

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C) 10426/2006

Reserved on: 11th March 2010

Decision on: 21st April 2010

P.K. SINGH

..... Petitioner

Through: Mr. R.K. Saini, Advocate

versus

LIFE INSURANCE CORPORATION OF INDIA Respondent

Through Mr. Ravinder Sethi, Senior Advocate

with Mr. Kamal Mehta and

Mr. Puneet Sharma, Advocates

WITH

W.P. (C) 10442/2006

NANDINI SUNDRIYAL

..... Petitioner

Through: Mr. R.K. Saini, Advocate

versus

LIFE INSURANCE CORPORATION OF INDIA Respondent

Through Mr. Ravinder Sethi, Senior Advocate

with Mr. Kamal Mehta and

Mr. Puneet Sharma, Advocates

WITH

W.P. (C) 10443/2006

MR. MAN SINGH KUSHWAHA

..... Petitioner

Through: Mr. R.K. Saini, Advocate

versus

LIFE INSURANCE CORPORATION OF INDIA Respondent

Through Mr. Ravinder Sethi, Senior Advocate

with Mr. Kamal Mehta and

Mr. Puneet Sharma, Advocates

AND

W.P. (C) 3277/2007

R.K. MAHAJAN

..... Petitioner

Through Mr. J.P. Sengh, Senior Advocate with

Mr. N.K. Katyal and Mr. Sumeet Batra,

Advocates

versus

LIFE INSURANCE CORPORATION OF INDIA Respondent
Through Mr. Ravinder Sethi, Senior Advocate
with Mr. Kamal Mehta and
Mr. Puneet Sharma, Advocates

CORAM: JUSTICE S. MURALIDHAR

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| 1. | Whether Reporters of local papers may be allowed to see the order? | No |
| 2. | To be referred to the Reporter or not? | Yes |
| 3. | Whether the order should be reported in Digest? | Yes |

JUDGMENT
21.04.2010

1. The facts in these four writ petitions are more or less similar and are accordingly disposed of by this common judgment.

2. Each of these Petitioners was an agent with the Life Insurance Corporation of India (LIC), the Respondent herein. By separate orders dated 24th November 2005, the agency of each of the Petitioners was terminated and forfeiture of renewal commission was also ordered in terms of the Life Insurance Corporation of India (Agents) Rules, 1972 [hereinafter the “Agents Rules”].

3. Each of the Petitioners preferred an appeal to the Zonal Manager against the terminations and each of the appeals was rejected by separate orders dated 30th May 2006. The orders dated 24th November 2005, terminating the agency and the orders dated 30th May 2006 dismissing the appeal have been challenged by each of them by way of the present writ petitions. They

were agents attached to Branch Unit 11-C.

4. The Petitioner in W.P. (C) No. 10426 of 2006, Mr. P.K. Singh, was appointed as an LIC agent in 1990. Since then, he has been conferred with several awards for his work in generating business for the LIC for several years. A long list of such achievements is set out in para 3(B) of the writ petition. He was awarded membership of the Chairman's Club for 2000-01 and 2001-02. Ms. Nandini Sundriyal the Petitioner in W.P(C) No. 10442 of 2006 became an LIC agent in the year 1990 and has had an unblemished record. Mr. Man Singh Kushwaha the Petitioner in W.P. (C) No.10443 of 2006 became an agent way back in the 1970s and has also been awarded merit certificates and honours. Similarly, Mr. R.K. Mahajan, the Petitioner in W.P. (C) No. 3277 of 2007 became an LIC agent on 22nd October 1990. He achieved top rankings in agent's listings and was awarded membership of the Chairman's Club for 1997-98. On 19th September 2003 Mr. R.K. Mahajan made certain complaints to the Senior Divisional Manager, LIC regarding malfunctioning of the SSS.

5. It is stated that on 15th July 2004, a notice was issued by the LIC to each of the petitioners stating that irregularities had been observed in various policies under the Salary Savings Scheme (hereinafter the "SSS") under the Petitioners' agencies at Branch Unit-11-C and that the said irregularities "were resorted to with a view to defraud the corporation". It was stated that the "entire matter is under investigation and disciplinary action was contemplated" pending investigation and action in accordance

with the Agents Rules. The Petitioners were directed “not to procure or solicit any new LIC insurance business unless permitted to do so”. By a separate order dated 15th July 2004, the Senior Divisional Manager directed each of them “not to enter any office under the jurisdiction of the LIC without taking his prior permission”.

6. On 17th July 2004, Mr. P.K.Singh and Ms. Nandini Sundriyal wrote to the Senior Divisional Manager expressing surprise at the aforementioned letters denying having committed any irregularity. Mr. Man Singh Kushwaha wrote letters to the Senior Divisional Manager, LIC to the same effect on 22nd July, 21st August and 6th September 2004. Mr. R. K. Mahajan wrote a similar letter on 20th July 2004.

7. By a common order dated 30th September 2004, the Branch Manager of Branch Unit No. 11-C stated that consequent upon the conclusion of investigation, the order dated 15th July 2004 prohibiting the agents from entering any office under the jurisdiction of the LIC of India, Delhi, stood withdrawn. The order dated 30th September 2004 was applicable to the three Petitioners other than Mr. R.K.Mahajan.

8. Mr. P.K. Singh, wrote a letter dated 6th December 2004 requesting LIC to take a decision in the matter and permit him to resume business as an LIC agent in view of conclusion of the investigation by LIC and the consequent order of 30th September 2004. This was followed by a common letter by three of them (other than Mr. R. K. Mahajan) delivered to the

Respondent LIC on 13th December 2004 to the same effect. By a letter dated 20th January 2005, the Branch Manager informed the said three Petitioners that the competent authority had decided to revoke the order dated 15th July 2004, and lifted the ban on procuring new life insurance business. As the two withdrawal orders dated 30th September 2004 and 20th January 2005 excluded Mr. R. K. Mahajan, he sent representations to the LIC regarding the same on 15th February 2005, 10th March 2005 and 8th April 2005.

9. After receiving the two orders of the Senior Divisional Manager, LIC dated 15th July 2004 Mr. R. K. Mahajan filed a writ petition, CWP No. 12754 of 2005 in this Court when no show cause notice was issued to him while he was prohibited from procuring any new business as well as entering premises under the jurisdiction of the LIC. This Court disposed of the said writ petition on 20th October 2005 directing the LIC to issue him a show cause notice. Thereafter, on 27th September 2005 a show cause notice was issued to each of the Petitioners by the Senior Divisional Manager under Rules 16 and 19 of the Agents Rules.

