

No. B2/5328/TC/11

Transport Commissionerate, Kerala,
Trans Towers, Thiruvananthapuram
Dated 02.05.2011

From

The Transport Commissioner,
Thiruvananthapuram

To

All Regional Transport Officers &
Joint Regional Transport Officers.

Sir,

Sub: Motor Vehicles Department - WP(C) No. 22971/08
filed by Sri. Anandan - KMTWWF- reg.

Ref: Common Judgment in WP(C) No. 22971/08 and
others dated 25th August 2009.

I am to invite your attention to the subject matter and inform that the Hon'ble High Court, vide reference cited, has held that the persons who have attained the age of sixty and are self employed are not liable to remit contribution to the Kerala Motor Transport Workers Welfare Fund. Consequently the Hon'ble High Court has directed the Motor Vehicle Department, not to insist on receipt from the Kerala Motor Transport Workers Welfare Fund Board from the beneficiaries for the purpose of collecting tax. Hence you are requested to take necessary action in the light of the judgment accordingly. Copy of the judgment is enclosed herewith. *for further information*

Yours faithfully,

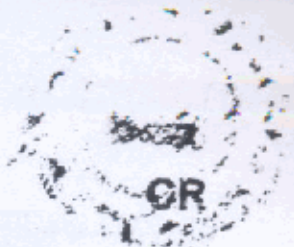
Sd/-

Senior D T C (Taxation),
For Transport Commissioner.

Approved for issue,

C. S. S. S. S.
Senior Superintendent.

[Signature]



P.R.RAMACHANDRA MENON, J.

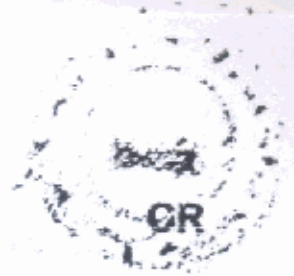
**WP(C) Nos. 582, 31737, 19895, 22971 & 26403 OF 2008
11950, 18361, 11715, 20985, 11507 & 17749 OF 2009**

Dated this the 25th day of August, 2009

J U D G M E N T

The common issue involved in all these cases is whether any contribution is liable to be paid in respect of the persons who have crossed the age of 60 years and are operating their own vehicles, on the basis of the valid driving licence and badge as 'self employed' persons under The Kerala Motor Transport Workers' Welfare Fund Act ('Act' in short) and whether the Taxation Officer under the Kerala Motor Vehicles Taxation Act is justified in refusing to accept the tax insisting that such persons also will have to produce requisite 'Certificates' as envisaged under Section 8A of the Kerala Motor Transport Workers' Welfare Fund Act. It is also an issue, whether the persons engaged for operating the Motor vehicles belonging to the 'Educational Institutions' are to be treated differently and whether any contribution is liable to be paid under the above enactment in respect of them as well.

2. The liability to effect contribution in respect of the 'employees' of the Motor Transport Undertaking, is upon the 'Employer' as defined under Section 2 (e) of the 'Act' which is extracted below:



P.R.RAMACHANDRA MENON, J.

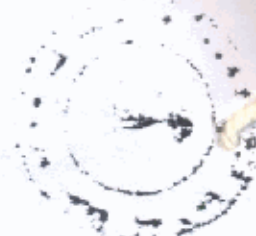
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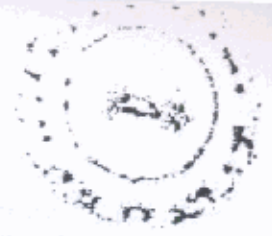
2. The liability to effect contribution in respect of the 'employees' of the Motor Transport Undertaking, is upon the 'Employer' as defined under Section 2 (e) of the 'Act' which is extracted below:



2(e) "Employer" means, [in relation to any motor transport undertaking, the registered owner or the person] who, or the authority which, has the ultimate control over the affairs of the motor transport undertaking, and where the said affairs are entrusted to any other person, whether called a manager, managing director, managing agent or by any other name, such other person;

The definition itself shows that, the 'Employer' need not be the registered owner of the vehicle and that it is the person having actual control or is operating said vehicle at the relevant time. When it was found that the employers have not been effecting the necessary contribution as contemplated under relevant provisions of law and that the very purpose of the welfare legislation was being defeated, the State brought about amendment to the Kerala Motor Vehicles Taxation Act incorporating sub section 7 and 8 to Section 4 of the parent Act, which mandate that necessary 'clearance certificate' shall be produced before the Taxation Authority, as to the satisfaction of the amount due under the Motor Transport Workers' Welfare Fund Act, if at all any tax is to be accepted in respect of the vehicle. The validity of the said provision was subjected to challenge in various Writ Petitions and finally, it was held by this Court in **Siraj Vs. Regional Transport Officer [2007(3) KLT 929]** that the enactment was proper and never ultra vires to the constitution. †

3. Learned counsel appearing for the petitioners, learned Standing Counsel appearing for the Welfare Fund Board and the learned Senior



Government Pleader appearing for the State/departmental authorities addressed this Court at length, as to the various provisions, the object, scope and scheme of the Statute.

