

**(Equivalent Citation:- 2007 (1) CPR 438 (NC))**

**II (2007) CPJ 175 (NC)**

**NATIONAL CONSUMER DISPUTES**

**REDRESSAL COMMISSION, NEW DELHI**

**Hon'ble Mr. Justice M.B. Shah, President; Mrs. Rajyalakshmi Rao, Member**

**REGISTRAR OF CO-OPERATIVE SOCIETIES & ANR.—Petitioners**

**versus**

**TAMIL NADU CONSUMER PROTECTION COUNCIL, TRICHY & ORS.—**

**Respondents**

*Revision Petition Nos. 726-821 of 2003, 822-923 of 2003, 1517-1635 of 2003, 1636-1762 of 2003, 1414-1421 of 2003—Decided on 9.2.2007*

**(i) Consumer Protection Act, 1986 — Section 21(b) — Co-operative Societies Act — Section 88 — Securities — FDR — Deposits with Co-operative Society — Failure to refund on maturity — Complaint allowed by Forum — Order upheld by State Commission — Special Officer and Registrar of Co-operative Societies made personally liable — Direction — Refund with interest — Hence revision — Registrar of Co-operative Societies and Special Officer appointed under Section 88 of Co-operative Societies Act — Discharge of any duty or function by them cannot be termed service or facility — Registrar discharges statutory duty and Special Officer appointed for administration of Society because of supersession — Both cannot be made personally liable for acts or misdeeds of Co-operative Societies — Order of Commission set aside — Only Co-operative Society liable for refund of deposit — Interest @ 8% allowed.**

**[Paras 23, 26, 27 to 31]**

**(ii) Distinction — Service under Section 2(1)(g) and Statutory Duty — Person who presents document for registration and pays stamp duty, not consumer — Officers appointed to implement provisions of Registration Act and Stamp Act do not render service under Consumer Protection Act — Perform only statutory duties.**

**[Para 24]**

**Result : Petitions disposed of.**

**Cases referred :**

1. ***S.P. Goel v. Collector of Stamps, Delhi*, I (1996) CPJ 11 (SC)=(1996) 1 SCC 573. (Relied) [Para 24]**

2. ***Lucknow Development Authority v. M.K. Gupta*, III (1993) CPJ 7 (SC)=(1994) 1 SCC 243. (Relied) [Para 25]**

**Counsel for the Parties :**

For the Petitioners : *Mrs. Nalani Chidambaram, Sr. Advocate with Mr. N. Thiagarajan, Advocate.*

For the Respondents : *Mr. N. Pushpavanam, Authorised Representative, Tamil Nadu Consumer Protection Council, Trichy.*

For the Respondent No. 10 in R.P. Nos. 1414-1421 of 2003 : *Mr. K. Selvan, Sr. Advocate.*

**ORDER**

**Mr. Justice M.B. Shah, President**—The only question which requires consideration in these Revision Petitions is whether the Registrar of the Co-operative Societies and the Special Officer, appointed under Section 88 of the Co-operative Societies Act, after supersession of Management Board of the Society, Tiruchirapalli Consumer Co-operative Wholesale Ltd., Trichy, would be jointly and severally liable for non-refund of deposits by the Society?

2. In our view, the Registrar of the Cooperative Societies and the Special Officer are discharging their duties under statutory provisions unconnected with any contract of accepting deposit from the complainants by the Cooperative Society. They cannot be held personally liable for non-refund of deposits by the Cooperative Society on the ground that the society was suffering from financial crunch or for various other reasons including mal-administration of the society. The Registrar of the Cooperative Societies under the Tamil Nadu Cooperative Societies Act is not providing any service or facility as contemplated under the Consumer Protection Act, but is exercising statutory, administrative, supervisory control and is discharging quasi-judicial functions as provided in the said Act.

*Facts:*

3. The Tiruchirapalli Consumer Cooperative Wholesale Stores Ltd. (for short, the TCCWS) failed to refund the deposited amount with interest accrued thereon to the investors/depositors. It is pointed out that the TCCWS had been constituted for the purposes, such as, to purchase articles in bulk of domestic consumption and sell them in wholesale and retail; to purchase or hire processing plants for the purpose of processing and/or manufacturing goods into a state fit for consumption or use; to construct, purchase or hire godowns or yards for purpose of storage, processing or manufacturing goods; to purchase or hire lorries for transport of goods; to act as the agent of the Government and/or co-operative societies to procure and stock foodgrains and other commodities, to sell the goods purchased, processed or manufactured by it to its affiliated primary stores at wholesale rates; to undertake retail distribution of goods, purchased, processed or manufactured by it, to open branches or supper markets for retail distribution at suitable places within its area of operations for the purpose mentioned in clause 7, to make distribution of consumer goods between purchasers and/or manufacturers as directed as

can be efficiently done and to undertake such other activities as are deemed essential for the attainment of any or all of the above objectives.

