

**HIGH COURT OF GUJARAT (D.B.)**

**DABHOI MUNICIPALITY**

**V/S**

**V R NAYAK, DISTRICT REGISTRAR OF CO-OPERATIVE SOCIETIES, BARODA**

**Date of Decision: 13 March 1970**

**Citation: 1970 LawSuit(Guj) 31**

**Hon'ble Judges:** [B J Divan](#), [P D Desai](#)

**Eq. Citations:** 1971 AIR(Guj) 203, 1971 GLR 260

**Case Type:** Special Civil Application

**Case No:** 5 of 1967

**Head Note:**

**Gujarat Co-operative Societies Act (X of 1962) - S.50(1),S.96 - Bombay co-operative societies Act(VII of 1925) - S.24A,S.54 - Provisions of Bombay and Gujarat Acts substantially both are same - until adjudication by Registrar, there could not be said to be any debt of society against any member - recovery proceedings Under S.50(1) as per Gujarat Act can not be brought in to play - comes into play only if employer makes default Under S.50 (3) of the Gujarat Act. there is bona fide contention by the employer in view of legal position it does not amount to willful default.**

**The provisions of sec. 50(1) of the Gujarat Co-operative Societies Act are for all practical purposes the same as the provisions of sec. 24A of the Bombay Co-operative Societies Act and the provisions of sec. 96 of the Gujarat Act are substantially the same as the provisions of sec. 54 of the Bombay Act. Merely on the reading of sec. 24A(1) of the Bombay Act and sec. 50(1) of the Gujarat Act it is clear that until the adjudication by the Registrar or his nominee under sec. 96 of the Gujarat Act there could not be said to be debt of the Society against the**

member for the recovery of which the special procedure laid down in sec. 50(1) of the Gujarat Act could be brought into play. (Para 4). The power of the Registrar to invoke the special machinery under sec. 50(3) of the Gujarat Act comes into play only if the employer at any time fails to deduct the amount specified in the requisition made under sub-sec. (2). If there was a bona fide contention by the employer that in view of the legal position the requisition by the Society to the employer was not valid inasmuch as there was no adjudication regarding the debt it could not be said that there was a willful default on the part of the employer in deducting the amount. *Majoor Sahakari Bank Ltd. Ahmedabad v. Jasmat Gopal* followed.

#### Acts Referred:

[Bombay Co-Operative Societies Act, 1925 Sec 54, Sec 24A](#)

[Gujarat Co-Operative Societies Act, 1961 Sec 96, Sec 50\(1\)](#)

**Final Decision:** Petition allowed

**Advocates:** [C T Dam](#), [S N Shelat](#), [R M Gandhi](#), [K S Nanavati](#), [I M Nanavati](#)

#### Reference Cases:

[Cases Cited in \(+\): 1](#)

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#### Judgement Text:-

Divan, J

[1] The petitioner herein is the Dabhoi Municipality functioning under the provisions of the Gujarat Municipalities Act, 1963. The first respondent is the District Registrar of Co-operative Societies, Baroda and the second respondent is the Co-operative Credit Society of the employees of the petitioner Municipality. The petitioner employs a large number of municipal servants and pays salaries or wages to those servants. It is legally liable to pay the prescribed salaries or wages to its servants. Some of the employees of the petitioner are members of the second respondent Co-operative Society (hereinafter referred to as the Society). The Society advances loans to its members and the members agree to pay back the loans thus advanced to them by monthly instalments. At the time when the loan is advanced, the member to whom the loan is advanced

agrees that if he fails to pay the instalment which falls due at the relevant time, the amount of the loan or the instalment may be recovered from his salary or wages. This agreement is entirely between the employee and the Society and the Municipality is not a party to such agreement. It is the case of the Municipality that the Society sent requisitions to the Municipality to deduct certain amounts from the wages of its employees alleging that those sums were due from the employees, who were the members of the Society. The requisitions purported to have been issued under the provisions of sec. 50 of the Gujarat Co-operative Societies Act, 1961 (hereinafter referred to as the Act). Such requisitions used to be received by the Municipality every month. Acting under the belief that every employer was bound to make deductions from the wages of his employees merely on a requisition from a Co-operative Society, the petitioner Municipality had made such deductions from the wages of its employees for the period from August to December 1965. Thereafter 92 employees of the petitioner Municipality, from whose wages, deductions had been made on the requisition of the Society, filed an application before the authority under the Payment of Wages Act, 1936, for recovering the amount of Rs. 4467. 44 P. being the amount deducted by the Municipality and handed over to the Society. In those proceedings, the Payment of Wages Authority heard the arguments of the Municipality and the contention of the Municipality then was that under sec. 50 of the Act, the Municipality was bound to deduct to amounts specified by the Society to be due from its members. The said Authority rejected this contention of the petitioner Municipality and relying on a decision of this High Court in *Majoor Sahkari Bank Ltd., Ahmedabad v. Jasmat Gopal*, VI G.L.R. 539, the Payment of Wages Authority directed that the amount which had been deducted by the petitioner Municipality had been wrongly deducted and directed the petitioner Municipality to pay Rs. 4476-44 P. to the employees who had filed the application. After this decision of the Payment of Wages Authority, the Municipality was advised that this decision was sound in law and that the Municipality had neither the power nor the duty to make deductions from the legal wages of its employees only on the strength of a letter from the Society alleging that certain sums were due from the employees and requisitioning that such sums should be deducted from the wages of the employees and such sums should be made over to the Society. After the decision of the Payment of Wages Authority and after duly considering the legal position, the petitioner Municipality decided not to make any deductions from the wages of its employees in respect of the requisitions made by the Cooperative Society and hence no deductions were made from the wages of the employees for the months of July, August and September, 1966. In subsequent months also, the Municipality did not make such deductions on a mere requisition by the Society. Thereafter on October 14, 1966, the

