

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF MARCH, 2024

BEFORE

THE HON'BLE MR JUSTICE ANANT RAMANATH HEGDE

WRIT PETITION NO. 4273 OF 2020 (CS-RES)

BETWEEN:

THE ACCOUNTANT GENERAL'S OFFICE
EMPLOYEES CO-OPERATIVE BANK LTD.,
PARK HOUSE ROAD, BENGALURU - 560 001,
REPRESENTED BY ITS SECRETARY,
SRI HARISH KASHYAP.

...PETITIONER

(BY SRI P P HEGDE, SR. ADVOCATE FOR
SRI SHARADI S SHETTY, ADVOCATE)

AND:

- 1 . UNION OF INDIA,
REPRESENTED BY ADDITIONAL SECRETARY OF
MINISTRY OF FINANCE,
DEPARTMENT OF ECONOMIC AFFAIRS,
ROOM NO.129-B NEW DELHI -110001(INDIA).
- 2 . STATE OF KARNATKA,
REPRESENTED BY SECRETARY,
DEPARTMENT OF CO-OPERATION,
M.S.BUILDING, DR.B.R.AMBEDKAR VEEDHI,
BENGALURU - 560 001.
- 3 . THE COMPTROLLER AND AUDITOR GENERAL OF
INDIA, NO.9, DEEN DAYAL UPADHYAY MARG,
NEW DELHI - 110124,
REPRESENTED BY ITS ASSISTANT COMPTROLLER
AND AUDITOR GENERAL (N),
SRI V S VENKATANATHAN.

- 4 . PRINCIPAL ACCOUNTANT GENERAL (G AND SSA)
KARNATAKA, BENGALURU, C-BLOCK,
AUDIT BHAVAN, DEVARAJ URS ROAD,
BENGALURU - 560 001,
REPRESENTED BY SENIOR DEPUTY ACCOUNTANT
GENERAL (ADMN), SMT VARSINI ARUN.
- 5 . DIRECTOR GENERAL OF AUDIT (CENTRAL)
BENGALURU, C-BLOCK,
AUDIT BHAVAN, DEVARAJ URS ROAD,
BENGALURU -560 001,
REPRESENTED BY DIRECTOR (ADMN),
SRI AVINASH K NILANKAR.
- 6 . PRINCIPAL ACCOUNTANT GENERAL (A AND E)
KARNATAKA BENGALURU, PARK HOUSE ROAD,
BENGALURU - 560 001,
REPRESENTED BY DEPUTY ACCOUNTANT
GENERAL (ADMN) SMT PRIYANKA L NAIK.
- 7 . ACCOUNTANT GENERAL (E AND RSA),
KARNATAKA, BENGALURU, C-BLOCK,
AUDIT BHAVAN, DEVARAJ URS ROAD,
BENGALURU - 560 001,
REPRESENTED BY DEPUTY
ACCOUNTANT GENERAL (ADMN)
SRI KUSHAL KARTHIK S.
- 8 . PRINCIPAL DIRECTOR OF AUDIT
(MEMBER AUDIT BOARD)
BENGALURU, 1ST FLOOR, BASAVA BHAVAN,
BENGALURU - 560 001,
REPRESENTED BY DIRECTOR (ADMN),
SRI A SUBRAMANIYAN.
- 9 . PRINCIPAL DIRECTOR OF AUDIT,
(SOUTH WESTERN RAILWAY AUDIT)
OLD GM OFFICE COMPLEX, CLUB ROAD,
KESHWAPUR, HUBBALLI - 580 023,
REPRESENTED BY DEPUTY DIRECTOR OF AUDIT,
SRI DINESH M NAIKA.

- 10 . DEPUTY DIRECTOR (P AND T AUDIT),
2ND FLOOR, BASAVA BHAVAN,
BENGALURU - 560 001,
REPRESENTED BY SENIOR AUDIT OFFICER (ADMN)
SRI B K NALARAJU.
11. DIRECTOR OF AUDIT (AIR FORCE),
B WING, 3RD FLOOR,
KENDRIYA SADAN, KORAMANGALA,
BENGALURU - 560 034,
REPRESENTED BY ITS SENIOR AUDIT OFFICER,
SRI B N PRAKASH.
12. DIRECTOR (SCIENTIFIC DEPARTMENT AUDIT),
DEPARTMENT OF SPACE, ANTARIKSH BHAVAN,
NEW BEL ROAD, BENGALURU - 560 230,
REPRESENTED BY SENIOR AUDIT OFFICER,
SMT V PRATHIMA.

