U)

PETITIONER(S):-

A.BALAN, S/O.KORAN, AGED 52,
AIKKAL HOUSE, MORAZHA P.O., MOTTAMMAL (VIA),
KANNUR DISTRICT.

BY ADVS.SRI.P.JACOB VARGHESE (SENIOR ADVOCATE)
SRI.VIVEK VARGHESE P.J.

RESPONDENT(S):-
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1. STATE OF KERALA,
REP. BY CHIEF SECRETARY.

2. DISTRICT EXECUTIVE OFFICER,
KERALA MOTOR TRANSPORT WORKERS WELFARE FUND BOARD,
KANNUR.

3. APPELLATE AUTHORITY,
JOINT SECRETARY TO GOVERNMENT,
LABOUR AND REHABILITATION (S) DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.

R1 & R3 BY GOVERNMENT PLEADER SRI.MANOJ P.KUNJACHAN.
R2 BY STANDING COUNSEL SRI.NAVEEN. T.
R BY SRI.PAUL.C.VARGHESE (SC FOR KTWWF BOARD)

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

WP(C).No. 33774 of 2005(U)

APPENDIX

PETITIONER'S EXHIBITS: -

EXT.P1	TRUE COPY OF AGREEMENT BETWEEN MANOHARAN AND THIRD PARTIES DATED 05.11.94.
EXT.P2	TRUE COPY OF SALE DEED IN RESPECT OF KL-13 A 6383.
EXT.P3	THE LETTER DATED 21.12.93 ISSUED BY VIJAYA AUTOMOBILE ENGINEERING.
EXT.P4	THE LETTER DATED 10.10.95 ISSUED BY VIJAYA AUTOMOBILE ENGINEERING.
EXT.P5	TRUE COPY OF FINAL DETERMINATION ORDER OF DISTRICT EXECUTIVE OFFICER.
EXT.P6	THE AFFIDAVITS SIGNED BY MR.A.VIJAYAN.
EXT.P7	TRUE COPY OF AFFIDAVIT BY MR.A.RAJEEVAN.
EXT.P8	TRUE COPY OF CHALLAN DATED 12.09.03.
EXT.P9	TRUE COPY OF LETTER DATED 12.09.03.
EXT.P10	TRUE COPY OF THE APPEAL MEMORANDUM.
EXT.P11	TRUE COPY OF ORDER DATED 30.09.05.

RESPONDENT'S EXHIBITS:-

NIL.

VKU/ (TRUE COPY)

K. Vinod Chandran, J.

W.P(C) No.33774 of 2005-U

Dated this the 04th day of February, 2015

JUDGMENT

The petitioner was assessed under the Kerala Motor Transport Workers' Welfare Fund Act, 1985 [for brevity "the Welfare Fund Act"] and Kerala Motor Transport Workers' Welfare Fund Scheme, 1985 [for brevity "the Welfare Fund Scheme"]. The petitioner's contention is that the petitioner had been carrying on stage carriage operations, employing himself and two brothers Ramesan and Vijayan. The petitioner contends that the persons mentioned in the order are not traceable and their addresses are not stated therein. The petitioner relies on Exhibits P1 to P4 documents to challenge the assessment made as against seven workmen. The assessment was confirmed in appeal by Exhibit P11 order.

2. The period of assessment is said to be between February 1993 and June 1996. The petitioner admittedly had two vehicles during the said period; the registration numbers of which are indicated in Exhibit P5, being KL-13/A-3123 and KLN 7346 which was later replaced by KL-13/A-6383. The

petitioner's contention is that the vehicle KL-13/A-3123 was sold by Exhibit P1, on 05.11.1994. A reading of Exhibit P1 would indicate that the same is a sale deed executed in favour of one Manoharan by Vijayan, Ramesan and Mukundan. Vijayan obviously is the brother of the petitioner. However, Ramesan is described as Driver and Mukundan is described as Cleaner in Exhibit P1. These are two of the seven workmen as is indicated in Exhibit P5.

3. Exhibit P2 is a document executed between the petitioner and one Manoharan; but however was with respect to exchange of two vehicles. In such circumstances, it is undisputed that the petitioner had two vehicles during the period in which the assessment was passed. Obviously the operation of two vehicles cannot be carried on with three employees. The document produced by the petitioner himself would indicate that two of the employees referred in Exhibit P5 have joined with the brother and had executed an agreement in favour of another for handing over the operation of the vehicle. No reliance can be placed on Exhibits P3 and P4 issued by a private workshop.

4. It is to be seen that Exhibit P5 specifically speaks of evidence by Ramesan and Mukundan, who are admittedly employed as Driver and Cleaner under the petitioner. One another employee, by name V.V.Mohanan, had deposed before the authority as to his employment with the management. In such circumstance, no interference can be caused to the assessment made with respect to Ramesan, Mukundan, V.V.Mohanan and the brothers of the petitioner, being Vijayan and Rajeevan.

5. However, there is no material to substantiate that Sreedharan and T.K.Balachandran were employed by the petitioner. The said employees have not appeared before the original authority also.

6. In the above circumstance, Exhibit P5 is interfered with, insofar as assessing contribution as against Sreedharan and T.K.Balachandran. The modified assessment order shall be issued by the authority. The petitioner shall produce a certified copy of this judgment before the 2nd respondent and fresh assessment order shall be passed,

assessing the five persons indicated above, being Ramesan, Mukundan, V.V.Mohanan, Vijayan and Rajeevan; and excluding Sreedharan and T.K.Balachandran. Exhibits P5 and P11 are modified to the extent indicated above.

The writ petition stands partly allowed. No costs.

Sd/-
K.Vinod Chandran
Judge.

vku/-

(true copy)