Society preferred an application to the District Registrar of Co-operative Societies, the first respondent herein. This application purporting to be under sec. 50 of the Act requested the Registrar to issue a certificate under sec. 50(3) of the Act. A notice was issued by the first respondent to the Municipality calling upon the Municipality to show cause why a certificate for the recovery of the said amount from the Municipality personally should not be issued under sec. 50(3) of the Act. Thereafter, the petitioner Municipality put forward its representation pointing out the facts stated above and also the decision of this High Court and on December 15, 1966, the first respondent passed an order holding that the petitioner Municipality was bound to make deductions on the requisitions of the Co-operative Society and that, a certificate should be issued for the recovery of Rs. 10,051/- from the petitioner Municipality under the provisions of sec. 50 of the Act. Apprehending that after the issue of such a certificate, this amount would be recovered as arrears of land revenue from the Municipality, the petitioner has filed this Special Civil Application challenging the order of the Registrar passed on December 15, 1966, copy of which has been annexed as Annexure "B" to the petition.

**[2]** Though the vires of sec. 50 of the Act have been challenged in the petition, at the hearing of the petition, the main arguments which have been advanced are in connection with the decision of this High Court in *Majoor Sahkari Bank's case* (supra). Mr. Daru, on behalf of the petitioner, has contended that though the decision in the above case was in connection with the provisions of sec. 24A and sec. 54 of the Bombay Co-operative Societies Act of 1925 and though the Act before us now is the Gujarat Co-operative Societies Act, 1961, in fact the provisions of sec. 24A of the Bombay Act and sec. 50(1) of the Gujarat Act are practically identical and further that the provisions of sec. 54 of the Bombay Act and sec. 96 of the Gujarat Act are substantially the same for all practical purposes and hence the decision in *Majoor Sahkari Bank's case* (supra) is still good law and would be applicable to the facts of the case.

**[3]** In *Majoor Sahkari Bank's case* (supra), at page 542, sec. 24A of the Bombay Act has been cited and sub-sec. (1) of that section was in these terms :-

"A member of a 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 employed 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."

Sec. 50(1) of the Gujarat Act is in these terms :-

"A member of a 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 to the society the amount so deducted in satisfaction of any debtor other demand of the society against the member."

As Mr. Nanavati, appearing on behalf of the second respondent Society urged before us, it is clear that the words "owing by the member to the Society" occurring in sec. 24A(1) of the Bombay Act are replaced by the words : "of the Society against the member" in sec. 50(1). Barring this change, there is no other difference between the provisions of sec. 24A(1) of the Bombay Act and sec. 50(1) of the Gujarat Act. The difference in terminology between sec. 24A(1) of the Bombay Act and sec. 50(1) of the Gujarat Act is not material. The use of the word "debt" occurring in sec. 50(1) of the Gujarat Act clearly indicates that there must be a debt owed by a member to the Society. Unless some amount is owed, there cannot be said to be a debt due by a member to the Society or a debt of the Society against a member. Therefore, as we have indicated above, the change in terminology makes no difference and the provisions of sec. 50(1) of the Gujarat Act are for all purposes the same as the provisions of sec. 24A(1) of the Bombay Act.

**[4]** The Division Bench in *Majoor Sahkari Bank's case* (supra) has placed considerable reliance upon sec. 54 of the Bombay Act and when one compares sec. 96(1) of the Gujarat Act read with Explanation 1, cl. (i), it is clear that the claim by a Society for any debt or demand due to it from a member, past member or the nominee, heir or legal representative of a deceased member, whether such a debt or demand be admitted or not, is included within the word "dispute". The same was the position under sec. 54 of the Bombay Act. That section provided that a dispute would include a claim made by a Society against its member and such dispute was to be decided by the Registrar, whether such debts or demands be admitted or not. Therefore, even if at one stage the



claim or demand is admitted by the member, even then a dispute regarding such claim by a Society would be a debt which has got to be decided by the Registrar or his nominee both under sec. 54 of the Bombay Act and sec. 96 of the Gujarat Act. After taking into consideration sec. 24A and sec. 54 of the Bombay Act, the Division Bench held :-

"It is clear from sec. 24A of the Bombay Co-operative Societies Act that a mere requisition by the Society is not sufficient. There must at the time of the requisition be an outstanding debt, for the deduction and payment are to be made only in satisfaction of such an outstanding debt or demand. Whether a debt or a demand claimed by the Society or its member as due to it or him is an admitted debt or not, it has to be referred to the Registrar or his nominee for his decision under sec. 54 of the Act. The words "the debt or other demand" in sec. 24A read in the light of the section as a whole must mean an adjudged debt or other demand and not merely a claim or an allegation by a society that there is due by its members to it a certain amount as a debt or other demand. Sec. 24A of the Act applies and is available to a Co-operative Society at the stage of recovery of a debt which is crystallized as such after it is adjudged as debt."