4. The TCCWS opened branches and super markets for retail distribution at suitable places within its area of operation and it opened the super market by the name of Chinthamani Co-operative Super Market (for short "CSM").

5. The TCCWS and the CSM come under the purview of the Tamil Nadu Co-operative Societies Act, 1983. By the application of the said Act, they come under the effective control and supervision of the Registrar of Co-operative Societies and the Government of Tamil Nadu represented by the Secretary to Government, Co-operative Department under the relevant provisions thereto.

6. The TCCWS, it appears, on the instructions issued by the Registrar of Co-operative Societies, received short term and long term deposits from its members agreeing to pay interest at a specified rate, obviously requiring such fluid cash resources or commercial transaction it had entered into in its sphere of its activities. The receipt of deposits from its members for the first time took place during the year 1997. As a matter of fact, there were a few deposits in the year 1997 as well as in 1998. Thereafter, the deposits collected from the members increased by leaps and bounds between the period 1999 and 2000. For the deposits so collected, the varying rates of interest were agreed to be paid such as 4.75%, 5%, 7%, 8%, 11%, 12%, 13.5%, 14% and 15% per annum.

7. The investors who made deposits either for short or long term with the TCCWS after the maturity of the said deposits, tried to encash those deposits by entrusting them to their banks for collection. When the investors demanded refund of money with accrued interest after the maturity period, by surrendering such deposits, receipts, the investors, to their shock and surprise, found advertisements in Newspapers that the TCCWS was trying to sell their immovable properties since they were in utter financial stress and that they were unable to meet the obligation of the creditors and the deposit holders.

8. Hence, the investors/deposit holders filed complaints before the Consumer Disputes Redressal Forum, Tiruchirappalli. Most of the cases are represented by the Tamil Nadu Consumer Protection Council (a voluntary consumer organization).

9. With regard to the refund of the money, there is no dispute. The contention that the complaint is not maintainable before the Consumer Fora, is rightly not pressed.

10. In various appeals filed by the petitioners the State Commission in its common judgment and order dated 23.1.2003 arrived at the conclusion that—

- (i) complaint for refund of the amount deposited with interest was maintainable before the District Consumer Fora;
- (ii) depositors are consumers *qua* the TCCWS;
- (iii) the Special Officer, TCCWS, and the Registrar of the Cooperative Societies are personally liable to pay the amount of deposit with interest accrued thereon, because of the deficiency in service on the part of the TCCWS;
- (iv) the Managing Director, the General Manager, the Branch Manager of the

TCCWS or the Branch Manager of the CSM cannot at all be mulcted with liability for the deficiency in service committed by the TCCWS.

- (v) the Special Officer, TCCWS and the Registrar of the Cooperative Societies would be jointly and severally liable.

11. The State Commission has also directed the Special Officer, TCCWS, to repay the amount due under the deposit with interest at the agreed rate till upto maturity and thereafter at 12% p.a. till realization and appeals were disposed of with the aforesaid modification.

12. After admission of the matters, on the basis of interim directions issued by this Commission, admittedly the Society has paid a sum of Rs. 575.87 lakh, principal amount without interest, to the complainants. For the rate of interest, it is agreed between the parties that the Society would pay interest at the rate of 8% p.a. on the principal amount of deposit which is refunded to the complainants.

13. Hence, the only question which requires consideration in these petitions is whether the Registrar of the Co-operative Societies and the Special Officer, Consumer Co-operative Wholesale Ltd. would be personally liable?

*Liability of Registrar and the Special Officer:*

14. At the outset, we state that, in our view, for determining as to whether a complaint is maintainable against a person including the statutory body is to be decided on the basis of the nature of the duty, function, and whether performance of such duty or function is service or a facility for consideration.

15. For arriving at the conclusion that the Registrar of the Co-operative Societies and the Special Officer would be personally liable for refund of the deposits with interest, the State Commission has relied upon the various provisions of the Tamil Nadu Co-operative Societies Act, 1983 and the rules thereof. We have gone through the said provisions. But the said provisions nowhere provide that the Registrar of the Societies is in any way concerned with the day-to-day administration or functioning of the Co-operative Societies, within his jurisdiction. Hence, those sections and rules are not required to be reproduced. Those provisions provide that the Registrar of the Co-operative Societies, can of his own motion, or on the application of a creditor of a registered society inspect or investigate or direct any person authorised by him in this behalf by general or special order in writing to inspect the affairs of the Co-operative Society, including alleged misappropriation, fraudulent retention of any money or property, breach of trust, corrupt practice or mismanagement in relation to the society. He can also issue various directions including preventing of affairs of any society from being conducted in a manner detrimental to the interests of the members or the depositors or the creditors thereof, by amending bye-laws or a similar such instructions including the removal of the officers or servants from the service on the ground of conviction and such other charges. He can inspect the books, accounts, documents, securities, cash or other properties, etc. and seize the same if necessary. He can call for the meeting of the members of the society. After inspection and inquiry report he can supersede the Board of Management and pass

appropriate order appointing special officer for management of the society.

