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. 31214 of 2012 (B)

PETITIONER(S):

JAMES AGED 42 YEARS
S/O.VAREETH, KURUTHUKULANGARA HOUSE, THOLUR P.O.
THRISSUR.

BY ADV. SRI.I.DINESH MENON

RESPONDENT(S):
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1. **THE REGIONAL TRANSPORT OFFICER**
   THRISSUR-686003.

2. **THE DISTRICT EXECUTIVE OFFICER**
   KERALA MOTOR TRANSPORT WORKERS WELFARE FUND BOARD
   KOZHIKODE-673020.

3. **THE DISTRICT EXECUTIVE OFFICER**
   KERALA MOTOR TRANSPORT WORKERS WELFARE FUND BOARD
   THRISSUR-686003.

4. **P.M.MUSTHAFA**
   S/O.ABOOBACKER, PADIKKAMANNIL HOUSE, KADUKARA
   KOOTTILANGADI, PERINTHALMANNA-676505.

R1 BY SRI S. SUDHEESH KUMAR, SENIOR GOVERNMENT PLEADER
R2-R3 BY SRI.K.S.MANU, KMTWWF

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

WP(C).No. 31214 of 2012 (B)

APPENDIX

PETITIONER'S EXHIBITS:

P1: COPY OF THE RELEVANT PAGE OF THE RC BOOK OF KL-11 Y 5997

P2: COPY OF THE INTERIM ORDER IN WPC 28625/2012 DATED 01.12.2012

RESPONDENTS' EXHIBITS: N I L

//TRUE COPY//

P.A.TO JUDGE

JV

ANIL K. NARENDRAN, J.

W.P.(C) No.31214 of 2012

Dated this the 10th day of September, 2015

JUDGMENT

The petitioner, who is the registered owner of a stage carriage bearing registration No.KL-11/Y-5997 with effect from 16.08.2012, has filed this writ petition seeking a writ of mandamus commanding the 1st respondent to accept the vehicle tax in respect of the said vehicle from 01.09.2012 onwards and further direct the 3rd respondent to accept the Welfare Fund contribution in respect of aforesaid vehicle from the date on which the petitioner came to be the owner of the vehicle.

2. By order dated 24.12.2012, this Court granted an interim order in terms with Ext.P2 interim order dated 01.12.2012 in W.P.(C). No.28625/2012, thereby directing the respondents herein to accept tax provisionally, subject to result of the writ petition without insisting for payment of prior Welfare Fund contributions which is alleged to be the liability of the earlier owner.

3. Today, when the case was taken up for final hearing, the learned counsel for the petitioner would point out that the issue raised in this writ petition is covered against the petitioner by

the judgment of this Court in **Ummar v. Joint Regional Transport Officer [2014 (4) KLT 358].** Paragraph 3 of the judgment reads thus:

> "**3.** The effect of the amendment brought about by the Amendment Act of 2005 was that, from 7.6.2005, the production of receipt of remittance of welfare fund contribution became an essential precondition for making payment of tax in respect of the vehicle, under the Kerala Motor Vehicles Taxation Act, 1976. Further, the arrears of amounts due from employers came to be recognised as a charge on the vehicle, in the event of a transfer by the employer of vehicles that were owned by him, and in respect of which there were amounts due under the 1985 Act. The resultant position was that, in respect of transfer of vehicles, effected by persons who had defaulted on payment of their dues under the 1985 Act, prior to 7.6.2005, the liability to pay the dues would continue to be with the transferor and would not pass with the vehicle to the transferee of the vehicle. For those transfers effected after 7.6.2005, however, the liability of the transferor under the 1985 Act, came to be recognised as a charge on the vehicle, by virtue of the amended S.10 of the Act, and consequently, would pass on to the transferee of the vehicle for the purposes of recovery under the 1985 Act. The legality of the insistence, by the authorities under the Kerala Motor Vehicles Taxation Act, for a clearance, by the owner of the vehicle, of the welfare fund dues of the erstwhile

owner, would, therefore, have to be examined in the light of the above statutory changes and the enquiry would have to be as to whether the transfer of the vehicle took place before the date of the amendment to the Kerala Motor Transport Workers Welfare Fund Act, 1985 or after that date. In my view, in cases where the transfer of the vehicle was effected prior to 7.6.2005, the liability of the erstwhile owner of the vehicle in respect of the amounts due under the 1985 Act would continue to be with him and the authorities would not be justified in proceeding against the transferee for realisation of those dues. In the case of transfers effected after 7.6.2005, however, the transferee of the vehicle would be liable to discharge the liability of the erstwhile owner of the vehicle in respect of the latter's dues under the 1985 Act. No doubt the transferee, in such cases, would have a right to proceed against the erstwhile owner for realisation of the amounts paid on his behalf. The rights of the parties in these Writ Petitions would, accordingly, have to be determined on the basis of the above legal position and accordingly, the Writ Petitions are disposed with the following directions:

1. In those cases were the transfers of the vehicles have been effected prior to 7.6.2005, the liability to discharge the welfare fund dues under the 1985 Act would continue to be with the erstwhile owner of the vehicle and accordingly, the

authorities under the 1985 Act would have to proceed against such owners for realisation of the dues. As a consequence, the insistence by the Motor Vehicles Taxation Authorities, for discharge of liabilities of the erstwhile owner, as a precondition for accepting tax from the subsequent owner, would have to be declared as illegal and I do so.

2. In cases were the transfer of the vehicle has been occasioned after 7.6.2005, the liability of the erstwhile owner of the vehicle, in respect of the dues under 1985 Act, would be a charge on the vehicle and go along with the vehicle to the transferee of the vehicle. Accordingly, the transferee of the vehicle would be liable to discharge the dues of the erstwhile owner under the 1985 Act. In such cases the action of the authorities under the Kerala Motor Vehicles Taxation Act insisting on a clearance of the erstwhile owner's dues, by the subsequent owner, as a condition for accepting tax from him, is held to be legal and valid and the notices, if any issued in that regard, are sustained.

3. In cases covered by (2) above, wherever the transferee has effected payment of dues pertaining to the erstwhile owner, it shall

> be open to the said transferee to proceed against the erstwhile owner, for realisation of the amounts paid on behalf of the erstwhile owner and in discharge of the latter's liability under the 1985 Act.
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> 4. The demands that have been made against the petitioners, which have been held to be legal and valid in this judgment, shall be satisfied by the petitioners within a period of one month from the date of receipt of a copy of this judgment. As it is noticed that, during the pendency of the Writ Petition, the petitioners have all been permitted to effect payment of motor vehicle tax by way of interim orders of this Court and, therefore, no further directions are required in that regard.

4. Since the issue raised in the writ petition is squarely covered against the petitioner, I find absolutely no grounds to grant the reliefs prayed for.

In the result, the writ petition fails and the same is dismissed, without prejudice to the right, if any, of the petitioner to proceed against the 4th respondent.

SD/-
ANIL K. NARENDRAN,
JUDGE

JV