

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 30TH DAY OF JANUARY 2015/10TH MAGHA, 1936

W.P.(C).No.37052 of 2008 (J)

PETITIONER(S):-

ASOK KUMAR, AGED 40 YEARS, S/O. NANU,
3/459, YASHODHALAYAM,
THALASSERY.

BY ADV. SRI.M.A.FAYAZ

RESPONDENT(S):-

1. THE JOINT REGIONAL TRANSPORT OFFICER,
THALASSERY.
2. THE DISTRICT EXECUTIVE OFFICER,
KERALA MOTOR TRANSPORT WORKERS' WELFARE FUND,
KANNUR.

R1 BY GOVERNMENT PLEADER SRI.T.J.MICHAEL.
R2 BY STANDING COUNSEL SRI.C.S.MANU.

R,R2 BY ADV. SRI.T.NAVEEN, SC, K.S.F.E. LTD.
R, BY SRI.PAULSON C.VARGHESE,SC,KMTWF BOARD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
30-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No.37052 of 2008-J

APPENDIX

PETITIONER(S)' EXHIBITS:-

- EXT.P1 TRUE COPY OF THE RELEVANT EXTRACTS OF THE REGISTRATION
 CERTIFICATE OF VEHICLE NO.KL-09-K-8539.
- EXT.P2 TRUE COPY OF THE REGISTRATION CERTIFICATE.
- EXT.P3 TRUE COPOY OF THE REPRESENTATION BEFORE THE
 2ND RESPONDENT.
- EXT.P4 TRUE COPY OF THE JUDGMENT IN W.P.(C).NO.11507/08
 DATED 4.4.2008.
- EXT.P5 TRUE COPY OF THE JUDGMENT IN W.P.(C)NO.15634/2008
 DATED 5.6.2008.

RESPONDENT(S)' EXHIBITS:-

vku/-

(true copy)

K. Vinod Chandran, J.

W.P(C) No.37052 of 2008-J

Dated this the 30th day of January, 2015

JUDGMENT

The above writ petition has been filed for a mandamus, directing the 2nd respondent to accept the welfare fund under the Kerala Motor Transport Workers' Welfare Fund Act, 1985 [for brevity "the Welfare Fund Act"] for the period prospective to the petitioner's purchase of the vehicle and to issue clearance certificate for remittance of motor vehicle tax.

2. The petitioner's contention is that the motor vehicle bearing registration No.KL-09-K-8539 was registered in the name of one Hyder Ali, who had defaulted payment under the Welfare Fund Act. Subsequently the petitioner is said to have purchased the vehicle and got transfer of the same on 17.11.2008. The petitioner wanted to remit welfare fund as also motor vehicle tax, which would not be accepted unless the arrears towards the welfare fund are remitted with the Board. Therefore, the present writ petition for appropriate direction.

3. By the Amendment Act 23/2005, effective from 07.06.2005, Section 8A and sub-section (2) of Section 10 were introduced in the Welfare Fund Act. Section 8A mandated a clearance certificate from the Board for acceptance of motor vehicles tax. Sub-section (2) of Section 10 created a charge on the vehicle for the arrears of tax on the vehicle. The issue of amendment and the liability prior to the amendment were considered in ***Ummer v. Joint R.T.O.*** [2014 (4) KLT 358]. This Court held that if the transfer is effected after the amendment, then necessarily the transferee of the vehicle would be liable to discharge the liability of the erstwhile owner of the vehicle in respect of the previous owner's dues under the Welfare Fund Act to enable payment of motor vehicle tax as also release the encumbrance by way of charge created on the vehicle. The transferee was held to be entitled to proceed against the erstwhile owner for realisation of the amounts paid on his behalf.

4. It is admitted in the writ petition that the vehicle was transferred to the name of the petitioner on 17.11.2008. Even according to the petitioner there are arrears due under the Welfare Fund Act from the previous owner. Since the transfer itself was made after the amendment, the petitioner is not entitled to the relief asked

for in the writ petition. The charge on the vehicle subsists even after the transfer.

5. However, if the petitioner approaches the authorities concerned, with a prayer for instalments, within a period of one month from the date of receipt of a copy of this judgment, the petitioner shall be permitted to settle the amounts due under the Welfare Fund Act, with interest, in six equal monthly instalments; for the purpose of remitting tax in respect of the vehicle and for payment of amounts under the Welfare Fund Act. Needless to say, the petitioner would be entitled to proceed against the previous owner for recovery of the arrears remitted by him, in appropriate proceedings.

The writ petition is disposed of with the above observations.

Sd/-
K.Vinod Chandran
Judge.

vku/-

(true copy)