In the High Court at Calcutta
Constitutional Writ Jurisdiction
Original Side

The Hon'ble Justice Sabyasachi Bhattacharyya

W.P.O. No. 56 of 2014
IA No. GA/1/2015 (Old No.GA/3881/2015), GA/5/2021

The Calcutta Tramways Employees' Co-operative Credit Society Limited
Vs.
The State of West Bengal and others

For the petitioner	:	Mr. Saptanshu Basu, Mr. Shibnath Bhattacharya, Mr. Abhishek Bhattacharjee.
For the respondent	:	Mr. Soumya Majumdar, Ms. Deblina Chattaraj.
Hearing concluded on	:	02.05.2022
Judgment on	:	20.05.2022

Sabyasachi Bhattacharyya, J:-

1. The petitioner is a registered credit co-operative society of the employees of the erstwhile Calcutta Tramways, now under the West Bengal Transport Corporation Limited. The grievance raised in the writ petition was originally that the due deductions payable to the petitioner-society by the employer company under Section 59 of the West Bengal Co-Operative Societies Act, 2006 (hereinafter referred to as "the 2006 Act") was withheld by the employer, as represented through the respondent nos. 2 and 3.

2. Subsequently, some payments were made by the said respondents pursuant to different orders passed by co-ordinate Benches of this court and the principal dues have admittedly been cleared. However, according to the petitioner, a major part of the interest due under Section 59(3) of the 2006 Act has not yet been paid. Respondent nos. 2 and 3, however, assert that there are no further dues on account of interest as well.

3. Section 59 of the 2006 Act is set out below for convenience:

> ***"59. Deduction of dues to Co-operative, societies from members and sureties.***- *(1) A member of a Co-operative society may execute an agreement in favour of the Co-operative society providing that his employer or the drawing and disbursing officer where applicable shall be competent to deduct from the salaries or wages and retiring gratuity or death gratuity payable to him by such employer or the drawing and disbursing officer where applicable such amount as may be specified in the agreement and to pay the amount to the Co-operative society in satisfaction of any debt or other demands of the Co-operative society against the member. A copy of such agreement shall be furnished to the employer or the drawing and disbursing officer where applicable.*
> *(2) Upon the execution of the agreement under sub-section (1), the employer or the drawing and disbursing officer where applicable shall on the requisition of the Co-operative society in writing and for so long as the Co-operative society does not intimate that the debt or demand has been fully paid, make the deduction in accordance with the agreement and pay the amount to the Co-operative society within fifteen days from the date of such deduction as if it were part of the wages payable by him under the Payment of Wage Act, 1936 (4 of 1936) on the date on which he makes the payment.*
> *(3) If the employer or the drawing and disbursing officer fails to make the deduction under sub-section (2) or defaults in making payment to the Co-operative society, he shall be liable to make the payment to the Co-operative society together with interest at twelve per cent per annum and the entire amount shall be recoverable from the employer or drawing and disbursing officer by the Co-operative society as an arrear of land revenue and such amount shall rank in priority in respect of the liability of the employer or drawing and disbursing officer as wages in arrear."*

4. Counsel for both sides have orally argued and filed written notes of arguments. Upon going through the pleadings, annexures thereto and arguments, the court arrives at the following decision:

5. A moot objection taken by the respondents is that the writ petition is for a money claim, which is time-barred and beyond the writ jurisdiction.

6. As far as the first question is concerned, contrary to the submissions of the respondents, the cause of action is continuing, in view of the language of Section 59 of the 2006 Act. The employer or the drawing and disbursing officer, as the case may be, shall upon deduction, go on paying the amounts to the co-operative society within fifteen days from the date of the deduction. However, the liability does not end there.

7. In the event the employer fails to make the deduction or defaults in making such payment to the society, he shall be "liable to make the payment to the Co-operative society together with interest at twelve per cent per annum and the entire amount shall be recoverable from the employer…" by the co-operative society as an arrear of land revenue and such amount "shall rank in priority in respect of the liability of the employer or drawing and disbursing officer as wages in arrear". Hence, the employer's liability, unlike an ordinary money claim, continues to be enforceable at the instance of the society even after the limitation period for a money suit, that is, three years.

8. Regarding the maintainability of the writ petition, the claim is against a public authority, which is owned and controlled by the State and comes within the purview of Article 12 of the Constitution. The function discharged by the employer is a statutory liability. Unlike a private employer, the employer in the present case is a public authority which is supposed to act in every sphere as a model employer. Moreover, the payment, including interest, is recoverable as a "land revenue", which is in the nature of a 'public demand' under the Public Demand Recovery Act.

9. The withholding of the dues under Section 59 of the 2006 Act is not only a statutory violation, but, in a broader sense, infringes the fundamental rights of freedom to profession and of life and liberty, as enshrined under Articles 19 and 21 of the Constitution of India, of the employees, whose interest is represented by the petitioner-society.

