



W.A.No.2126 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2024

CORAM

THE HONOURABLE Mr.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE Mr.JUSTICE C.KUMARAPPAN

W.A.No.2126 of 2022

and

CMP.No.15813 of 2022

The Secretary,
Government Regional Workshop
Employees Co-Operative Thrift and Credit Society Ltd.,
Salem.

... Appellant

Vs.

1. G.Pandurangan
2. The Deputy Registrar of Co-Operative Societies,
Salem Circle,
Salem.
3. Auto Mobile Engineering,
Government Auto Mobile Workshop,
Cuddalore.
4. Subramanian
5. Government Auto Mobile Workshop,
Cuddalore District,
Cuddalore.

... Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 04.03.2022 passed in WP.No.16488/2013 in so far as



W.A.No.2126 of 2022

appellant is concern.

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For Appellant : Mr.P.K.Shiva Kumar

For Respondents : Mr.D.Baskar for R1
Mrs.Geetha Thamaraiselvan
Special Government Pleader (Co-Op)
for R2, R3 & R5

J U D G M E N T

[Judgment of the Court was delivered by **S.M.SUBRAMANIAM, J.**]

The writ appeal on hand is instituted by the Secretary, Government Regional Workshop Employee Co-operative Thrift and Credit Society Limited challenging the writ order dated 04.03.2022 in WP.No.16488 of 2013. The appellant is the 3rd respondent in the writ petition. The appellant is a Cooperative Society registered under the provisions of The Tamil Nadu Cooperative Societies Act 1983. The employees working in the Government Regional Workshop are eligible to become the Members of the Cooperative Society and the Society itself was formed by the employees of the Government Regional Workshop and registered under the Tamil Nadu Cooperative Societies Act.

2. There is no Government funding for the Cooperative Society. The funds contributed by the members are utilized for the purpose of granting the



W.A.No.2126 of 2022

loan to other eligible members.

3. Admittedly, the first respondent stood as a guarantor to the borrower, who is also a member of the appellant-Cooperative Society. The Principal committed default in repayment and the Society proceeded against the guarantor/first respondent. Liability of the Guarantor admittedly coexists with the liability of the principal borrower. That being the first principle in law, there is no impediment for the Society to proceed against the guarantor to recover the loan dues.

4. The competent Authority of the Government Automobile Workshop at Cuddalore issued an order dated 22.01.2013 recovering the gratuity amount of Rs.1,48,388/- of the first respondent. Challenging the said order, the Writ petition came to be instituted. The Writ Court allowed the writ petition mainly on the ground that no notice was issued to the first respondent and under the provisions of the Gratuity Act, the amount of gratuity cannot be recovered. Thus, the present writ appeal.

5. The learned counsel for the writ appellant Mr.P.K.Shiva Kumar, would submit that even under the Gratuity Act, recovery is permissible. Rule



W.A.No.2126 of 2022

70 of The Tamil Nadu Pension Rules, 1978 permits the employer to recover the loan dues and settle the same to the Society. Thus, the Writ Court has committed an error in allowing the writ petition filed by the first respondent. Regarding issuance of show cause notice, the same would not arise in view of the fact that the first respondent stood as a Guarantor and he is aware of the default committed by the Principal borrower and thus, such a show cause notice becomes a empty formality and as per the undertaking given by the guarantor in the loan forms is liable to repay the loan amount in the event of default by the principal employer.

6. Mrs.Geetha Thamaraiselvan, learned Special Government Pleader appearing on behalf of the respondents 2, 3 and 5 would submit that the Department Authorities are empowered to recover the gratuity amount and disburse the same to the Cooperative Society in order to clear the loan dues. Such an undertaking has been given by the Pay Disbursing Officer at the time of approval of loan application and therefore, the competent authority is duty bound to recover and settle the loan dues as per law. Thus, the writ Court has not considered the said position and consequently, the writ appeal is to be considered.



W.A.No.2126 of 2022

7. Heard the parties.

8. Curiously, none of the parties have raised the relevant provisions of the Tamil Nadu Cooperative Societies Act, which would be applicable for the loan transactions of the Cooperative Societies. Admittedly, the appellant is a Cooperative Society registered under the Cooperative Societies Act, and the said Act would be applicable for the purpose of grant of loan and recovery of a loan dues. The Government employees are the members of the Cooperative Society formed and registered by them. The transactions are governed under the provisions of the Cooperative Societies Act and Rules. The loan applications are submitted by the members/Government employees to the competent Authority at the first instance, and the Pay Disbursing Officer will make an endorsement in the loan application with an undertaking that the monthly loan instalments will be recovered from the salary of the employee/member and disbursed to the Cooperative Society. The loan itself is sanctioned based on the endorsement made by the Pay Disbursing Officer of the Government Department. Therefore, the undertaking given by the Pay Disbursing Officer as recognised under Section 48 of the Tamil Nadu Cooperative Societies Act will prevail over other general Laws. Cooperative Societies Act being a special enactment would



W.A.No.2126 of 2022

apply for loan transactions in Cooperative Societies.