...RESPONDENTS

(BY SRI B M KUSHALAPPA, CGC FOR R1,
SRI B J ESWARAPPA, AGA FOR R2,
SRI S PRAKASH SHETTY, ADVOCATE FOR R3 TO R12)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF CONSTITUTION OF INDIA PRAYING TO QUASH CLAUSE NO.(v) OF CIRCULAR DTD.18.10.2019 BEARING CIRCULAR ISSUED BY R-3 VIDE ANNEXURE-E. QUASH THE CONSEQUENTIAL ORDERS DTD.29.01.2020 VIDE ANNEXURE-F, ORDER DTD.30.01.2020 VIDE ANNEXURE-G, ORDER DTD.06.02.2020 VIDE ANNEXURE-H AND ORDER DTD 06.02.2020 VIDE ANNEXURE-J ISSUED BY THE R-4, 6, 5, 7 RESPECTIVELY AND ALLOW THIS W.P.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 29TH FEBRUARY, 2024 AND COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

1. The petitioner is a Co-operative Bank established by the employees of the Accountant General's Office and the Bank is registered under the Karnataka Co-operative Societies Act, 1959 (for short 'the Act of 1959').

2. The petitioner is assailing clause No.v of Annexure E, the Circular dated 18.10.2019 issued by respondent No.3- the Controller and Auditor General of India and the order dated 29.01.2020 marked at Annexure-F, order dated 30.01.2020 marked at Annexure-G, order dated 06.02.2020 marked at Annexure-H and order dated 06.02.2020 marked at Annexure-J which have been issued pursuant to impugned clause No.v referred to above.

3. The impugned clause No.v in Annexure-E reads as under:

"No recovery (neither subscription nor any other liability) will be allowed by the DDOs in respect of dues of Co-operative Housing Societies and Co-operative Banks".

(DDO- is the abbreviation for Drawing and Disbursing Officer)

4. The impugned clause No.v issued by the 3rd respondent, prohibited the salary drawing and disbursing officers from deducting the amount due to the co-operative Bank, from the salary of the employee even if the employee is consenting for such deduction.

5. The petitioner Bank claims that it is advancing the loan to its members. Some of the members, are the employees of the Accountant General's office and other members of the Bank are not necessarily employees of the Accountant General's Office.

6. Referring to Section 34 of the Act of 1959, Sri P.P.Hegde, the learned senior counsel appearing on behalf of the petitioner urged that Section 34 of the Act of 1959 provides for an agreement between the borrower and the Co-operative Bank, which enables the employer of the borrower to deduct the agreed amount towards repayment of the debt due to the Co-operative Society. It is stated that the said agreement is binding on the employer of the borrower under Section 34(2) of the Act of 1959, though the employer is not a party to the agreement.

7. It is urged that impugned clause No.v in Annexure-E extracted above, curtails the right of the petitioner Bank to enter into an agreement with the borrower to recover its debt, in the manner provided under Section 34(1) of the Act of 1959.

8. The further contention is that the exclusion in impugned clause No.v is made only in respect of two classes of Co-operative Societies, including the class to which the petitioner/Co-operative Bank belongs. It is further urged that the 3rd respondent has no power to curtail the statutory right.

9. Sri Prakash Shetty, the learned counsel for respondents No.3 to 12 defending the impugned clause No.v would contend that the petitioner has no *locus* to question the policy decision taken by respondent No.3 in excluding certain classes of Co-operatives Societies and Banks from the ambit of Section 34 of the Act of 1959.

10. It is further urged that Section 34 of the Act of 1959 does not apply to respondent No.3. Section 34 of the Act of 1959 applies only if a member of a Co-operative

Society is an employee of the State Government or any other institution referred to in Section 2(e) of the Act of 1959.

