

* HON'BLE SRI JUSTICE R.KANTHA RAO

+ Writ Petition No.25147 of 2015

% 07-10-2015

M.A. Hakeem

... Petitioner

Vs.

\$ TSRTC, Bus Bhavan, Mushirabad,
Hyderabad-500 624, Rep. by its JMD;
and 2 others

... Respondents

! Counsel for the Petitioner: Sri A.G. Satyanarayana
Rao

Counsel for Respondents : Sri N.Vasudeva Reddy,
Standing Counsel

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> Head Note:

? Cases referred:

1. AIR 1980 SC 1528
2. (2013) 12 SCC 210
3. (2012) 11 SCC 511

**IN THE HIGH COURT OF JUDICATURE AT
HYDERABAD**

FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Writ Petition No.25147 of 2015

Between

M.A. Hakeem

... Petitioner

and

TSRTC, Bus Bhavan, Mushirabad,
Hyderabad-500 624,
Rep. by its Joint MD;
and 2 others

... Respondents

DATE OF JUDGMENT PRONOUNCED: 07-10-2015

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE R.KANTHA RAO

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|---|--|--------|
| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgment? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reports/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

HON'BLE SRI JUSTICE R.KANTHA RAO

Writ Petition No.25147 of 2015

Order:

Heard Sri A.G. Satyanarayana Rao, learned counsel appearing for the petitioner and Sri N.Vasudeva Reddy, learned Standing Counsel for TSRTC-respondents 1 to 3.

2. The petitioner was a driver in the 1st respondent-Corporation. He was appointed on 12-02-1984. After rendering unblemished service, he retired from service on attaining the age of superannuation on 31-3-2012 from the 3rd respondent-Depot. One Shaik Hussain, Conductor in the respondents-Corporation, obtained House Building Advance (HBA) of Rs.83,300/- while in service. The petitioner and one Mohammed Kareem Pasha, driver, stood as sureties to the said principal borrower. An amount of Rs.16,000/- was recovered from Sk.Hussain towards the principal amount of the HBA by the Corporation. It is submitted by the petitioner that as per the Circulars of the Corporation, if an employee is removed from service, the balance loan amount and interest has to be recovered from the settlement of salary, Gratuity and by disposing of the property offered as security to the HBA. According to the petitioner, the 3rd respondent has not taken any action till June, 2000 and started recovery from the salary of the surety

Md.Kareem Pasha, driver. Thus, an amount of Rs.65,300/- was recovered from the salary of the other surety Md.Kareem Pasha. Further, an amount of Rs.2,500/- was recovered from the salary of the petitioner. Thus, the total principal amount of Rs.83,800/- was recovered by the 3rd respondent as on May, 2011. The principal borrower Sk.Hussain was removed from service on 03-5-1993.

3. The contention of the petitioner is that the Corporation ought to have recovered the principal amount and interest from the settlement dues of Sk.Hussain or it ought to have disposed of the mortgaged property and have realised the balance loan amount and interest from the sale proceeds of the mortgaged property. Contrary to this, it is said that the respondents-Corporation without following the Circular instructions, withheld the terminal benefits of the petitioner i.e., the amount relating to leave encashment and settlement of salary amounting to Rs.1,45,729/- from April, 2012. The same is said to be contrary to the Regulations of the Corporation. The petitioner, therefore, filed the present writ petition seeking a Writ of *mandamus* declaring the action of the respondents-Corporation in withholding the terminal benefits of the petitioner viz., leave encashment and settlement of salary of an amount of Rs.1,45,729/- as unjust, arbitrary and contrary to the Circulars and

APSRTC Employees' Leave Regulations, 1963, and in violation of Articles 14 and 21 of the Constitution of India and consequently direct the respondents-Corporation to pay the balance retiral amount of Rs.1,45,729/- relating to leave encashment and settlement of salary with interest at the rate of 9% per annum from the date of retirement of the petitioner i.e. 31-3-2012 till the date of payment.

4. The respondents-Corporation filed counter affidavit contending, *inter alia*, as follows:

(a) Sk.Hussain after availing the HBA of Rs.83,300/- from the respondents-Corporation was removed from service on 03-5-1993. The petitioner and one Md.Kareem Pasha, employees of the Corporation, stood as sureties to Sk.Hussain, who availed the HBA from the Corporation and was removed from service, is only entitled for the benefits up to the date of his removal i.e. 03-5-1993. As per the audit report, the petitioner was to pay an amount of Rs.2,62,711/- including the penal interest as on July, 2008. The principal borrower Sk.Hussain did not submit any representation to recover the HBA due from his settlement amounts. However, the settlement amounts payable to Sk.Hussain were insufficient to clear HBA due. As per the agreement entered by the sureties with the borrower and the respondents-Corporation, the sureties are liable to pay the HBA loan together with interest. An

amount of Rs.2,500/- was recovered from the salary of the petitioner and a further amount of Rs.65,300/- was recovered from the salary of another surety Md.Kareem Pasha towards HBA loan dues. The petitioner retired from the service of the Corporation on 31-3-2012, the terminal benefits and settlement of salary of Rs.1,45,729/- were withheld and the same is adjusted towards the HBA loan dues after obtaining necessary orders from the office of the Regional Manager. As per the agreement between the petitioner, borrower and the Corporation, there is a contractual obligation on the part of the petitioner to pay the amount which became due towards the HBA loan borrowed by Sk.Hussain and the petitioner cannot go back and deny the liability.

