IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

WEDNESDAY, THE 16TH DAY OF SEPTEMBER 2015/25TH BHADRA, 1937

WP(C).No. 28708 of 2012 (K)

PETITIONER :

LIJO VARGHESE,
S/O.RAPPAI, ARAKKAPPADAN HOUSE, PANAMUK DESOM,
KANIMANGALAM VILLAGE, THRISSUR.

BY ADV. SRI.DILIP J. AKKARA

RESPONDENTS :

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1. STATE OF EKRALA,
REPRESENTED BY SECRETARY,
DEPARTMENT OF LABOUR & REHABILITATION, SECRETARIAT,
THIRUVANANTHAPURAM-695 001.

2. DISTRICT EXECUTIVE OFFICER,
KERALA MOTOR TRANSPORT WORKERS WELFARE FUND BOARD,
THRISSUR-680 003.

R2 BY ADV. SRI.K.S.MANU, SC, KMTWWFB
BY GOVERNMENT PLEADER SRI.JOBY JOSEPH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C)No.28708/2012

APPENDIX

PETITIONER'S EXHIBITS :-

EXHIBIT P1: PHOTOCOPY OF THE REGISTRATION CERTIFICATE OF THE VEHICLE NO:09-C-5495.

EXHIBIT P2: PHOTOCOPY OF THE RECEIPT NO.97 DTD 17.1.08, RECEIPT NO.A 0182893 DATED 29.12.11 AND RECEIPT NO.A0562735 DATED 17.10.2012.

EXHIBIT P3: PHOTOCOPY OF THE SALE AGREEMENT DATED 20.10.2012 BETWEEN THE PETITIONER AND VARGHESE.

RESPONDENTS' EXHIBITS :- NIL.

True copy

P.A to Judge

ANIL K.NARENDRAN, J.

W.P.(C)No.28708 of 2012

Dated this the 16th day of September, 2015

JUDGMENT

The petitioner, who is the registered owner of a 1996 model Eicher Goods 10.90 mini lorry covered by Ext.P1 certificate of registration, has filed this writ petition seeking a declaration that under the Motor Transport Workers Welfare Fund Scheme, 1985 the respondents can demand contributions for vehicles that are not Heavy Goods Vehicle only at rates on par with Light Goods Vehicles. The petitioner has also sought for an order restraining the respondents from demanding more contribution for his vehicle, either retrospectively or otherwise. He has also sought for an order directing the 2nd respondent to issue the requisite 'No Objection Certificate' to enable him to transfer the said vehicle.

2. Going by the averments in the Writ Petition, the petitioner purchased the aforesaid lorry in the year 1996 and it was being used for distribution of medical and health care products from the respective dealers to various retail shops. According to the petitioner, the distribution of the said products does not require much manpower as it consists of supplying one or two packages to various shops and keeping record of delivery. The petitioner being a licensed driver with badge himself drives the vehicle and does distribution of goods and he does not

employ any employees unless he is ill or otherwise indisposed.

3. In Ext.P1 certificate of registration, the class of the vehicle is shown as 'Medium Goods Vehicle-Goods Carriage'. The contention of the petitioner is that his vehicle does not fall under the category of Heavy Goods Vehicle as specified by the Kerala Motor Transport Workers Welfare Fund Scheme (hereinafter referred to as the 'Scheme') and in such circumstances the demand for payment of contribution @ ₹400/- per month treating the vehicle as a Heavy Goods Vehicle, for which contribution can be demanded only at rates applicable to Light Goods Vehicle, cannot be sustained. The petitioner decided to sell the vehicle in question and entered into Ext.P3 sale agreement with one Varghese. However, in order to effect transfer of registration a No Objection Certificate is required from the 2nd respondent, who refused to issue such certificate unless the petitioner pays contribution as if his vehicle is a Heavy Goods Vehicle, that too with retrospective effect. According to the petitioner, Heavy Goods Vehicle is one with a gross weight of 12,000 Kg. whereas the petitioner's vehicle is just above 8000 Kg. only. For heavy goods vehicle the contribution has to be paid @ ₹400/- per month. On the other hand, for the Light Goods Vehicle it is only @ ₹200/- per month. It was in such circumstances, the petitioner has filed this Writ Petition seeking various reliefs.