11. It is also urged that respondent No.3 is not a party to any agreement between the Co-operative Bank and the borrower, as such; Section 34 of the Act of 1959 cannot be imposed on respondent No.3.

12. By way of reply, the learned Senior Counsel appearing for the petitioner would contend that Sub-Section (3) of Section 34 of the Act of 1959 excludes only the persons employed in Railways and Mines and Oil Fields from the purview of said provision, and by necessary implication, all other employees including employees of 3rd respondent are covered under the said Section 34.

13. It is his further submission that Section 2(e-3) of the Act of 1959, which defines the word 'employee' is only clarificatory in nature and serves a limited purpose of explaining that the employee of the State Government or any other Institution, employed in a Co-operative Society at a given point of time is deemed to be an employee of the Co-operative Society and nothing further. Section 34(1) of the Act of 1959 refers to a member of a Co-operative Society

not an employee of a Co-operative Society. If there is an agreement between the Co-operative Society and the member/ borrower, with the concurrence of the employer as provided under the first *proviso* to Section 34, by reason of Section 34(2) of the Act of 1959, the employer is bound to deduct the permissible amount towards repayment of the loan amount.

14. This Court has considered the contentions raised at the Bar and perused the records.

15. The impugned clause No.v in Annexure-E reads as under:-

"No recovery (neither subscription nor any other liability) will be allowed by the DDO in respect of dues of cooperative housing societies and cooperative banks".

16. Section 34 of the Act of 1959 reads as under:-

"34. Deduction from salary to meet society's claim in certain cases.-

(1) Notwithstanding anything contained in any law for the time being in force, a member of a co-operative society may execute an agreement in favour of the society providing that his employer shall

be competent to deduct from the salary or wages payable to him by the employer, 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 owing by the member to the society:

Provided that the employee shall obtain prior concurrence in writing of the employer agreeing to deduct from his salary or wages such an amount as specified in such agreement:

Provided further the liability of the employer shall be limited to the extent of deduction of an amount which if included makes the total of all the deductions from the salary not to exceed fifty per cent of the salary of the employee:

Provided also that the board of the co-operative society shall determine the amount of loan and the number of instalments to be granted to the employee in such a manner that the total of all deductions including the deduction on account of the loan installment along with interest thereon shall not exceed fifty per cent of the salary of the employee.

(2) On the execution of such an agreement the employer shall, if so required by the co-operative society by requisition in writing and so long as such debt or demand or any part of it remains unpaid, make the deduction in accordance with the agreement and

pay the amounts so deducted to the society within fourteen days from the date of the deduction.

(3) Nothing contained in this section shall apply to persons employed in railways as defined in Article 366 of the Constitution, mines and oil fields.

(emphasis supplied)

17. Section 34 of the Act of 1959 came into force with effect from 1959 itself. However, the first proviso was inserted in 2013.

18. Sub-section (1) of Section 34 of the Act of 1959 provides for an agreement between the member of a Co-operative Society covering the following matters.

- (a) Deduction of such amount, agreed in the agreement, from the salary of the member of the Society.
- (b) Authority to the employer to deduct such agreed amount from the salary of his employee who happens to be a member of the Co-operative Society.
- (c) Imposing a binding obligation on the employer to credit such amount deducted towards the dues or demand of the Co-operative Society from such member.

19. By operation of sub-clause 2 of Section 34 of the Act of 1959, the agreement binds the employer, though the employer is not a party to the agreement. Sub-section (2) of Section 34 of the Act of 1959 was also in force from 1959 itself.

20. As noticed above, the first *proviso* to Section 34(1) of the Act of 1959 which was introduced in 2013, mandates concurrence in writing by the employer before the employee who is a borrower/member of a cooperative Society enters into an agreement specified in Section 34(1) of the Act of 1959 with the Co-operative Society. Thus, by operation of the first *proviso*, sub-section (2) of Section 34 of the Act of 1959 binds the employer only if the concurrence of the employer is in writing before entering into the agreement referred to in Section 34(1) of the Act of 1959.

21. Now the question is whether the first proviso to Section 34 of the Act of 1959, which mandates the concurrence of the employer in writing before the employee enters into an agreement with the Co-operative Society, enables the employer to exclude a class or classes of

Co-operative Societies from the ambit of Section 34 of the Act of 1959.