10. In the case of Mr. P.K. Singh the details of seven policies which were processed on the basis of Mr. P.K.Singh's Agents Confidential Reports (ACRs) were set out. It was stated that the premia for the said policy proposals were deposited through the Branch Office Collections (BOCs) including those created in the name of the Paying Authority (employer) [hereinafter the "PA"] namely, Delhi Jal Board (DJB)/Municipal

Corporation of Delhi (MCD) in gross violation of the Agents Rules. Thus, the remittances of the PA, i.e., the employer remitting SSS renewal premia were deposited as proposal deposits against the above proposals. The precise allegation was that Mr. P.K.Singh had “misled the Corporation to adjust the above amount towards first premium under fresh proposals under ordinary mode”, and therefore he was “a direct beneficiary in the above said fraudulent act”, since he had given the Agent’s Confidential Report (ACR) for the completion of the above proposal “leading to payment of enhanced commission to you by way of the above referred misappropriation to defraud the policyholders as well as the Corporation”. The show cause notice further stated that the above adjustments have led to misappropriation of the renewal of premia “and creation of gaps in policies causing monetary loss to the Corporation and the Policy holders”. Mr. P. K. Singh was accused of having defrauded the LIC and its policyholders resulting in the tarnishing of its image. In para 2 of the show cause notice it was specifically alleged that “you collected cheques towards PAs remittances and submitted the same along with the lists containing details of premium deduction and misled the Corporation to adjust the remittances towards first/renewal premium under the proposal/policies other than those in respect of which the deductions were made by the PAs, thereby putting policyholders and the Corporation to financial loss”. It was stated that by the aforesaid acts, Mr. P. K. Singh had “acted in a manner prejudicial to the interests of the Corporation as also that of policyholders & failed to maintain absolute integrity in discharging the functions as an agent and committed breach of Rule 16(1)(a)&(b) of the LIC of India(Agents) Rules,

1972.” In the penultimate paragraph of the show cause notice, the Senior Divisional Manager (Disciplinary Authority) stated that the LIC “.....provisionally propose to impose the penalty of termination under Rule 16(1) of LIC of India (Agents) Rules, 1972 with forfeiture of renewal commission in terms of Rule 19(1) read with Rule 10(6) of LIC of India (Agents) Rules, 1972.” Mr. P. K. Singh was asked to show cause within 15 days why he should not be held guilty of the aforesaid charges and why the penalty of termination of agency under Rule 16(1) with “forfeiture of renewal commission” under Rule 19(1) to be read with Rule 10(6) of the Agents Rules, should not be imposed.

11. Similar allegations were communicated to the other Petitioners in the show cause notices issued to them. In case of Ms. Nandini Sundriyal, sixty-two proposals were mentioned in which the premia had been so adjusted. In case of Mr. Man Singh Kushwaha the allegation of adjustment of premia was with regard to two proposals. Mr. R.K. Mahajan’s notice mentioned some fourteen proposals in which, the allegation was that, a total amount of Rs. 18,254/- was adjusted against PA’s money for renewal premia and diverted towards new proposals. Another charge against Mr. R.K. Mahajan was that six proposals given by him, which were converted into policies by the LIC, later had to be repudiated when the said six policy holders all died within three years of subscribing to their respective policies. This according to the show cause notice was in violation of Rule 8(2) (b) of the Agents Rules.

12. On various dates in October 2005, the four Petitioners submitted their replies to the show cause notices. Apart from denying the allegations, it was stated that they were being blamed for “what is basically a system failure and for which even very remotely the applicant cannot be held responsible” and that “only those responsible for the management and administration of LIC should be put into task.” It was maintained that it was practically not possible for the Petitioners to change or alter the system of LIC since the agents had “no control over the system and administration of LIC”. The Petitioners also pointed out to the inherent defects in the manner in which the SSS was being administered where the first premium as well as the renewal premium were remitted to LIC in a single cheque from the employer which then used to be bifurcated into two parts, for one of which a Block Branch Office Collection (BOC) would be issued and for the other an SSS MR. Mr. P.K. Singh gave an example where the actual cheque amount was Rs. 10,000/- which was split into two parts of Rs. 5,000/- each and a block BOC as well as an SSS MR were issued giving the same cheque number for both. This resulted in multiple BOCs being issued against a single cheque. While adjusting the amount, if the premium was short, it was adjusted from another Block BOC and the case used to get passed. It was pointed out that all these discrepancies were not on account of the Petitioners but on account of the LIC officials themselves. The above practice was followed not only for the MCD but for DJB, DDA etc. as well. It is stated that such practice was prevalent from earlier times when the Petitioners first became LIC agents. It was pointed out that when Mr. P. K. Singh had given a life insurance business of over 6000 policies,

it was not possible for him to compromise on the deposit of any amount. The other three Petitioners had also provided more or less a similar quantum of business. It was stated in the reply as under:

“For the list of premium, as indicted in the show cause notice, it is further clarified that such list were prepared in consultation with the employer and used to be duly signed by their authorized DDO. As such, no direct and independent role was ever played which could be prejudicious (sic *`prejudicial’*) to the interest of LIC.”

13. On 24th November 2005 separate orders were passed by the Disciplinary Authority in respect of all four petitioners terminating the agency under Rule 16(1) (a), (b) and the renewal commission in terms of Rule 19(1) read with Rule 10(6) of the Agents Rules. In the case of Mr. P. K. Singh, the order set in five paragraphs the contents of the show cause notice and thereafter stated: “after consideration of investigation reports, reply of Mr. P.K. Singh and the documentary evidence available, I conclude that Mr. P.K. Singh, Agency Code 49721-111 is guilty of the charges enumerated against him vide Show Cause Notice.....” Similar orders were passed in respect of the other Petitioners. Mr. R.K. Mahajan was, in addition, found to have violated Rule 8(2) (b). His agency was terminated under Rule 16(1) (d) in addition to Rule 16(1) (a) and (b) of the Agents Rules

14. Mr. R.K. Mahajan, on 2nd December 2005 and 21st December 2005,

sought permission for inspection of certain records. The LIC on 7th January 2006 denied this request.

15. The orders passed by the Appellate Authority on 30th May 2006 dismissing the petitioners' appeals were identical. After setting out the contents of the show cause notice, Mr. P.K. Singh's order stated that "the remittance of Paying Authority (Employer) remitting SSS renewal premiums were deposited as proposal deposit against the seven mentioned proposals and Ex-Agent misled the Corporation to adjust the above amount towards 1st Premium under fresh proposals under Ordinary as well as SSS Mode." The orders stated that the Petitioners did not raise any new fact for consideration.

