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**(2005) 09 KL CK 0057**

**In the High Court Of Kerala**

**Case No :** WP (C) No. 1284 of 2005 (C)

| | |
|---|---|
| KSRTC | APPELLANT |
| Vs | |
| Kerala State Transport Employees Co-os Socy. Ltd. | RESPONDENT |

**Date of Decision :** 07-09-2005

**Acts Referred:**
Kerala Co-operative Societies Act, 1969 — Section 100, 2(i), 37, 37(1), 37(2)

**Citation :** (2005) 4 ILR (Ker) 750 : (2005) 3 KLJ 437 : (2005) 4 KLT 662

**Hon'ble Judges :** Thottathil B. Radhakrishnan, J

**Bench :** Single Bench

**Advocate :** T. Ravikumar SC, for the Appellant; N. Unnikrishnan, for the Respondent

## Judgement

Thottathil B. Radhakrishnan

1. A white elephant has mahout. He has helpers. The mahout and helpers ate, belched and slept. They never cared for the elephant. For, it belonged to a great lot of people; the commoners, urchins, the rich and the poor, the bold and the meek, the fleecing and the righteous; yet the citizens of a great nation, living in the "God''s Own Country". They, unfortunately, by compulsions of their collective living, had to entrust the elephant to be cared for, by hands, chosen not by them. The elephant lost, not only its tiers and tyres, but also, its trunk, tusk, tummy, et al. The helpers changed as they aged. The mahout changed at the trustee''s will. Followed the true owners, apparently, faithfully. For, they couldn''t but. And, hadn''t the will, but not to follow. As a bedtime one, this table would shudder even an infant. As a truth, this stares at the citizenry. This is but, the story of the petitioner, the Kerala State Road Transport Corporation, hereinafter referred to in this judgment as the "KSRTC", for brevity, for, it has got to be abbreviated and deserves also to be brined, going by what is noticed hereunder. The official website of KSRTC, downloaded on 3-9-05, shows the updated version as on 25-6-2005, stating among other things, under the head FINANCIALS, that the gigantic difference in the official figures of 1965 and 2005 are very

interesting to note. The website is right, quite interesting! The ratio between the provisional revenue receipts annual, in Crores, as against the provisional expenditure annual, in Crores, as on 25-6-2005 is 776.68: 923.04, a whooping deficit of 146.36 Crores. In 1965, the receipts exceeded the expenditure, though marginally. Prudent conservation of available resources and exclusion of avoidable expenditure ought to be part of the commercial wisdom and managerial expertise needed to prevent wanton waste of public funds by an institution like the petitioner and they who man it.

2. One of the proceedings that the KSRTC is now facing, to which this writ petition relates, is for recovery of money, to the tune of over Rs. 18.5 lakhs, a claim that finds its genesis in the omissions of KSRTC and its officers, whether, willful or not.

3. The helpers of the mahout, the employees, for their betterment, formed cooperative societies for themselves, or became members of existing societies. Such societies get funds from the District Cooperative Banks or other sources and provides the same in the form of loans for various purposes, to their members, who are employees of KSRTC. Sub-section (1) of Section 37 of the Kerala Co-operative Societies Act, 1969, hereinafter, the "Act" for short, provides for the execution of an agreement by a member of the society in its favour, providing for the deduction, from the said member''s salary or wages, by the employer or the person disbursing the salary or wages, the amounts payable by the member to the society. Sub-section (2) thereof provides a statutory obligation on the employer or the person disbursing the salary or wages of such an employee, who has executed an agreement as aforesaid, to deduct in accordance with the aforesaid agreement, on requisition by the society in writing, so long as the debt or demand or any part thereof remains unpaid. The amounts so deducted are to be paid to the society within seven days from the date of deduction. Section 37 of the Act I reads as follows:

37. 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 the 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 its remains unpaid, make the deduction in accordance with the agreement and pay the amounts so deducted to the society within seven days from the date of the deduction.

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4. Many among the officials of KSRTC, disbursing the salary or wages of such employees, deducted the amounts due to the respective societies. But in contravention of the aforesaid statutory requirement that the amounts so deducted are to be paid to the society within seven days from the date of the deduction, no such remittances were duly made. This resulted in huge loss to the societies.

