
(2005) 01 KL CK 0059
In the High Court Of Kerala
Case No : Writ Petition (C) No. 15 of 2005

J. Godwin

APPELLANT

Vs

Kollam District Co-operative Bank Ltd. and Others

RESPONDENT

Date of Decision : 04-01-2005

Acts Referred:

Kerala Co-operative Societies Act, 1969 — Section 37

Citation : (2005) 1 ILR (Ker) 417 : (2005) 2 KLJ 336 : (2005) 1 KLT 625

Hon'ble Judges : Kurian Joseph, J

Bench : Single Bench

Advocate : H.B. Shenoy and B. Ashok Shenoy, for the Appellant; P.B. Suresh Kumar, for the Respondent

Judgement

Kurian Joseph

1. Can a Government servant resist recovery from his salary made at the request of a Co-operative society on the ground that he is not a member

of the Society? Petitioner presently working as a Village Extension Officer is aggrieved by the steps initiated by the third respondent, for recovering

certain amounts from his salary as per requisition made by the second respondent. The requisition is made u/s 37 of the Kerala Co-operative

Societies Act. The contention is that the recovery u/s 37 can be made only from a member of the society. The petitioner is not a member of the

first respondent society. Therefore, it is submitted that he cannot be proceeded against u/s . Sri. P.B. Suresh Kumar, learned counsel appearing for

the first respondent submits that the said question need not be considered in this case since the petitioner being a Government Servant is governed

by Article 89(3) of the Financial Code.

2. Article 89(3) of the Financial Code, to the extent relevant reads as follows:-

Deduction of amounts due to Co-operative Societies-Where the Acts under which Co-operative Societies are registered impose a statutory

obligation on Government to make recoveries from the salary of Government servants on account of dues to such Societies and also provide for

the execution of an agreement by the members in favour of the Societies requiring the employer to make such recoveries it shall be obligatory on

the part of Drawing and Disbursing Officers/Treasury Officers to recover such dues. The amount shown in the requisition in writing received from

the Cooperative Societies shall be recovered in accordance with the following procedure:-

(a) Where the whole or a part of the attachable portion of the salary of the Government employee concerned is already under attachment, the

recoveries is already under attachment, the recoveries on account of the demands from Co-operative Societies shall be made from that portion of

his salary as is not liable to attachment under the provisions of the CPC 1908.

(b) Where the Government servant draws his own bills, it shall be the duty of the Head of the Office receiving the requisition from the cooperative

society to send the necessary intimation to the Treasury Officer or other Disbursing Officer concerned. On receipt of such intimation the Treasury

Officer or other Disbursing Officer shall make recoveries from the salary of the officer and the amounts thus recovered shall be paid to the Co-

operative Society without undue delay after deducting remittance charges if any.

(c) In the case of non gazetted Government servants, on receipt of the requisition in writing from the Society, it shall be the duty of the Drawing and

disbursing Officer of the Government servant concerned to make the recoveries in satisfaction of the requisition. The Drawing and Disbursing

Officer shall draw the gross amount of pay and allowances of the Government servant concerned in the usual manner, but should disburse only the

net amount after making recoveries. The amount thus recovered should be paid to the Co-operative Society concerned without undue delay after

deducting the remittance charges, if any.

(d) In cases where the Government servant concerned intentionally allows his pay to remain undisbursed or undrawn with a view to evading

payment on account of dues to co-operative societies, the administrative head of the Department concerned should draw the pay of the debtor -

employee under intimation to him, in satisfaction of the requisition received from the co-operative society and remit the amount to the society, without undue delay, after deducting the remittance charges, if any.

3. Section 37 of the Kerala Co-operative Societies Act reads as follows:-

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 society, may execute an agreement in favour of the society providing that his employer or the officer disbursing his salary or wages 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 me member to the society.

(2) On the execution of such an agreement, the employer or the officer disbursing the salary or wages of any such member as is referred to in sub section (1) shall, if so required by the 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 me amounts so deducted to the society within seven days from the date of the deduction.

4. A close reading of Section 37 would show that what is dealt with in the recovery of dues to the society by making deductions from salary or

wages of various employees including Government servants. The Act thus provides for recovery from the salary of Government servants and

execution of agreements agreeing for recovery by the employer. Recovery in such cases is an obligation on the Government. Since the Kerala Co-

operative Societies Act 1969 under which the Society is registered provides for a statutory obligation on Government to make recovery from the

salary of Government servants. Article 89(3) of the Code comes into play. True, it is stated in Section 37 that the recovery is based on the

agreements executed by members who are also employees in any sector. But it has to be noted that the section does not in any way prohibit

execution of agreements by employees who are not members and recovery in terms of such agreements. Only since it is permissible, particularly as

per the byelaws and resolutions of the societies, such agreements are executed by non members, agreeing for recovery from salary/wages. Having

understood the meaning, purpose and consequence of an agreement executed

by a Government servant and for that matter any employee, and his employer also having agreed to act in terms of the agreement, there is no justification at all in later turning round and raising objections and resisting the recovery of the dues to the society. Article 89(3) is in fact titled as ""deduction of amounts due to co-operative societies"". The Government servants who have executed agreements for recovery of dues to the society by agreeing for deduction from salary/wages and other benefits cannot resist the recovery in terms of such agreements on the ground that they are not members of the society. Any other interpretation would defeat the purpose of the provision and will only be ultimately against the interests of the members of the Society. Yet another contention is that the petitioner alone is proceeded against and there are other sureties. There will be a direction to respondents 1 and 2 not to discriminate the petitioner in the matter of recovery and steps shall simultaneously be taken against the principal debtor and other sureties also.

The writ petition is disposed of as above.