16. Thereafter, on 13th July 2006, Mr. R.K. Mahajan filed a memorial as provided for in terms of Rule 24 Agents Rule to the Chairman of LIC and sent a reminder of the same on 12th October 2006. Between September 2006 and December 2006, he also filed a number of applications under the Right to Information Act 2005 (RTI Act) seeking information regarding utilization of the sum of Rs. 37,000/- credited to the LIC's account. However, the LIC refused access on the ground that the information sought related to a matter under investigation by the Central Bureau of Investigation (CBI). An appeal was preferred to the Central Information Commission (CIC), which, in its order dated 12th February 2007, directed LIC to furnish the information sought inasmuch as it did not relate to the

CBI investigations. LIC did not furnish any information on the ground that the details with regard to the said cheque were under investigation.

Writ Petitions and Replies

17. The principal ground in each of the writ petitions is that the impugned orders terminating the agency of the petitioners are in violation of the principles of natural justice. It is stated that even the Appellate Authority did not follow Rule 23(1) of the Agents Rules which contemplates giving the appellant “a reasonable opportunity of representing his case”. A reference is made to the judgment of the Madras High Court in ***K. Chellathangam v. The Chairman, Life Insurance Corporation of India*** AIR 2004 Madras 288.

18. The Petitioners submit that the case had already been investigated in 2004 and nothing had been found against any of the Petitioners to justify the subsequent orders dated 30th September 2004 and 20th January 2005. The impugned orders had been passed without any further enquiry. It was further pointed out that the Petitioners have been made a scapegoat for the fault of the LIC officials and that in terms of LIC’s circulars and orders, the Petitioners had been depositing amounts to cover the shortfall in the premium. In some of the cases, this shortfall was only to the extent of Rs. 20/- to Rs. 200/- which could have been due to a *bonafide* calculation mistake. It is also pointed out that the CBI had raided the Petitioners’ premises and found nothing incriminating. The Petitioners had been working with the LIC for a long time and had a legitimate expectation that

their agency would continue. In any event, there was absolutely no justification for forfeiting the entire renewal commission for all the policies which had been brought to the LIC by the Petitioners.

19. In the counter affidavit, it is contended by the LIC that the principles of natural justice were fully complied with “both in its letter and spirit”. It was stated that the charges stood proved against the Petitioners. They were of quite a grave nature amounting to fraud and misappropriation and that the “said misconduct is totally and completely prejudicial to the interest of the corporation”. It is stated in the counter affidavit that “the only punishment which could have been awarded to the Petitioners is the termination of their services which is what was precisely done.” Further the fraudulent nature and the element of misappropriation “was of such a grave nature having criminal culpability that the matter had to be entrusted to the Central Bureau of Investigation”. The circular/instruction dated 10th March 2006 relating to closing of books and acceptance of cash deposits was limited to the period between 23rd March and 31st March 2006. In no event, could the said amounts be utilized towards introduction of fresh proposals.

LIC's response to the Petitioners' RTI applications

20. During the pendency of this writ petition, Mr. P.K. Singh filed an application under the RTI Act on 5th September 2006. Ms. Nandini Sundriyal also filed a similar application. The reply given by the LIC to the questions raised by the Petitioners on the working of the SSS were

summarized by them as under:

- “1. Monthly premium in Salary Saving Scheme (SSS) are deposited/dispatched by the employer directly to LIC servicing branch.
2. Employees of the respective branch scrutinize the list of the policy Nos. submitted by the Employees along with the Premium Cheques.
3. Officials of the particular servicing branch create the miscellaneous Receipt (MR) of the Renewal Premium cheques.
4. Officials at the servicing branch make the adjustment of MRs/BOCs created in the name of Paying Authority (Employer).
5. There is no role of the Agent in said adjustments of BOCs/MRs.
6. Renewal Premium received from the Employer by crossed cheque in the name of LIC of India cannot be adjusted in fresh proposals.
7. Officials/employees of the branch office are responsible for underwriting/scrutiny of the fresh insurance proposal forms. They fill the proposal No. BOC No. Date of BOC and amount of BOC on the proposal forms and after scrutiny of the proposal form.”

21. In addition to the Petitioners' forfeiture of agency commission, LIC issued show cause notices on 14th November 2006 to 18 officers of the Khan Market branch office to seek their explanation. Instructions were issued on 11th March 2000 itself by the Divisional Office pointing out that the deduction of new insurance premium amount from the salary of the proposer was contrary to the instructions whereby the recovery of the salary commenced only from the 3rd month of the entry. The said circular

stated that the branches themselves would be responsible if the said
WP (C) Nos. 10426, 10442, 10443 of 2006 & 3277 of 2007

instructions were violated.

22. An additional affidavit was filed by Mr. P.K. Singh on 20th February 2009 stating that against the order dated 30th May 2006 of the Appellate Authority, he had filed a memorial under Rule 24 of Agents Rules to the Chairman, LIC which had been rejected by an order dated 22nd November 2007. A copy of the said order has also been placed on record.

Orders of this Court

23. When these cases were heard together by this Court, it was found that none of the relevant documents had been produced by LIC. On 14th January 2010, the following order was passed by this Court:

“1. In each of these cases the allegation is that money deposited by the paying authority (‘PA’) pursuant to the Salary Saving Scheme, for renewal of premia of LIC policies in the names of the employees of the PA, have been, at the instance of the Petitioners, misappropriated towards payment of premium for new/fresh policies of private individuals unconnected with the PA.

2. Learned counsel for the LIC states that he will, on the next date of hearing, produce before this Court the complete details of each of the policies mentioned including the premia paid against these policies and the manner of payment of such premia.

3. At his request, list on 28th January 2010.”

24. Thereafter, on the adjourned date a further time was sought by the LIC and the case was listed for 8th February 2010. Mr. Ravinder Sethi, the learned Senior Counsel for LIC again sought further time to produce the

records which were ultimately produced on 17th February 2010.

25. During the hearing on 17th February 2010, LIC informed this Court that the voluminous documents submitted before the Court on that date were not furnished earlier to any of the Petitioners, much less enclosed with the show cause notices seeking their explanation. The court enquired of the learned Senior counsel appearing for the LIC whether the LIC would be willing to consider giving a fresh opportunity of hearing to each of the Petitioners by furnishing them with the complete material which was used by the LIC to form an opinion about their alleged misconduct resulting in the termination of their agency. Learned Senior counsel for LIC sought time to obtain instructions. On 17th February 2010 the following order was passed:

“1. The Respondent has produced the documents which included the charts giving the particulars that are available in the records of the LIC vis-à-vis each of the Petitioners. After going through the materials and making submissions Mr. Sethi, learned Senior counsel for the Respondent states that these cases may be adjourned by ten days to enable him to seek instructions in light of what has transpired before this Court.

2. It is made clear that if the LIC is not able to take a decision by the next date, the case will be heard further on merits.

3. Adjourned to 4th March 2010.”

26. At the subsequent hearing on 4th March 2010, the learned Senior counsel for the LIC stated on instructions that the LIC was not prepared to give any further hearing to any of the Petitioners and that his instructions

were to defend the impugned orders on the basis of the existing pleadings.