9. Section 48 of The Tamil Nadu Cooperative Societies Act provides deduction from salary, wages or gratuity. Sub-Section (1) (a) and (b) read as under:-

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 payable 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 towards the entire balance, due by him to the society in respect of any debt or other demand owing by the member to the society.”

10. Section 48 (2) (a) reads as under:-

“(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



W.A.No.2126 of 2022

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.”

11. Section 48 (7) and (8) read as under:-

“(7) The provisions of this section shall apply notwithstanding any law to the contrary for the time being in force.

(8) Without prejudice to any other mode of recovery which is being taken or may be taken under this Act or any other law for the time being in force, any sum deducted under sub-section (2) or sub-section (5) but not paid to the society within a period of fourteen days on which such deduction is made may be recovered together with the interest at such rate as may be prescribed from the date of such deduction and the costs involved in such recovery as if it were an arrear of land revenue and for the purposes of such recovery, the Registrar shall have the powers of a Collector under the Tamil Nadu Revenue Recovery Act, 1864 (Tamil Nadu Act II of 1864).”

12. Thus, the said Act will prevail over all other general laws.

13. The endorsement made by the Pay Disbursing Officer in the loan



W.A.No.2126 of 2022

application would be binding on the Department. Therefore, the competent authorities of the Government Department are duty bound to recover the loan dues from the principal borrower or guarantor and settle the same to the Cooperative Society concerned. The said undertaking has been agreed by the principal borrower and guarantor. That being the nature of loan transaction, now the first respondent-guarantor cannot turn around and say that employer/Government Department cannot recover the gratuity and settle the loan dues. Section 48 [as stated supra] would squarely apply in respect of the loan transactions in Cooperative Societies and more specifically, where the Government employees or the employees of other sectors borrowing loan from the Cooperative Societies.

14. Question of issuance of show cause notice in such matters would not arise at all in view of the fact that the principal borrower and the guarantor are very much aware of the nature of transactions and the agreements signed by them, which is a contract. The agreement, loan applications are governed under the provisions of the Tamil Nadu Cooperative Societies Act and therefore, ignorance in respect of the conditions is not a ground to seek exoneration. Under Section 48, gratuity is



W.A.No.2126 of 2022

recoverable for the purpose of settling the loan dues to the Cooperative Societies. Thus, the ground that no show cause notice was issued to the first respondent is untenable and such notice is not required in view of the contractual obligations as established, under the Statute, which was agreed in the loan application both by the principal borrower and the guarantor.

15. Regarding the other ground that under the Gratuity Act, the gratuity is not recoverable, Section 48(7) of the Tamil Nadu Cooperative Societies Act states that the provisions of this Section shall apply notwithstanding any law to the contrary for the time being in force. Therefore, the Cooperative Societies Act would prevail over all other general laws. Thus, the order passed by the competent authority of the Government Automobile Workshop in proceedings dated 22.01.2013 is well within the powers conferred under Section 48 of the Tamil Nadu Cooperative Societies Act and there is no infirmity. The Writ Court proceeded by considering the provisions of the Gratuity Act and the relevant provisions of the Tamil Nadu Cooperative Societies Act, which is a special enactment was not brought to the notice of the Writ Court, which resulted in allowing of the writ petition. Thus, we are inclined to interfere.



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W.A.No.2126 of 2022



W.A.No.2126 of 2022

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16. Accordingly, this Writ Appeal stands allowed and consequently, the writ order impugned dated 04.03.2022 passed in WP.No.16488 of 2013 is set aside. No costs. Consequently, connected CMP is also closed.

[S.M.S., J.] [C.K., J.]
01.08.2024

kmi

Index : Yes

Speaking order : Yes

Neutral Citation : Yes

To

1. The Deputy Registrar of Co-Operative Societies,
Salem Circle,
Salem.
2. Auto Mobile Engineering,
Government Auto Mobile Workshop,
Cuddalore.
3. Government Auto Mobile Workshop,
Cuddalore Distrit,
Cuddalore.



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W.A.No.2126 of 2022

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W.A.No.2126 of 2022

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