(b) The respondents-Corporation could only recover Rs.16,000/- towards the HBA loan due from the salary of the borrower Sk.Hussain. No further amount could be recovered as the borrower was removed from service on 03-5-1993 and was not reinstated into service thereafter. Therefore, the Corporation has to recover the HBA loan amount from the sureties of the borrower.

The Corporation directed Sk.Hussain to pay HBA dues but he did not respond to the letters of the Corporation and did not clear the HBA loan dues. The said borrower Sk.Hussain is not eligible for terminal benefits and other amounts.

(c) Without the directions of the Estate Officer, the

Depot Manager cannot take any decision in respect of the settlement of HBA loan dues, which are higher than the benefits/amounts due and payable to the borrower.

The petitioner was paid all the benefits like Gratuity, Provident Fund, SBT, SRBS and FPS except withholding of the terminal benefits relating to encashment of leave and settlement of salary in order to adjust the amount payable towards HBA loan due as the petitioner was the surety for the HBA loan advanced to the borrower.

The petitioner being a surety is under an obligation to discharge the debt on behalf of the borrower. As per the Regulations of the Corporation, there is no prohibition from recovering the amounts from the retiral benefits of the sureties. The action of the respondents-Corporation, therefore, is in accordance with the Circulars and Regulations and not in violation of Articles 14 and 21 of the Constitution of India.

(d) The petitioner retired from service in March, 2012 but approached this Court by filing the present writ petition after lapse of three years seeking payment of balance retirement benefits. The writ petition is hit by laches and delay, and the petitioner is not entitled for any of the reliefs prayed for in the writ petition.

(e) Contending as above, the respondents-Corporation sought to dismiss the writ petition.

5. The short question which requires determination

in the present writ petition is whether the respondents-Corporation is entitled in law to withhold the retiral benefits of the petitioner towards the satisfaction of the HBA taken by Sk.Hussain on the ground that the petitioner stood as one of the guarantors to him for borrowing the said loan.

6. It is the contention of the learned counsel appearing for the petitioner that it is obligatory on the part of the respondents-Corporation either to recover the amount from the amounts payable to the principal borrower or by proceeding against the house-site which was mortgaged by the principal borrower to the Corporation.

7. On the other hand, it is the contention of the learned Standing Counsel for the respondents-Corporation that the liability of the petitioner, who is one of the guarantors, is co-extensive with that of the principal borrower and when there is no possibility to recover the amount towards the HBA loan from the principal borrower, the Corporation can recover the same from the petitioner either from his salary or the Corporation also can withhold the retiral benefits to the extent of the loan which remained unpaid.

8. There is no dispute about the fact that the principal borrower Sk.Hussain was removed from service in the year 1993. Though it is submitted on behalf of the

respondents-Corporation that steps have been taken to recover the amounts from the principal borrower, nothing has been placed on record to show as to what are the steps that were taken to realise the debt. There is no dispute about the fact that the principal borrower mortgaged the house-site to the respondents-Corporation as security for the HBA loan. He sold the property on 26-02-2007 i.e. long after his retirement to a third party. Till such time, no steps have been taken by the Corporation to proceed against the house-site which was mortgaged as security for the HBA loan borrowed by the principal borrower Sk.Hussain.

9. In this context it would be necessary to go through the judgment of the Supreme Court in

The State Bank of Saurashtra v. Chitranjan Rangnath

Raja^[1] relied upon by the learned counsel appearing for the petitioner, wherein the Supreme Court held as follows:

“19. It is difficult to entertain a contention that S.141 would not be attracted and surety would not be discharged even if it is found that a creditor has taken more than one security on the basis of which advance was made and the surety gave personal guarantee on the good faith of other security being offered by the principal debtor which itself may be a consideration for the surety offering his personal guarantee and the creditor by its own negligence lost one of the securities. Acceptance of such a contention would tantamount to putting a premium on the negligence of the creditor to the detriment of the surety who is usually described as a preferred debtor. Should

a Court by its construction of such letter of guarantee enable the creditor to act negligently and yet be not in any manner accountable? Was the guarantee a guarantee against proper performance of the contract evidencing advance of loan and methods of its repayment, or a guarantee covering Bank's utter disregard of its responsibility or to use the words of the High Court, the Bank's utter negligence in failing to exercise the care of a prudent man which one would expect in management of one's own affairs?

