

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

MONDAY, THE 9TH DAY OF FEBRUARY 2015/20TH MAGHA, 1936

WA.NO. 47 OF 2015 ()

AGAINST JUDGMENT IN WP(C) 10197/2005 OF HIGH COURT OF KERALA
DATED 02-09-2014

APPELLANT(S) /PETITIONER:

ANTONY P.MATHEW,
S/O.LATE MATHEW, PANAKKAL HOUSE, CHEMPANTHOTTY.P.O
SREEKANDAPURAM, KANNUR.

BY ADV. SRI.SHEJI P.ABRAHAM

RESPONDENT(S) /RESPONDENTS/RESPONDENTS1:

1. REGIONAL MANAGER(MARKETING) ,
LIFE INSURANCE CORPORATION OF INDIA
SOUTHERN ZONAL OFFICE, LIC BUILDING, MADRAS-600 002.

2. SR.DIVISIONAL MANAGER,
LIC OF INDIA, DIVISIONAL OFFICE, P.B.NO.117
KOZHIKODE.

3. BRANCH MANAGER,
LIC OF INDIA, TALIPARAMBA.

R1 -R 3 BY ADV. SRI.S.EASWARAN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON
19.01.2015, THE COURT ON 09-02-2015 DELIVERED THE FOLLOWING:

“C.R”

ASHOK BHUSHAN, Ag. C.J.

And

A.M. SHAFFIQUE, J.

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W.A. No.47 of 2015

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Dated this the 09th day of February, 2015

J U D G M E N T

Ashok Bhushan, Ag. C.J.

This Writ Appeal has been filed against the judgment dated 02.09.2014 of the learned Single Judge by which judgment Writ Petition No.10197 of 2005 filed by the appellant (hereinafter referred to as the “petitioner”) has been dismissed.

2. Brief facts giving rise to this Writ Appeal are: Petitioner was appointed as agent of the Life Insurance Corporation of the India (for short, “the Corporation”) vide order dated 01.11.1976. Petitioner's appointment was to be governed by the Life Insurance Corporation of India (Agents) Regulations, 1972 (for short, “the Regulations”). Exercising power under Regulation 13 of

the Regulations by order dated 09.11.1990 petitioner's agency was terminated on the ground that petitioner did not complete the business guarantee required from him under Regulation 9 of the Regulations during the agency year ending 31.10.1990. Petitioner submitted representation on 12.12.1990 and 21.02.1991 for cancelling the order dated 09.11.1990. Petitioner stated that he has submitted 12 proposals in September and 1st week of October but the special reports were not submitted by the Development Officer. Petitioner submitted a representation on 04.09.1991 requesting for reinstatement. Letter dated 13.09.1991 was received by the petitioner from the Branch Manager referring to life policy given to one P.I.Issac which was revived on personal statement made by him dated 05.03.1990. Issac died on 11.03.1990. Although he was receiving medical treatment which was not disclosed in the personal statement, the personal statement was

witnessed by the petitioner on 05.03.1990. On 23.09.1991 another letter was issued by the Senior Divisional Manager to the petitioner asking his explanation which was submitted by the petitioner on 30.10.1991. When the petitioner did not receive his commission for the last three months, a lawyer's notice dated 24.10.1994 was sent to the Branch Manager to give petitioner's commission for the past three months within 7 days failing which legal action was to be initiated. On 03.12.1994 a show cause notice was given to the petitioner by the Senior Divisional Manager with heading "disciplinary proceedings under the Regulations and in the matter of Antony P.Mathew who was working as life insurance Corporation agent in branch office Taliparamba." The show cause notice stated that petitioner has witnessed the personal statement of health of P.I. Issac on 05.03.1990, who was under treatment and died on 11.03.1990. Having regard to

the gravity of the charges levelled against the petitioner it is proposed to impose penalty of forfeiture of future renewal commission payable to the petitioner exercising power under Regulation No.19(1) of the Regulations. Petitioner submitted a detailed reply on 14.12.1994 stating that since the policy holder having expressed his willingness to revive his policy, he helped to revive the policy on 05.03.1990 on which date premium was also paid. He has no role in the attestation of signature of P.I.Issac by V.T.Vijayan, Branch Manager. Reply further stated that since the petitioner has issued a legal notice on 24.10.1994 asking for payment of commission, as a counter-blast the show cause notice has been issued. An order dated 02.08.1995 was passed by the Senior Divisional Manager under Regulation 19(1) of the Regulations imposing penalty of forfeiture of future renewal commission payable to the petitioner. Petitioner filed

O.P. No.18439 of 1995 in this Court challenging the order dated 09.11.1990 terminating the agency as well as the order dated 02.08.1995 forfeiting his future renewal commission (Exts.P1 and P14.). Writ Petition was decided by this Court vide its judgment dated 26.10.2004 quashing Ext.P14 and directing the respondents to take a fresh decision on the proposal of forfeiture of future renewal commission. In compliance of the order of this Court, the Senior Divisional Manager again passed an order on 14.01.2005 by which order it was held that petitioner's case that he had no role in the matter of attesting signature on 19.03.1990 cannot be accepted. Challenging the order dated 14.01.2005 O.P. No.10197 of 2005 was filed by the petitioner which has been dismissed by judgment dated 02.09.2014 against which this Writ Appeal has been filed.

3. We have heard Shri Leo George, learned counsel for the petitioner and Shri S.Easwaran, learned

counsel for the Corporation.

4. Learned counsel for the petitioner contended that under Regulation 15 finding of fraud is to be recoded in a judicial proceeding and the agency having not been terminated under Regulation 15, renewal commission cannot be forfeited. It is submitted that the Corporation is entitled to forfeit commission payable to an agent whose agency has been terminated on the ground of fraud whereas in the present case petitioner's agency was terminated on the ground that petitioner could not bring in the required business for the year ending 31.10.1990, hence renewal commission could not be forfeited in the present case. It is further submitted that the error committed by the petitioner if any, could not be equated to fraud for forfeiting renewal commission.

