IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2017

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

W.A.No.1079 of 2017
and
CMP.Nos.15032 and 15033 of 2017

The Tamil Nadu Accountant General's
Office Staff Co-op. Credit Society Ltd.
Represented by its Secretary
M.Thinagaran ... Appellant

vs.

1.The Accountant General (A&E), Tamil Nadu
361, Anna Salai,
Teynampet,
Chennai - 600 018.

2.The Comptroller & Auditor General of India,
9, Deen Dayal Upadhyay Marg,
New Delhi - 110 002.

3.The Central Registrar,
Room No.224,
Department of Agriculture & Cooperation
Ministry of Agriculture, Krishi Bhawan
New Delhi - 110 001. ... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 14.07.2017 passed by a learned Single Judge of this Court in WP.No.4349 of 2017.

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WP 4349/2017 PRAYER:

Petition Under Article 226 of the Constitution of India praying to issue writ of Certiorarified mandamus calling for the records pertaining to the impugned order dated 02/02/2017 In Letter No.AG(A&E)/Estt V/Genl/2016-17/241 of the First Respondent and quash the same and consequently direct the First Respondent to deduct from Salary as provided under Section 60 of the Multi State Co-operative Societies Act 2002 and further not to disturb or obstruct any of the facility enjoyed by the Petitioner society

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For Appellant : Mr.S.S.Rajesh
For R1 : Mr.V.Vijay Shankar
For R3 & R2 : No appearance

JUDGMENT

(Judgment of the Court was delivered by HULUVADI G. RAMESH, J.)

The unsuccessful writ petitioner viz., The Tamil Nadu Accountant General's Office Staff Co-op. Credit Society Ltd, Chennai ("the Society" for brevity), is the appellant herein. The Society has come up with the present Writ Appeal as against the order, dismissing the writ petition filed by them.

2.The issue involved in the writ petition is, whether a Multi State Co-operative Society is entitled to recover the loan dues from the salary of its Members, who are all the employees working in the office of the Accountant General of Tamil Nadu, in the absence of any agreement or authorisation from the Pay Disbursing Officer, office of the Accountant General of Tamil Nadu.

3.The case of the Society before the learned Single Judge was that it was registered under the Multi State Co-operative Societies Act, 2002, (for brevity "the Act") for the welfare of the members, who are all the employees working under the control of Accountant General of Tamil Nadu. The Society is functioning based on the By-Laws approved by the General Body and by the Central Registrar of Co-operative Societies. The Elected Board is administering the Society. One of the welfare policies adopted by the Society is providing loans to its members. Accordingly, the Society is sanctioning loans to its members. The repayment of loans is normally made by the employer by deducting the dues from the salary or wages payable to the members, as per Section 60 of the Act. While so, the first respondent, by letter bearing No.AG (A&E)/Estt V/Genl/2016-17/241 dated 02.02.2017 informed the Society that as there is no provision for recovery of monthly subscription and loan, they could not deduct the amount due to the Society from the salary of its members from February 2017 onwards. Challenging the said communication, the Society has preferred the writ petition in WP.No.4349 of 2017.

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4.By the order impugned in this writ appeal, the learned Single Judge has dismissed the aforesaid writ petition. While doing so, it was observed in paras 12, 23, 24 and 25 of the said order, as follows:

> "12. This Court is of the view that the petitioner society is a Co-operative Society registered under the Multi State Co-operative Societies Act and it is not a State and in fact,

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it is administered by the Board of Directors and the Members of the Society as a private body. The welfare policies announced by the Society is only for the welfare of its members and the entire administration are vested in the hands of the Board of Management elected by the Members. The administration of the society is no way connected or concerned with the office of the Accountant General of Tamil Nadu and as a welfare State, the Accountant General can extend some support for the formation of the society and for the welfare of its employees. Therefore, there is no legal duty on the part of the Accountant General of Tamil Nadu to control the administration and affairs of the writ petitioner Co-operative Society nor the respondents can interfere with the administration of the Co-operative Society. Absolutely they have no control over the administration or function of the writ petitioner / Co-operative Society."

"23. Unfortunately, by mistake or error, the writ petitioner has failed to obtain such an authorisation at the time of sanctioning loan to its members. Thus, at this point of time, the error occurred cannot be cured and it is left open to them to recover the dues under the Provisions of Multi State Co-operative Society Act and the Rules therein."

"24. On reading of Section 60 along with the Rules, the management of the writ petitioner Co-operative Society ought to have prescribed a column in the loan application itself for receiving proper endorsement from the Pay Disbursing Officer. This Court is of the opinion that such a mistake /lacuna committed by the Administration/ Management of the writ petitioner co-operative society, at this point of time, cannot pleaded so as to recover their loan dues from its members by attaching the salary without any authorisation from the employer."

"25. In this view of the matter, this Court is of the view that there is no infirmity in the communication given through the impugned order in the writ petition and it is for the writ petitioner to work out their remedy against its members to recover the loan dues in the manner known to law."

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Feeling aggrieved over the order of the learned Single Judge, the Society is before this Court with the present writ appeal.

5.The main plank of contention of the Society is that it is the statutory obligation of the respondents herein to recover the loan dues from its employees and pay the same to the Society, in terms of Section 60 of the Act. However, without appreciating the same in a proper perspective, the learned Single Judge erred in concluding that there is no agreement with the employer to recover/deduct the loans due from the salary of the employees and to pay the same to the Society.

