IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9635 of 2008

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1. Vinay Shankar Prasad, son of late Shiv Shankar Prasad, Resident of New Professors' Colony, Hanumanganj, Mishra Tola, P.S. – Darbhanga Town, District-Darbhanga
2. Syed Hashamuddin Ali, son of late Syed Asghar Ali, resident of Azad Road, Chandwara, P.S. – Muzaffarpur Town, District – Muzaffarpur
3. Sanjeev Kumar Sinha, s/o Shri Krishna Chandra Prasad Sinha, Resident of "Mani Prakash", Mohalla- Bengali Tola, Laheriasarai, P.S. – Laheriasarai, District – Darbhanga.

.... Petitioner/s

Versus

1. Life Insurance Corporation of India through its Chairman, Yogakshema Building, Jeevan Bima Marg, Mumbai-400 021
2. Zonal Manager, East Central Zone, Life Insurance Corporation of India, Exhibition Road, Jeevan Deep Building, Patna – 800 001.
3. Senior Divisional Manager, Life Insurance Corporation of India, Divisional Office, Uma Shankar Prasad Marg, Ramna, Muzaffarpur
4. The Branch Manger, Life Insurance Corporation of India, Branch Office, Ashok Complex, Raj Kumar Ganj, Darbhanga

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Rajiv Kumar Singh
For the Respondent/s : Mr. Rajeev Ranjan Prasad
Mr. Nilanjan Chatterjee

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
ORAL JUDGMENT
Date: 07-08-2015

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07.08.2015 Heard learned counsel for the parties.

The Three petitioners were / are Development Officers, working under Life Insurance Company of India. All three approached the High Court when a decision, contained in Annexure-1, dated 22nd of May, 2008 was taken to make recovery of excess Incentive Bonus (IB) and Additional Conveyance Allowance

(ACA), which was paid towards their credit wrongly on behalf of wrong tagging of agents to these officers. Besides Annexure-1, since the 'appellate authority' also passed an order on 7th of May, 2008, rejecting the claim of the petitioners, the 'appellate order' is also under challenge in I. A. No. 801 of 2009, annexed as Annexure-14 series. As of now three petitioners are seeking quashing of Annexure-1 and Annexure-14 series.

Submission of the counsel for the petitioners is that the two orders are prejudicial to the interest of these petitioners, because the benefit on account of the hard work put in by them is now being taken away on the ground of wrong attachments of agents with them.

It is also their case that the attachment of agents or their tagging with the Development Officers is done by the respondent-authorities. They do not have much of a role to play and it cannot be the case of the respondents-LIC that the Development Officers were not responsible for brining additional business and generating business for the period in question for which the two incentives were initially awarded and now sought to be taken away.

Respondents have filed a detailed counter affidavit. They have explained the mechanism of tagging of agents, the procedure and mechanism which is followed. What kind of agents can be tagged or not tagged with a Development Officer would be evident from reading of Annexure-3 brought on record by the petitioners themselves. No doubt, by virtue of Annexure-4, 5 and 6, certain agents were shown to have been attached with the petitioners under the signature of Manager (Sales), but obviously, this was not done with an honest intent and purpose and in violation of 1992 Rules or guidelines annexed as Annexure-3.

The sum essence of the dispute is that petitioners have drawn advantage of IB / ACA of the hard work and the business which the agents have procured. These agents were not attachable and there is no evidence on record to show that either any request or any consent was given by the agents to be attached with any of the three petitioners. Why and how the tagging was done and with what object came to the knowledge of the respondent-authorities when an internal audit with regard to working of the Darbhanga Branch of LIC was conducted. The audit team pointed out the infirmity as to how the petitioners have derived undue credit and benefit by drawing excess of IB and ACA and, therefore, the respondent-authorities decided to recover the same.

Spirited defence was put up by the petitioners before the authorities and many a pleas were taken as to why the advantage already earned by them ought not be taken away and plea of innocence as well as some of the guidelines or rules were relied upon. The plea of the petitioners was examined by the appellate authority and the order of the appellate authority is Annexure-14 series.

The Court has gone with the petitioners counsel the entire order of the appellate authority. To be fair to the appellate authority, the objections of the petitioners against the decision, contained in Annexure-1 has been dealt with upfront and the reason for rejection of those objections have been meticulously recorded and answered. The sum essence of the conclusion made by the appellate authority is that the plea of innocence is not available for the conduct of these petitioners. The petitioners were very much aware about the non-attachable status of some of the agents and for whose business they could not claim benefit as well as remunerations but still they did.

The Court after hearing the parties and perusing the materials on record comes to a considered opinion that no person can be allowed to draw advantage of somebody elses hard work. As per the terms of scheme of things they were not entitled to derive benefit of the business developed by agents. This came to the knowledge of the authorities only when an audit objection was raised and every effort was made by the petitioners to hang on to it.

Even if Annexure-1 was a short order, Annexure-14 series is an independent order passed on the direction of the High Court at the level of Zonal Manager. The decision lays down the parameters within which such a decision was required to be reached. The petitioners were given adequate opportunity to meet the decision of the respondents. They have also accepted the plea of the petitioners that the decision should be prospective in nature and not retrospective, meaning thereby that the benefit is sought to be withdrawn only from the date of the audit objection and thereafter and not for the past transaction.

The respondents, therefore, have passed a fair and reasonable order. No case for interference with the impugned orders is made out. The petitioners cannot be permitted to derive advantage or benefit which never accruable to them in the very first place.

Writ application, therefore, is dismissed.

(Ajay Kumar Tripathi, J.)

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