5. Shri S.Easwaran, learned counsel for the Corporation refuting the submissions of the learned

counsel for the petitioner contended that for exercising powers under Regulation 19 for forfeiting future renewal commission it is not necessary that finding of fraud be recorded in a judicial proceeding as required by Regulation 15 rather the Corporation itself is empowered to enquire and find out fraud on the part of agent and consequently forfeit the renewal commission. It is submitted that Regulation 19 is an independent proceeding which could be drawn by the Corporation for forfeiting the renewal commission. It is submitted that in any event if the agency is not terminated on the ground of fraud and it is detected subsequently that fraud was played by the agent, Corporation can very well initiate proceeding under Regulation 19 and impose the penalty of forfeiture of renewal commission. He further submitted that in the present case fraud played by the petitioner in getting the policy of P.I.Issac renewed was subsequently detected and there was no

error in issuing the show cause notice dated 03.12.1994.

6. Learned counsel for the parties in support of their respective submissions have placed reliance on the judgments of this Court, other High Courts and the Apex Court which shall be referred to while considering the submissions in detail.

7. From the materials on record and submissions made by the learned counsel for the parties, the following are the issues which arise for consideration in this Writ Appeal.

(i) Whether power under Regulation 19 to forfeit the renewal commission of an agent can be exercised by the Corporation only when the agency has been terminated on the ground of fraud?

(ii) Whether the Corporation can initiate proceeding under Regulation 19 for imposing penalty of forfeiture of

renewal commission subsequent to termination of agency when the agency has not been terminated on the ground of fraud, and the fraud is detected subsequently?

(iii) Whether in the facts of the present case proceedings undertaken by the Corporation for imposing penalty of forfeiture of renewal commission vide its show cause notice dated 03.12.1994 are in accordance with the power and procedure contemplated under the Regulations?

(iv) Whether in the present case forfeiture of renewal commission of the petitioner is in accordance with law?

8. All the issues being interconnected, they are being taken together. Issues which have arisen in the present case relate to the scope and ambit of the Regulations. Regulations have been framed by the Corporation with the previous approval of the Central

Government in exercise of the powers under Section 49 of the Life Insurance Corporation Act, 1956. It is necessary to look into the scheme of the Regulations.

9. Regulations have been framed for regulating terms and conditions of appointment and work of agents. The Corporation appoints agents under Regulation 4, functions of agent are mentioned in Regulation 8, Regulation 9 deals with the minimum amount of business to be secured by the agents, Regulation 10 deals with payment of commission to agents, Regulation 11 deals with gratuity and term insurance benefit, Regulation 13 provides for termination of agency when an agent fails to bring in business required of him under Regulation 9, Regulation 14 provides for termination of agency on cancellation of, or failure to renew licence, Regulation 15 deals with termination of agency on account of certain disqualifications of an agent, Regulation 16 deals

with termination of agency for certain lapses, Regulation 17 deals with termination of agency by notice and Regulation 19 deals with payment of commission on discontinuance of agency.

10. From the facts noted above, there is no dispute between the parties that agency of the petitioner was terminated by order dated 09.11.1990 on the ground that petitioner could not comply with the business guarantee required from him under Regulation 9. It is useful to quote the 1st paragraph of the termination letter which is to the following effect:

"Life Insurance Corporation of India

Kozhikode Division

Ref.Sales/Agency

Branch:Taliparamba

Date: 9.11.1990

*Shri Antony P.Mathew,
Panakkal House,
Chempathotty P.O.,
Sreeikandapuram, Kannur*

Dear Sir/Madam,

*Ref: Termination of your Agency appointment
Code No.2310772*

We regret to find that you did not complete the business guarantee required of you under Regulation 9 of the Agents Regulations during your agency year ended 31.10.2010. In the circumstances, your agency stands terminated from 1.11.90. In case you have completed the requisite business in our Division or any other Division, please furnish us immediately with the policy numbers, sum assured, the date of risk and the date of completion to enable us to re-examine your case."

11. Regulation 13(2) provides for reinstatement of the agency terminated under Rule 13(1) for which reinstatement petitioner made representation but the same was rejected and the agency was not reinstated. It is useful to quote Regulation 13 which is to the following effect:

"13. Termination of agency.- (1) *If an agent fails to bring in the business required on him under regulation 9 in any agency year, his appointment shall stand terminated at the end of such agency year:*

Provided that nothing contained herein shall apply to an agent who has been exempted under sub-regulation (4) of regulation 9 from bringing in the minimum business required under the said regulation.

(2) *An agency which stands terminated under sub-regulation (1) may be reinstated by the competent*

authority if it is satisfied that the failure of the agent to bring in the business required of him was due to reasons beyond his control.

3...."

Regulation 10 provides for payment of commission to agents. Regulation 10(6) provides that no commission shall be payable to the agent if he ceased to be an agent except as provided in Regulation 19. Regulation 10(6) is quoted below:

"10. Payment of commission to agents.

.....

(6) Save as provided by regulation 19, no commission shall be payable to an agent after he has ceased to be such agent."

Regulation 15 as noted above deals with termination of agency on account of certain disqualifications which is to the following effect:

"15. Termination of agency on account of certain disqualifications.-

(a) is found to be of unsound mind by a Court of competent jurisdiction;

(b) is found to be guilty of criminal misappropriation or criminal breach of trust or cheating or forgery or an abetment of or attempt to commit any

such offence by a Court of competent jurisdiction;

(c) in any judicial proceeding, has been found to have knowingly participated in, or connived at, any fraud, dishonesty or misrepresentation against the Corporation or any of its subsidiaries or against any person having official dealings with the Corporation or any of its subsidiaries,

his appointment shall be liable to be terminated without notice and the competent authority shall forthwith terminate his appointment."