6.Learned counsel for the Society placed reliance on a decision of this Court in 2009 (26) CTCOL 378 (Mad.) [Thiruvalluvar Transport Corporation Employees Co.op Credit Society Ltd rep. by its Secretary v. The State Express Transport and others], wherein, it has been held as follows:

> "Therefore, the contention of Mr.Jayesh B.Dolia, learned counsel for the respondent-Corporations that the obligation of the respondents is only contractual in nature and that the contract is liable for termination, cannot be accepted. As a matter of fact, Justice S.S.Subramani, has taken a similar view in unreported decision in UCO Bank Employees' Co-op. Thrift 7 Credit Society Ltd. V. UCO Bank and Ors. W.P.No.14510 of 1998 dated 7.12.1998 where it has been held as follows:
>
> > "Under the Multi State Co-operative Societies Act also, when such authorisation is given, the employer is legally bound to deduct from the wages and pay the same to the Society. This established practice cannot be withdrawn, at any rate without notice to the petitioner."

7.On the contrary, learned Standing counsel for the respondents 1 and 2 reiterated the same averments as made in the counter affidavit. According to him, there was no provision for recovery of monthly subscription and loan on regular basis. Further, there was no agreement existing between the first respondent and Society or there was no undertaking or consent given by the employees to the first respondent to such effect. As such, the question of deducting the amount from the salary of the employees does not arise.

8.Heard the submissions of the parties and perused the materials placed before this Court.

9.Incontrovertibly, the Society is registered under the

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provisions of the Act. The Society was formed for the welfare of the staff members of the Tamil Nadu Accountant General Office. The main object of the Society is to promote the economic and social condition of its members through mutual aid in accordance with the by-laws.

10.Section 60 of the Act provides deduction from salary to meet the claim of the Society in certain cases, which read thus:

> (1) Notwithstanding anything contained in any law for the time being in force, a member of a multi-state cooperative society may execute an agreement in favour of that society providing that his employer disbursing his salary or wages shall be competent to deduct every month from the salary or wages payable to him, 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 the member owes to the society.
>
> (2) On the execution of such agreement, the employer disbursing the salary or wages of the members shall, if so required by the multistate cooperative society, by a requisition in writing and so long as the society does not intimate that the whole of such debt or other demand has been paid, make the deduction in accordance with the agreement and pay the amount so deducted to the society within a period of fourteen days of the date on which deduction has been made, 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), and such payment shall be valid discharge of the employer for his liability to pay the amount deducted.
>
> (3) If after the receipt of a requisition made under sub-section (2), the employer disbursing the salary or wages of the member 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 multi-state cooperative society, the society shall be entitled to recover any such amount from such employer as arrears of land revenue and the amount so due from such employer shall rank in priority in respect of the liability of such employer equal to that of the salary or wages in arrears.

However, the aforesaid provision makes it clear in no uncertain terms that there must be an agreement or authorisation to effect deduction from the salary of the employees, so as to meet the claim of the Society.

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11.Even in the decision relied upon on the side of the Society, it is held by this Court that only when an authorisation is given, the employer is legally bound to recover the dues from the employees and pay the same to the Society and therefore, an authorisation to the Pay Disbursing Officer is a precondition for effecting recovery.

12.After analysing the entire facts and circumstances of the case, the learned Single Judge was of the view that in the absence of a specific undertaking having been executed, it may not be possible for the first respondent viz., the office of the Accountant General of Tamil Nadu suo motu to effect recovery based on the demand made by the Society and pay the money to the Society; the first respondent cannot act as a recovering agency on behalf of the Co-operative Societies; the office of the Accountant General of Tamil Nadu is functioning based on the Act and Rules and the guidelines issued by the Government of India; it is not a bounden duty of the first respondent to recover any loan dues suo motu or at the request of the Society and pay the same to the Society.

13.We do not find any reason, much less valid reason, to disagree with such view taken by the learned Single Judge. Accordingly, the order of the learned Single Judge is hereby, confirmed.

14.Before parting with the matter, it is worth mentioning that we cannot slightly brush aside the plight of the Society, as it was formed solely for the welfare of its members, who are all working in the office of the first respondent and its main object is to promote the economic and social condition of its members. Further, the Society is advancing loans to its members for meeting out their emergent needs. If there is no scope for recovering the loans already given to some of its members, the Society will not be in a position to fulfil the genuine claim of its other members and the monthly dues payable by its members approximately works out to Rs.75 lakhs. In the event of the same being not recovered, the administration of the Society would be paralyzed. Having regard to the same, we are of the opinion that for the smooth functioning of the Society, there must be a legal obligation created on the part of the employer, enabling them to recover/deduct the loan dues from the salary of the employees and pay the same to the Society. For a workable solution, a tripartite agreement should be entered into amongst the employer, employee and Society, in respect of all the claims of the Society.

15.In such view of the matter, the Society is permitted to submit an application to the respondent concerned to go for a tripartite agreement, in the interest, welfare as well as

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survival of the Society. On submitting such application, the respondent concerned shall consider the request of the Society and take a decision within a reasonable time, to facilitate the smooth running of the Society.

16.The Writ Appeal stands disposed of, as indicated above. No Costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

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To
1.The Accountant General (A&E), Tamil Nadu
361, Anna Salai,
Teynampet,
Chennai - 600 018.

2.The Comptroller & Auditor General of India,
9, Deen Dayal Upadhyay Marg,
New Delhi - 110 002.

3.The Central Registrar,
Room No.224,
Department of Agriculture & Cooperation
Ministry of Agriculture, Krishi Bhawan
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+2cc to Mr.S.S.RAJESH Advocate, S.R.No. 83395
+1cc to Mr.V.VIJAY SHANKAR Advocate, S.R.No. 84090

W.A.No.1079 of 2017

RK(CO)
TR(21/12/2017)

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