Submissions of Counsel

27. This court has heard the detailed submissions of Mr. J.P. Sengh, the learned Senior counsel and Mr. R.K. Saini, learned counsel appearing for the Petitioners. Mr. Ravinder Sethi, the learned Senior counsel and Mr. Kamal Mehta, learned counsel made detailed submissions for the LIC.

28. It is submitted on behalf of the Petitioners that there are no documents enclosed with the show cause notices to show that any of the Petitioners was responsible for the adjustment of the premia remitted by way of the cheques of the PAs under the SSS against either the first or any of the subsequent premia payable towards the proposals recommended by them. It is pointed out that even the documents handed over by the LIC in the court, copies of which were furnished to the counsel for the Petitioners, do not demonstrate this. Apart from a bald allegation that the Petitioners had misled the staff of the LIC into adjusting these amounts, the show cause notices do not indicate how and in what manner this was done. In any event it could not have been done without the connivance of the employees of the LIC. No such details were provided. It is pointed out that the proposals for some of these policies were submitted several years earlier and unless the full details were furnished, the Petitioners would not be in a position to effectively present their cases. There was no role assigned to any of them in the actual adjustment of the amounts or the issuance of the BOCs. It was the LIC employees who themselves brought out the lists

showing the adjustments of the premia amount against the cheques remitted by the PAs. It was not known on what basis it has been alleged that any of the Petitioners played a role in this exercise. It is pointed out that the chargesheet submitted by the CBI was a subsequent development and did not form the basis for the impugned orders terminating the agency. In any event the chargesheet did not advance the case of the LIC since it does not throw any fresh light on the manner in which the Petitioners are supposed to have misled the LIC into adjusting the premia. The statement in the chargesheet that these Petitioners prepared their own lists at the time of adjustment of the cheques collected from the MCD, was belied by the CBI's own observation that such lists were not available either with the LIC or the agents.

29. Finally, it is submitted that fraud had to be proved by producing credible and cogent evidence, which was lacking in the instant cases. It is submitted that absent such proof of fraud the entire commission amount could not be forfeited under Rule 19(1) of the Agents Rules. Reliance is also placed on the judgment in *Union of India v. Lt. Gen. M.S. Sandhu 2001 V AD (Delhi) 441*. In addition, the judgment in *Delhi Electric Supply Undertaking v. Basanti Devi AIR 2000 SC 43* is referred to emphasize that the agents do not have any role to play in this entire exercise of adjusting premia remitted under the SSS.

30. Mr. Saini, the learned counsel appearing for Mr. Kushwaha, in whose case it is mentioned that in four of the policies, medical certificates were

found to be incorrect leading to forfeiture of the amounts, submits that the agent merely witnesses a proposal and therefore ought not be made liable for any false declaration made by the policy holder. It is also pointed out that in none of the cases of alleged wrongful adjustment of SSS premia, has the policy in question been cancelled. No adverse consequences have been suffered by any of the policy subscribers who were the probable beneficiaries of the alleged fraud in the manner described by the LIC.

31. Replying to the above submissions, Mr. Ravinder Sethi, the learned Senior counsel appearing for the LIC, first submits that these Petitioners are agents of the LIC and not its employees. He submits that the legal requirement of compliance with the principles of natural justice as might apply in the case of the termination of the services of an employee would not apply to a case of termination of agency of the LIC. In support of this, he relies upon a large number of judgments, including *Harshad J. Shah v. L.I.C. of India* AIR 1997 SC 2459; *Kamlesh Aggarwal v. Union of India* AIR 2003 Delhi 88; *Chandra Prabha Dogra v. LIC of India* [decision dated 17th May 2005 in LPA No. 698 of 2004]; *Chandra Prabha Dogra v. LIC of India* 112 (2004) DLT 168; *S.P. Habbu v. LIC of India* (decision dated 2nd February 1996 of the Karnataka High Court in Writ Appeal No. 2413 of 1992) and *Wasti Ram Bhasin v. LIC of India* (decision dated 10th December 1996 of the Allahabad High Court in Civil Misc. Writ Petition No. 12796 of 1985).

32. Referring to the voluminous bunch of documents separately compiled

for each of the cases (purportedly from the records available with the LIC) Mr. Sethi pointed out that the proposals for each of these policies were signed by the Petitioners as agents. It was their ACRs which were relied upon by the LIC. Mr. Sethi produced computer printouts generated by the LIC itself titled “adjusted policies against block BOC pertaining to: period 1.4.1991 to 31.3.2004 – Branch Unit – 11C’. Pages 23, 24, 68, 74 and 87 of the said printout were produced. Certain other computer generated printouts of the LIC showed, *inter alia*, the BOCs with their numbers. He also referred to the chargesheet filed by the CBI. According to him, these documents, although not furnished earlier to the Petitioners, were sufficient to fully substantiate each of the allegations in the show cause notices. Mr. Sethi reiterated that the show cause notice had set out all the relevant details. According to him, since the Petitioners in their replies did not ask for the documents, there was no need for the LIC to furnish those documents. Moreover, since this was a termination of agency on account of the loss of confidence of the LIC in the agent, there was no question of offering any personal hearing. There was also no statutory requirement of giving detailed reasons for terminating the agency. He referred to the pleadings in which according to him the Petitioners had admitted to having collected cheques from the PAs and depositing them with the branch which was impermissible under the Agent Rules. He characterized this as a gross misconduct. He further submitted that the forfeiture of renewal commission was the inevitable consequence given the gravity of the misconduct committed by each of these Petitioners. The penalty was therefore proportionate to the misconduct and did not call for interference.

On various dates of hearing Mr. Mehta, the other learned counsel appearing for the LIC supplemented and reiterated the above submissions.

Violations of principles of natural justice

33. This Court is first called upon to examine if the principles of natural justice were complied with in the instant cases. According to the LIC, since the Petitioners were not its employees, it was not required to comply with the principles of natural justice in the same manner as in the case of termination of the services of its employee.

34. The show cause notice in each of these cases has been referred to hereinbefore. In each of the show cause notices, the proposal numbers, the amount of premium, the BOC numbers have been set out. These proposals were dated several years before the show cause notices. It is not denied that these Petitioners have been agents for several years with the LIC and had given business of crores of rupees against several thousands of policies. To expect the Petitioners to immediately have all the records to answer the allegations of the irregularities allegedly committed by each of them in relation to the particular policies mentioned in the show cause notice, without furnishing them with the copies of the relevant documents, was not being either practical or reasonable.