Regulation 16 provides for termination of agency for certain lapses. Regulation 16(1) which is relevant for the present case is quoted below:

"16. Termination of agency for certain lapses.- (1) *The competent authority may, by order, determine the appointment of an agent-*

(a) if he has failed to discharge his functions, as set out in regulation 8, to the satisfaction of the competent authority;

(b) if he acts in a manner prejudicial to the interests of the Corporation or to the interests of its policy-holders.

(c) if evidence comes to its knowledge to show that he has been allowing or offering, to allow rebate of the whole or any part of the commission payable to him;

(d) if it is found that any averment contained in his agency application or in any report

furnished by him as an agent in respect of any proposal is not true;

(e) if he becomes physically or mentally incapacitated for carrying out his functions as an agent;

(f) if he being an absorbed agent on being called upon to do so, fails to undergo the specified training or to pass the specified tests, within three years from the date on which he is called upon; provided that the agent shall be given a reasonable opportunity to show cause against such termination."

12. Before we proceed further, one submission which has been raised by the learned counsel for the petitioner needs to be considered that the word "fraud" used in Regulation 19(1) refers to fraud as contemplated in Regulation 15(c), i.e., fraud which has been found in any judicial proceeding. Learned counsel for the petitioner has referred to a judgment of a learned Single Judge of this Court reported in **Balakrishna Reddiar v. Branch Manager, L.I.C of India** (2007 [4] KLT 446). In the said case also question of etitlement of

commission under Rule 19 came up for consideration. Learned Single Judge in paragraph 15, after considering Regulations 15(c) and 19(1) came to the conclusion that it is only where termination of agency is under Regulation 15(c), the Corporation is entitled to forfeit a claim. It is useful to quote paragraph 15 of the above judgment:

"15. As regards the liability of the Corporation to pay the commission due to an agent on the premium received in respect of the business secured by him, the exception is confined to cases of fraud as the term occurs in the statute in question. Then it seems to be quite logical to confine such cases of fraud having been perpetrated by the agent, and so found in any judicial proceeding involving the Corporation or any of its subsidiaries or against any person having official dealing with the Corporation (R.15(c) of the Rules). It is to be noted that the Rules in question, which are obviously statutory in character define the method of recruitment and the terms and conditions of appointment of an agent. An agent of the Corporation is not entitled to any salary. He is entitled to only such benefits payable to him by way of commission in terms of R.10 of the Rules and gratuity and term insurance benefits due to him under R.11 of the Rules. Thus, where the statute provides for the mode of

termination and the statute itself, couched in a positive way, mandates payment of commission on the premium received in respect of the business secured by the agent, in the event of termination of his appointment as an agent, the statutory consequences will have to be given effect to. Termination of the appointment of an agent will have to be resorted to only under the circumstances provided under R.13 to R.18 of the Rules. Obviously, they deal with different circumstances. R.15 of the Rules contemplates termination of agency on account of certain disqualifications incurred by the agent concerned and R.16 of the Rules deals with termination of agency for certain lapses on the part of the agent. The Rule Making Authority seems to have kept in its mind different situations warranting application of R.15 or R.16 of the Rules, as the case may be. The term "fraud" or "fraudulent" does not find a place in R.16. "Fraud" either resultant upon act of commission or omission on the part of the agent is contemplated and provided for only under R.15(c) of the Rules. If that be so, it is only where the termination of appointment of an agent is resultant upon R.15(c) of the Rules, that the Corporation is given liberty to forfeit the commission payable to an agent. Of course, such forfeiture as provided under R.19(1) of the Rules need not necessarily be resultant upon proof of any monetary loss suffered by the Corporation. If in any judicial proceeding, it is found that the agent concerned has knowingly participated in or connived at any fraud, against the Corporation or any of its subsidiaries or

against any person having official dealings with the Corporation or any of its subsidiaries, then termination of agency can be followed by or accompanied by forfeiture of the commission in terms of R.19(1). But the crucial aspect is that the finding of fraud must be in any judicial proceeding as provided for under R.15(c) of the Rule."

13. Learned counsel for the Corporation has relied on the Division Bench decision in **L.I.C of India v. Balakrishna Reddiar** (2009 [3] KLT SN 41) which was an appeal filed against the judgment in **Balakrishna Reddiar v. Branch Manager, L.I.C of India** (supra). The Division Bench did not subscribe to the view taken by the learned Single Judge. It is useful to quote the following observations in paragraph 4 of the judgment:

"4. Thus, an agency can be terminated under Rr.15, 16 and 17. The termination under R.17 will not disqualify the agent from receiving the commission. The cases covered by R.15(b) and (c) normally disentitle the agent to get commission, as most of those cases will come under various shades of fraud. In appropriate cases, an agent terminated under R.16 may be guilty of fraud and therefore, disentitled to get common under R.19(1). Going by the scheme of the above Rules, we feel that only if an agent is found to have committed

fraud by a competent court, the forfeiture of commission on premium is permissible is not the correct legal position. Even if the Corporation finds that the agent has committed fraud and therefore terminated the agency under R.16, the commission on premium can be denied.”