5. This issue came up before this Court in a batch of writ petitions, which were disposed of by my learned brother Mr. Justice K. Balakrishnan Nair, as per Ext. P5 judgment dated 5-4-2002. After noticing the penalty provided by the statute as per sub-section (9) of section 94 of the Act, for contravening the statutory obligation u/s 37(2) of the Act, the learned Judge noticed that the provisions in section 94 of the Act are without prejudice to any action that may be taken against the offenders under any other law for the time being in force. The learned Judge, rightly noticed that the omissions and commissions of the KSRTC and its officers, in this regard, would amount to criminal breach of trust and misappropriation and pointed out that they are cognizable offences for which substantial punishments are provided for under the Indian Penal code. On the basis of admission, and otherwise, the said batch of writ petitions were disposed of directing that the amounts due to the societies shall be paid by the KSRTC in 20 equal monthly installments, commencing from 1-6-2002. The said direction was issued after noticing the indisputable proposition of law that no one can be permitted to take advantage of his own wrong.

6. It was further directed as per Ext. P5 judgment, that if the petitioners therein, which were the societies, had suffered any damage as a result of the omission of the KSRTC and its employees to pay the amount in time as provided u/s 37 of the Act, the societies would be free to work out their remedies either before the civil court or before the arbitrator under the Act.

7. The respondent, the Kerala State Transport Employees Co-operative Society Ltd. (hereinafter, the "Society", for short) filed a case before the Arbitrator/Joint Registrar of Co-operative Societies (General) Ernakulam, under the Act, against the KSRTC, seeking to recover an amount of Rs. 18,51,352/- from the KSRTC "by way of interest at the rate of 18% per annum on the principal amount of Rs. 36,19,251/- which they have illegally and unauthorisedly kept with them from 22-4-1998 to 31 -03-2003."

8. KSRTC raised the question of maintainability of the case, resulting in the arbitrator over-ruling such objections. The arbitrator issued Ext. P6. In doing so, reference was made to Ext. P5 judgment of this Court.

9. This writ petition is filed by the KSRTC challenging Ext. P6 decision of the Arbitrator, by asserting that the directions in Ext. P5 judgment were "carried out fully and effectually" to the satisfaction of the 1st respondent society and further in paragraph No. 5 of the writ petition as follows:

5. While so, some politicians intervened and instigated the respondent society.

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They lighted a damp squib in the hope of creating a towering infer no. The petitioner had on a previous occasion demanded interest from Employees Co-operative Society R-707 Guruvayur for belated payment of rent. This brought to the limelight, contoured by the argument that since societies maintain the brotherhood among themselves, anyone turns against any society will pay in the barbarious way tooth for tooth, nail for nail and "interest for interest". This is the backdrop of the present litigation.

10. Politicians and politics are no bane. Nor, the answer. The needed of the hour is prompt and appropriate action by all concerned, prompted by political will, in national interest.

11. The grounds pleaded in this writ petition in opposition to the impugned are that the KSRTC is a corporation and governed by the Road Transport Corporations Act; constructive res-judicata, for not having raised the claims in the writ petition leading to Ext. P5 judgment; mis-joinder and non-joinder of necessary parties, on account of non-impleadment of the employees who had availed the loans and the disbursing unit officers; KSRTC is not a member of the society and the provisions of the Act and the Rules framed thereunder cannot be applied to mulct the KSRTC with liability, while it took only additional responsibility in collecting the monthly dues of its employees to the society and the KSRTC had made no claim for the man-hours spent by its officers for collection and remittance of the amounts due to the society from the employees; there is no express or implied agreement for payment of interest or penal interest, by KSRTC and that the claim is barred by limitation.

12. On the face of the impugned Ext. P6 order of the arbitrator and having regard to the stage of the arbitration proceedings, it is sufficient, at this stage to consider, whether the impugned proceedings are with jurisdiction. If the answer is in the negative, the proceedings will end by this judgment. Otherwise, it has to proceed, leaving the parties to agitate other relevant issues before the arbitrator, since the other issues are such that they are to be raised before arbitrator and the award can be subjected to a statutory revision before the Tribunal under the Act.

13. Section 2(i) defines "dispute" as follows:

2. Definitions.- In this Act, unless the context otherwise requires-

(i) "dispute" means any matter touching the business, constitution, establishments or management of a society, capable of being the subject of litigation and includes a claim in respect of any sum payable to or by a society, whether such claim be admitted or not.

(emphasis supplied)

14. Section 100 of the Act prescribes exclusion of jurisdiction of civil and revenue courts in respect of any matter for which provision is made in the Act.

