**BEFORE THE DEPUTY REGISTRAR OF COOPERATIVE SOCIETIES (AUDIT)**
**COOPERATIVE DEPARTMENT, GOVERNMENT OF PUDUCHERRY.**

N.M.D.No. 7 of 2018

T.SUBRAMANYAN
(Ex-Manager of the Pondicherry Coop. Housing Society Ltd., No.P.56)
No.88, Iyyanar koil street
Dr.Radhakrishnan Nagar, Ariyankuppam
Puducherry – 605007. >>> Petitioner

Vs.

(1) The Administrator
Pondicherry Coop. Housing Society Ltd., No.P.56
Ilango Nagar, Puducherry – 605011.

(2) The Secretary
Pondicherry Coop. Housing Society Ltd., No.P.56
Ilango Nagar, Puducherry – 605011. >>> Respondents

ORDER

*(Issued under Section 84 of the Puducherry Cooperative Societies Act, 1972 read with Rule 67 of the Puducherry Cooperative Societies Rules, 1973)*

The above-named Petitioner, retired Manager of the Respondent-Society, filed this dispute, dated **22.10.2018**, before the Registrar of Cooperative Societies ***(for short "the RCS")***, Puducherry, under Section 84 of the Puducherry Cooperative Societies Act, 1972, ***(for short "the Act")*** for the recovery of **Rs.21,22,265/-**, along with interest due thereon, which is payable by the Respondent-Society in respect of five (5) Fixed Deposits ***(for short "the FDs")*** issued to the Petitioner.

**[2]** This dispute was taken up by the RCS and transferred to the undersigned for adjudication, vide proceedings dated **15.11.2018**. The Respondent-Society filed its Counter Statement dated Nil, which was received on **09.01.2019**. The Petitioner filed his rejoinder dated **04.02.2019**. The Respondent-Society filed its Additional Counter dated **09.04.2021**. Thiru J.Mantiny Xavier, Cooperative Officer / Ex-Administrator-cum-Secretary of the Respondent-Society, filed two (2) replies dated **29.12.2020 and 09.08.2021**.

**[3]** On examination of the records and documents available in this dispute, the following indisputable events, in chronological order, were revealed:

**a)** The Respondent-Society is a registered primary level cooperative housing society, registered under the Act.

**b)** The Petitioner retired from the services of the Respondent-Society on **31.01.2015** on attaining superannuation. At that time, in the absence of an elected committee of management, the Respondent-Society was managed by an Administrator appointed by the RCS. At present, the Respondent-Society is being managed by an elected committee of management.

**c)** As an employee, the Petitioner is entitled to claim his terminal benefits, such as, retirement gratuity, employees' provident fund **(EPF)** and surrender and encashment of earned leave, from the Respondent-Society.

**d)** Gratuity amount of **Rs.8,55,028/-** due to Petitioner was fully settled. An amount of **Rs.6,25,000/-** was paid to the Petitioner as EPF during the period from **04.03.2015 to 07.04.2018**. An amount of Rs.13,76,600/-, as detailed below, was due to the Petitioner from the Respondent-Society:

| S. No. | Particulars | | Amount Rs. |
|---|---|---|---|
| 1 | **Amount Due to the Petitioner:** | | |
| | (a) EPF dues | 17,24,314 | |
| | (b) Encashment of EL | 2,77,286 | **20,01,600** |
| 2 | **Less amount paid:** | | |
| | On 04.03.2015 | 1,00,000 | |
| | On 29.09.2015 | 50,000 | **18,51,600** |
| | | | |
| | On 27.10.2016 | 25,000 | |
| | On 16.05.2017 | 1,00,000 | |
| | On 16.05.2017 | 2,00,000 | |
| | On 07.04.2018 | 1,50,000 | **13,76,600** |

**e)** Despite repeated requests made by the Petitioner, the Respondent-Society couldn't settle the amount due to the Petitioner due to financial crisis.

f) The Petitioner made several representations to the Government higher authorities for intervention to resolve his grievance.

g) On **05.07.2016**, the said Ex-Administrator of the Respondent-Society himself calculated the amount due to the Petitioner as **Rs.21,22,265/-**, as detailed below:

| S. No. | Particulars | | Amount Rs. |
|---|---|---|---|
| 1 | **Amount Due to the Petitioner:** | | |
| | (a) EPF dues | 17,24,314 | |
| | (b) Encashment of EL | 2,77,286 | 20,01,600 |
| 2 | **Add:** | | |
| | Interest for 31 days @ 9% p.a | | |
| | (01.02.15 to 04.03.2015) | 15,300 | 20,16,900 |
| 3 | **Less:** | | |
| | Payment made on 04.03.2015 | 1,00,000 | 19,16,900 |
| 4 | **Add:** | | |
| | Interest for 209 days @ 10% p.a | | |
| | (04.03.2015 to 29.09.2015) | 1,08,886 | 20,25,786 |
| 5 | **Less:** | | |
| | Payment made on 29.09.2015 | 50,000 | 19,75,786 |
| 6 | **Add:** | | |
| | Interest for 225 days @ 10.5% p.a | | |
| | (29.09.2015 to till date) | 1,46,479 | **21,22,265** |