Regulations provide for termination of agency on account of certain disqualification acquired by an agent. Regulation 15 itself contemplated that if an agent acquires any of the disqualifications mentioned therein his appointment shall be liable to be terminated and the competent authority can forthwith terminate his appointment. The said provision thus mandates termination on acquiring a disqualification by an agent and the said termination is not on account of any proceeding taken by the Corporation. Regulation 16(1) empowers the Corporation to terminate the agency for “certain lapses”. Regulation 16(1)(b), “if he acts in a manner prejudicial to the interests of the Corporation or in the interests of the policy holders” is a very wide phrase which shall cover any unauthorized and

fraudulent act done by an agent. We cannot countenance the situation that even if the agent commits a fraud in carrying on his business with the Corporation or policy holders, the Corporation cannot initiate any proceeding for termination of agency on coming to know that the agent is working fraudulently. The Corporation has ample jurisdiction and Regulation 16 gives ample power to the Corporation to initiate proceeding for any lapse committed by the agent including his fraudulent act or act of forgery for terminating his appointment. We thus are of the view that the word "fraud" used in Regulation 19 does not only refer to fraud as found in the judicial proceeding under Regulation 15(c) but shall also include the action of the Corporation terminating the agency on any fraudulent act of the agent. Thus in proceeding under Regulation 16(1) also the Corporation after considering the materials and after giving opportunity

can come to the conclusion regarding the act of fraud committed by the agent and that can also form a basis for forfeiting the commission under Regulation 19.

14. Present is not a case of acquiring any disqualification under Regulation 15. Present is not a case where any proceeding was initiated by the Corporation under Regulation 16 for terminating agency of the petitioner on account of any lapses or any acts of fraud by the agent. Present is a case where termination of agency was directed under Regulation 13 on the ground that petitioner did not complete the business guarantee required of him under Regulation 9 during the agency year ending 31.10.1990. Relevant extract of the order dated 09.11.1990 has already been quoted above.

15. The core issue in this Writ Appeal centres around the ambit, scope and jurisdiction of the Corporation to take action to forfeit renewal

commission in exercise of the powers under Regulation 19. Regulation 19 for its ready reference is quoted below:

"19. Payment of commission on discontinuance of agency.-(1) *In the event of termination of the appointment of an agent, except for fraud, the commission on the premiums received in respect of the business secured by him shall be paid to him if such agent-*

(a) has continually worked for at least 5 years since his appointment and policies assuring a total sum of not less than Rs.2 lakhs effected through him were in full force on a date one year before his ceasing to act as such agent; or

(b) has continually worked as an agent for at least 10 years since his appointment or;

(c) being an agent whose appointment has been terminated under clause (e) of sub-regulation (1) of regulation 16 has continually worked as an agent for at least two years from the date of his appointment and policies assuring a total sum of not less than Rs.one lakh effected through him were in full force on the date immediately prior to such termination;

provided that in respect of an absorbed agent the provisions of clause (a) shall apply as if for the letters, figures and word "Rs.2 lakhs", the letters and figures "Rs.50,000" had been substituted.

(2) Any commission payable to an agent under sub-regulation (1) shall notwithstanding his death, be payable to his nominee or nominees or, if no nomination

is made or is subsisting, to his heirs so long as such commission would have been payable had the agent been alive.

(3) In the event of the death of the agent while his agency subsists, any commission payable to him had he been alive shall be paid to his nominee, or, if no nomination is made or is subsisting, to his heirs, so long as the such commission would have been payable had the agent been alive, provided he had continually worked as an agent for not less than 2 years from the date of his appointment and polices assuring a total sum of not less than Rs.one lakhs effected through him were in full force on the date immediately prior to his death.

(4) If the renewal commission payable under sub-section (1) or sub-regulation (2) or sub-regulation (3) falls below Rs.100 in any financial year (hereinafter referred to as the said financial year), the competent authority may, notwithstanding anything contained in the said sub-regulation, commute all commission payable in subsequent financial years for a lump sum which shall be three times the amount or renewal commission paid in the said financial year and on the payment of such lump sum to the agent or his nominee or heirs, as the case may be, no commission on the business effected through the agent shall be payable in the financial years subsequent to the said financial year."

Key words used in Regulation 19(1) are "in the event of termination of the appointment of agency, except for

fraud, the commission on the premium received in respect of the business secured by him shall be paid to him if such agent.....” Whether the words “except for fraud” used in the first sentence are the words referable to or related to termination of appointment of an agent or it shall also include fraud *de hors* the termination of appointment of an agent.

16. Learned counsel for the Corporation has submitted that the words “except for fraud” which finds place in Regulation 19(1) after the punctuation, “comma”, has no relation with the event of termination of appointment of an agent and fraud can be found out by an action taken by the Corporation even if termination of agency was not on the ground of fraud.

17. Before we interpret the above provision, it is useful to remind us of the cardinal principle of interpretation which is known as literal interpretation. The Apex Court in **Harbhajan Singh v. Press Council**

of India ([2002] 3 SCC 722) has laid down the following in paragraph 9:

"9. *Cross in Statutory Interpretation* (Third Edition, 1995) states:

*"The governing idea here is that if a statutory provision is intelligible in the context of ordinary language, it ought, without more, to be interpreted in accordance with the meaning an ordinary speaker of the language would ascribe to it as its obvious meaning, unless there is sufficient reason for a different interpretation. Thus, an 'ordinary meaning' or 'grammatical meaning' does not imply that the Judge attributes a meaning to the words of a statute independently of their context or of the purpose of the statute, but rather that he adopts a meaning which is appropriate in relation to the immediately obvious and unresearched context and purpose in and for which they are used. By enabling citizens (and their advisers) to rely on ordinary meanings unless notice is given to the contrary, the legislature contributes to legal certainty and predictability for citizens and to greater transparency in its own decisions, both of which are important values in a democratic society" (p. 32 *ibid*).*

The learned author cites three quotations from speeches of Lord Reid in House of Lords cases, the gist whereof is :

(i) in determining the meaning of any word or phrase in a statute ask for the natural or ordinary meaning of that word or phrase in its context in the statute and follow the same unless that meaning leads to some result which cannot reasonably be supposed to have been the legislative intent; (ii) rules of construction are our servants and not masters; and (iii) a statutory provision

cannot be assigned a meaning which it cannot reasonably bear; if more than one meaning are capable you can choose one but beyond that you must not go (p. 40, ibid). Justice G. P. Singh in his celebrated work - Principles of Statutory Interpretation (Eighth Edition, 2001) states (at page 54) -

"The intention of the Legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence a construction which requires for its support addition or substitution of words or which results in rejection of words as meaningless has to be avoided."

