IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 31.10.2022

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No.20870 of 2016 and
WMP.No.17883 of 2016

Tamilnadu State Transport Corporation
(Salem Division-I) Employees' Co-operative
Thrift and Credit Society Ltd., S.S.59,
Rep. by its Secretary,
No.164, A2 ELLEM Complex,
Sathianarayana Road,
Swarnapuri, Salem-4. ... Petitioner

Vs

1.The Government of Tamilnadu,
Rep. by its Secretary to Government,
Transport Department,
Fort St. George, Chennai-9.

2.The Managing Director,
Tamilnadu State Transport Corporation (Salem),
No.12, Ramakrishna Road,
Salem – 636 007. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the order in Pa.No.006/E.P.7/E.Pa.P/APoKa/Salem/2016 dated 3.05.2016 on the file of the 2nd respondent quash the same.

For Petitioner : Mr.M.S.Palaniswamy

For Respondents : Mr.R.U.Dinesh Rajkumar (for R1)
Additional Government Pleader

Mr.R.Raman Laal (for R2)
Additional Advocate General-I
for M/s.R.Babu,
Standing Counsel for TNSTC, Salem

O R D E R

The petitioner is the Tamil Nadu State Transport Corporation (Salem Division-I) Employees Co-operative Thrift and Credit Society Limited SS5 (in short 'Society'). In the course of its regular working, the petitioner, established in the year 1981, advances monies to employees of the second respondent/Tamil Nadu State Transport Corporation (Salem). At the time of filing of this writ petition in 2016, there were 3354 employees on its rolls, who were members of the petitioner society. The object of the Society is the extension of loans for education of the members' children, medical, wedding and other necessary family expenses.

2.In terms of Section 48(1) of the Tamil Nadu Co-operative Societies Act, 1983 (in short 'Act'), the members of the petitioner society have entered into agreements with the society providing that there shall be a deduction from salary or, post employment, from the gratuity paid by the employer, towards repayment of the loans received.

3.The provisions of Section 48 of the Act deal with statutory deductions from salary, wages or gratuity. Section 48(2)(a) states that where any agreement, as referred to in sub-Section (1) has been executed by a member with the society, then it is mandatory for the employer of the disbursing officer to, upon receipt of a requisition from the society, effect deduction from the salary/wages/gratuity, as the case may be, and pay over the amount deducted to the society within a period of 14 days from the date on which the deduction has been effected.

4.There had been efforts by the Transport Corporations to step out of the responsibility cast upon it by Section 48(2)(a), complaining that the responsibilities were onerous and the efforts to be taken for deduction and remittance, very cumbersome. Such attempts by various Corporations came to be challenged by various credit societies, both Multi-state and state level societies, in a batch of Writ Petitions in WP.Nos.30864 of 2008, 1547 and 2596 of 2009.

5.Mr. Justice V.Ramasubramanian, as he then was, by order dated 17.02.2009, accepted the submissions of the Societies repelling the argument of the

Transport Corporations. He compared the provisions of Section 60 of the Multi-State Cooperative Societies Act, 2002 and Section 48 of the Tamil Nadu Co-operative Societies Act, 1983 noticing the distinctions between the two.

6.At paragraph 11 he noticed specifically that it was only the Society concerned and the employee, who were required to enter into a bilateral agreement for repayment of the loan, and the presence of the Transport Corporation/the employer, was not required. Thus, upon the execution of an agreement between the Society and the employee, the responsibility cast upon the Transport Corporation under Section 48 of the Act kicked in automatically.

