

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.**

WRIT PETITION NO. 4580 OF 2012

The Maharashtra State Road Transport
Corporation (Marathwada) Employees
Co-operative Credit Society's Union,
Aurangabad

Petitioner

Versus

The State of Maharashtra and others

Respondents

Mr. D.J. Choudhary, Advocate for the petitioner.

Mr. B.A. Shinde, A.G.P. for respondent Nos.1 and 15.

Mr. U.B. Shriram, Advocate holding for

Mr. D.S. Bagul, Advocate for respondent No.5.

Mr. A.D. Wange, Advocate for respondent No.7.

CORAM : RAVINDRA V. GHUGE

AND

SUNIL K. KOTWAL, JJ.

Dated : 03-11-2017.

ORAL ORDER :-

1. By this Petition, the petitioner Society has put-forth the following prayers in paragraphs 18-C and 18-D :-

18-C. The respondent No.1 to 11 may please be directed to follow the provisions of Sec.49 of the M.C.S. Act, 1960 and recover the dues of the customers of the respondent No.13 by issuing writ of

Mandamus or orders or directions in the nature of writ of mandamus.

18-D. *The respondent No.1 to 22 may please be directed to decide the representation dated 10.01.2012 seeking to follow the bond executed u/s. 49 and not to make discrimination in the recovery of the dues of the respondent No.13 and 14 within stipulated period and cancel the said circular directing to give preference to the recovery of dues of respondent No. 14 by issuing writ of Mandamus, orders or directions in the nature of writ of Mandamus.*

2. We have heard the learned Advocates for the respective sides.

3. We have find that the petitioner, in so far as this Petition is concerned, only prays that Section 49 of the Maharashtra Co-operative Societies Act, 1960 should not be violated or deviated from, by any of the respondents. Reliance is placed on the judgment of the learned Division Bench of this Court in the matter of **Poona Post and Telecom Co-operative Credit Society Ltd Vs. Union of India and others** , [2010 (1) Mh.L.J. 858]. A specific reliance is placed on paragraph Nos.1, 2, 10 and 11, which read as under :-

1. *This petition filed under Article 226 of the Constitution impugns the letter dated 29.3.2000 and the subsequent communications issued by respondent nos.2 to 4 denying to deduct the loan instalments from the salaries of the employees of the department of Posts and R.M.S. and to remit to the petitioner credit society. The petitioner further prays for a writ of mandamus or order in the like nature to the respondents to continue to deduct the amount of loan*

instalments and interest thereon from the monthly salaries and other dues payable to the employees of the Posts and R.M.S. departments, in view of the statutory obligations under Section 49 of the Maharashtra Co-operative Societies Act, 1960. (hereafter referred to as "the Act" for short).

2. *The petitioner is a Co-operative Credit Society duly registered under the Act and the employees of the Postal Department and Telegraph Department, and Wireless Department are its members. It advances loan to its members/ employees of all these departments and the repayment of loans is by monthly instalments along with interest to be deducted from the salaries of the members. Such deductions were being done by all the concerned departments. However, on 15.3.2000 the petitioner received a letter from respondent no.4 to the effect that henceforth the Director of Postal Services, Pune Region would be acting as the Ex-officio President of the petitioner society and same was the decision of respondent no.3. On 17.4.2000, the petitioner addressed a letter to respondent no.3 and pointed out that the President of the petitioner society is elected from amongst the gazetted officers of the Postal department, R.M.S. and Telecom departments as per Bye Law No.20 of its bye laws as amended on 11.11.1994. This led to exchange of letters between the parties and on 28.4.2000 respondent no.4 addressed a letter to the petitioner to the effect that according to the orders of the Directorate of Postal Department, the Chairman of the society must be an official representative and 1/3rd strength of the managing committee /executive committee of the society or 3 members whichever is less should be official nominees of the postal department. By a subsequent letter dated 26.6.2000 the respondent no.4 informed the petitioner that unless the demands of such nominations were considered, action will be taken to withdraw the facilities provided by the department. On 17.11.2000, the respondent no.4 issued directions to the subordinate postal officers not to recover the instalments of loan and interest from the salaries of*

the postal employees and such deductions should be stopped forthwith. On 22.11.2000 the respondent no.1 addressed a letter to the petitioner stating that all the facilities including the recovery of society subscription and loans from the pay and allowances of the staff was withdrawn as the petitioner had not accepted the demand of nominating the Director of Postal Services as Ex-Officio Chairman and three other officials as nominees of the Managing Committee/ Executive Committee and a deadline was set out in this regard stating that unless the demands made by respondent no.4 were considered by 27.11.2000 the deductions could not be made. On 29.12.2000 the Senior Post Master, Pune Head Office returned the recovery list on the ground that the facility of recovery from the staff salaries was withdrawn. In these circumstances, the petitioner has approached this court and has submitted that having regard to the scheme of Section 49 of the Act, the respondent nos.2 to 4 are obliged to deduct the loan instalments and remit to the petitioner on the basis of the agreement between the petitioner and its borrowing members who are the employees working under the said respondents.