The learned author states at another place (at page 74, ibid) that the rule of literal construction whereby the words have to be assigned their natural and grammatical meaning can be departed from but subject to caution. The golden rule is that the words of statute must prima facie be given their ordinary meaning. A departure is permissible if it can be shown that the legal context in which the words are used or the object of the statute in which they occur requires a different meaning. To quote,

"such a meaning cannot be departed from by the Judges 'in the light of their own views as to policy' although they can 'adopt a purposive interpretation if they can find in the statute read as a whole or in material to which they are permitted by law to refer as aids to interpretation an expression of Parliament's purpose or policy.' A modern statement of the rule is to be found in the speech of Lord Simon of Glaisdale in Suthendran v. Immigration Appeal Tribunal (1976 (3) All ER 611, 616) to the effect - 'Parliament is prima facie to be credited with meaning what is said in an Act of Parliament. The drafting of

statutes, so important to a people who hope to live under the rule of law, will never be satisfactory unless Courts seek whenever possible to apply 'the golden rule' of construction, that is to read the statutory language, grammatically and terminologically, in the ordinary and primary sense which it bears in its context, without omission or addition. Of course, Parliament is to be credited with good sense; so that when such an approach produces injustice, absurdity, contradiction or stultification or statutory objective the language may be modified sufficiently to avoid such disadvantage, though no further."

To the same effect is another judgment of the Apex Court in **State of H.P. v. Pawan Kumar** ([2005] 4 SCC 350). The Apex Court referring to the basic principle of interpretation of Statute held that statute has to be construed in accordance with the plain, literal and grammatical meaning of the words. Following was laid down in paragraph 8:

"8. One of the basic principles of interpretation of statutes is to construe them according to plain, literal and grammatical meaning of the words. If that is contrary to, or inconsistent with, any express intention or declared purpose of the statute, or if it would involve any absurdity, repugnancy or inconsistency, the grammatical sense must then be modified, extended or abridged, so far as to avoid such an inconvenience, but no further. The onus of showing that the words do not mean what they

say lies heavily on the party who alleges it. He must advance something which clearly shows that the grammatical construction would be repugnant to the intention of the Act or lead to some manifest absurdity (see Craies on Statute Law, 7th Edn., pp. 83-85). In the well known treatise -- Principles of Statutory Interpretation by Justice G. P. Singh, the learned author has enunciated the same principle that the words of the statute are first understood in their natural, ordinary or popular sense and phrases and sentences are construed according to their grammatical meaning, unless that leads to some absurdity or unless there is something in the context or in the object of the statute to suggest the contrary (see the chapter -- "The Rule of Literal Construction", p. 78, 9th Edn.). This Court has also followed this principle right from the beginning. In Jugalkishore Saraf v. Raw Cotton Co. Ltd. (1955 (1) SCR 1369 : AIR 1955 SC 376) S. R. Das, J. said: (SCRp. 1374)

"The cardinal rule of construction of statutes is to read the statute literally, that is by giving to the words used by the legislature their ordinary, natural and grammatical meaning. If, however, such a reading leads to absurdity and the words are susceptible of another meaning the court may adopt the same. But if no such alternative construction is possible, the court must adopt the ordinary rule of literal interpretation."

A catena of subsequent decisions have followed the same line. It, therefore, becomes necessary to look to dictionaries to ascertain the correct meaning of the word "person".

18. Taking words, phrases and sentences used in Regulation 19(1) it is clear that the words “except for fraud” which find place in the very first sentence after the punctuation, “comma” are preceded by the words **“in the event of termination of appointment of an agent”**. Regulation 19(1) thus refers to event of termination of appointment of an agent and when after the punctuation, “comma” the words “except for fraud” are used, the said denotes an interrelation to the preceding words. Regulation 19(1) states that **“in the event of termination of appointment of agent”** the commission on the premium received in respect of the business secured by him shall be paid to him on fulfillment of certain conditions mentioned therein. Thus the main substantive provision in Regulation 19(1) is for payment of commission to agent whose agency is terminated. As noted above, Regulation 10 which deals with payment of commission to agents contains a

provision i.e., Regulation 10(6), that no commission shall be payable to the agent after he has ceased to be agent except as provided in Regulation 19. Reading Regulations 10(6) and 19 together, it is clear that Regulation 19 is a provision engrafted in the Regulations providing for payment of compensation to an agent after termination of the agency. Payment of commission which is contemplated in Regulation 19(1) is the commission of the agent on the premium received in respect of the business secured by him. Thus, commission referred to is the commission which is payable on the business already acquired by the agent. The provision of payment of commission has been made to reward the agent for the business he secured for the Corporation which payment shall also continue in future as and when renewal premium is received. The said payment is with an exception, i.e., in case when the agency is terminated on fraud, agent is

disentitled to receive the commission, thus the power has been given to forfeit renewal commission when the agency is terminated on the ground of fraud. The above is the plain and literal interpretation of the words used in Regulation 19(1). Submission of learned counsel for the Corporation that the word "fraud" used in Regulation 19(1) is not to be necessarily linked with termination of appointment of agent cannot be accepted. Termination of appointment of agent is an event which is to happen for giving an occasion for payment of commission on the business already secured by the agent. Without there being termination of agency, the question of payment on the business already secured does not arise. The words "except for fraud" had to confine and relate to termination of agency. All the three words used in the first sentence "except for fraud" have to be given its full meaning. The word "except" denotes an exception to the earlier

phrase. Use of the word “fraud” clearly links the termination of appointment of agent on fraud and it is not possible to read the said words “except for fraud” *de hors* to the termination of agency.