22. If impugned clause No.v is given effect to, the agreement referred to Section 34(1) of the Act of 1959 becomes unenforceable. In such an event both Section 34(1) and 34(2) of the Act of 1959, become otiose. Once the member of a co-operative society with prior concurrence of his employer, enters into an agreement with a Co-operative Society, such agreement creates a right in favour of a Co-operative Society to recover its dues from the salary of an employee, and the employer is bound to deduct such agreed amount from the salary. If there is no concurrence in writing as mandated in the first proviso to Section 34 of the Act of 1959, then there is no obligation on the employer to deduct such an amount from the salary of the employee.

23. When a law creates certain rights and obligations on the parties to an agreement, those rights, and obligations can be enforced and extinguished only in the manner recognised under the law. As already noticed, Section 34 of the Act of 1959, creates the rights and obligations if certain conditions enumerated therein are fulfilled. However, 3rd

respondent employer by executive order impugned in this petition directs the salary drawing officer not to honour the obligations arising under Section 34 of the Act of 1959. The 3rd respondent has no such power. However, the first *proviso* which was inserted in 2013, has conferred discretion on the employer to refuse the request of the employee who seeks to enter into an agreement contemplated in Section 34(1) of the Act of 1959. Even said discretion is not absolute. Said discretion is to be exercised keeping in mind the second proviso to Section 34 of the Act of 1959 which permits deduction of 50% salary at the maximum. Probably the discretion is conferred to refuse permission to enter into an agreement contemplated in Section 34, to ensure that the salary deduction does not exceed 50% provided in the second proviso to Section 34 of the Act of 1959.

24. Thus, on a meaningful reading of Section 34 of the Act of 1959, there cannot be any doubt that the impugned clause No.v is per se illegal as it runs contrary to Section 34 of the Act of 1959.

25. It is also relevant to note that sub-section(3) of Section 34 of the Act of 1959 excludes the operation of

Section 34 of the Act of 1959 on the persons employed in Railways as defined in Article 366 of the Constitution and Mines and Oil Fields. The exclusion of certain classes of employees named in sub-section(3) of Section 34 of the Act of 1959 leads to the conclusion that the agreement referred to in sub-Section(1) of Section 34 of the Act of 1959 binds all employers other than the employers excluded in sub-section (3) of Section 34 of Act of 1959.

26. Referring to the definition of "employee" found in Section 2(e-3) of the Act of 1959, it is urged by Sri Prakash Shetty, that Section 34 of the Act of 1959 has no application to the 3rd respondent on the premise that Section 34 of the Act of 1959 applies only to the employers of a Co-operative Society.

27. Section 2(e-3) of the Act of 1959 reads as under:-

'Employee' means a salaried employee of a co-operative society and includes an official of the State Government or any employee of any other institution or co-operative society who for the time being is working in a co-operative society.

28. On a reading of the aforementioned definition, it is evident that the term "employee" means an employee of a Co-operative Society or an official of the State Government or any other employee of any other institution who is working in a Co-operative Society. This definition would clarify the position where a person who is not appointed by the Co-operative Society, but who is an official of the State Government and any other institution but is working in a Co-operative Society at any given point in time would also become an "employee" of a Co-operative Society in that given period. The said definition has no impact on Section 34 of the Act of 1959. Section 34 of the Act of 1959 provides for an agreement by a member of a Co-operative Society who is employed anywhere to enter into an agreement with the Co-operative Society where he is a member, authorising his employer to deduct a certain amount from his salary. Said provision cannot be read as a provision applicable only to the employees of the State Government. Said provision enables the employee of any institution to enter into an agreement with the Co-operative Society for deducting the amount from the salary to be credited to the dues of the Society. However, after the insertion of the first proviso,

before entering into such an agreement, there must be prior concurrence of the employer. Thus, the contention that Section 34 of the Act of 1959 applies only if the employee of the State government is incorrect.

