

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

THURSDAY, THE 2ND DAY OF JULY 2015/11TH ASHADHA, 1937

WA.No. 1527 of 2013 () IN WP(C).27931/2010

AGAINST THE JUDGMENT IN WP(C) 27931/2010 of HIGH COURT OF
KERALA DATED 17-07-2013

APPELLANT/PETITIONER:

K.J.THOMAS, AGED 61 YEARS,
S/O. THE LATE JOSEPH, KOLARAYIL HOUSE
THALAYOLA PARAMBU P.O, KOTTAYAM 686 605

BY ADVS.SRI.O.V.RADHAKRISHNAN (SR.)
SMT.K.RADHAMANI AMMA
SRI.ANTONY MUKKATH

RESPONDENTS:

1. LIFE INSURANCE CORPORATION OF INDIA
REPRESENTED BY ITS CHAIRMAN, CENTRAL OFFICE
YOGAKSHEMA JEEVAN BIMA MARG, MUMBAI 400 021
2. CHAIRMAN
LIFE INSURANCE CORPORATION OF INDIA, CENTRAL OFFICE
YOGAKSHEMA, JEEVAN BIMA MARG, MUMBAI
3. ZONAL MANAGER
LIFE INSURANCE CORPORATION OF INDIA
SOUTHERN ZONAL OFFICE, L.I.C BUILDING, ANNASALAI
CHENNAI 600 002
4. SENIOR DIVISIONAL MANAGER
LIFE INSURANCE CORPORATION OF INDIA
DIVISIONAL OFFICE, NAGAMPADAM, KOTTAYAM 686 001

SRI.S.EASWARAN, SC FOR LIC

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON
02-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

smv

**ANTONY DOMINIC
&
SHAJI P. CHALY, JJ.**

W.A. No.1527 of 2013

Dated this the 2nd day of July, 2015

JUDGMENT

Antony Dominic,J.

Appellant filed writ petition No.27931 of 2010. By the judgment under appeal, the learned Single Judge dismissed the writ petition. It is aggrieved by this judgment, this appeal is filed.

2. We heard the learned counsel for the appellant and the learned counsel appearing for the respondents.

3. The facts which are required to be noted for the disposal of this appeal are that the appellant was an agent of the first respondent. While so, alleging certain acts of misconducts on his part, Ext.P1 memo of charges was issued to him. Finally by Ext.P6 order, his agency was terminated without forfeiture of commission. In the appeal that was filed by the appellant, the appellate authority issued Ext.P7 order not only confirming the termination of agency but also ordering forfeiture of the commission. Memorial filed by the appellant before the

Chairman was disposed of by Ext.P8 order, by which Ext.P7 to the extent it confirmed the termination of agency was upheld but the appellate order to the extent commission was forfeited was set aside and was remitted to the appellate authority for fresh disposal.

4. Appellate authority accordingly issued Ext.P9 notice, to which the appellant filed Ext.P10 reply. Thereafter, the appellate authority issued Ext.P11 notice proposing to order forfeiture of commission also. At that stage, appellant filed O.P. No.6090 of 2001 challenging the entire proceedings. That original petition was disposed of by Ext.P12 judgment setting aside the impugned proceedings and at the same time directing that an enquiry be conducted into the allegation of misconducts in the manner as ordered therein. Later, the judgment to the extent it directed that the 4th respondent therein be appointed as the Enquiry Officer was reviewed at the instance of the respondents herein by Ext.P16 order in R.P.No.408 of 2008 and liberty was granted to them to appoint an Enquiry Officer.

5. Accordingly an Enquiry Officer was appointed by Ext.P17 proceedings. Thereafter, enquiry proceedings commenced and

the appellant submitted his list of witnesses and also list of documents. He also wanted three documents to be produced by the respondents and to examine witness Nos.5, 6 and 7 in the list who were official witnesses.