19. Regulation 19 deals with payment of commission on discontinuance of agency. It do not contemplate any separate proceeding. Regulation 16 which contemplated termination of agency for want of certain lapses contains a provision that “provided that the agent shall be given reasonable opportunity to show cause against such termination. Regulation 19 does not contain any such provision nor Regulation 19 is set out in a manner to indicate that it contemplates a separate proceeding. Regulation 19 is a power of the Corporation to determine the commission on discontinuance of agency and in any event the Corporation is deciding not to pay commission on the business of the agent on discontinuance of agency on

the ground of fraud, the said power can very well be exercised at the time of terminating the agency.

20. Learned counsel for the Corporation in support of his submission has placed reliance on the judgment of the Delhi High Court in **Mrs.Chandra Prabha Dorga v. LIC of India** (W.A. No.6926 of 2003), decided on 19.04.2004. The said case was with regard to Regulations 15, 16 and 19. In the above case the Corporation had issued a show cause notice on 05.10.2001 for termination of agency under Regulation 16(1)(b) and forfeiture of renewal commission under Regulation 19(1). Petitioner's explanation was sought for and agency was terminated under Regulation 16(1)(b) and renewal commission was forfeited under Regulation 19(1) by order dated 20.01.2002. It was challenged and contention was raised that the case falls under Regulation 15(c) and there was no fraud as envisaged under Regulation 15. The said argument was repelled

and it was held that fraudulent act outside judicial proceedings would also be actionable under Regulation 16(b) and it be open for the Corporation to treat the same as a case of fraud for the purpose of Regulation 19(1). Following observations were made by the Delhi High Court:

"He therefore submits that petitioner's case would not fall under Regulation 165(c) and there was no fraud as envisaged under Regulation 15. The termination under Regulation 19(c) not being for fraud, petitioner was entitled to the renewal commission. The said submission proceeds on misreading of Regulations 15, 16 and 19. One a composite reading of the said regulations, it is seen that Regulation 15 merely sets out the disabilities upon the attainment of which the agency was liable to be terminated. It simply provided that in any judicial proceedings, if an agent was found to have participated in any fraud, dishonesty or misappropriation against the Corporation, then the agency was liable to be terminated. Regulation 15 prescribes an additional ground for termination of agency upon being found guilty of fraud in any judicial proceedings. This does not preclude termination of an agent who is found to be in breach of Regulation 16 and acts not in a manner prejudicial to the interest of the Corporation or to that of the policy holders.

A fraudulent act outside judicial proceedings would also be actionable under Section 16(b) and it would be open for the respondent-Corporation to treat the same as a case of fraud for the purposes of Regulation 19. Respondents having found the actions of the petitioner to be fraudulent, they were justified in invoking regulation 19 and forfeiting the renewal commission payable."

The above was a case where power under Regulations 16(1)(b) and 19(1) were exercised together. Renewal commission was forfeited since the finding of fraud was recorded by the Corporation under Regulation 16(1)(b). Learned counsel for the Corporation has also relied on the decision in **Indian Bank v. M/s.Sathyam Fibres (India) Pvt. Ltd.** ([1996] 5 SCC 550) for the proposition that the authorities also possess power to recall their judgments/orders if they are obtained by fraud. It is useful to quote the following observations made by the Apex Court in in paragraph 20:

"20. By filing letter No. 2775 of 26-8-91 along with the Review Petition and contending that the other letter, namely, letter No. 2776 of the even date, was never written or issued by the respondent, the appellant, in

fact, raised the plea before the Commission that its judgment dated 16-11-1993, which was based on letter No. 2776, was obtained by the respondent by practising fraud not only on the appellant but on the Commission too as letter No. 2776 dated 26-8-91 was forged by the respondent for the purpose of this case. This plea could not have been legally ignored by the Commission which needs to be reminded that the Authorities, be they Constitutional, Statutory or Administrative, (and particularly those who have to decide a lis) possess the power to recall their judgments or orders if they are obtained by fraud as Fraud and Justice never dwell together (Fraus et jus nunquam cohabitant). It has been repeatedly said that Fraud and deceit defend of excuse no man (Fraus et dolus nemini patrocinari debent)."

There cannot be any dispute about the above proposition laid down by the Apex Court in the said case. Present is not a case of recalling any judgment or order by the Corporation. The above case does not help the Corporation in any manner in the present case.

21. Learned counsel for the Corporation further placed reliance on the judgment of the Supreme Court in **Sree Durga Distributors v. State of Karnataka**

([2007] 4 SCC 476) in support of the submission that use of punctuation “comma” before the words “except for fraud” makes the words “except for fraud” independent and of different category. In the above case the Apex Court had occasion to interpret entry No.5 of the First Schedule of the Karnataka Value Added Tax Act, 2003. In that context question has arisen whether dog feed and cat feed sold by the appellant-assessee attracted nil rate of duty under entry 5. It was held that list is exhaustive and that dog feed and cat feed will not. The following was laid down in paragraph 5:

"5. We do not find any merit in the arguments. The above quoted Entry 5 shows that animal feed and feed supplements is one category. It is after the expression "animal feed and feed supplements" that the Legislature has inserted the comma, therefore, animal feed and feed supplements constitute one class of products, they do not constitute two separate classes. Further, the expression "animal feed and feed supplements" is not only followed by the comma, it is followed by the word 'namely', which indicates that the

items mentioned after the word 'namely' like poultry feed, cattle feed, pig feed, fish feed etc. are specific instances of animal feed and feed supplements, which would fall in Entry 5. That list is exhaustive. In that list, the Legislature has not included dog feed/cat feed, therefore, the products of the appellant do not fall under Entry 5 of the First Schedule of the Act. In our view, the basic premise on which the arguments of the assessee proceeds is that Entry 5 covers three categories of goods, namely, animal feed, feed supplements and feed supplements and mineral mixtures. This premise is wrong. A bare reading of the said entry indicates 'animal feed and feed supplements' as constituting one category. They are not two separate categories. The punctuation mark "comma" has been used expressly after the words "animal feed and feed supplements", which indicates that the Legislature intended to classify these two items as one class/category. Further, the Legislature intended to restrict that category by confining that category to processed commodity alone and that too for certain named animals. In the present case, we are concerned with cat feed and dog feed. Cat feed carries a fishy smell on account of processing. However, cat feed though processed is not put in Entry 5. Similarly, dog feed is also excluded from Entry 5. In the circumstances, we do not find any merit in the arguments advanced on behalf of the assessee."

The above judgment in no manner help the

Corporation in the present case.

22. In the present case as noted above, punctuation “comma” has been used after the words “in the event of termination of appointment of an agent” to carve out an exception, i.,e. “except for fraud”.

23. Next judgment relied on by the learned counsel for the Corporation on Statutory Interpretation is **Union of India and others v. Raninder Singh** ([2012] 12 SCC 787). The Apex Court in the said case had occasion to interpret Section 52(f) of the Army Act, 1950. The Apex Court held that the two parts of Sec.52 (f) are disjunctive since there is 'comma' and conjunction 'or' separating two parts of the class. It is useful to quote paragraphs 11 and 25 of the judgment:

“11. Before we deal with the submissions by the rival counsel, we may note that the respondent was charged under Section 52 (f) of the Army Act, 1950 and the Section was specifically referred in the charges levelled against him. Section 52 reads as follows :

"52. Offences in respect of property- Any person subject

to this Act who commits any of the following offences, that is to say,

(a) commits theft of any property belonging to the Government, or to any military, naval or air force mess, band or institution, or to any person subject to military, naval or air force law, or

(b) dishonestly misappropriates or converts to his own use any such property; or

(c) commits criminal breach of trust in respect of any such property; or

(d) dishonestly receives or retains any such property in respect of which any of the offences under clauses (a), (b) and (c) has been committed, knowing or having reason to believe the commission of such offence; or

(e) willfully destroys or injures any property of the Government entrusted to him; or

(f) does any other thing with intent to defraud, or to cause wrongful gain to one person or wrongful loss to another person, shall, on conviction by court martial, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned."

25. We accept the submission of Shri Tripathi that the two parts of Section 52 (f) are disjunctive, which can also be seen from the fact that there is a comma and the conjunction 'or' between the two parts of this sub-section, viz (i) does any other thing with intend to defraud and (ii) to cause wrongful gain to one person or

wrongful loss to another person. If the legislature wanted both these parts to be read together, it would have used the conjunction 'and'. As we have noted earlier in Dr. Vimla (supra) it was held that the term 'fraudulently' is wider than the term 'dishonestly' which however, requires a wrongful gain and a wrongful loss. The appellants had charged the respondents for acting with 'intent to defraud', and therefore it was not necessary for the appellants to refer to the second part of Section 52 (f) in the charge. The reliance by the Division Bench on the judgment in S.Harnam Singh (supra) to justify the conclusions drawn by it was clearly erroneous."

The above case was also on its own facts and Section 52(f) was set out by using conjunction 'or' between the two parts. In the said background the Apex Court held that if the Legislature wanted to read together both the parts together, it would have used the conjunction "and". Section 52(f) as quoted above clearly indicate that both the classes were separated by the punctuation "comma" and the conjunction 'or' and was designated as a separate class. The above case also do not in any manner help the Corporation.

24. Learned counsel for the petitioner had placed reliance on the judgment of the Calcutta High Court in **Usha Chatterjee v. Life Insurance Corporation of India** (CDJ 2004 Calcutta HC 665). In the above case, the Corporation never alleged fraud against the petitioner while terminating the appointment of the petitioner as agent and payment towards commission could not have denied.

25. Judgment of the Madras High Court has also been relied by the learned counsel for the petitioner - **(O.A.Seshadri v. The Chairman and Managing Director, LIC of India and Others** - W.P. No.9980 of 995) decided on 01.07.2003. In the said case also submission was made by the learned counsel for the petitioner that relying of Regulation 15, that in case of termination of agency on the ground of fraud, misappropriation, the same can be done only after a finding was rendered by the criminal court and in the

absence of a finding of fraud by criminal court the agency could not be terminated. In the above case show cause notice was issued as to why agency should not be terminated under 8(3)(b) and (c), 16(1)(a) and (b) read with Regulation 19(1). Argument was rejected and the Madras High Court held that Regulations 15, 16 and 19 are distinct. The following observations were made by the Madras High Court:

