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(2026) 01 KL CK 1687

In the High Court Of Kerala

Case No : Writ Petition (C) Nos.15242, 15710, 15846, 16110, 16113, 16190, 17566, 17486 Of 2025

Idukki District Police Co-Operative Society APPELLANT

Vs

State Of Kerala RESPONDENT

Date of Decision : 20-01-2026

Acts Referred:
Kerala Co operative Societies Act, 1969 — Section 37

Citation : (2026) 01 KL CK 1687

Hon'ble Judges : Gopinath P., J

Bench : Single Bench

Advocate : P.C.Sasidharan, Akshay Venu, Akhil Raj B., Sravan M.S., Arun Raj, Vishnu Vijayan, Antony Mukkath

Final Decision : Disposed Of

Judgement

Gopinath P., J

1. These writ petitions are filed by certain Employees’ Co-operative Societies being aggrieved by the fact that despite there being an agreement as contemplated by the provisions of Section 37 of the Kerala Co-operative Societies Act, 1969 (hereinafter referred to as the '1969 Act') and inspite of the fact that the petitioner-Societies have the right to recover amounts due to it from the Death-cum-Retirement Gratuity (hereinafter referred to as the ‘DCRG’) payable on the retirement of employees who have availed loans from the petitioners-Societies, the competent authority is now refusing to deduct the amounts due to the Societies from the DCRG on account of the amendment to the Rulings under Rule 3 of Part III of the Kerala Service Rules (hereinafter referred to as the ‘KSR’) w.e.f. 01.02.2025, which contemplates that the recovery from the DCRG shall be made only upon obtaining fresh written consent from the employee concerned at the time of his retirement.

2. Sri. P. C. Sasidharan, the learned counsel representing the petitioners in these

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matters, asserts that the petitioners are Employees' Cooperative Societies. It is submitted that all the members of the petitioner Societies are Government employees serving in various departments under the Government of Kerala. It is submitted that these Societies advance loans to their members after the members execute an agreement in terms of Section 37 of the 1969 Act and after they execute an undertaking that any amount remaining due from them at the time of their retirement can be recovered from the DCRG payable to them by the Government. It is submitted that in several cases the loans availed remain unpaid even at the time of retirement, and therefore, the petitioner Societies must recover the amounts due to them from the DCRG. It is pointed out that Ruling No.1 under Rule 3 of Part III of the KSR specifically empowers the competent authority to recover amounts due to the Society from the DCRG payable to an employee, provided there is a consent for such recovery in writing. It is pointed out that, with the amendment introduced w.e.f. 01.02.2025, a further requirement that a fresh consent in writing should be obtained at the time of retirement has been incorporated, practically undoing or making invalid the consent earlier given by the employee in question at the time of availing the loan. It is submitted that this has caused serious prejudice to the Societies. It is submitted that, at any rate, the provision cannot be extended to cases where loans were sanctioned before 01.02.2025 on the strength of an undertaking that the amounts due to the Society can be recovered from the DCRG.

3. Sri. Antony Mukkath, the learned Senior Government Pleader appearing for the official respondents in these cases, would submit that recovery from gratuity is not contemplated even by the provisions of Section 37 of the 1969 Act. It is submitted that Section 37 of the 1969 Act contemplates recovery from salaries or wages, and that gratuity does not fall within the definition of salaries or wages. It is submitted that gratuity is an amount paid to an employee for long years of dedicated service, and to provide sustenance to the employee after retirement. It is submitted that it was in such circumstances that Ruling No.1 under Rule 3 of Part III of the KSR was amended, making it mandatory that the consent for recovery from the DCRG must be obtained at the time of retirement, even if such consent had been obtained earlier at the time of availing the loan. It is submitted that a Division Bench of this Court in Surendran v. Mavelikara Primary Co-operative Agricultural and Rural Development Bank Ltd., 2005 KHC 1796, had taken the view that the word 'salary' used in Section 37 of the 1969 Act does not include DCRG.

