

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

TUESDAY, THE 11TH DAY OF AUGUST 2015/20TH SRAVANA, 1937

WP(C).No. 36799 of 2007 (E)

PETITIONER(S) :

**T.P.GEETHADEVI, W/O.LATE RAMAN NAMBISAN,
CHERATTUKUZHAYIL VEEDU, MUTHALAM P.O.,
MANASSERRY, MUKKOM, KOZHIKODE.**

BY ADV. SRI.P.V.JAYACHANDRAN

RESPONDENT(S) :

- 1. THE DISTRICT EXECUTIVE OFFICER,
KERALA MOTOR TRANSPORT WORKERS WELFARE FUND BOARD,
KOZHIKODE.**
- 2. THE DEPUTY TAHSILDAR (RR),
KOZHIKODE.**
- 3. THE STATE OF KERALA,
REPRESENTED BY THE JOINT SECRETARY TO GOVERNMENT,
LABOUR AND REHABILITATION DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.**

**R2 & R3 BY SRI.K.K.SAIDALAVI, SR. GOVERNMENT PLEADER
R1 BY SRI.P.RAMAKRISHNAN, SC,KMTWF BOARD**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
11-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

AMV

: 2 :

WP(C).No. 36799 of 2007 (E)

APPENDIX

PETITIONER(S) EXHIBITS :

EXT.P1. : COPY OF THE OBJECTION DATED 17.05.2002.

EXT.P2. : COPY OF THE STATEMENT DATED ON 13.12.2004.

**EXT.P3. : COPY OF THE ORDER NO.B1 A2/1228/1997-2002
DATED 23.03.2005.**

EXT.P4. : COPY OF THE APPEAL DATED 30.04.2005.

**EXT.P5. : COPY OF THE ORDER NO.G.O(Tt) NO.796/07/LBR
DATED 24.03.2007**

EXT.P6. : COPY OF THE DEMAND NOTICE DATED 26.11.2006.

RESPONDENTS EXHIBITS : NIL

/TRUE COPY/

PA.TO JUDGE

AMV

ANU SIVARAMAN, J.

.....
W.P.(C) No.36799 of 2007 (E)

.....
Dated this the 11th day of August, 2015

JUDGMENT

This writ petition is filed challenging Ext.P5 appellate order issued by the Government under the Kerala Motor Transport Workers' Welfare Fund Act, 1985 [hereinafter referred to as the 'Act' for brevity] and Ext.P6 demand notice issued pursuant to it. The petitioner also challenges Ext.P3 final determination order passed under the Act.

2. The learned counsel for the petitioner contends that the petitioner's husband Raman Nambisan owned four stage carriages and was operating the same in partnership with one C.T.Unnikrishnan. After the death of the petitioner's husband, she had conducted the stage carriage operation in respect of the stage carriage bearing registration No.KL-10B-4662. The petitioner's contention is that the vehicle was being operated on commission basis along with one Unnikrishnan and Neelakandan and that they were entitled to share in the profits and were not her employees. The 1st respondent issued notices under the Kerala Motor Transport Workers' Welfare Fund Scheme [for brevity, 'the Scheme'] to the petitioner seeking contribution in respect of several

employees allegedly employed by her. Petitioner had preferred Ext.P1 objection to the provisional assessment order. Later Ext.P2 statement was also submitted before the assessing authority, pursuant to a remand by the Government in appeal. It was the specific case of the petitioner that, she had not employed the persons whose names are shown in the notice during the periods for which the notices were issued to her. She has also reiterated that Sri.Unnikrishnan and Neelakandan were not her employees and were operating the stage carriage on commission basis along with her.

3. By Ext.P3 final determination order, the 1st respondent held that even though notices were issued to the petitioner, she had not entered appearance or produced any documents to substantiate her claim that the persons whose names were included in the notices were not her employees. Two of the employees, Sathyanarayanan and Unnikrishnan were examined by the 1st respondent and they had given evidence to the effect that they, as well as the other employees named in the notice, had been employed by the petitioner. The petitioner did not appear or contest the case at that stage. Thereafter, in appeal, the petitioner had taken a contention that the finalisation of the determination order

issued by the respondent without hearing the petitioner was bad in law. It is further contended that all the employees whose names were shown in the notices and the provisional determination orders had to be summoned and examined by the assessing authority and the issuance of the final determination order without examining them was improper.

4. By Ext.P5 order dated 24.03.2007, the Government rejected the appeal and confirmed the findings of the 1st respondent. The contentions of the petitioner with regard to the employment of the workers whose names are mentioned in the notices and the orders of determination were considered by the Government. The Government also adverted to the objections raised by the petitioner to the effect that she had not employed any person in the capacity of an employee in the motor vehicle in question, during the relevant time and that she was not liable to make any payments under the Act and the Scheme. However, the Government after considering the contentions held that the petitioner had actually been given notice, but did not choose to appear or to cross examine the workers who were examined before the assessing authority. It was also stated that, it was not necessary to take deposition from every worker to arrive at the conclusion that the workers

had actually been employed by the petitioner. It is also stated in the appellate order that in her deposition during 10/2000, the appellant had expressed her willingness to remit the welfare fund. On these grounds, the appeal was dismissed.

5. Heard Sri.P.V.Jayachandran, the learned counsel for the petitioner, Sri.P.Ramakrishnan, the learned standing counsel for the 1st respondent as well as the learned Government Pleader appearing for respondents No.2 and 3.

6. It is the contention of the petitioner that she was not given a proper opportunity to contest the case before the assessing officer, which has resulted in Ext.P3 final determination order being passed against her. It is also contended that the denial of opportunity to contest the case which was raised before the appellate authority has also not been considered in the proper perspective by the appellate authority.

7. Having considered the pleadings and the materials on record, it is seen that the petitioner had been given notice on 29.10.2004 by the assessing officer after remand for participating in the hearing to be conducted. The case appears to have been posted to 09.11.2004; on which date also deposition of the employees were recorded. In spite of

notice issued, the petitioner did not appear or contest the matter. On 10.11.2004 further notices were issued to the petitioner by the 1st respondent to be present at the enquiry. However, the petitioner did not appear or produce any documents or oral evidence in support of her contentions. Ext.P3 order dated 20.03.2005 was passed thereafter. This aspect has been considered by the Government in Ext.P5 appellate order also. From a reading of the order of the assessing authority as well as the appellate authority, the contention of the petitioner that the contentions advanced in her objections had not been considered also does not appear to be sustainable.

In the above view of the matter, I do not find any material irregularity in Exts.P3 and P5 orders warranting interference under Article 226 of the Constitution of India. Accordingly, this writ petition fails and it is dismissed.

Sd/-
ANU SIVARAMAN, JUDGE