20. The appeal accordingly fails and is dismissed with costs."

10. The learned counsel appearing for the petitioner further relied on **STATE OF JHARKHAND v. JITENDRA KUMAR SRIVASTAVA**^[2], wherein it is held as follows:

"14. The right to receive pension was recognised as a right to property by the Constitution Bench judgment of this Court in **Deokinandan Prasad v. State of Bihar** [(1971) 2 SCC 330], as is apparent from the following discussion: (SCC pp. 342-43, paras 27-33)

"27 to 32.

33. Having due regard to the above decisions, we are of the opinion that the right of the petitioner to receive pension is property under Article 31(1) and by a mere executive order the State had no power to withhold the same. Similarly, the said claim is also property under Article 19(1)(f) and it is not saved by clause (5) of Article 19. Therefore, it follows that the order dated 12-6-1968, denying the petitioner right to receive pension affects the fundamental right of the petitioner under Articles 19(1)(f) and 31(1) of the Constitution, and as such the writ petition under Article 32 is maintainable. It may be that under the Pension Act (23 of 1871) there is a bar against a civil court entertaining any suit relating to the matters mentioned therein. That does not stand in the way of writ of mandamus being issued to the State to properly consider the claim of the petitioner for payment of pension according to law."

Basing on the aforementioned judgments, the learned counsel appearing for the petitioner contends that the respondents-Corporation, which is grossly negligent in recovering the amounts payable to the principal borrower after his removal from service and also in not proceeding against the property which was mortgaged as security for the loan, is not entitled now to withhold the retiral benefits of the petitioner.

11. On the other hand, the learned Standing Counsel for the respondents-Corporation relied on

RAM KISHUN v. STATE OF U.P.^[3], wherein the Supreme Court held as follows:

“In view of the provisions of Section 128 of the Contract Act, the liability of the guarantor/surety is coextensive with that of the debtor. In view of Section 146 of the Act in case there are more than one surety/ guarantor, they have to share the liability equally unless the agreement of contract provides otherwise. However, in this case, though there are some documents to show that there were two guarantors but who was the other guarantor is not evident from the record, nor had such a plea ever been taken by the appellants before the courts below.

The creditor has a right to obtain a decree against the surety and the principal debtor.

The surety has no right to restrain execution of the decree against him until the creditor has exhausted his remedy against the principal debtor for the reason that it is the business of the surety/guarantor to see whether the principal debtor has paid or not.

The surety does not have a right to dictate terms to the creditor as to how he should make the recovery and pursue his remedies against the principal debtor at his instance. In the present case, the father of the appellants

stood as guarantor when G took loan from the Bank. As the appellants had inherited the estate of the guarantor, they are liable to meet the liability of unpaid amount.”

12. Having gone through the afore-referred judgments and the submissions on either side, I am of the view that the general principle that the creditor can proceed either against the principal borrower or the sureties according to his choice cannot be made applicable to the facts of the present case.

The respondents-Corporation is the employer of the principal borrower and also the petitioner and other surety who stood as guarantors for the principal borrower. The Regulations of the Corporation and the Circular Instructions placed on record clearly indicate that the Corporation has a right to proceed to recover the debt from the amounts payable to the principal borrower and also by bringing the property mortgaged as security for the loan to sale. As the Corporation is the employer of the petitioner and the principal borrower, it cannot be equated with an ordinary creditor to whom the principle laid down in **RAM KISHUN** (3 *supra*) is applicable.

In **Chitranjan Ranganath Raja** (1 *supra*), the Supreme Court has emphatically laid down that when the creditor acts in utter disregard of its responsibility and is grossly negligent in exercising all the care of a prudent man which one would expect in management of one's own affairs cannot act to the detriment of the surety.

The respondents-Corporation being an organisation of the State is under an obligation to follow its regulations and Circular instructions. As per the Regulations and Circular instructions placed on record, it is obvious that the respondents-Corporation is under a duty to either recover from the amounts payable to the principal borrower after his removal from service or it can proceed against the property mortgaged by the principal borrower as security for the HBA loan. Admittedly, in the instant case, the respondents-Corporation did not take any steps to proceed against the principal borrower or the security furnished and acted in clear disregard of its own regulations and Circular instructions.

13. Therefore, withholding the retiral benefits of the petitioner to a tune of Rs.1,45,729/- is illegal. The writ petition, thus, succeeds and the respondents-Corporation is directed to pay an amount of Rs.1,45,729/- (Rupees one lakh, forty five thousand, seven hundred and twenty nine only) with interest at the rate of 9% per annum from the date of retirement i.e.

31-3-2012 to the petitioner within a period of 8 (eight) weeks from the date of receipt of a copy of this order. The writ petition is allowed accordingly.

The miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.

R.KANTHA RAO, J.

07th October, 2015.

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Note:-

L.R. Copy to be marked.

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HON'BLE SRI JUSTICE R.KANTHA RAO

Writ Petition No.25147 of 2015

07th October, 2015.
(Ak)

[\[1\]](#) AIR 1980 SC 1528

[\[2\]](#) (2013) 12 SCC 210

[\[3\]](#) (2012) 11 SCC 511