"....Thereby the learned counsel would submit that once misappropriation found proved, the only course open to the respondent-Corporation is to invoke Regulation 15 by lodging a complaint. In the absence of such complaint, the respondent-Corporation cannot invoke Regulation 16 of Regulations. This argument of the petitioner is totally misconceived as the provisions of Regulations 15, 16, 19 are distinct and different as to the source of power of the Corporation. The Corporation is empowered to take action to terminate the agency on the ground of disqualification in terms of Section 15. In addition to the power, the Corporation is also to take action in the event that an agent has failed to discharge his functions as set out in the Regulation 8, which referred to payment of premium. As I referred earlier, it is the duty of the agent in terms of Regulations to

ensure that remittance of premium by the policy holders within the grace period only to ensure the Commissioner of the policy. Therefore it goes without saying that once such remittance is made by the policy holders through his agent, there is a corresponding duty vests with the agent to remit the said amount the Corporation within the grace period to ensure that the Commissioner of the policy otherwise the policy will get lapsed and the policy holder would not be entitled to any benefit of the policy in the event of any untoward incident happens in the meantime. When there is failure to discharge of his functions, it is always open to the Corporation to invoke Regulation 16, more particularly, Regulation 16(1)(1) and (b) of Regulations. Hence I find no merits of the submission of the learned counsel that the respondent-Corporation cannot invoke Regulation 16(1)(a and (b) of the Regulations to terminate the agency of the petitioner, since ought to have invoked only Regulation 15.

".....Regulation 19 empowers the Corporation to forfeit the renewal Commission in the event that the termination of agency is made by the Corporation. When such power is contemplated for forfeiture of renewal commission under Regulation 19, I do not find any reason to interfere with the said order. Accordingly, the submission made challenging the impugned orders cannot be accepted and consequently, the writ petition fails and the same is dismissed."

26. There is one more reason due to which we are

not persuaded to accept the submission of the learned counsel for the Corporation that under Regulation 19 the Corporation can initiate separate proceeding for imposing penalty of forfeiture of renewal commission in event of termination of agency not terminated on the ground of fraud which was detected subsequently. As noted above, the words “except for fraud” are linked and related to the factum of termination of appointment of agent hence only when fraud is found while terminating agency renewal commission can be forfeited.

27. It is relevant to note that a similar claim regarding payment of commission is disclosed in Regulation 11. Proviso to Regulation 11 contemplated that where the appointment of any person who was acting on behalf of the Corporation as insurance agent is terminated on or after 01.09.1971 but before the published day except for fraud his heirs shall be paid an

amount which shall be equal to the gratuity. Regulation 11 is quoted below:

11. Gratuity and terms insurance benefits.- The gratuity and term insurance benefits admissible in the case of an agent shall be as set out in Schedule VI:

Provided that where the appointment of any person who was acting on behalf of the Corporation as an insurance agent as defined in the Insurance Act has been terminated on or after the 1st September, 1971, but before the published day except for fraud, or where any person who was so acting as insurance agent on behalf of the Corporation has died on or after the 1st September, 1971, but before the published day; he or his heirs, as the case may be, shall be paid an amount which shall be equal to the gratuity payable in his case had these regulations been in force on the date of termination of his appointment or his death;

Provided further that any person who was so acting as an insurance agent on behalf of the Corporation has died on or after the 1st September, 1971 but before the published day, while his agency was subsisting, his heirs shall also be paid an amount which shall be equal to the amount of term insurance payable in his case had these regulations been in force on the date of his death."

In the proviso to Regulation 11 the words "except for

fraud” have been used after the punctuation “comma”. But the provision clearly indicate that termination of agency is made after 01.09.1971 but before the published day the link between the words “except for fraud” and termination is clearly established and referred to. The same object is found delineated in Regulation 19(1). Thus the above reinforces our above view that forfeiture of commission can be ordered only when termination of agency is made on the ground of fraud.

28. One more reason for not accepting the submission of the learned counsel for the Corporation is that Regulation 19 contemplates independent proceeding for imposing penalty. Regulation 19(3) provides that in the event of death of agent while the agency subsists any commission payable to him shall be payable to his nominee or to his heir. If submission of the counsel for the Corporation is accepted that on

detection of subsequent fraud Corporation can initiate proceedings for forfeiture of commission, the said scheme has also to be applicable to 19(3) whereas the express provision do not contemplate any power with the Corporation to forfeit the renewal commission under Regulation 19(3). Thus Regulation 19 cannot be held to be an independent proceeding for imposing penalty for forfeiture of renewal commission rather the power under Regulation 19 to forfeit renewal commission is exercisable when termination of agency is on account of fraud. The power under Regulation 19(1) to forfeit renewal commission is a power which can be exercised by the Corporation consequent to termination of agency on the ground of fraud. Regulation 19 did not admit for any other interpretation.

29. In view of the forgoing discussion we are of the view that in the present case where agency was admittedly terminated on account of petitioner having

not complied with the business guarantee required of him under Regulation 9 during the agency period ended 31.10.1990 his termination cannot be held to be on account of fraud. Hence the Corporation had no power to initiate proceedings invoking Regulation 19(1) for imposing penalty of forfeiture of renewal commission. Proceedings initiated by show cause notice dated 03.12.1994 and the consequent order dated 14.01.2005 are vitiated and liable to be set aside.

The Writ Appeal is allowed and the judgment of the learned Single Judge is set aside. Writ Petition filed by the petitioner is allowed. Exhibit P4 dated 14.01.2005 is set aside. Respondents are directed to pay the renewal commission payable to the petitioner on the premium received on the business secured by the petitioner. Necessary renewal commission payable to the petitioner shall be computed within a period of one month from this day and shall be paid to be petitioner

within a period of further one month. Subsequent renewal commission if any, shall also be paid to the petitioner in accordance with law.

Parties shall bear their costs.

ASHOK BHUSHAN, Ag. C.J.

A.M. SHAFFIQUE, JUDGE.

Vsv

The name of the counsel occurring in paragraph 3 of the judgment dated 09/02/2015 in W.A. 47/2005 is corrected and substituted as "Sheji PAbraham" instead of "Leo Gerge", as per order dated 18/02/2015 in I.A.No.252/2015 in W.A. 47/2015.

Sd/-
Registrar (Judicial)