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. 23834 of 2014 (D)

PETITIONER(S):

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

BY ADVS.SRI.G.HARIHARAN,
SRI.PRAVEEN.H.

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. ISMAIL
   S/O.MOHAMMED HAJI, MANNARAM PURAYIL HOUSE,
   PADANILAM P.O., KUNNAMANGALAM, KOZHIKODE-690 529.

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

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rs.

WP(C).No. 23834 of 2014 (D)

APPENDIX

PETITIONER'S EXHIBITS:-

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

EXHIBIT-P2: TRUE COPY OF THE REGULAR PERMIT ISSUED IN RELATION TO THE VEHICLE MENTIONED IN EXHIBIT-P1.

EXHIBIT-P3: 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.

EXHIBIT-P4: TRUE COPY OF THE TAX ENDORSEMENT EVIDENCING PAYMENT OF TAX ON THE VEHICLE MENTIONED IN EXHIBIT-P1 UPTO 30.06.2014.

EXHIBIT-P5: TRUE COPY OF THE DEMAND DRAFT DATED 26.08.2014 ISSUED BY THE STATE BANK OF INDIA, KOZHIKODE MEDICAL COLLEGE BRANCH IN FAVOUR OF THE 1ST RESPONDENT FOR RS.29,910/-.

EXHIBIT-P6: TRUE COPY OF THE CIRCULAR NO.31/2002 DATED 18.11.2002 ISSUED BY THE TRANSPORT COMMISSIONER, THIRUVANANTHAPURAM.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.A. TO JUDGE

rs.

ANIL K.NARENDRAN, J.

W.P.(C)No.23834 of 2014

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 24.01.2014, as evident from Ext.P1 certificate of registration. The vehicle in question was purchased from the 3rd respondent and the same is operating on the strength of Ext.P2 regular permit on the route Kozhikode-Areekode which is valid up to 30.6.2015. 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.P3 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 till 30.6.2014 was accepted, which is evident from Ext.P4.

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 24.1.2014, 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 1.1.2014. 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 24.1.2014, 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 1.1.2014, 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 1.1.2014 on production of proof regarding payment before the 2nd respondent.

3. On 12.9.2014 this Court passed the following interim order:-

> "There will be an interim direction as prayed for on condition that the petitioner shall remit the welfare fund dues forthwith."

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. The learned Government Pleader on instructions would submit that the tax in respect of the aforesaid vehicle upto 30.6.2014 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 30.6.2014.

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, it is relying on Ext.P3 certificate, the petitioner is contending that the establishment in which previous owner of the vehicle is associated is covered under the provisions of the EPF Act. The learned Government Pleader has also submitted on instructions that,

the motor vehicle tax in respect of the vehicle in question was accepted upto 30.6.2014 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 24.1.2014, since the establishment in which the previous owner of the vehicle is associated 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 24.1.2014. 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

skj