

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 23RD DAY OF JULY 2015/1ST SRAVANA, 1937

WP(C) .No. 1842 of 2012 (E)

PETITIONER:

THE MANAGING DIRECTOR
KERALA STATE ROAD TRANSPORT CORPORATION
THIRUVANANTHAPURAM -23
REPRESENTED BY ITS CHIEF LAW OFFICER
P.SURESH KUMAR.

BY ADVS.SRI.BABU JOSEPH KURUVATHAZHA,SC,KSRTC
SRI.P.C.CHACKO, SC, KERALA STATE ROAD TRANSPORT CORPN.

RESPONDENTS:

1. KERALA STATE TRANSPORT EMPLOYEES CO-OP.SOCIETY
LTD NO.4206, ALAPPUZHA -688 001
REPRESENTED BY ITS SECRETARY.

2. JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL)
ERNAKULAM, KOCHI - 682 030.

3. KERALA CO-OPERATIVE TRIBUNAL,
THIRUVANANTHAPURAM REPRESENTED BY ITS SECRETARY. PIN 695001.

SRI.RAFEEK, GOVERNMENT PLEADER
R1 BY ADV. SRI.N.UNNIKRISHNAN
R BY SRI.N.UNNIKRISHNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
23-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

RKC

APPENDIX

PETITIONER'S EXHIBITS

P1: COPY OF THE AWARD DT.22.5.2010 IN ARC 288/03 OF THE COURT OF JOINT REGISTRAR OF CO-OPERATIVE SOCEETIES (GENERAL), ERNAKULAM.

P2: COPY OF THE JUDGMENT DT.29.7.11 IN APPEAL NO.56/2010 OF THE COURT OF THE KERALA CO-OPERATIVE TRIBUNAL, THIRUVANANTHAPURAM.

RESPONDENTS' EXHIBITS

R1 (A) : COPY OF THE JUDGMENT DT.5.4.02 IN WPC NO.857/02

R1 (B) : COPY OF LETTER DATED 3.1.02

R1 (C) : COPY OF NOTICE DT.14.7.03

R1 (D) : COPY OF COUNTER AFFIDAVIT DT.15.4.04

R1 (E) : COPY OF REPLY DT.27.4.04 IN ARC 288/03

R1 (F) : COPY OF JUDGMENT DT.7.9.05 IN WPC NO.1284/05

R1 (G) : COPY OF JUDGMENT DT.2.2.06 IN W.A.NO.2156/05

RKC

TRUE COPY

PA TO JUDGE

P.V.ASHA, J.

.....
W.P.(C) No.1842 of 2012
.....

Dated this the 23rd day of July, 2015

JUDGMENT

The Managing Director of Kerala State Road Transport Corporation (hereinafter referred to as K.S.R.T.C. for short) has filed this writ petition against the award passed by the Joint Registrar of Co-operative Societies (General), Ernakulam in ARC No.288 of 2003-Ext.P1 and the order passed by the Kerala Cooperative Tribunal, Thiruvananthapuram in Appeal No.56 of 2010-Ext.P2, affirming the award.

2. The 1st respondent, Kerala State Transport Employees Co-operative Society Ltd., filed ARC No.288 of 2003 under section 69 of the Kerala Co-operative Societies Act, 1969, for a direction to the petitioner to pay interest at the rate of 18% per annum for the delay in payment of the amount due to the first respondent society, after recovering the same from the members of the co-operative society, who are employees of the petitioner towards the monthly instalments due to the society on account of the loan availed by them. Their case was as follows:

3. The first respondent society has been advancing loan to its members. The members are employees of K.S.R.T.C. The loan is disbursed after getting an undertaking from the members/employees that recovery from their salary will be effected in terms of the provisions contained in section 37 (1) of the Kerala Co-operative Societies Act. On the basis of this undertaking K.S.R.T.C used to recover the monthly instalments from the salary of its employees who availed loan, in terms of the requisition made by the 1st respondent society as well as the undertaking given by the employees. But the K.S.R.T.C after recovering the amount from the salary of the employees regularly, did not remit the same to the society. They retained the amount with themselves and the society suffered loss on account of the same. Thus a sum of ₹36,19,251/- was found as the amount not remitted in the account of the first respondent for the period from 22.4.1998 onwards. The non-remittance by the K.S.R.T.C resulted in non-payment of the retirement benefits of the employees, on account of the fact that the loan accounts were not closed. Several writ petitions were filed before this Court by the employees as well as the society in respect of the

non-remittance of the amount by the K.S.R.T.C, after recovery of the same from the salary of the employees. In a batch of cases filed by the employees/co-operative society, this Court by its judgment dated 5.4.2002 in O.P.No.857 of 2002 and connected cases, held that the omission of K.S.R.T.C to pay the amount in time, recovered from the salary of the employees, in terms of section 37 of the Co-operative Societies Act is an offence under section 94 of the Act and the officer/employer, who fails to pay the society, the amount deducted by him within seven days will amount to criminal breach of trust and mis appropriation. This Court found that the society had advanced loan to its members on the basis of agreement executed under section 37 of the Act, in which the employer K.S.R.T.C agreed to deduct the monthly instalments due to the society from the salary of the concerned employees and to pay the same to the society. Accordingly, any amount thus deducted was liable to be made over to the society within a period of seven days. In the said case, this Court found that serious prejudice was caused to the society on account of the delay on the part of the K.S.R.T.C to pay the amount. That writ petition was disposed of directing the K.S.R.T.C to pay the

amount within 20 equal monthly instalments. It was further ordered as follows.