7.At paragraphs 11 to 13 the learned Judge states as follows:

> *'11. A comparison of the provisions of both the enactments make clear, the following:-*
>
> *(a) Section 60 (1) of the Central Act, begins with a non obstante clause. Similarly, Section 48 (7) of the State Act, also declares that the provisions of the Section shall apply notwithstanding any law to the contrary, for the time being in force.*
>
> *(b) Section 60 (1) of the Central Act, as well as Section 48 (1) of the State Act, enables a member of the Multi State Co-operative Society or a Co-operative Society, as the case may be, to execute an agreement in favour of the Society, of which he is a member. Interestingly, there is no indication in these provisions, that such an agreement would be a tripartite agreement. Section 60 (1) of the Central Act, as well as Section 48(1) of the State Act, use the same phrase viz., "a member of ..... Society may execute an agreement in favour of that Society". Therefore it is clear that these provisions do*

not contemplate such agreements to be tripartite in nature. They are only bipartite agreements between the member and the Society.

(c) Sub Sections (2) of both these provisions viz., Section 60 of the Central Act and Section 48 of the State Act, are also similarly worded in the sense that the employer is made obligated to make deductions from the salaries, if two conditions are satisfied. The first condition to be satisfied is that an agreement as per sub section (1) should have been executed between the member and the Society. The second condition is that there must be a "requisition in writing from the Society". If both these conditions are satisfied, the employer becomes obligated. The provisions of both these enactments do not appear to confer any discretion upon the employer, as sub sections (2) of both these provisions use the same expression "the employer .... shall"

(d) Sub sections (2) of both these provisions do not even stipulate a requisition in writing from the employee concerned. They only envisage a requisition in writing from the Society concerned. Thus the obligation imposed under these provisions comes into effect, the moment an agreement is executed by a member with the Co-operative Society and the Society in turn, makes a request in writing to the employer.

(e) Section 48 (6) of the State Act, makes the employer or the Officer disbursing the salary, vulnerable for penal action, if they fail to comply with the provisions of the Section. The failure contemplated by this provision, is not a mere failure to remit the money deducted from the salary of the employee. It includes a failure even to effect recovery from the salary.

(f) Under Section 48 (8) of the State Act, the Registrar of Co-operative Societies, is conferred with the power of a Collector under the Tamil Nadu Revenue Recovery Act, 1864, for the purpose of recovering any amount deducted by the employer from the salary of the employee, but not remitted to the Society.

12. All the above salient features of Section 48 of the State Act and Section 60 of the Central Act, establish beyond any shadow of doubt that the obligation in question, is not contractual but statutory *in character. First of all, the provisions of these Acts, do not contemplate a contract, to which the employer is required to be made a party. The agreement referred to in these provisions, is to be only between the member and the Society. Therefore there is no contract, to which the employer is a party, in so far as the deductions are concerned. At the most, the obligation to effect recovery from the salary of the employees, can be read into the contract of employment. But if so read, the same would become part and parcel of the terms and conditions of service of workmen, which cannot be altered without notice, in view of Section 9-A of the Industrial Disputes Act, 1947.*

13. Moreover, a mere contractual obligation, cannot result in prosecution and penal consequences, in case of breach. The very fact that even the failure to effect recovery from the salary is made a punishable offence, is indicative of the fact that the obligation is statutory in character. The fact that the provisions of the Revenue Recovery Act, can be invoked against the employer, in case of failure to remit the amount already deducted, lends support to the view that the obligation is statutory.'

8.This decision has attained finality and with this, the responsibilities cast upon the Transport Corporations to deduct and remit within 14 days, cannot be questioned any longer.

9.In the present case, the factual matrix is slightly different insofar as the State Transport Corporations have both deducted and remitted the amounts to the Society. However, by way of the impugned communication, they have proceeded to levy service charge along with interest for their efforts in this regard, the former being computed at 2.5% of the remittances made. The charges are levied as a measure of compensation for the costs incurred by them, presumably for their efforts and for specific expenditure incurred for this purpose. It is this communication, which is under challenge in the present writ petition.

10.The society questions the statutory backing for the impugned levy of service charges and interest pointing out that there is nothing in the Act, the Rules or for that matter, in the agreement entered into between the society and the employee, to warrant or justify such imposition. They would submit that this is a punitive measure that would lead to great prejudice and hardship to the employees of the Transport Corporations.