10. *In our opinion, the scheme of Section 49 (2) clearly imposes the statutory obligation on the respondents to make the deductions of loan and interest thereon from the monthly salaries of the borrowing members of the petitioner society and it cannot be accepted that unless there is an agreement signed between the employees and respondents, such deductions are not required to be made by way of a statutory obligation. Accepting such a view will be simply writing something which is not provided for in Section 49 of the Act. It is well settled that the provisions of the statute are required to be read as they are and no external aid for interpretations is required unless the words of the statute are vague or lead to more than one interpretations. We hold that it is obligatory on the part of the respondents to effect the deductions as are required under Section 49 of the Act and remit the deducted amounts with the petitioner society failing which the penal provisions of sub section (3)*

of Section 49 would be applicable. We are informed that by way of interim order passed by this Court, the respondents have continued to do the deductions and as such deductions are being done as of now as well. There is no reason to deviate from this practice and the stand taken by the respondents in the impugned communications is not in keeping with the legal obligations and therefore unsustainable. Hence the communications must be quashed and set aside.

11. *In the premise, this petition succeeds and we quash and set aside the impugned communication, including the communication dated 22.11.2000 as well as 29.12.2000. As directed by the interim order, the respondent nos. 3 to 4 shall continue to extend the obligation to recover from staff salaries of all the members in keeping with the scheme of Section 49 of the Act, so long as such members are in service. Rule is thus made absolute and more particularly in terms of prayer clause 7(b).*

4. Learned Counsel for the petitioner submits that for the present he is praying for ensuring the compliance of Section 49 of the Maharashtra Co-operative Societies Act, 1960, which reads as under :-

49. *Deduction from salary to meet society's claim in certain cases-*
- (1) *A member of a society may execute an agreement in favour of the society, providing that his employer shall be competent to deduct from the or wages payable to him by the employer, such total amount payable to the society and in such instalments as may be specified in the agreement and to pay to the society the amounts so deducted in satisfaction of any debt or other demand of the society against the member. A copy of such agreement duly attested by an officer of the society shall be forwarded by the society to the employer.*
- (2) *On receipt of a copy of such agreement, the employer shall, if so required by the society by a requisition in writing, and so long as the total amount shown in the copy of the agreement*

as payable to the society has been deducted and paid to the society, make the deduction in accordance with the agreement and pay the amount so deducted to the society, as if it were a part of the wages payable by him as required under the Payment of Wages Act, 1936 on the day on which he makes payment.

- (3) *If after the receipt of a requisition made under the foregoing sub-section, 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 society, the employer shall be personally liable for the payment of such amount or where the employer has made deductions but the amount so deducted is not remitted to the society, then such amount together with interest thereon at one and half times the rate of interest charged by the society to the member for the period commencing on the date on which the amount was due to be paid to the society and ending on the date of actually remitting it to the society; and such amount together with the interest thereon, if any, shall, on a certificate issued by the Registrar, be recoverable from him as an arrear of land revenue, and the amount and interest so due shall rank in priority in respect of such liability of the employer as wages in arrears.*
- (4) *Nothing contained in this sections hall apply to persons employed in any railways (within the meaning of the Constitution) and in mines and oil fields.*

5. We do not find from the submissions of the learned Advocates for the respondents that they seek to deviate from Section 49 of the Maharashtra Co-operative Societies Act. No such submission is put-forth before us by the learned Advocates for the respondents that they do not desire to follow Section 49 or that they do not desire the compliance of Section 49 of the said Act.

6. In the case of **Poona Post and Telecom Co-operative Credit Society Ltd** (supra), this Court has concluded that the statutory obligation to make deductions of loan and interest from the monthly salaries of the borrowing members cannot be ignored and the contention that unless there is an agreement signed between the employees and the respondents, no such deduction can be carried out, can not be accepted.

7. Learned Counsel for the respective sides informed that the M.S.R.T.C. has issued a Circular which is the subject-matter of Writ Petition No. 12456 of 2017. We do not intend to delve on the said issue as the said aspect is subjudice before the learned Division Bench of this Court in the said Writ Petition.

8. Considering the above and especially in the light of the law laid down by this Court in the case of **Poona Post and Telecom Co-operative Credit Society Ltd** (supra), we allow this Petition by directing the respondents that they cannot ignore or disobey the mandate of Section 49 of the Maharashtra Co-operative Societies Act and in the matters of recovery, they shall be governed by Section 49 of the said Act.

(**SUNIL K. KOTWAL**)
JUDGE

(**RAVINDRA V. GHUGE**)
JUDGE