We have pointed out that the provisions of sec. 50(1) of the Gujarat Co-operative Societies Act are for all practical purposes the same as the provisions of sec. 24A of the Bombay Act and the provisions of sec. 96 of the Gujarat Act are substantially the same as the provisions of sec. 54 of the Bombay Act. Under these circumstances, the decision of the Division Bench in *Majoor Sahkari Bank's case* (Supra) based as it was on the provisions of sec. 24A and sec. 54 of the Bombay Act will still be good law notwithstanding the fact that we are now governed by the provisions of the Gujarat Co-operative Societies Act, 1961. It is, therefore, clear that in the instant case, the petitioner Municipality was not bound to act upon the requisition issued by the Society calling upon the Municipality to deduct any particular amount from the salary or wages payable to any particular employee of the Municipality who was also a member of the Society. Unless and until the debt was adjudged by the appropriate authority, there could not be said to be any debt of the Society. In *Majoor Sahkari Bank's case* (supra), the Division Bench has pointed out in para 8 at page 544 of the report as

follows :-

"What sec. 24A provides is an additional remedy to a co-operative society so that in order to recover a debt due to it, the society would not have to undergo the elaborate procedure of execution. It provides a procedure whereby it can follow the moneys due by a third party to its debtor and reach such funds for the satisfaction of the debt or demand due to it. Sec. 24A presumably was inserted in the Act to avoid the difficulty of execution under sec. 60 of the Civil Procedure Code. Under that section no execution can lie against wages payable to a workman. Sec. 24A, therefore, applies and is available to a co-operative society at the stage of recovery of a debt which is crystalized as such after it is adjudged as such debt."

Under these circumstances, merely on the reading of sec. 24A(1) of the Bombay Act and sec. 50(1) of the Gujarat Act, it is clear that until the adjudication by the Registrar or his nominee under sec. 96 of the Gujarat Act, there could not be said to be debt of the Society against the member for the recovery of which the special procedure laid down in sec. 50(1) of the Gujarat Act could be brought into play.

**[5]** We may also point out that the power of the Registrar to invoke the special machinery under sec. 50(3) of the Gujarat Act comes into play only if the employer at any time fails to deduct the amount specified in the requisition made under sub-sec. (2). Now, the word "fails" in sub-sec. (3) in the context in which it occurs, must connote a wilful or intentional default or default without sufficient cause on the part of the employer and not merely a physical failure to deduct after intimation in the form of the requisition made by the Society. This construction of the sub-section is warranted (1) because of the serious consequences which ensue upon the issuance of the certificate and (ii) because failure without sufficient cause to comply with the requisition under sec. 50(2) is an offence punishable under sec. 147(1)(c) read with sec. 148(1)(c). If, as in the present case, there was a bona fide contention by the Municipality that in view of the legal position as it emerged from the decision of the Division Bench in *Majoor Sahkari Bank's case* (supra), because the requisition by the Society to the employer was not valid inasmuch as there was no adjudication regarding the debt, it could not be said that there was a wilful default on the part of the employer in deducting the amount. The

consequences of the order passed by the Registrar under sec. 50(3) are very serious and the amount becomes recoverable on behalf of the Society as an arrear of land revenue, on a certificate being issued by the Registrar. The Registrar has, at the time of such enquiry contemplated by sec. 50(3), to satisfy himself that there is failure in the sense of wilful or intentional default or default without sufficient cause on the part of the employer in deducting the amounts specified in the requisitions by the Society and he has also to satisfy himself whether the requisition itself was a legal requisition or not. On both these points in the instant case the petitioner Municipality had urged contentions before the Registrar, the first respondent herein; but overlooking the requirements and conditions precedent for the exercise of his power before granting the certificate, the Registrar in the instant case has issued the Certificate, Annexure "B" to the petition. Since there was no wilful default on the part of the petitioner Municipality and further since the requisition for deducting the amount was itself not according to law, the Registrar's Order, Annexure "B" in the form of certificate, was beyond the scope of the powers vested in him by sub-sec. (3) of sec. 50 of the Act. Our conclusion, therefore, is that the Order and the Certificate are bad. We, therefore, allow this petition and quash and set aside the order, dated December 15, 1966, annexure "B" to the petition. We also issue a writ of Mandamus directing the first respondent to forbear from acting upon the Order, dated December, 15, 1966, in any manner and from taking any steps for recovering the amount mentioned in the said order as and by way of arrear of land revenue or in any other manner. The opponents will pay the costs of this petition to the petitioner. Rule is made absolute.

Petition allowed.