h) As a temporary solution in respect of terminal benefits due to the Petitioner, the said Ex-Administrator issued the following FDs dated **06.07.2016**, amounting to Rs.21,22,265/-, to the Petitioner in lieu of his terminal benefits dues:

| S. No. | FDR No. | FD Amount Rs. | Period of Deposit | Date of maturity |
|---|---|---|---|---|
| 1 | 002455 | 5,00,000 | 26 months | 06.09.2018 |
| 2 | 002456 | 5,00,000 | 26 months | 06.09.2018 |
| 3 | 002457 | 4,00,000 | 26 months | 06.09.2018 |
| 4 | 002458 | 4,00,000 | 26 months | 06.09.2018 |
| 5 | 002459 | 3,22,265 | 14 months | 06.09.2017 |
| | **Total:** | **21,22,265** | | |

i) All the above-stated five (5) FDs, dated **06.07.2016**, were issued by the said Ex-Administrator in favour of the Petitioner and his wife, i.e., as "T.Subramaniyan (EorS) S.Kasturi", which carry interest at the rate of 11% per annum.

j) The Petitioner-Society neither paid interest for the said FDs nor refunded the said FDs on maturity.

k) In respect of issue of FDs to the Petitioner, the Petitioner-Society and the said Ex-Administrator submitted two contradicting written statements, vide their Counter Statement and Reply dated **09.01.2019** and **29.12.2020** respectively..

   a. **Based on the books of accounts of the Respondent-Society, the Petitioner-Society categorically denied the issue of the said FDs in favour of the Petitioner and raised the question of legality for the said FDs.** However, the Respondent-Society admitted that, an amount of 13,76,600/- is due to the Petitioner towards EPF (Rs.10,99,314/-) and encashment of Earned Leave (Rs. 2,77,286/-).

   b. **Contrary to the Respondent-Society's stand, the said Ex-Administrator affirmed that the said FDs were issued by himself to the Petitioner. The said Ex-Administrator admitted that,** (a) FDs were not issued to the Petitioner on receipt of cash from the Petitioner, (b) FDs were issued to the Petitioner in lieu of his terminal claims (c) Fixed Deposit Receipts (FDRs) were signed only by him and (d) the then second-line officials of the Respondent-Society were refused to sign in the FDRs in as much as they didn't agree for the issue of FDs to the Petitioner in lieu of his terminal claims.

**[4]** In view of the above facts, it is evident that, FDs were issued to the Petitioner for **Rs.21,22,265/-** by the said Ex-Administrator on **06.07.2016**,. The Petitioner received a sum of **Rs.4,75,000/-** from the Respondent-Society, during the period from **27.10.2016 to 07.04.2018**, as detailed below:

| S. No. | Date of payment | Amount Rs. |
|---|---|---|
| 1 | 27.10.2016 | 25,000 |
| 2 | 16.05.2017 | 1,00,000 |
| 3 | 16.05.2017 | 2,00,000 |
| 4 | 07.04.2018 | 1,50,000 |
| | **Total:** | **4,75,000** |

**[5]** The Petitioner-Society refunded the said amount of Rs.4,75,000/- to the Petitioner as part-payment of EPF dues. In this regard, it is evident that, FDs were issued to the Petitioner for **Rs.21,22,265/-** by the said Ex-Administrator on **06.07.2016,** and thereafter, the Petitioner received a sum of **Rs.4,75,000/-** from the Respondent-Society, during the period **from 27.10.2016 to 07.04.2018.** On the one hand, the Petitioner filed this dispute in respect of the said FDs, which were issued in lieu of his terminal claims in respect of EPF and encashment of earned leave dues, whereas, on the other hand, after the receipt of the said FDs, the Petitioner received Rs.4,75,000/- from the Respondent-Society towards part-payment of his EPF dues. However, the Petitioner didn't state anything about the receipt of the said Rs.4,75,000/- from the Respondent-Society either in his petition or in his rejoinder.

**[6]** Aggrieved by the non-refund of the said FDs, the Petitioner filed this dispute dated **22.10.2018** for adjudication.

**[7]** In respect for the **legality of the said FDs**, the Petitioner-Society firmly denied the issue of the said FDs in favour of the Petitioner. As admitted by the said Ex-Administrator, the said FDs were not transacted in the books of accounts of the Respondent-Society. At the time of issuing FDs to the Petitioner, in lieu of his terminal claims, the said Ex-Administrator should have arranged to pass necessary adjustment journal entries in the books of accounts of the Respondent-Society. Without passing necessary adjustment journal entries, the said Ex-Administrator himself signed the said FDs and issued the same to the Petitioner. In this regard, the said Ex-Administrator replied that, he can understand from the Respondent-Society's counter statement that, adjustment entries were not passed by the Respondent-Society for the issue of the said FDs to the Petitioner.

