IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2017

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THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P. No. 4349 of 2017
and W.M.P.Nos. 4539 & 19479 of 2017

The Tamil Nadu Accountant General's
Office Staff Co-operative Credit Society Ltd.,
Rep by its Secretary M.Thinagaran,
361, Anna Salai, Teynampet,
Chennai - 600 018. ... Petitioner

Vs

1. The Accountant General (A&E),
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

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a 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.

For Petitioner : Mr.S.S.Rajesh

For Respondents : Mr.V.Vijayashankar (For R1&R2)
No appearance (For R3)

ORDER

The issue to be decided in this writ petition, in nut shell 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 under 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. The writ petitioner is a co-operative society registered under the Multi State Co-operative Societies Act 2002.

2. The grievances of the writ petitioner is that the Co-operative Society was registered for the welfare of its Members, but all the employees are 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 Society was registered under the Central Act and the over all controlling authority is the Central Registrar of Co-operative Societies under the Act. The Elected Board is administering the society and they are deciding the policy to be adopted for the welfare of its members.

3. One of the welfare policies adopted by the Society is providing loans to its members and accordingly, the writ petitioner society is sanctioning loans to its members. For the purpose of sanctioning the loan, the member has to fill up and sign the required application-cum-agreement.

4. The learned counsel appearing for the writ petitioner submitted a copy of the application and a copy of the agreement between with the Society and the member.

5. On perusal of the agreement with the Society, this Court is able to find out that the member of the Society alone is the Signatory in the agreement with the Society. Even, in the loan application form, there is no agreement with the employer, viz., the Accountant General of Tamil Nadu. The relationship between a Government employee and the Government is contractual in nature. Loan borrowed by a Government employee is to be properly authorised by the employer and only in such an event, it will be possible for an employer to recover from the salary of the employee and pay the same to the Societies concerned.

6. In the absence of any consent or authorisation by the Pay Disbursing Officer of such an employee, it may not be possible and it will not be legal on the part of the employer from

recovering the loan dues and paying Suo Motu only at the request of the writ petitioner/ Co-operative Society.

7. Learned counsel appearing for the respondents contended that the relationship between the employee and the Government is contractual in nature and it is necessary that the Government servant, who borrowed the loan from any organisation has to inform and obtain an authorisation from the employer for recovery of the loan dues from his salary.

8. Learned counsel for the respondents further contended that the salary of an employee is a fundamental right and it is an earned wage by an employee and without his consent no recovery can be imposed in respect of the loan dues to be paid other than the Government. The Government dues and recovery are governed under the Government Rules and any other recovery to be made in respect of loans and other dues towards other agency, a specific undertaking or authorisation is required to be undertaken, by the Pay Disbursing Officer of the office of the Accountant General of Tamil Nadu /the employer concerned.

9. In the absence of executing such a specific undertaking it may not be possible for the Office of the Accountant General of Tamil Nadu Suo Motu to effect recovery only based on the demand made by the Co-operative Society and pay the money to the Society. In other words, the Accountant General cannot act as a recovering agency on behalf of the Co-operative Societies. More so, 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 and they is no bounden duty to recover any loan dues suo motu or at the request of the Co-operative Society and pay the same to the Co-operative Society.

10. Learned counsel appearing for the respondents contended that the very Multi State Co-operative Societies Act provides for recovery of loan dues from the member is provided. The only precondition is that at the time of sanctioning loan the employee has to provide an undertaking to the Pay Disbursing Officer stating that the loan dues shall be recovered from his salary and the same to be paid to the Co-operative Society, and such an undertaking to be authorised by the Pay Disbursing Officer.

11. In the absence of any such undertaking by the employee, it may not be proper on the part of the employer viz., the Accountant General of Tamil Nadu to recover the loan dues from the salary and to pay the same to the Co-operative Society.

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, 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.

13. The very purpose of Section 60 in the Multi State Co-operative Societies Act is to make a provision enabling a Co-operative Society to realise the loan dues from the employees, in view of the fact that the Co-operative Society is registered by the Members for the welfare of the employees working under the control of Accountant General of Tamil Nadu. Even Section 60 (2) says that

> "On the execution of such agreement, the employer disbursing the salary or wages of the members shall, if so required by the multi State co-operative 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."

14. The learned counsel appearing for the writ petitioner contended that the statutory requirement is to be complied with. It is the statutory obligation on the part of the respondents to recover the loan dues from its employees and pay the same to the writ petitioner society. No doubt it is rightly contended by the learned counsel for the writ petitioner, that it is the statutory obligation on the part of the respondents to recover the loan dues from the employees and pay the same to the Co-

operative Societies at its request, provided, there is an execution of agreement to that extent. It means that there must be an authorisation by the Pay Disbursing Officer that the employee agrees to recover the loan dues from the salary, by the employer.

15. In the absence of such an endorsement by the Pay Disbursing Officer, if any amount is recovered there is a possibility of raising an objection by the employee that without his consent the employer has no right to recover any amount from the salary.

16. An undertaking by the Government employee and an authorisation by the employer to that effect is a precondition for effecting recovery.

17. In the absence of any such undertaking by any employee for recovery from salary at the time of sanctioning loan, it may not be proper to recover suo motu at the request of the Co-operative society and pay the same to the Society. Thus, this Court is of the view that an undertaking by the employee and an authorisation by the Pay Disbursing Officer of the Office of the Accountant General of Tamil Nadu is a precondition for effecting recovery from the salary of such employees/members who borrowed loan from the writ petitioner society.

18. The learned counsel appearing for the writ petitioner submitted a copy of the application cum agreement between the employee and the petitioners society.

19. On perusal of the same, there is no column and there is no endorsement of the Pay Disbursing Officer. Further, the loan was sanctioned in the absence of such an undertaking and authorisation. Thus, there is no legal duty casted upon the respondents to recover suo motu from the employees/members.

20. Learned counsel appearing for the writ petitioner brought to the notice of this Court regarding the judgment rendered in the case of Thiruvalluvar Transport Corporation Employees Co-operative Credit Society Limited rep by its Secretary and Ors. Vs. The State Express Transport and Ors. Reported in 2009 (26) CTCOL 378 (Madras).

Paragraph 15 is extracted hereunder :

> "15. 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.

21. Even in this judgment, it is unambiguously stated that under the Multi State Co-operative Societies Act also only when such an authorisation is given, the employer is legally bound to recover the same from the employees and pay the same to the writ petitioner co-operative society. And therefore, an authorisation from the employer to recover the amount is a precondition for effecting recovery.

22. Admittedly, the writ petitioner Co-operative Society is alien to the Government administration and therefore, they have to satisfy the legal requirements. Thus, an authorisation to the Pay Disbursing Officer is a precondition prescribed even in this judgment cited by the learned counsel for the petitioner.

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.

26. Accordingly, the writ petition stands dismissed. However, there is no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

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

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   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.

+1cc to M/s.V.Vijayshankar, Advocate, S.R.No.49822
+2cc to M/s.S.S.Rajesh, Advocate, S.R.No.49244

W.P.No. 4349 of 2017

CU(27/07/2017)