35. The contention that since the Petitioners did not seek copies of the documents there was no need for the LIC to furnish the same is not acceptable to this Court. It also is not entirely factually correct. As pointed

out by Mr. J.P. Sengh, that at least in two of the cases (Ms. Nandini Sundriyal and Mr. Kushwaha), a request was made for copies of the documents. It was only after several adjournments at its instance before this Court that the LIC was able to collate the relevant documents in respect of each of these cases and produce them before the Court. The question therefore is whether the inquiry purportedly carried out by the LIC, prior to issuance of the impugned orders, involved an examination of these documents. If there had been such inquiry on a case by case basis, then it should have been a simple exercise for the LIC to produce these documents.

36. The response of the learned Senior counsel for the LIC was that the CBI had taken away the relevant documents during its investigation and they were therefore not available. This Court finds it difficult to appreciate that LIC had not kept copies of the relevant documents, even if the original files were taken away by the CBI. In any event, the CBI had already submitted its chargesheet sometime in January 2008 in the criminal court. The upshot of the above discussion is that none of them was ever furnished with any of the documents which were being relied upon by the LIC to conclude that they were guilty of misconduct contemplated under the Agents Rules.

37. It is also not possible to accept the contention of learned Senior counsel for the LIC that the show cause notice was itself a detailed one. None of the documents referred to therein were enclosed to the show cause notice. If

the evidence on the basis of which the averments were made was not furnished to the Petitioners then it mattered little that the show cause notice was a detailed one. It could have only elicited a bare denial from the notice. The question is whether on receiving such show cause notice, the recipient would be able to know what the materials were on the basis of which the allegations were made. In the considered view of this court, in the instant cases, the answer to that question has to be in the negative. If there was an inquiry undertaken by the LIC prior to issuance of such show cause notice, then it was incumbent, in order to give the noticee an effective opportunity of defending herself or himself, a copy of such report. No such report of the inquiry was furnished to the Petitioners.

38. It is in the background of the above facts, that the case law relied upon by the LIC requires to be examined. The facts in *LIC v. Lalitha Devi 1991 Supp (2) SCC 154* were that a single Judge of the Andhra Pradesh High Court had quashed the order of the LIC terminating the Respondent's agency under Regulation 17(1) of the Agent's Regulations, 1972. Regulation 17(1) states that "the appointment of an agent may be terminated by the competent authority at any time by giving him one month's notice thereof in writing". The Respondent therein had been absorbed as an agent of the LIC overlooking the fact that her husband was already in service with LIC. In the circumstances, it was held that as long as a notice had been served on the Respondent before terminating the agency, no illegality had been committed.

39. This Court fails to appreciate how the above decision helps the LIC in the present case where it is not Regulation 17(1) but Regulation 16(1) (b) that has been invoked. The said provision enables the LIC to terminate the agency if the agent “acts in a manner prejudicial to the interests of the Corporation or to the interests of its policy holders”. Further, the proviso to Rule 16(1) mandates that “the agent shall be given a reasonable opportunity to show cause against such termination”. Given that a decision that the agent is acting in a manner prejudicial to the interests of the LIC is likely to have adverse civil consequences for such agent, the proviso of the Rule itself recognizes the need to give such an agent a “reasonable” opportunity to show cause against such termination. No comparison, therefore, can be drawn with the situation under Rule 17(1). A mere issuance of a show cause notice without furnishing the material in support of the allegations contained therein cannot be said to satisfy the requirement of providing a “reasonable” opportunity.

40. In *Harshad J. Shah v. L.I.C. of India*, the Supreme Court was interpreting the correctness of a decision of the National Consumer Disputes Redressal Commission (NCDRC) which held that an insurance agent, upon receiving a premium cheque from the insured towards payment of the insurance premium, was not acting as the agent of the LIC and his receiving a cheque would not mean that the LIC had received the premium. Consequently, it was held that the deposit, by the agent, of the cheque for premium after the death of the insured, would not make LIC liable. While upholding the decision of the NCDRC, it was held that the

agent did not have the express authority to receive the premium on behalf of the LIC because in his letter of appointment there was an express condition prohibiting him from collecting premium on behalf of the LIC. A reference was made to Regulation 8(4) which prohibited agents from collecting premium. It was held that the said provision was intended to protect LIC from any fraud on the part of the agent.

41. It must be observed that the above decision in *Harshad J. Shah v. L.I.C. of India* was not about the compliance with the principles of natural justice. It concerned the status of an LIC agent in regard to the collection of the premia. Rule 8 (4) states that the agent has no authority to collect the moneys or to accept any risk for or on behalf of the LIC. The proviso to Rule 8(4) nevertheless states that “an agent may be authorized by the Corporation to collect and remit renewal premiums under policies on such conditions as may be specified”. The facts in the present case are something different.

42. Clause 4.2 of the “Manual for Policy Servicing Department (No. 14)” sets out the requirement for introduction of proposals under the SSS:

“4.2 Requirements for introducing proposal under S.S.S.

1. Prescribed authorization letters should be obtained in triplicate with full details of Dept., token No., badge No., or PF No. if any from PA under which the employee is working. This forms the basis for deduction of premiums by the employer.

2. 2 monthly premiums are to be collected along with the proposal. If the proposer desires to backdate the policy the **arrears of premia should also be collected.** Recovery from

their salary commences only from the 3rd month of entry.

3. Age proof should be submitted along with the proposal.

4. By reference to SSS PA code book, it should be ensured that correct code number of P.A. has been mentioned in the Authorisation letters, proposal forms and Review slips.”
(emphasis supplied)

43. Therefore there was some role envisaged in regard to collection of premia at the time of the submission of the proposal. From the replies given to the RTI applications made by the Petitioners during the pendency of these writ petitions, it is obvious that there was no role of an agent in the adjustment of BOCs/MRS. In fact, the instructions dated 10th March 2000 further prohibited any adjustment of premium from the salary before the third month. The responsibility for violation of these instructions was stated to be entirely that of the branch and the LIC officials. Consequently, what appears to have happened in the instant cases is that the Petitioners were acting as agents by collecting the lists and remittances of the cheques from the PAs and depositing them in the LIC branch. Beyond this, they had no role to play. Mere preparation of a list of employees whose renewal premia is supposed to be covered by the cheque of the PA, cannot amount to collection of the premium amount itself. This is plain from the judgment of the Supreme Court in *Harshad Shah*. If, in fact, the agent had no role to play in terms of making adjustments of premia collected under the SSS, the burden lay on the LIC to show exactly how the Petitioners played any role in such adjustment.

44. As already noticed hereinbefore, this causal connection between the

transactions in question and each of the Petitioners has been failed to be shown by the LIC. Apart from a bald statement in the show cause notice that these agents misled the LIC to make the adjustments, there is no material to substantiate it. Consequently, the judgment of ***Harshad J. Shah v. L.I.C. of India*** does not advance the case of the LIC that it was not required to furnish any of the Petitioners with the documents relevant to their cases to seek their explanation before taking a decision to terminate their agencies.

