

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 14TH DAY OF NOVEMBER 2018 / 23RD KARTHIKA, 1940

WP(C).No. 34376 of 2018

PETITIONER:

SULFIKER M., S/O MOOSA, MANAGER  
M/S THOUFEEQ TRANSPORT COMPANY  
AMINA MANZIL, KALOTH, KONDOTTY  
MALAPPURAM DISTRICT

BY ADVS.  
SRI.G.HARIHARAN  
SMT.K.S.SMITHA  
SRI.PRAVEEN.H.  
SRI.V.R.SANJEEV KUMAR

RESPONDENTS:

- 1 REGIONAL TRANSPORT OFFICER  
MALAPPURAM 676505
- 2 REGIONAL PROVIDENT FUND COMMISSIONER  
OFFICE OF THE EMPLOYEES PROVIDENT FUND ORGANIZATION,  
SUB REGIONAL OFFICE, KOZHIKODE-673006.
- 3 DISTRICT EXECUTIVE OFFICER  
KERALA MOTOR TRANSPORT WORKERS WELFARE FUND,  
MALAPPURAM-676505.

BY ADVS.  
DR.ABRAHAM P.MEACHINKARA, SC, EPF ORG.  
SRI.PRATHEESH, SC, KERALA MOTOR TRANSPORT WORKER  
WELFARE FUND BOARD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14.11.2018,  
ALONG WITH WP(C).Nos.35082/2018,35821/2018,35860/2018,35964/2018  
35982/2018,36000/2018,36282/2018,36283/2018,36331/2018,36876/2018,  
AND 36879/2018, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Endt No. Bile-28571/TC/2017 dtd 15/12/2018

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information and necessary action.

## JUDGMENT

In all these Writ Petitions, the petitioners claim that their establishments are covered by the provisions of Employees Provident Fund Act. When they want to remit the Motor Vehicle Tax, the Regional Transport Officer concerned insisted that they should get a No Objection Certificate from the Transport Workers Welfare Fund Board. Aggrieved, they have filed the Writ Petitions.

2. Heard the learned counsel for the petitioners, the learned Government Pleader, the learned Standing Counsel for the Employees Provident Fund Organisation, and the learned Standing Counsel for the Kerala Motor Transport Workers Welfare Fund.

3. Statutorily speaking, Section 4 of the Kerala Motor Transport Workers Welfare Fund Act, 1985 exempts any establishment covered by the Employees Provident Fund and Miscellaneous Provisions Act, 1952, from the obligation of contributing to the fund. And it reads as follows:

**“4. Contributions to the Fund.**-(1)The contribution which shall be paid by the employer to the Fund shall be eight per cent of the wages

*for the time being payable to each of the employees and employees' contribution shall be equal to the contribution payable by the employer in respect of him: Provided that nothing in this sub-section shall apply to a motor transport undertaking to which the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952(Central Act 19 of 1952), apply.*

*(2) The employer shall in addition to the contribution payable under sub-section (1) contribute to the Fund as gratuity an amount equal to five per cent of the wages for the time being payable to each of the employees:*

*Provided that nothing in this sub-section shall apply to a motor transport undertaking to which the provisions of the payment of Gratuity Act, 1972 (Central Act 39 of 1972), apply.*

*(3) Where the amount of any contribution payable under this Act involves a fraction of a rupee, such fraction shall be rounded off to the nearest rupee, half of a rupee or quarter of a rupee. ”*

3. Now the learned Standing Counsel for the Employees Provident Fund Organisation, on instructions, submits that all the petitioners are covered by the Act and they have been contributing to the fund. Then the learned Standing Counsel for the Welfare Board also informs the Court that the Board will act on the Provident Fund Organisation's assertion that the petitioners have been covered and, accordingly, will issue the No Objection

### Certificates.

4. The Government Pleader, nevertheless, voices concern. According to her, in certain instances there is no correlation between the Organisation covered by the Employees' Provident Fund Act and the actual owner of the vehicle at times the vehicle. At times, the vehicle could have been hired by the establishment; yet the owners take advantage of the establishment's coverage and seek exemption. The apprehension is genuine.

5. The Standing Counsel for the Welfare Fund suggests that the electronic challan cum return issued by the Employees' Provident Fund Organisation to the establishment on its contribution reveals all particulars: the names of the employees and the contributions made. According to him, besides the No Objection Certificate from the Welfare Fund Board, if the vehicle owner produces the ECR, it will facilitate easy reference and verification for the Regional Transport Officer.

6. Under these circumstances, I dispose of the Writ Petitions holding as follows:

(a) As the Provident Fund Organisation has affirmed that the

petitioners' establishments have been covered by the Employees Provident Fund Act, the Welfare Fund Board will issue to the petitioners the No Objection Certificate.

(b) Once any petitioner produces the certificate before the Regional Transport Officer concerned, he will verify whether the vehicle stands in the name of the establishment that claims exemption. After satisfying himself on that count, it will receive the Motor Vehicle Tax from that petitioner.

(c) The petitioners will also produce, besides a No Objection Certificate from the Welfare Fund Board, the ECR from the Employees Provident Fund Organisation, before the Regional Transport Officer.

sd/-

DAMA SESHADRI NAIDU

JUDGE