29. It is also relevant to note that sub-section (3) of Section 34 of the Act of 1959 excludes the operation of Section 34 of the Act of 1959 on the persons employed in Railways as defined in Article 366 of the Constitution and Mines and Oil Fields. The exclusion of certain classes of employees named in sub-section (3) of Section 34 of the Act of 1959 leads to the conclusion that the agreement referred to in sub-section (1) of Section 34 of the Act of 1959 binds all employers other than the employers excluded in sub-section (3) of Section 34 of Act of 1959.

30. The further contention of Sri Prakash Shetty, that the third respondent cannot be made to act as a recovery agent for the dues payable to the petitioner/Bank also cannot be accepted for the simple reason the insertion of the first *proviso* to Section 34 of Act of 1959 mandates the concurrence of the employer. Thus, the employer has the discretion to either approve or reject the proposal of the

employee seeking concurrence to enter into an agreement contemplated under Section 34 of the Act of 1959. Once such concurrence is provided then the agreement binds the employer and the employer cannot shirk the statutory obligation by issuing executive fiat contrary to law.

31. The impugned clause No.v altogether excludes the members of the petitioner-Bank from availing the facility provided under Section 34 of the Act of 1959 and prevents the petitioner-Bank from invoking the said provision to recover the debt or such amount due from the member in the manner provided under Section 34 of the Act of 1959.

32. This benefit conferred under the Statute viz., Section 34 of the Act of 1959 cannot be taken away in the manner provided under impugned clause No.v of Annexure - E. The employer cannot issue a circular that has the effect of rendering Section 34 of the Act of 1959 otiose for a class of a Co-operative Society. The third respondent has no jurisdiction to take away the statutory facility provided under the Statute.

33. Though, the learned counsel for the respondent has relied upon the judgment of the Division Bench of this

Court in ***The Pr. Commissioner of Income Tax and another vs. The Totagars Co-operative Sale Society*** in ***ITA No.10069/2016*** to contend that the Co-operative Bank is not a Co-operative Society and the Co-operative Bank is not covered under Section 34 of the Act of 1959, the said contention is not tenable. In the judgment, the Division Bench of this Court has held that the word "Co-operative Bank" also includes "Co-operative Society". This is also evident from the definition of "Co-operative Bank" found in Section 2(b-1) of the Act of 1959. Under the said definition, a co-operative Bank is also a Co-operative Society doing business in banking. Hence, the petitioner Bank is also a Co-operative Society and entitled to avail the benefit of the recovery mechanism provided in Section 34 of the Act of 1959.

34. Referring to the judgment of the Apex Court in the cases of ***VISHAL TIWARI vs. UNION OF INDIA AND OTHERS*** reported in ***AIR 2024 SC 414***, ***STATE OF PUNJAB AND OTHERS VS. RAM LUBHAYA BAGGA AND OTHERS*** reported in ***(1998) 4 SCC 117*** AND ***UNION OF INDIA vs. PUSHPA RANI AND OTHERS*** reported in

(2008) 9 SCC 242, it is urged that the Court cannot interfere in the policy decision. This Court is of the view that the impugned clause No.v cannot be termed as a policy decision discussed in the aforementioned judgments where the said decisions did not violate any provisions of law. However, impugned clause No.v conflicts with the binding provision of law. Thus, the Court in exercise of its writ jurisdiction can certainly strike down the said clause even if it is the policy decision, as such decision seeks to override the provision of law and seeks to take away certain rights conferred under the Statute. The right conferred under the Statute can be taken away only in the manner known to law and not by any executive decision taken by any authority which has no authority to meddle with the statutory rights.

35. For the reasons recorded above, this Court is of the view that impugned Clause No.v in Annexure-E dated 18.10.2019 is unsustainable. Since, the said Clause is unsustainable, the further consequential orders impugned in the writ petition marked at Annexures-F, G, H and J are also unsustainable.

36. Hence, the following:-

ORDER

- (i) The Clause No.v in Circular dated 18.10.2019 marked at Annexure-E is quashed.
- (ii) The further consequential orders dated 29.01.2020 marked at Annexure-F, the order dated 30.01.2020 marked at Annexure-G, the orders dated 06.02.2020 marked at Annexures-H & J passed pursuant to the impugned Clause No.v in Annexure-E are also quashed.
- (iii) No order as to cost.

**Sd/-
JUDGE**

BRN/CHS
List No.: 1 Sl No.: 13