16. Hence, in our view, the reliance placed by the State Commission on the sections and the rules would only reveal that the Registrar of the Cooperative Societies is entitled to have a supervisory jurisdiction, administrative control and is also required to discharge quasi-judicial functions. But, that would not mean that the Registrar would be personally liable for the defaults committed by the Society.

17. Further, the society is a corporate body, as provided in Section 39 of the Act and the management of the society vests in the general body of its members, as provided in Section 32 of the Act. Relevant Sections 39 and 32 are as under:

“Sec. 39: *Societies to be bodies corporate*—The registration of a society shall render it a body corporate by the name under which it is registered, with perpetual succession and a common seal and with power to hold property, to enter into contracts, to institute and defend suits and other legal proceedings and to do all things necessary for the purposes for which it is constituted”.

“Sec. 32. *General meetings*—(1)(a) Subject to the provisions of this Act, the rules and the bye-laws, the ultimate authority of a registered society shall vest in the general body of its members:

Provided, that nothing contained in this clause shall affect the exercise by the board or any officer of a registered society of any power conferred on such board or such officer by this Act or the rules of the bye-laws”.

18. From the aforesaid provisions, it is clear that for refund of the deposits by the members or creditors, proceedings would lie against the society which is a corporate body and whose management ultimately vests in the general body of its members.

19. Apart from the aforesaid provisions, Section 166 of the Act *inter alia* provides that the Registrar has power to enforce performance of duties by the Co-operative Societies and failure to comply with such directions the Registrar is entitled to take action as provided therein. The said section reads thus:

166. *Registrar's power to enforce performance of duties*—(1) If at any time, it appears to the Registrar that a registered society has made default in performing any duty imposed by or under this Act or has failed to comply with a lawful order of the Registrar, he may by order in writing, fix a period for the performance of such duty or for the compliance of the order.

(2) If such duty is not performed or the order of the Registrar is not complied within the period so fixed, the Registrar or any person authorised by him in this behalf may take or cause to be taken such action as may be necessary and recover the expenses of taking such action from the society 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 1862)

(3) Notwithstanding anything contained in Sub-sections (1) and (2), the Registrar may direct the officer or officers, whom he considers responsible for the default to

perform the duties or failure to comply with the order, to pay to the society the expenses recovered under Sub-section (2).

(4) The Registrar may, where the officer or officers fail to pay the expenses referred to in Sub-section (2), by order, require such officer or officers to pay to the society such sum not exceeding twenty-five rupees as he may think fit each day until his direction under Sub-section (3) is carried out.

(5) No order or direction under this Section shall be made or issued except after giving the society or officer concerned an opportunity of making its or his representations.

(6) The action taken under this section shall be without prejudice to any other action that may be taken under this Act and the rules.

20. The above stated functions also can be termed as administrative and quasi-judicial functions of the Registrar of the Co-operative Societies.

21. Finally, Section 176, provides for immunity in case of action taken in good faith. The said Section reads as under:

*“176. Protection of action taken in good faith.—No suit, prosecution or other legal proceeding shall lie against the Government or any officer or servant of the Government or the Registrar or any person authorized by him for anything which is in good faith done or intended to be done under this Act or any rule or bye-law made thereunder.”*

22. Next, the Special Officer is appointed for administration of the Society under Section 88 of the Act after supersession of the society. That power is conferred on the Registrar in cases where the society is not functioning properly or wilfully disobeys or wilfully fails to comply with any order or direction issued by the Registrar under the Act or the Rules. Therefore, the Special Officer comes into picture only after the supersession of the Board of any registered society. He cannot be held personally liable for the failure of the society to repay the deposited amounts.

23. Considering the aforesaid provisions it cannot be held that the Registrar of the Cooperative Societies or the Special Officer appointed under Section 88 of the Co-operative Societies Act are discharging any duty or function which can be termed as service or faculty for consideration. The Registrar is discharging his statutory duty which may be either administrative, supervisory or quasi-judicial. The Special Officer is appointed for administration of the society because of supersession, and for the past deeds of the society, he cannot be held liable. Therefore, they would not be personally liable for the acts or misdeeds of the Co-operative Societies or holders of office of Co-operative Society. Hence, the findings recorded by the State Commission that the Registrar and the Special Officer are personally liable for the refund of the deposits to the complainants cannot be justified.