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The entire administration of the Respondent-Society was in the hands of the said Ex-Administrator when he issued the said FDs to the Petitioner, whereas, the said Ex-Administrator now blames the Respondent-Society for the non-transaction of the said FDs in the books of accounts of the Respondent-Society. Further, after issue of the said FDs to the Petitioner on **06.07.2016** in lieu of his terminal claims, the said Ex-Administrator himself paid a sum of **Rs.4,75,000/-** to the Petitioner during the period **from 27.10.2016 to 07.04.2018** from the funds of the Respondent-Society as part-payment of EPF dues.

The said Ex-Administrator prayed for an order from the undersigned to the Respondent-Society to pass necessary adjustment entries in the books of accounts of the Respondent-Society to settle this dispute. It seems that, in order to escape from his misbehavior, the said Ex-Administrator made the said prayer, which cannot be agreed to. Further, by such prayer, the said Ex-Administrator affirmed that, he signed and issued the said FDs without passing necessary adjustment entries in the books of accounts of the Respondent-Society. His act equals to dereliction of his official duties. At present, after a lapse of nearly five (5) years, it is not possible for this authority to consider the said Ex-Administrator's prayer of issue of direction to the Respondent-Society to pass necessary adjustment entries in the books of accounts of the Respondent-Society for validating the said FDs.

Hence, in view of the above facts, **this dispute cannot and shouldn't be adjudicated on the basis of the said FDs**, which were issued by the said Ex-Administrator without transacting the same in the books of account of the Respondent-Society. **However, the Petitioner is at liberty to initiate appropriate legal proceedings, if any, against the said Ex-Administrator of the Respondent-Society before competent court of law for the issue of the said FDs without transacting in the books of accounts of the Respondent-Society..**

**[8]** In order to redress the Petitioner's grievance to the possible extent and on humanitarian basis and to render justice, personal hearings were held on **05.08.2021 and 12.08.2021**, wherein the Petitioner and the President of the Respondent-Society were participated. The said Ex-Administrator of the Respondent-Society was called absent. During the said hearings, the legality of the said FDs, as aforesaid, was explained to the Petitioner.

The gist of the submissions made in the said hearings are detailed as follows:

**a)** The Petitioner consented for the cancellation of the said FDs.

**b)** The Petitioner consented to receive the remaining amount EPF dues from the Respondent-Society as per the Respondent-Society's records. The petitioner insisted for interest from the Respondent-Society for his EPF dues. The Petitioner further insisted his claim in respect of encashment of earned leave dues from the Respondent-Society.

**c)** The President of the Respondent-Society expressed his consent to settle the remaining EPF dues, without interest due thereon, subject to the availability of funds in the Respondent-Society. Even though settlement of EPF dues is a statutory liability of the Respondent-Society, the President of the Respondent-Society didn't state any time-line for such settlement.

**d)** In respect of encashment of earned leave, the President of the Respondent-Society firmly refused to settle the same due to present critical financial position of the Respondent-Society.

[9] In view of the above facts and in order render justice, **the following orders are made:-**

**a)** The said FDs, which were issued by the said Ex-Administrator of the Respondent-Society, don't have any legal validity. Hence, as consented by the Petitioner himself, the said FDs stand cancelled. The Petitioner should immediately surrender the said FDs to the Respondent-Society.

**b)** On receipt of the said FDs from the Petitioner, the Respondent-Society must immediately pay the remaining EPF dues of **Rs.10,99,314/-** to the Petitioner, along with simple interest at the rate of nine per cent per annum **(9% p.a)**. Interest shall be calculated only for the actual amount payable to the Petitioner, from time to time, on product basis method, and

**c)** When the financial position of the Respondent-Society improves and on humanitarian grounds, the Respondent-Society may consider for the settlement of encashment of earned leave of Rs.**2,77,286/-** to the Petitioner, without any interest thereon.

[10] A copy of this order is forwarded to the Deputy Registrar of Cooperative Societies (Housing) for information. The Deputy Registrar of Cooperative Societies (Housing) may arrange to initiate necessary disciplinary action against the said Ex-Administrator in respect of issue of the said FDs without transacting the same in the books of accounts of the Respondent-Society.

[11] **With the above directions, this dispute is disposed of. No costs.**

Pronounced in the open court on this **18th day of August, 2021 (18.08.2021).**

18/8/2021

**(P.RAMACHANDRAIAH)**
**Deputy Registrar of Coop. Societies (Audit)**

**To:**

1) The Petitioner
2) The President, Pondicherry Coop. Housing Society Ltd., No.P.56

**Copy to:**

1) The Deputy Registrar of Coop. Societies (Housing), Coop. Dept., Puducherry.
2) Stock File, 2021, Coop. Legal Cell, Coop. Dept., Puducherry.
3) The Web Editor, Coop. Dept., Puducherry.

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