45. Considerable reliance was placed by Mr. Sethi on the decision of the Division Bench of the Karnataka High Court in ***S.P. Habbu v. LIC of India*** since that was a case of termination of an agency under Rule 16. In particular, the following passage was relied upon:

“Before advertent to the submissions urged by the learned counsel, it is necessary to bear in mind that the appellant was not an employee of the Corporation but the relationship was that of principal and agent. The terms and conditions of agency are regulated by statutory regulations framed by the Corporation. It is not in dispute that it is permissible for the principal i.e., the Corporation, to terminate the agency in accordance with Regulations 13 to 17. The agency has been terminated in the present case under Regulation 16(1)(a), (b) and (d). The charge against the appellant was that he had failed to discharge his functions to the satisfaction of the competent authority, he had acted in a manner prejudicial to the interest of the Corporation and it was found that the contents of the proposal made in respect of Pandurang were not true.”

46. However, what is significant are the lines immediately following the

above passage which read as under:

“The material relied upon by the authority leaves no manner of doubt that Pandurang was in hospital as indoor patient from October 21, 1984 to November 4, 1985 and was treated for liver serosis. In case Pandurang was in Manipal Hospital, he could not have been present at karwar where the proposal form is alleged to have been signed by Pandurang and at which place Pandurang is claimed to have been medically examined by Dr. Alur. The record from the Manipal Hospital conclusively established that Pandurang was not at Karwar at the relevant time.”

47. It is plain, therefore, that in the above case, the complete details were made available to the agent in the course of enquiry proceedings. Para 6 of the judgment in *S.P. Habbu v. LIC of India* also shows that the proceedings had been remanded by the High Court to the Appellate Authority on more than two occasions and the Appellant there had been directed to present oral arguments which he did. Further, the facts of that case had unmistakably established that the appellant there had “actively connived in preparing a forged proposal form” and in the circumstances, the termination of the agency and the forfeiture of the commission were upheld. In the considered view of this Court, the decision in *S.P. Habbu v. LIC of India* entirely turned on the facts of that case. In the present case, the details of the investigation made by the LIC are not available even to this Court as on date. It is not known in what manner the LIC was able to conclusively hold that it was the Petitioners who were responsible for the adjustment of the remittances made under the SSS against the premium payable against fresh policies. The said decision in *S.P. Habbu v. LIC of*

India therefore does not help the case of the LIC.

48. In *Wasti Ram Bhasin v. LIC of India*, it was held that the term ‘reasonable opportunity’ did not mean giving a hearing. Again in the said decision it was noted by the High Court that the show cause notice “has specified in detail the allegations and particulars thereof”. On that basis, it was held that there was no need for a further personal hearing. In the present case, however, the show cause notice does not give complete details as to how the Petitioners played a part in the adjustment of the renewal premia under the SSS against the proposals submitted by the Petitioners.

49. In *Kamlesh Aggarwal v. Union of India*, the Petitioner there had been given an agency for the National Savings Organisation and was also an agent for the Public Provident Fund Scheme (PPF Scheme). The termination of the agency was challenged for non-compliance of the principles of natural justice. It was noticed that in terms of the contract, all that was required, was to give a one month’s notice for termination. In para 11 the following observations were made:-

“11. I find considerable merit in the submission of Mr. Jayant Bhushan. The petitioner who was arrested on 14.7.2000 and after being in custody was released on bail on 16.1.2001. In my view since the work of the agency is required to be carried out personally or under personal supervision, the absence and no availability of petitioner for such a long period, itself was a sufficient reason to terminate. Besides specific complaints had been made by depositors, alleging cheating and diversion of

funds to the two private concerns culminating in the registration of FIR and framing of charge sheet under Section 406/420 IPC. The respondents had also conducted an enquiry through the Dy. Regional Director and other concerned officials which revealed diversion of investment and other breaches in the operation of agencies as recorded in the termination orders. In these facts and circumstances the decision of the respondents to terminate the agencies cannot be assailed as arbitrary, mala fide or unconscionable. Besides it was an exercise of contractual rights under the agency agreements.

In judicial review, the Court is not concerned with the correctness or merit of the decision taken but with the decision making process. The respondents cannot be faulted with, if in the background of these facts and especially the detention of the petitioner for a period of nearly 5 to 6 months, they reached a conclusion that continuation of the petitioner as an agent would be detrimental to the working of the schemes and image of the Government and maintaining public confidence in the schemes.”

50. It must be noticed that the above decision did not concern Rule 16 of the LIC Agents Rules which mandates a reasonable opportunity to be given to the agent. The agency here is therefore not purely contractual as was sought to be contended by the LIC. It is governed by the LIC Agents Rules. The above decision also, therefore, does not help the LIC.

51. In *Chandra Prabha Dogra v. LIC of India*, the show cause notice detailed the manner in which the misconduct had been committed by the LIC Agent under the LIC Agents Rules. It was noticed that the allegation was that “she used to receive moneys in advance from the prospective

persons seeking insurance and then at her convenience issue her own cheques which in a number of cases got dishonoured”. In reply to the show cause notice, she admitted her fault by stating: “While I once again, in an unqualified manner, make a submission that there was a mistake on my part in the use of discretion.....” It was in the above circumstances that it was held that there was no violation of the principles of natural justice and that “a fraudulent act outside judicial proceedings would also be actionable under Section 16(b)”.... After the above decision in ***Chandra Prabha Dogra v. LIC of India*** was upheld by the Division Bench on 17th May 2005, where it was noticed that the cheques issued by the agent had bounced and the policies were returned whereas the amount had been collected in cash from prospective policy holders, the facts of the present case do not bear any comparison with the facts of ***Chandra Prabha Dogra v. LIC of India***. That case proceeded on an ‘admission’ by the agent of her misconduct. This Court is, therefore, unable to agree with the submission of the learned Senior Counsel for the LIC that the above case justifies dispensation with the compliance of the minimum requirements of natural justice.

52. In ***V.P. Subrahmanian v. LIC of India 1998 INDLAW KER 523***, the Petitioner was alleged to have suppressed the information relating to his previous agency while applying for a fresh agency. The facts, again, of the said case do not bear any comparison with the facts in hand. In ***B.K. Vadiraja v. Managing Director, LIC of India AIR 2002 Karnataka 113***, it was held, following ***S.P. Habbu v. LIC of India***, that under Rule 17(2) an

agency can be terminated by giving a one month notice and therefore, the effect of Rule 17(1) in the said case was not indicated. As already pointed out, the present case is not relatable to Rule 17(1) at all but to an action taken under Rule 16(2)(b) which stands on a different footing.