10. Hence, the writ court can, in exercise of its powers under Article 226 of the Constitution of India, issue prerogative writs directing compliance of such duties of the employer.

11. Although learned counsel for the respondent nos. 2 and 3 contends that the deductions, as claimed, do not form a part of Section 7 of the Payment of Wages Act, 1936, which statute has been referred to in Section 59 (2) of the 2006 Act, such contention is not tenable in the eye of law, for the following reason.

12. Sub-section (2) of Section 59 refers to the 1936 Act in the limited context of drawing a parallel on the quantum of wages stipulated in such Act, and not in respect of the deductions contemplated under the 1936 Act. The exact language of the relevant portion of sub-section (2) is, "… make the deduction in accordance with the agreement and pay the amount to the co-operative society within fifteen days from the date of such deduction as if it were part of the *wages payable by him under the Payment of Wages Act, 1936…" (Italics supplied by me).*

13. That apart, the respondent nos. 2 and 3 have further sought to restrict the interest payable by them to ten per cent, which is the interest on loan payable by the employees to the petitioner-society as per their individual loan bonds. However, the said rate cannot be equated or mixed up which the twelve per cent statutorily payable by the respondent nos. 2 and 3 in terms of Section 59(3) of the 2006 Act.

14. The interest payable on the loans by the employees to the petitioner-society arises from the liability fixed under their individual loan bonds, whereas the twelve per cent per annum interest payable by the respondent nos. 2 and 3 to the society is not merely intended to cover such loan bond interest but is on an entirely different footing.

15. First, as per the arguments of respondent nos. 2 and 3 themselves, the employer is not a party to the individual loan agreements between the employees and their society.

16. Secondly, the ten per cent loan interest is *contractual*, between the individual employees and the society, whereas the twelve per cent interest payable by the respondent nos. 2 and 3 to the society is a penal *statutory* provision, for delay on the part of the said respondents to pay the dues of the employees' society after fifteen days from the due date of payment.

17. Ten per cent interest on loan may be a revenue for the petitioner-society (which is admittedly a credit co-operative society) for the services rendered by it to its individual members, but is entirely distinct from the twelve per cent penal interest payable by the employer for delayed payment. The employer either already deducts the amount from the salaries, wages, etc. of the employees statutorily under Section 59 of the 2006 Act or neglects their duty to do so, for which they have to pay up from their own coffers in either case. In the event the said amount, along with twelve per cent statutory interest for delay, is withheld by the employer after making such deductions from the employees (or the employer neglects to do so), the same willtantamount to unjust enrichment for the employer.

18. Insofar as the actual quantum of dues of interest is concerned, the respondent nos. 2 and 3 have taken different stances before this court at different points of time, but have never denied their liability to pay. The denials, if any, are blatantly evasive. The employer has, in fact, not quantified any specific amount which is due in lieu of interest, despite being specifically directed to disclose the same and its break-up vide order dated April 18, 2022 in the present writ petition.

19. In the series of correspondence between the employee and the petitioner-society, as annexed to the writ petition, there has been either tacit or explicit admission of dues on the part of the employer.

20. On the other hand, the petitioner-society, in its written notes of arguments, has clearly disclosed the due amount, supported by a detailed break-up of calculations by a registered Chartered Accountant. Although not on oath, which rules out the strict applicability of the doctrine of non-traverse, the said break-up disclosed by the petitioner has not been rebutted by any alternative calculation by the respondents.

21. In any event, since the dues of interest disclosed by the petitioner-society in its written notes of arguments have been computed at the statutory rate of twelve per cent per annum and are backed up by detailed consideration of the parts of the principal dues paid at each stage (as borne out by the supporting detailed break-up given by a registered Chartered Accountant), there is nothing before the court to disbelieve such calculations.

22. Hence, WPO 56 of 2014, along withIA No. GA/1/2015 (Old No. GA/3881/2015) and GA/5/2021, are disposed of by directing the respondent nos. 2 and 3 and/or the employer, namely the West Bengal Transport Corporation Limited and/or the drawing and disbursing officer to disburse the balance due of interest at the statutory rate of 12 % per annum till April 15, 2022, to the tune of Rs. 16,01,95,890(rounded off to the nearest Rupee), as per the petitioner's unrebutted calculation, to the petitioner-society as expeditiously as possible, in four approximately equal monthly instalments, the first of which shall be paid by June 15, 2022 and thereafter by the 15th day of each succeeding month. The remaining balance dues, over and above such equal monthly amounts, shall be disbursed with the fourth and last monthly instalment, payable by September 15, 2022.

23. In default of payment of any such instalment, the entire amount due,as on the date of such default, along with 18 per cent per annum interest on the entire due amount, from the date of default till the date of payment, shall be recoverable in terms of Section 59 (3) of the West Bengal Co-operative Societies Act, 2006 as an arrear of land revenue and such amount shall rank in priority in respect of the liability of the employer or drawing and disbursing officer as wages in arrear.

24. There will be no order as to costs.

25. Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)