4. The first question to be considered is whether the 'self employed' persons, will come within the purview of the term 'Employer'. In almost all these cases, a specific contention has been raised stating that, the petitioners are 'self employed' persons and are operating their own vehicles, holding valid driving licence and badge. It is stated that there is no 'employer-employee relationship' and as a natural consequence, there is no liability upon the petitioners to effect any contribution in respect of themselves. Taking note of the factual situation prevailing section 2 (ja) defining the term 'self employed person' was introduced in the 'Act' with effect from 2005; which is extracted below.

2(ja) "self employed person" means a person other than an employee who is engaged in the profession of a motor transport undertaking by actually operating the vehicle and depending mainly on such a motor transport undertaking for his livelihood";

5. By virtue of the incorporation of the term 'self employed person', it is no longer in doubt that such persons also will come within the purview of the statutory prescription and they are liable to effect necessary contribution. But the further question to be considered in these cases is whether the petitioners who are 'Hexagenarians', having crossed the age of 60 years, are



actually entitled to any benefit under the Act or Scheme; for obtaining which a liability has been cast under the Statute, to effect necessary contribution.

6. It is no doubt that the 'Act' is a welfare legislation. Clause 55 of the Scheme provides for exgratia benefits, Clause 47 relates to withdrawal from the fund for payment towards the insurance policies, Clause 53 provides the advance from the fund for construction of dwelling houses or dwelling sites. Chapter 9 of the Scheme [as per Clause 58, 60, 61 and 61 (A)] provides for welfare measures such as advance during unemployment, loan for illness, advance for education of children; scholarship for the children of the workers respectively; who are registered as the members. Further, Clause 62 of the Scheme also provides for advances for the marriage of daughters of the members under the Act and Scheme. This shows the wide range of activities and welfare measures intended to be bestowed upon the members of the Scheme. The immediate question that arises for consideration is whether 'any person' is eligible to obtain membership under the Scheme, so as to avail the benefit as mentioned above.

Clause 2 (o) of the Scheme defines the term 'superannuation'

2(o) "Superannuation" means the termination of the services of an employee by the employer or any other authorities so authorised when the employee reaches the age of sixty;


7. This shows that membership will come to an end, once a person



crosses 60 years. That apart, Clause 27 of the Scheme speaks about the membership; simultaneously adding in the 'second proviso' in crystal clear terms, that the persons above the age of 60 years are not entitled to obtain membership under the Scheme. In short, the persons who are above the age of 60 years are no longer intended to be continued as members of the Scheme. To put it more clear, neither the Act, nor the Scheme does take care of any situation to provide benefit under the said welfare legislation to the persons who have crossed the age of 60 years. This being the position, the question is whether the petitioners herein, who have obviously crossed the age of 60 years, can be compelled to effect any contribution to the Welfare Fund/Scheme, when the Scheme itself stands against such persons to be members/beneficiaries of the Scheme.

8. In this context, it is worthwhile to refer to the stand of the Welfare Fund Board, as revealed from the counter affidavit filed in WP(C) 32861/2008. The Chief Executive Officer of the second respondent Board has filed a detailed counter affidavit stating it point blank that the persons who have crossed the age of 60 years do not come within the purview of the Scheme.

9. The learned Senior Government Pleader appearing for the State/Departmental authorities, with reference to the relevant provisions of law, asserts that, the factum of self employment will not absolve the person



concerned from the liability to effect the contribution. However, it is also conceded that there cannot be any membership for persons who have crossed the age of 60 years and as such, there is no rationale in demanding any contribution from such persons who have crossed the age of 60 years and operating the motor transport undertakings as 'self employed' persons. As such, the point of dispute is rather obliterated to 'nil'. In the case of persons who are operating the vehicles as 'self employed' persons, on the basis of valid driving licence and badge and who have crossed the age of 60 years, they are not liable to be compelled to effect any contribution to the Motor Workers' Welfare Fund.

10. The challenge raised by all the petitioners is sustained and it is declared that no steps can be pursued against such persons, who form the above 'specific category', for realisation of any amount as payable to the Fund and as a natural consequence, there is no need, necessity or occasion for them to procure any 'clearance certificate' or NOC from the authority under the Kerala Motor Transport Workers' Welfare Fund, to be produced before the Taxation authority, in conformity with the requirement under Section 8A of the 'Act' as aforesaid.

11. It is also brought to the notice of this Court that persons engaged as employees in the Motor Transport undertakings belonging to the Educational Institutions are not liable to be covered under the Act/Scheme;



particularly in view of the clarification issued by the Government of Kerala stating that the educational institutions are not Motor Transport undertakings.

Based on the said clarification, this Court has held in *Toc'H Public School Vs. District Executive Officer [1992 (1) KLT SN 37 Case No. 49]* that the educational institutions are not required to make payment of the welfare fund contribution in respect of their employees engaged in their vehicles. This being the position, the petitioners in WP(C) 582/2008, who are running an 'educational institution' are not liable to effect any contribution in respect of the workers engaged in the motor vehicles belonging to the said educational institution. As such, no certificate/NOC as contemplated under Section 8A of the 'Act' shall be insisted for remittance of tax in respect of the school vehicles owned by the petitioner.

Accordingly, all the Writ Petitions are allowed to the above extent. No cost.

Sd/-

P.R.RAMACHANDRA MENON
JUDGE

(True copy)

P.A. to Judge

dnc

True Copy

Examiner