53. The facts in the decision of the Division Bench of the Kerala High Court in *LIC of India v. C. Mohanan Pillai* bear comparison with the decision in *Chandra Prabha Dogra v. LIC of India*. Two policy holders had lodged complaints that even though the agent had collected cash, payment had been made through a cheque from an account which did not belong to him and which payment stood dishonoured. The Division Bench, in its judgment dated 20th February 2006 in Writ Appeal No. 1396 of 2004, examined the proportionality of the punishment since it was convinced that the allegations substantiated the commission of fraud. Importantly in a question put to the agent, whether the money was received from the policy holder, he conceded that it was received and not deposited with the LIC. A reference was made to the decision in *Chandra Prabha Dogra*. As already pointed out hereinbefore, the said facts do not bear comparison with the facts on hand. Likewise, in *O.A. Seshadri v. Chairman, LIC*, the Madras High Court (in its decision dated 23rd February 2004 in Writ Appeal No. 239 of 2003) was dealing with a case where the agent had taken money for paying the premium but had paid it only after seven years. The said case again is of no help to the LIC in the present case. In *V.A.S. Rama Raju v. The Senior Divisional Manager, LIC of India* (decision of the Andhra Pradesh High Court dated 16th November 2007 in Writ Petition No. 20457

of 2003), the learned Single Judge was dealing with a case where the allegation was that the Petitioner submitted a proposal for insurance of Rs. 2 lakhs in the name of a dead person. This court fails to appreciate how this case can have any relevance to the facts on hand.

54. A reference was made to the charge sheet of the CBI in the present case where on the basis of these very documents prima facie conclusions have been arrived at by the CBI. In the first place, the chargesheet is not a document that was relied upon by the LIC in passing the impugned orders. It could also not have since it was prepared later by the CBI. Secondly, the acceptability of such chargesheet has to be decided by the criminal court. Thirdly, the findings of the criminal court where the standard of proof is beyond all reasonable doubt need not bind the present proceedings where the standard of proof is preponderance of probabilities. The highlighted portions of the charge sheet, a copy of which has been handed over by the learned counsel for the LIC, are in the considered view of this Court the tentative conclusions of the CBI. They are yet to be tested in the criminal court. In exercise of its powers under Article 226 this Court is only required to examine whether, in arriving at the conclusion that the Petitioners were guilty of grave misconduct, the LIC acted on the basis of relevant materials and in a just, fair and reasonable manner. The CBI's charge sheet was not before the LIC and did not form the basis of the impugned orders. This Court is, therefore, not required to examine the said chargesheet for the purposes of examining, if in the present case the decision of the LIC could be justified.

55. The result of the above discussion is that in the considered view of this court there is a failure on the part of the LIC to comply with the principles of natural justice in the present cases in not furnishing to each of the Petitioners the detailed documentation on the basis of which it conducted inquiries and came to the conclusion that they had committed grave misconduct. Each of the Petitioners were therefore denied a reasonable opportunity of defending themselves in response to the show cause notices issued to them. There has been a violation of the mandatory requirement of the proviso to Rule 16 (1) of the Agents Rules which is fatal to the impugned orders of termination.

Is there material available on record to justify the termination of agency?

56. In a case involving violation of the principles of natural justice, a court might decide to give the party affected a post-decisional hearing or by setting aside the impugned orders permit the authority which passed the impugned order to give a fresh hearing. As already noticed hereinbefore, LIC has taken a categorical stand in these cases that it would not be willing to give the Petitioners any fresh hearing and that it wishes to defend the impugned orders on the basis of the material brought on record in these petitions. That apart, this Court cannot be unmindful of the fact that the impugned orders were passed nearly five years ago and the Petitioners might be prejudiced if they were relegated at this stage to a fresh hearing before the LIC. Also, if there was going to be no further material which was to be disclosed as the basis of the impugned orders by the LIC, little purpose would be served in sending the Petitioners for a hearing which

might turn out to be an empty formality. For the above reasons, this court, at the insistence of learned senior counsel for the LIC, proceeded to examine the materials to determine if they justified the termination orders.

57. On a detailed examination of the documents produced by the LIC, it appears to this Court is that they do not *per se* show the involvement of any of the Petitioners. For instance, the print out titled “Adjusted Policies against Block BOC pertaining to Paying Authorities: Period 1/4/1999 to 31/5/2004 = Branch Unit – 11C”, contains some of the details of the relevant BOCs. However, the figures simply do not tally.

58. In the first place, it must be noticed that the relevant cheques are all dated in the month of March 2000 and admittedly when there is a shortfall in the collection of the premia for the period of one week in the month of March, the LIC permits adjustments to be made from the amounts deposited by the agents themselves. This is plain from the instructions dated 10th March 2006. Paras 8(a) and 8(b) of the instructions read as under:

“8(a) An amount of Rs.50,000/- only in cash may be accepted as Lump-sum-Deposit from an Agent/Broker/Corporate Agent/Banks (per outlet) for covering calculation errors, shortfalls in premium due to modified terms, etc. for the proposals submitted to the lives under his/her agency only. Similarly a sum of Rs.50,000/- may also be accepted in cash as Lump-sum-Deposit from a Development Officer towards shortages of premium in respect of proposals submitted from his/her organization.

8(b) The cash deposits as above can be accepted only during the

period 23rd March to 31st March 2006. The utilization of this amount must be for the purpose of meeting shortfalls as above. In no case this amount should be utilized towards introduction of fresh proposals. For the purpose, the branch must maintain a control book where each such deposit is entered and the utilization thereof is clearly shown.”

59. As a sample one may refer to the case of Mr. R.K. Mahajan. The BOC numbers 5596-97 dated 31st March 2000 in the proposal submitted by him refer to the same cheque no. 49725111 giving two different policy numbers: one titled ‘ORD’ (which means ‘ordinary’) against which the adjustment of premium is Rs. 1785/- and the name is ‘Kumar’. As regards the SSS policy, the adjusted premium is Rs. 11/- and the name is ‘Mukesh’. According to Mr. Sethi, the word ‘Kumar’ refers to Dalip Kumar whose proposal was submitted by Mr. R.K. Mahajan. However, the endorsement in the column “BOC number” shows the figure ‘Rs. 1799’ and reads as under:

“5596 dt 31/3/ 1047
5597 dt 31/3/ 752

1799

60. What is also interesting is that the writing of the proposal number and the BOC number are not in the same handwriting and are therefore not by the person who filled up this form. The signature of the agent is only as a witness to the declaration. We then have a computer printout of the relevant BOCs which read as under:

“BOC-1			BOC-2		
BOC DATE	AMOUNT-1		BOC DATE	AMOUNT-2	
5596	31/3/2000	1047.00	5597	31/03/2000	752.00”
WP (C) Nos. 10426, 10442, 10443 of 2006& 3277 of 2007			Page 35 of 41		

61. There is, therefore, no correlation of the BOC number as mentioned in the proposal and the related computer printout when compared with the printout titled “Adjusted Policies against Block BOC pertaining to Paying Authorities: Period 1/4/1999 to 31/5/2004 = Branch Unit – 11C” which is a document created by the LIC. Likewise the documents in the case of the others are no better. If even at this stage, i.e., after five years of so-called detailed investigation of the LIC, the LIC is unable to explain the discrepancies, then it throws considerable doubt on whether any detailed inquiry was carried out on the basis of which it could be conclusively established that Mr. Mahajan or any of the others was guilty of serious misconduct.