11.If such a levy were to be upheld, Mr.M.S.Palaniswamy, learned counsel for the petitioner would point out, the Society would have no option but to pass on such service charges to the employees themselves, which would defeat the purpose of the loans, since the loan were advanced to meet family exigencies and expenses.

12.Per contra, the respondents would argue that there is no bar against the levy of service charges and they must be compensated for their time, effort and additional cost incurred by them in effecting the deduction and remitttances.

13.Having heard both learned counsel, my decision is as follows. The impugned communication dated 03.05.2016 has, in the opening paragraphs, referred to the necessity for additional infrastructure as well as efforts by the Transport Corporation in computing the amounts to be deducted in the case of all the employees as well as effecting remittances to the society within the time set out under Statute.

14.The total amount deducted and remitted is of a sum of Rs.131,43,20,986/- and the service charge has been computed at a flat rate of 2.5% of the aforesaid amount, which is Rs.3,28,58,026/-. In addition, interest at 15% from July 1981 to March 2016, which is the period for which the remittances had been made has also been computed, amounting to a total sum of Rs.17,81,49,629/-. This amount is not really insisted upon by Mr.Ramanlaal, learned Additional Advocate General-I, whose submissions turn on the justifiation of the service charge itself.

15.It is correct that neither the Act nor the Rules provide for the impugned levy. Section 86 of the Act requires a registered society to pay to the Government such sums as may be determined in the prescribed manner in respect of any special or additional staff employed by the Government for the purpose of the society. The benefit of this provision is unavailable to the Transport Corporation since Section 86 contemplates a specific identification of the special/additional staff employed, which, admittedly is unavailable in this case. The impugned communication merely refers in general terms to the additional infrastructure that has been deployed and admittedly there have been no specific appointments or special efforts that have been put in by the Transport Corporation for the exercise of deduction and remittance.

16.There are, admittedly, no other provisions under the Act that would justify the impugned levy. The Transport Corporation is a company incorporated under the provisions of the Companies Act, 1956 and though there may be some justification in the corporation seeking reimbursement of the costs that had been incurred by it, there is certainly no justification for imposing a flat rate of 2.5% as service charge, that admittedly, includes a profit element. The basis of the levy, at 2.5%, is itself drawn from the service charge paid by the Postal Department to the Transport Corporation towards services rendered by the latter in the matter of recurring deposits made by the employees with the former.

17.In my considered view, there is no comparison to be drawn between the two. In the present case, there is a statutory duty cast upon the Transport Corporation under Section 48 that would require the Corporation to deduct and remit the amount of installments to the Society. Section 48 is extracted below and does not contemplate anywhere the levy of service charges:

*'**48. Deduction from salary, wages or gratuity.-** (1) A member of a registered society may execute an agreement in favour of that society providing that-*

(a)his employer or the officer disbursing his salary or wages shall be competent, on a requisition in writing from the society to deduct every month from the salary or wages p;ayable to him such amount as may be specified in the requisition towards the amount; and

(b)if he ceases to be an employee, his employer shall be competent on a requisition in writing from the society to deduct from the gratuity payable to such employee such amount as may be specified in the requisition to wards the entire balance, due by him to the society in respect of any debt or other demand owing by the member to the society.

(2)(a)Where any such agreement as is referred to in sub-section (1) has been executed by a member of a registered society, the employer or the officer disbursing the salary or wages of such member shall, on receipt of a requisition from the society, make the deduction from the salary or wages or the gratuity, as the case may be, payable to the member in accordance with the requisition, and pay, [within a period of fourteen days from the date on which such deduction is made] in respect of any society or class of societies, the amount so deducted to the society.'

18.In the light of the discussion as above, there is no justification whatsoever for the imposition of the service charge, that includes a profit element, and moreover, one that is not borne out by any statutory provision or Rules. The impugned order is quashed and this writ petition is allowed. No costs. Connected miscellaneous petition is closed.

31.10.2022

vs

Index : Yes
Speaking Order

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DR.ANITA SUMANTH, J.

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