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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P. (C) 848/2013, CM APPL.1622/2013

DELHI PARIVAHAN KARAMCHARI COOPERATIVE THRIFT AND CREDIT SOCIETY LIMITED ..... Petitioner

Through: Mr. Viraj R. Datar, Advocate.

versus

DTC AND ORS ..... Respondents

Through: Mrs. Avnish Ahlawat, Advocate for DTC.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

O R D E R

% **02.03.2016**

The only controversy before this Court is the correctness and legality of the Notification dated 10.01.2013 by the Delhi Transport Corporation ("DTC") intimating that it would be discontinuing deductions from the monthly salary of its employees who had secured loans from the petitioner cooperative society.

The petitioner cooperative society urges that the obligation to deduct amounts towards loan and outstanding dues in accordance with the *inter se* arrangement between the DTC employees and the cooperative society on the other is statutory in terms of Section 52 (2) of the Delhi Cooperative Societies Act. It is submitted therefore that the Notification insofar as it seeks to exclude the responsibilities of

DTC is unsustainable as it exceeds the statutory mandate.

Section 52 of the Delhi Cooperative Societies Act reads as follows: -

> *"52. (1) Notwithstanding anything contained in any law for the time being in force, a member of a co-operative society may execute an agreement in favour of the co-operative society providing that his employer 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 co-operative society in satisfaction of any debt or other demand owing by the member to the co-operative society.*
>
> *(2) On the execution of such agreement, the employer shall, if so required by the co-operative society by a requisition in writing and so long as the co-operative society does not intimate that the whole of such debt or demand has been paid, make the deduction in accordance with the agreement and pay the amount so deducted to the co-operative society, as if it were a part of the salary or wages payable on the day as required under the Payment of Wages Act, 1936 (4 of 1936). Such payment shall be valid discharge of the employer for his liability to pay the amount deducted.*
>
> *(3) Where a requisition in writing from any co-operative society registered or deemed to be registered in any reciprocating State/Union territory in respect of a member of that co-operative society, who has executed any such agreement as is referred to in sub-section (1) and who, for the time being, is employed in Delhi, is received by his employer, the requisition shall be acted upon as if it had been made by a co-operative society in Delhi and the provisions of this section shall have effect accordingly.*
>
> *(4) If, after the receipt of a requisition made under sub-section (2) or sub-section (3), the employer at any time fails to deduct the amount specified in the requisition from the salary or wages payable to the member concerned or makes default in remitting*

the amount deducted to the co-operative society, the co-operative society shall be entitled to recover any such amount from the employer as arrears of land revenue and the amount so due from the employer shall rank in priority in respect of the liability of the employer equal to that of the wages in arrears.

(5) Nothing contained in this section shall apply to an establishment under a railway administration operating any railway as defined in clause (20) of article 366 of the Constitution."

As is evident the above provision particularly Section 52 (2) and 52 (4) casts absolute liability upon the employer - in this case the DTC - compelling it to deduct amounts in terms of the loan arrangements and agreements between the cooperative society and the borrower who might be its employee. Section 52 couched in mandatory terms states that the employer shall deduct the requisite or agreed amount from the salary and that such payments shall be adjusted towards the salary payable to the employee. To that extent the deduction would be deemed in discharge of the employer's duty to pay the proportionate amounts to the employee. Failure to comply with the terms of Section 52 (2) enables the creditor/cooperative society to approach the Revenue authorities for recovery of the amount in default as arrears of loan arrangement under Section 52 (4). Section 52 (5) clearly states that only one class of employer, i.e., the Railway Administration defined by Article 366 (20) of the Constitution would be exempted from the operation of the Section 52.

In view of the clear terms of Section 52, there is no question of DTC seeking to exclude itself from the operation of law to shrug off its statutory responsibilities. Consequently, the DTC cannot rely upon the impugned Notification of 10.01.2013. The same is declared to be inapplicable in the circumstances of the case.

It is clarified, however, that having regard to the phraseology adopted by Section 52, DTC cannot be compelled to deduct amounts payable by guarantors to a particular cooperative society specially if such guarantors are not in its employment any longer.

The writ petition is allowed in the above terms.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

MARCH 02, 2016
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