4. The learned counsel appearing for the petitioners in these cases would submit that the petitioners-Societies would be satisfied if this Court were to examine the question as to whether the provisions of the amended Ruling No.1 under Rule 3 of Part III of the KSR, which came into effect from 01.02.2025, would apply in cases where the loans were granted before that date, and based on the Rule as it stood at the relevant point of time.

5. Having heard the learned counsel appearing for the petitioners in these cases

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and the learned Senior Government Pleader appearing for the official respondents in these cases, I am of the view that the learned counsel for the petitioners is right in contending that the provisions of the amended Ruling No.1 under Rule 3 of Part III of the KSR cannot be applied to loans sanctioned before 01.02.2025 on the strength of a specific undertaking that the amounts due to the Society can be recovered from the DCRG. Ruling No.1 under Rule 3 of Part III of the KSR before its amendment w.e.f. 01.02.2025 reads thus:

"Amounts due from a Government employee or pensioner to Government Companies, Local Bodies, Co-operative Societies, etc., though not treated as Government dues may be recovered from the death-cum-retirement gratuity payable to him with his consent in writing."

Thus, it is clear from a reading of Ruling No.1 under Rule 3 of Part III of the KSR, before its amendment w.e.f. 01.02.2025, that the amounts payable by an employee on account of a loan availed from a Society can be recovered from the DCRG, provided the employee in question had given his consent in writing. Following the amendment w.e.f 01.02.2025, Ruling No.1 under Rule 3 of Part III of the KSR reads thus:

"Amounts due from a Government employee or pensioner to Government Companies, Local Bodies, Co-operative Societies, etc., though not treated as Government dues may be recovered from the death-cum-retirement gratuity payable to him with the written consent of the employee to the Drawing and Disbursing Officer/ Competent Authority at the time of his retirement (Written consent includes consent conveyed electronically that bears digital signature as defined in section 3 of IT Act 2000)."

A reading of Ruling No.1 under Rule 3 of Part III of the KSR, both before and after its amendment w.e.f. 01.02.2025, indicates that whereas, before 01.02.2025, the consent in writing could be one obtained at the time of sanctioning the loan, after 01.02.2025, the consent for recovery from the DCRG must be given at the time of retirement, even if such consent had already been given at the time of availing the loan. It is not disputed before me that almost all loans sanctioned by Societies like the petitioner-Societies in these cases are so sanctioned on the security of a salary certificate and on the strength of an undertaking given in terms of the provisions contained in Ruling No.1 under Rule 3 of Part III of the KSR, as it stood before its amendment. No other security is usually obtained by the Societies while sanctioning the loans. Therefore, if Ruling No.1 under Rule 3 of Part III of the KSR, as amended w.e.f 01.02.2025, were to apply to loans sanctioned before 01.02.2025, the same would cause serious prejudice and hardship to the Societies, which granted loans on the strength of the undertaking that the amounts due can be recovered from the DCRG payable to the employees on retirement. Moreover, if such an interpretation is placed on Ruling No.1 under Rule 3 of Part III of the KSR, the same would also be manifestly arbitrary. It is settled law that the grounds upon which plenary legislation may be declared unconstitutional apply with equal force to

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subordinate legislation. In that view of the matter, if Ruling No.1 under Rule 3 of Part III of the KSR, as amended w.e.f. 01.02.2025, were held to apply to loans sanctioned before 01.02.2025, the same would have to be declared unconstitutional on the ground of manifest arbitrariness. Therefore, I have no hesitation to hold that the Ruling No.1 under Rule 3 of Part III of the KSR, as amended w.e.f 01.02.2025, will not apply in cases where undertakings, as contemplated by Ruling No.1 under Rule 3 of Part III of the KSR (as it stood prior to its amendment) had been obtained. It is clarified that the provisions of the amended Ruling No.1 under Rule 3 of Part III of the KSR will apply only to loans which are sanctioned on or after 01.02.2025. I make it clear that I have not examined the question as to whether the Ruling No.1 under Rule 3 of Part III of the KSR, being subordinate legislation, can be sustained in the present form in the light of the provisions contained in Section 37 of the 1969 Act and whether the provisions after amendment should be struck down on the ground of manifest arbitrariness, and that question is left open to be considered at a later stage, if necessary.

These writ petitions are ordered accordingly.

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