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15. Section 69(1) of the Act provides that notwithstanding anything contained in any law for the time being in force, if a dispute arises among the classes of litigants referred to in the different clauses thereunder, the same shall be decided by the arbitrator/arbitration tribunal. In sub-section (1) of Section 69, resolution of disputes by the arbitrator is provided for, between the society and any agent or past agent, as per clause (c) and between the society and a person, other than the member of the society, with whom the society has or had business transactions, as per clause (f). The relevant portions of sub-section (1) of section 69 of the Act, including clauses (c) and (f) thereof, read as follows:

69. Disputes to be decided by the Co-operative Arbitration Court and Registrar. (1) Notwithstanding anything contained in any law for the time being in force, if a dispute arises,-

(a) **************; or

(b) **********************; or

(c) between the society or its committee and any past committee, any officer, agent or employee, or any past officer, past agent or past employee or the nominee, heirs or legal representatives of any deceased officer, deceased agent or deceased employee of the society; or

(d) ********************; or

e) *********************; or

(f) between the society and a person, other than a member of the society, who has been granted a loan by the society or with whom the society has or had business transactions or any person claiming through such a person; or

(g) ********************; or

(h) *******************; such dispute shall be referred ***************

16. KSRTC is a statutory corporation and hence a person, a juristic one. Any matter touching the business, is a dispute, as defined in section 2(i) of the Act. "Touching the business" is an expression of wide amplitude and takes within its ambit, any matter that relates to or concerns the business of the society (see Deccan Merchants Co-operative Bank Ltd. Vs. Dalichand Jugraj Jain and Others, and T.P. Mukundan Vs. Cannanore Co-op. House Construction Society Ltd., . This Court has held that the claim by a society for damages against a contractor who was entrusted with the work of construction of a godown for the society is a dispute, within the scope of the definition (see S. Chandra Sekharan and Others Vs. Govt. of Tamil Nadu and Others, ). Though the definition clause, section 2(i) uses the word "means", as rightly noticed in Sekharan''s case, it is an inclusive definition, going by its terms and sweep. The issue at hand can be resolved on a consideration as to whether the dispute raised by the respondent society against KSRTC is a matter touching the business of the society. The society is involved in providing loans to its members. This is part of its business. The activity of

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ensuring ways and means of recovery of the loans advanced is also, obviously, part of its business. Section 37(1) of the Act provides for entering into agreements, which have such statutory backing as is provided by sub-section (2) of Section 37. The liability of the employer under sub-section (2) of Section 37 is a statutory obligation arising co-instanti, the entering into of an agreement as envisaged by sub-section (1) of section 37. This is the effect of section 37 of the Act. That statutory responsibility is one that is intricately connected and inter-twined with the right of the society to recover the outstandings from debtor. The relationship that arises between the society and the KSRTC on account of an agreement provided for by sub-section (1) of section 37 is of a statutory obligation on the part of KSRTC in favour of the society, in relation to the activity of lending and recovery, which are matters touching the business of the society. Hence, any dispute between the society and the KSRTC, touching the discharge of the obligations of the KSRTC in relation to agreements u/s 37(1) of the Act, including any claim for damages or otherwise; in any form, as interest or otherwise; on account of alleged deficiency or delay in performance in terms of section 37(2) of the Act, is a dispute touching the business of the society and hence a ''dispute'' as defined in section 2(i) of the Act. Having regard to the nature of the statutory obligations of the employer KSRTC, emanating out of section 37 of the Act, the relationship of the KSRTC to the society is one of agency, though such relationship is created by the application of a statute. Hence also, the dispute is one that falls u/s 2(i) of the Act.

17. For the foregoing reasons, the challenge in this writ petition, as to jurisdiction of the arbitrator fails. The other grounds pleaded are best left to the arbitrator to consider. However, before parting, certain aspects need to be noticed. The famine leading to the white elephant, KSRTC, being reduced to a sack of bones, is by the culpable lethargy, negligence in office and other wrongs of its employees, who are/were duty bound to act in such manner as to contain the mounting liabilities. In this case, the grim picture is a claim for over Rs. 18.5 lakhs against a corporation, merely on account of delayed payment of monies, due remittances of which are statutorily called for. If ultimately upheld by the arbitrator, is this liability also to be shouldered by the commuting passengers? Or, is it the State, the citizens as a whole, to sweat out to pay further interest on any borrowings to satisfy any such award debt? If the top is correct, the bottom is bound to be correct. This, as a theory of administration, need not always be true. But, who is the ultimate beneficiary of the administrative despondency of the employees who were duty bound to honour the commitments in time and as enjoined by the laws? They are themselves the beneficiaries. The society is of the employees. The dividend of the activities of the society ultimately flows to them. In such circumstance, it is high time for the KSRTC to search for legal ways and means to reach the wrong-doers, be they in service or not.

In the result, the writ petition fails and it is accordingly dismissed, with no order as to costs, but with the fervent hope that the elephant survives any catastrophe. For, its existence is the requirement of the common man.

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