4. A statement has been filed on behalf of the 2nd respondent, contending that, as per the provisions of the Kerala Motor Transport Workers Welfare Fund Act and the Scheme made thereunder as amended in the year 2005, the welfare contribution has to be remitted in respect of each category of vehicle as fixed under the scheme. The welfare fund contribution to be remitted by the employer of the goods vehicle is detailed in Table II of the Scheme, which contains two categories of vehicles, namely, Heavy Goods Vehicle and Light Goods Vehicle. In respect of light goods vehicle the welfare fund to be remitted by the employer is @ ₹200/- per month for one employee and in respect of Heavy Goods Vehicle it is @ ₹400/- per month for two employees. Since the petitioner's vehicle is a medium goods vehicle, which is evident from Ext.P1 certificate of registration with seating capacity of 2, is bound to pay contribution @ ₹400/- per month. But, by mistake the vehicle in question was categorized as Light Goods Vehicle and the petitioner was permitted to pay contribution @ ₹200/- per month for one employee. The 2nd respondent would also contend that going by the averments in the Writ Petition the petitioner is also admitting the fact that his vehicle is a Medium Goods Vehicle. All owners of vehicles falling under categories other than the Light Goods Vehicles were paying contribution for two employees, except the petitioner. Therefore, the 2nd respondent would

contend that the demand made is perfectly legal and no interference of this Court is warranted.

5. The sole issue that arises for consideration in this Writ Petition is as to whether the petitioner is liable to pay the contribution under the Scheme only at the rate applicable to Light Goods Vehicle.

6. Going by Ext.P1 certificate of registration, the vehicle owned by the petitioner is registered under the class 'Medium Goods Vehicle-Goods Carriage'. Therefore, as borne out from Ext.P1, the petitioner's vehicle does not fall under the category of Light Goods Vehicle. The provisions of the Kerala Motor Transport Workers Welfare Fund Act and the Scheme made thereunder, as amended in the year 2005, contemplated only two categories of Goods Vehicle, namely, Heavy Goods Vehicle with an average minimum number of employees of two with quantum of welfare fund payable at ₹400/- and Light Goods Vehicle with an average minimum number of employee of one with quantum of welfare fund payable at ₹200/-. Admittedly the vehicle in question does not fall under the category of Light Goods Vehicle. As far as the category of Medium Goods Vehicle is concerned, the said category was introduced in Table II of the Scheme only by way of an amendment made vide the Kerala Motor Transport Workers Welfare Fund (Amendment) Scheme, 2014, which came into force with effect from 15.10.2014. After the said

amendment, the category Medium Goods Vehicle was also included under the Motor Transport Workers Welfare Fund Scheme with an average minimum number of employees two with quantum of welfare fund payable at ₹300/-.

7. A reading of explanatory note to S.R.O.636/2014 would make it explicitly clear that the amendment was necessitated since the Table does not contain the category of Medium Goods Vehicle. Therefore, when a separate category for Medium Goods Vehicle was introduced only with effect from 15.10.2014, the rate prescribed therein can have application only with effect from that date. Till such amendment, Table II contained only two category of vehicles, namely, Heavy Goods Vehicle with contribution at the rate of ₹400 per month for two employees and Light Goods Vehicle with contribution at the rate of ₹200/- per month for one employee. Admittedly the vehicle owned by the petitioner, which is covered by Ext.P1 certificate of registration does not fall under the category of Light Goods Vehicle. When the vehicle owned by the petitioner does not fall under the category of Light Goods Vehicle, he has to pay contribution at the rate applicable to the category of Heavy Goods Vehicle attracting contribution at the rate of ₹400/- per month for 2 employees.

In such circumstances, the demand made by the 2nd respondent that the petitioner has to pay welfare fund contribution for his vehicle in question at the rate of ₹400/- per month for 2 employees does not warrant any interference by this Court. In the result, I find absolutely no merit in the contentions raised in the Writ Petition. The Writ Petition fails and the same is dismissed. No order as to costs.

Sd/-
ANIL K.NARENDRAN, JUDGE

skj