"Societies have to pay penal interest to the District Co-operative Banks. If the petitioners have suffered any damages as a result of the omission of the respondents to pay the amount in time as provided under section 37 of the Act, they will be free to work out their remedies either before the civil court or before the Arbitrator under the Kerala Co-operative Societies Act".

On the basis of the said judgment K.S.R.T.C remitted payment by November 2003. The respondent society had in the meanwhile demanded interest from K.S.R.T.C on account of the delay in remittance, by issuing notice on 14.7.2003. The interest due to the delay in remittance was found as ₹18,51,352/- towards the delay in remittance of ₹36,19,251/-, recovered during the period from 22.4.1998 to 31.3.2003.

4. The petitioner had raised objections as to the maintainability of the application under section 69 of the Act, which was held untenable. It was also contended that the claim was barred by resjudicata, since the respondent society had not raised the issue in the writ petition.

5. After considering the issues raised with reference to the materials made available before the Joint Registrar of Co-operative Societies, award was passed in the ARC as per Ext.P1 directing the petitioner- K.S.R.T.C to pay the interest as claimed with future interest at the rate of 6% per annum for the period from 4.2.2004 till the date of payment.

6. The petitioner filed an appeal before the Co-operative Tribunal, Thiruvananthapuram alleging that the award passed was wrong in law and fact, the society did not furnish the split up details of the claim advanced, the interest on interest awarded was illegal and opposed to the public policy etc.

7. The Tribunal considered all the objections and issues raised. Regarding the maintainability of the petition under section 69, the Tribunal found that since the dispute affects the business of the co-operative society and as the dispute arises out of the loan advanced to the employees of K.S.R.T.C, who are members of the society, the said dispute was one coming under the purview of section 2(i) of the Co-operative Societies Act. It was also found that the dispute was with reference to the interest payable on the amount deducted from the salary of the

employees of the petitioner on the basis of the undertaking given under section 37(2) of the Act and the delay in its remittance. As one of the activities of the society was advancing of loan to its members, it was found that adjudication of such a dispute was maintainable under section 69 of the Co-operative Societies Act. Regarding the question of resjudicata also, the Tribunal found that observation of this Court in the judgment to the effect that the petitioners would be free to work out their remedy before the civil court or arbitrator under the Kerala Co-operative societies Act in respect of any damages as a result of the omission of the respondent, will conclude the objection raised by the petitioner and the same is not barred by resjudicata. The petitioner K.S.R.T.C had raised contentions as to nonfurnishing of the split up details. According to it loss was caused to the society on account of the delay in remittance. On going through the evidence adduced by the parties, the Tribunal found that the arbitrator had entered into a finding on the basis of Ext.P8 notice dated 14.7.2003, in which the details of the demand for interest was given, which the petitioner never controverted.

8. Yet another contention was regarding the rate of interest

arrived at by the society. The arbitrator had found, on the basis of Exts.P20 to 23 series of letters of the District Co-operative Bank, Alappuzha that the respondent society availed loan from the bank on interest at the rate of 16% per annum and the respondent society had demanded interest at the rate of 18% for the amount advanced reckoning the establishment charges also. It was also found that the employees who had availed loan had not remitted any interest to the society, till the remittance of the amount which was already collected. The interest could be collected from them only up to the date of deduction of salary. The Tribunal found that Ext.P8 was sufficient to explain the details of interest charged by the society, as the statement contains the amount recovered from the salary of each employee, the date of its recovery, details of delay as well as the interest accrued at the rate of 18% per annum as well as the rate of ₹1/- per day. The Arbitrator as well as the Tribunal found that the petitioner K.S.R.T.C never disputed Ext.P8. It did not also adduce any evidence contrary to the said claim. It was also not taken notice of the fact that the details of recovery were very well available with the K.S.R.T.C and they could have availed

opportunity to adduce evidence contrary to it, in case such evidence was available. In such circumstances, the contentions raised by the petitioner were rejected. Regarding the contentions as to levying of future interest at 6% per annum, the Tribunal found that the interest directed at the rate of 6% per annum cannot be termed as interest on interest and it was already found that society had sustained loss on account of the inaction on the part of the petitioner, on account of which remittance was delayed by seven years.