62. Further, Mr. Saini was able to point out on the basis of the replies received in the RTI application that the BOCs generated at the time of the deposit of the cheques completely tally with the premia cheque deposited by the agents along with the proposal. These documents were made available to him pursuant to the application made under the RTI Act by the LIC itself. Clearly, these documents support the explanations offered by the Petitioners. However, for reasons best known to it, the LIC did not include them in the voluminous bunch of documents produced by it before this Court. The inescapable inference is that these documents favouring the Petitioners did not form part of LIC’s enquiries preceding the issuance of the show cause notices. This Court is satisfied that the so-called investigations or inquiries by the LIC on the above basis could not have unmistakably pointed out to the misconduct of each of the Petitioners in

the manner detailed in the show cause notice.

Adverse consequences for the Petitioners

63. The Court is also not satisfied that the procedure adopted in the present case was sufficient for the purposes of the proviso to Rule 16(1) of the Agents Rules which requires a reasonable opportunity to be given to an agent who is charged with misconduct. Being an LIC agent for 15 years means that such person has earned goodwill and a reputation. Although it might technically be correct that an agent is not an employee of the LIC, from the point of view of the public, an LIC agent is seen as representing LIC. The adverse consequence of an agent being held to have committed fraud is, therefore, even more severe than perhaps that suffered by its employee. The more grievous the charge, the more strictly must the words 'reasonable opportunity' be interpreted. The materials that constituted the basis for forming an opinion that the agent committed an act prejudicial to the interests of the LIC, must be furnished to such an agent to elicit such agent's response. Further, if such material has been investigated and a conclusion arrived at then the report of such investigation must be furnished to the agent so that a response can be elicited before proceeding against such agent. Such a procedure, which comports with the mandatory requirement of providing a 'reasonable opportunity' in terms of the proviso to Rule 16 (1) of the Agents Rules has not been adopted in the present case.

64. In the cases involving insurance proposals where the medical certificates submitted were not found to be authentic, this Court is of the

view that by merely signing as a witness to the declaration, the agent cannot be fastened with the liability arising out of such misdeclaration. A witness does not incur a liability co-terminus with that of the maker of the declaration. It must be shown that when the agent co-signed the proposal he was aware that the medical status of the policy holder was being misdeclared, and despite such knowledge co-signed the proposal. No such case is made out against Mr. Mahajan by the LIC. Therefore, it is not possible to accept the contention of the learned Senior Counsel that in view of the subsequent discovery of the medical status of the policy holders, the agency of Mr. Mahajan who submitted the ACR should be terminated. In this connection reference may be made to Rule 8.2 of the Agents Rules which reads as under:

“8.2 In procuring new life insurance business, an agent shall:

....

(b) make all reasonable inquiries in regard to the lives to be insured before recommending proposals for acceptance, and bring to the notice of the Corporation any circumstances which may adversely affect the risk to be underwritten.”

65. The phrase “all reasonable enquiries” contemplates knowledge on the part of the agent not to the extent of a medical practitioner. It must be remembered that policy proposals are accompanied by ‘Medical Examiner’s Confidential Report’ signed by a qualified medical practitioner. The name, address, qualifications, the code number and the limit allotted to the medical practitioner are also mentioned. It would be the medical practitioner who issued such certificate who would be

primarily answerable in the event of the medical status declared being found to be wrong at a later point in time. If no action is taken against him and only against the agent who is no better aware of the medical status than a lay person, then it would not be a fair or reasonable action on the part of the LIC.

66. Interestingly, none of the policies in the instant case in which according to the LIC premia amounts were wrongly adjusted, have been terminated or revoked. The LIC throughout has proceeded on the footing that the only beneficiaries of the so called fraud were the LIC agents. However, it is plain that the principal beneficiary of the so called fraud would be the policy holder himself or herself. Even in the criminal case, they have not been named as accused. With no action having been taken against such policy holders, the LIC is not consistent in its conclusion that a fraud had been committed. Otherwise, it is totally inexplicable why such a policy which itself stands vitiated, would not be cancelled. No satisfactory explanation is forthcoming for this anomaly. Since the termination orders are held to be legally unsustainable, the consequential penalty orders of forfeiture of commission are also bad in law and are liable to be set aside.

67. Before concluding, this Court would like to observe that it is a matter of concern that the Appellate Authority in the instant case, did not bother to deal with any of the contentions of each of the Petitioners and passed identical orders parroting what the Senior Divisional Manager stated in the orders terminating the agencies. The least that the Appellate Authority

should have done was to have called for the records, and examined the materials available therein to bring out the allegations. In the event of concurring with the orders under appeal, the Appellate Authority should have considered the question of proportionate and appropriate penalty in each of the cases. It is disappointing to note that the Appellate Authority failed to exercise this solemn and statutory function with the degree of seriousness it deserved. It has had the effect of rendering the internal mechanism of appeal a futile exercise.

Conclusion

68. For all of the above reasons, this court is satisfied that the termination of the agencies of the Petitioners by the LIC cannot be justified in law. The impugned orders dated 24th November 2005 and 30th May 2006 passed by the LIC in the cases of each of the petitioners are hereby set aside. In the case of Mr. P.K. Singh, the order of Chairman, LIC dated 22nd November 2007 is also set aside. The agency of each of the Petitioners would be restored from the date of their respective termination. Consequential orders regarding restoration of renewal commission will be passed and the arrears paid together with simple interest at 6% per annum from the date of forfeiture to the date of payment within six weeks from today.

69. As regards the specific policies which have been set out in the show cause notice issued to each of the Petitioners, as long as the LIC takes no action to cancel such policies, the commission(s) payable in respect of the

premia deposited for such period will continue to be paid to the Petitioners. Any deprivation of commission thereafter would be strictly in accordance with law after complying with the procedure contemplated under the Agents Rules.

70. With the above directions, the writ petitions are allowed with costs of Rs. 20,000/- each, which will be paid by the LIC to each of the Petitioners within a period of four weeks from today.

S. MURALIDHAR, J

APRIL 21, 2010
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