6. At a later stage of the proceedings, by Ext.P29, appellant informed the Enquiry Officer that in the absence of the aforesaid documents, the production of which was sought for by him, no useful purpose would be served by examining the three witnesses mentioned above and for that reason, he gave up those witnesses. On that basis, though enquiry was closed by Ext.P30, stating that it was for the purpose of affording the appellant an opportunity to adduce his evidence, the enquiry was re-opened by Ext.P31 and Ext.P32 notice was issued to the appellant on 8.7.2008 requiring the appellant to be present for the enquiry on 15.7.2008. On receipt of the said communication, appellant gave Ext.P34 reply dated 11.7.2008, where he again reiterated that he had given up the three official witnesses. Thereafter he did not have any further notice in the matter.

7. Subsequently, he received Ext.P36 report of the Enquiry Officer along with Ext.P37 show cause notice. The enquiry

report revealed that the Enquiry Officer found the appellant guilty of charges and it also disclosed that the official witnesses, who were given up by the appellant, appeared before the Enquiry Officer on 15.7.2008 and 28.7.2008 and that their evidence was recorded. In this report, their evidence was also relied on by the Enquiry Officer to find the appellant guilty of the charges. Appellant filed his reply by Ext.P38 objecting to the findings of the enquiry officer. However, Ext.P39 order was issued by the disciplinary authority terminating the agency and also ordering forfeiture of commission. His appeal was rejected by Ext.P43 and by Ext.P45 memorial submitted by him to the Chairman was also disposed of vacating the punishment of forfeiture of commission. It is in this background the writ petition was filed, which was dismissed by the learned Single Judge.

8. Having heard the learned counsel for the appellant and the learned counsel for the respondents and also noticing that the facts are as above, what we find is that the three witnesses who were examined by the Enquiry Officer on 15.7.2008 and 28.07.2008 were those who were proposed to be examined by

the appellant as his witnesses and who were given up by him. After these witnesses were given up by the delinquent, when they were examined by the Enquiry Officer, the same was done without giving any intimation to the appellant either regarding the decision of the Enquiry Officer to examine them or regarding the date of enquiry. Such a course adopted by the Enquiry Officer tantamounts to collection of evidence against the appellant without putting the appellant on notice and is a clear case of violation of principles of natural justice. Added to this, it was relying on the evidence of these witnesses also that the Enquiry Officer found the appellant guilty of the charges. In other words, the Enquiry Officer has relied on the evidence of witnesses who were examined without notice to the appellant to find him guilty of the misconducts. According to us, if at all the Enquiry Officer wanted to record the evidence of these witnesses, that should have been only after giving appropriate intimation to the appellant so that the appellant would have had an opportunity to appear before the Enquiry Officer and cross-examine these witnesses if the evidence tendered by them was against him. In such circumstances, for violation of principles of

natural justice, we cannot sustain Ext.P36 report of the Enquiry Officer, Ext.P39 order imposing penalty and Exts.P43 and P45 orders passed by the appellate authority and the Chairman.

9. However, the above finding cannot result in absolving the appellant of the charges against him and the enquiry is liable to be continued from the stage when the Enquiry Officer has erred. Therefore, invalidation of the report and the orders imposing punishment shall be without prejudice to the right of the respondents to complete the proceedings either by eschewing the evidence of three witnesses or to continue the enquiry by affording the appellant an opportunity to cross-examine the witnesses whom the management wants to examine. Accordingly, after completing the proceedings, the Enquiry Officer will afford the appellant to make his written submissions and submit his report to the disciplinary authority who will furnish a copy of the report to the appellant. On receipt of the report, the disciplinary authority shall afford him an opportunity to file his objections to the findings of the Enquiry Officer and thereafter, will take a fresh decision in the matter.

10. In view of the above, the judgment of the learned Single

Judge is set aside. The matter will stand remitted to the disciplinary authority for completing the disciplinary action against the appellant in the manner as indicated above.

11. It is submitted by the learned counsel for the respondents that due to lapse of time, the Enquiry Officer who submitted Ext.P36 report may not be available. Taking note of this, we clarify that it will be open to the respondents to appoint an appropriate Enquiry Officer for completing the proceedings.

Writ appeal is disposed of as above.

Sd/-
ANTONY DOMINIC
JUDGE

Sd/-
SHAJI P. CHALY
JUDGE

smv