9. The K.S.R.T.C has in this writ petition challenged the award as well as the appellate order of the Tribunal, alleging almost the same contentions as raised before the Arbitrator as well the Tribunal. The contentions raised by the petitioner are - split up details of loss sustained was not furnished; the first respondent had never suffered any loss on account of the delay in remittance; there was no proof for any loss; the statement of accounts ought to have been furnished to establish the claim as to the loss; illusory and fictitious figures were furnished by the society; recovery effected from 22.4.1998 to 31.3.2003 in a phased manner will not carry interest as claimed; issuance of

demand notice cannot be the proof in support of the claim in the absence of any relevant document or data; Annexure-2 statement of the society ought not have been relied on by the Arbitrator or the Tribunal for quantifying the liability of interest; the amount claimed by the society as interest would have been paid by the employee who availed loan or his guarantor; there is no justification in demanding of further interest; interest of co-operative societies are paid by the Government based on schemes evolved by the Government from time to time etc.

10. I heard Sri.Chacko, learned standing counsel appearing for K.S.R.T.C and Sri.N.Unnikrishnan, learned counsel appearing for the society.

11. On consideration of the rival contentions on either side, it is clear that K.S.R.T.C retained the amount recovered from the employees, which was collected by them in terms of section 37 (2) of the Kerala Co-operative Societies Act, 1969 based on their undertaking that the amount due under monthly instalments towards loan availed by its employees from the society will be recovered from their salary every month and remitted to the society within a period of seven days. Rule 37 reads as follows:

"Deduction from salary to meet socieity's claim in certain cases:- (1) *Notwithstanding anything contained in any law for the time being in force, a member of a society, may execute an agreement in favour of the society providing that his employer or the officer disbursing his salary or wages shall be competent to deduct from the salary or wages payable to him by the employer, such amount as may be specified in the agreement and to pay the amount so deducted to the society in satisfaction of any debt or other demand owing by the member to the society.*

(2) On the execution of such an agreement, the employer or the officer disbursing the salary or wages of any such member as is referred to in sub-section (1) shall, if so required by the society by requisition in writing and so long as such debt or demand or any part of it remains unpaid, make the deduction in accordance with the agreement and pay the amounts so deducted to the society within seven days from the date of the deduction.

Provided that this sub-section shall not apply if the employees, whose salary is to be deducted, are not informed at least thirty days in advance, by notice duly acknowledged, about the dues on loan or award amount."

It is an admitted case that the said amount was not remitted except after intervention of this Court, that too in 20 instalments and the last instalment of the payment was in November 2013.

12. The contention that employees have already remitted the interest on the loan amount cannot be correct in view of the fact that the amount payable on each monthly instalment was already recovered and it was in the hands of the K.S.R.T.C and there is no further provision to realise any interest from the loanees. This Court has in the judgment in O.P.No.857 of 2002 and connected cases observed that the petitioners therein can resolve to appropriate remedy either before the civil court or arbitration court towards the damages suffered by them on account of the delayed remittance. Regarding the split up details of the payment, the Arbitrator as well the Tribunal has found that the recovery which was liable to be made each month and the interest thereon falling to the respective months were already produced. The respondents have produced the statement showing the penal interest on the arrears due from the petitioner as Ext.R1(c) before this Court.

13. The provisions contained in section 37 of Kerala Co-operative Societies Act as well as rule 52 of the Rules bind the K.S.R.T.C to see that the monthly instalments of payment due to the society are remitted with the society within seven days of its

recovery from the salary payable to the employees. Section 37 as well as rule 52 provides for agreement to be executed by the employer with the society for recovery from the employees as well as the remittance with the society, in the manner prescribed. Under rule 52(8) of the Co-operative Societies Rules, the employer or the officer disbursing salary or wages shall maintain a register showing the recovery and remittance of the money to the society in form No.11. Therefore all documents relating to the recovery and remittance are available with K.S.R.T.C. They did not choose to raise any objection producing any of the documents available with them. On the other hand, they continue to raise objections as to maintainability on one or other reasons and demanded split up details again and again.

14. A Division Bench of this Court has by judgment dated 12.12.2006 in W.A.No.2060 of 2006, directed K.S.R.T.C to remit with the society any recovered amount retained by them with interest at the same rate at which the interest is charged by the society. It was further directed therein to resort to revenue recovery proceedings in the event of non-payment.

The award was passed on the basis of the pleadings, the

evidenced adduced as well as the materials on record. The Tribunal also considered all the relevant materials and came to the conclusion that the award passed in the ARC is on the basis of the materials on record. On an analysis of the award-Ext.P1 as well as the appellate order Ext.P2 with reference to the materials on record, I do not find any circumstance warranting interference under Article 226 of the Constitution of India.

Hence the writ petition is dismissed.

Sd/-
P.V.ASHA,
JUDGE.

rkc