24. Further, this question does not require much discussion for the reasons recorded by the Apex Court in *S.P. Goel v. Collector of Stamps, Delhi*, I (1996) CPJ 11

(SC)=(1996) 1 SCC 573. In the said case, the Apex Court considered the provisions of the Stamp Act, Indian Registration Act and the Consumer Protection Act, 1986 and arrived at the conclusion that in case of deficiency in service on the part of the Collector in not registering the documents (Will) or issuing certified copy in spite of payment of registration charges, complaint before the Consumer Fora was not maintainable. The Court observed that —

“32. Running through the twin Acts, namely, the Registration Act and the Stamp Act, we could not, at any stage, reconcile ourselves to the idea spoused by the appellant’s Counsel, that there is an element of commercialism involved in the whole process of registration of instruments or payment of Stamp Duty and that the executant of an instrument, at the time of its presentation for registration, becomes a “consumer” entitled to “service” within the ambit of Consumer Protection Act. The reasons are many.

33. The Registration Act as also the Stamp Act are meant primarily to augment the State revenue by prescribing the stamp duty on various categories of instruments or documents and the procedure for collection of stamp duty through distress or other means including criminal prosecution as an offence. Payment of registration fee or registration charges including charges for issuing certified copies of the registered documents or fee for the inspection of various registers or documents kept in the Registrar’s or Sub-Registrar’s office, etc. constitute another component of State revenue.

34. In this situation, therefore, the person who presents a document for registration and pays the stamp duty on it or the registration fee, does not become a consumer nor do the officers appointed to implement the provisions of the two Acts render any service within the meaning of Consumer Protection Act. They only perform their statutory duties (some of which, as earlier indicated, are judicial or, at least, quasi-judicial in nature) to raise and collect the State Revenue which is a part of the sovereign power of the State.”

25. Thereafter, the Apex Court considered its earlier decision in the case of *Lucknow Development Authority v. M.K. Gupta*, III (1993) CPJ 7 (SC)=(1994) 1 SCC 243, and held that the Government Officer may be held liable in tort if in the discharge of his official duties acts maliciously or with oblique motive or *mala fide* but, the position in that case was different in many vital respects. Thereafter, the Court referred to Section 86 of the Stamp Act which provides immunity to the concerned officer if the Act is done in good faith. The said Section 86 is similar to Section 176 of the Tamil Nadu Cooperative Societies Act and it reads as under:

“Sec. 86. Registering Officer not liable for thing bona fide done or refused in his official capacity— No Registering Officer shall be liable to any suit, claim or demand by reason of anything in good faith done or refused in his official capacity”.

The ratio laid down in the aforesaid decision would be squarely applicable in the present case.

26. Hence, we hold that the Registrar of the Cooperative Societies, Tamil Nadu, is not discharging any service as contemplated under the Consumer Protection Act, 1986 nor is providing any facility under the Act, but is exercising statutory, administrative, supervisory power or/and discharging quasi-judicial functions under the Tamil Nadu Cooperative Societies Act. There is no question of hiring or availing of service or facility of the Registrar or the Special Officer by the complainants who have deposited their amounts with the society.

27. Hence, we set aside the order passed by the State Commission holding that the Registrar of the Cooperative Societies and the Special Officer are jointly and severally liable to pay the amount to the depositors. We hold that only the Cooperative Society would be liable for refund of the deposit with accrued interest.

28. It is also made clear that on the basis of various directions issued by this Commission the society has repaid the deposits in the sum of Rs. 575.87 lakh, *i.e.* principal amount to the complainants without interest. For the interest amount it is agreed between the parties that the same would be paid with interest at the rate of 8% p.a.

29. It is, therefore, ordered that the interest amount at the rate of 8% shall be paid to the complainants as far as possible within a period of one year, even by selling of the land belonging to the society as stated in our order dated 8.1.1997, wherein, *inter alia*, we have directed as under:

“Considering the aforesaid submissions and the fact that for administration of the society, Special Officer has taken charge, it is hoped that the Special Officer would make efforts to sell the immovable property and pay the amount if suggested by the members of the Cooperative Society. Affidavit, as stated above, to be filed on or before 18.1.2007. Dasti.

We have heard Mr. N. Pushpavanam, Authorised Representative of the Consumer Protection Council. He submits that direction be issued to the petitioner Society to pay the interest at the rate of 8% p.a. to the depositors to whom the amount is repaid, within a period of one year.”

30. We have taken into consideration the affidavits filed by the Deputy Registrar, Special Officer and that of the complainant. In our view, considering the dispute the society is directed to pay interest amount in any case, within a period of two years. This direction is also given to the Special Officer of the society who is in-charge of day-to-day administration of the society.

31. The Revision Petitions are disposed of accordingly. There shall be no order as to costs.

***Petitions disposed of.***

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