

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Pronounced on: 27.11.2015*

+ LPA 531/2010

LIFE INSURANCE
CORPORATION OF INDIA Appellant

Versus

R K MAHAJAN Respondent

+ LPA 534/2010

LIFE INSURANCE CORPORATION OF INDIA
THR ITS CHAIRMAN & ANR. Appellants

Versus

MAN SINGH KHUSHWAHA Respondent

+ LPA 535/2010

LIFE INSURANCE
CORPORATION OF INDIA Appellant

Versus

NANDINI SUNDRIYAL Respondent

+ LPA 537/2010

LIFE INSURANCE CORPORATION
OF INDIA & ANR. Appellants

Versus

P K SINGH Respondent

Present:- Mr.Kamal Mehta, Advocate with Mr.Sudeep Singh, Adv.
for the appellants/LIC.
Mr. R. K. Saini, Adv. for the respondents in LPA
534/2010, 535/2010, 537/2010
Mr. Ajay Sharma, Ms. Rupali Sharma, Adv. for the
respondent in LPA 531/2010

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

COMMON JUDGMENT

: G.ROHINI, CHIEF JUSTICE

1. By common order dated 21.04.2010, the learned Single Judge allowed W.P.(C) Nos.10426, 10442, 10443 of 2006 and W.P.(C) 3277 of 2007. Aggrieved by the same, the Life Insurance Corporation of India/the sole respondent therein preferred these four appeals under Clause 10 of the Letters Patent.
2. The Respondents/Writ petitioners are the agents with the Life Insurance Corporation of India (for short 'LIC'). By separate orders dated 24.11.2005, their agency was terminated by the LIC and renewal commission was forfeited in terms of Life Insurance Corporation of India (Agents) Regulations, 1972 (hereinafter referred to as 'the Regulations'). Against the said orders of termination though the writ petitioners preferred appeals to the Zonal Manager, the same were rejected by orders dated 30.05.2006. Aggrieved by the same, they filed W.P.(C) Nos.10426, 10442, 10443 of 2006 and W.P.(C) No.3277 of 2007 contending *inter alia* that the orders of termination as well as the orders of the Appellate Authority dismissing the appeals were in violation of the principles of natural justice. Accepting the said contention, the learned Single Judge allowed all the writ petitions. Accordingly, while setting aside the impugned orders dated 24.11.2005 and 30.05.2006, the learned Single Judge directed restoration of the agency of the writ petitioners from the date of their respective termination. The learned Single Judge also directed payment of renewal commission and the arrears together with simple interest @ 6% per annum

from the date of forfeiture to the date of payment. The said order is under challenge in these appeals preferred by the LIC.

3. We have heard the learned counsel for both the parties. Since the facts have been set out in detail by the learned Single Judge in the order under appeal, we are not repeating the same. However, it is necessary to notice the relevant statutory provisions.

4. In exercise of the powers conferred in it under Section 49 of the Life Insurance Corporation Act, 1956 and with the previous approval of the Central Government, the LIC made the Regulations called the Life Insurance Corporation of India (Agents) Regulations, 1972 which shall apply to all agents appointed by LIC for the purpose of soliciting or procuring life insurance business for LIC. The Regulations contain specific provisions prescribing the qualifications for appointment as agents, the training and tests they have to undergo, the period of probation, their functions and also commission and remuneration payable for the discharge of their functions. The agency is liable to be terminated on different grounds specified in the Regulations and as per Regulation 16, the appointment of an agent may be terminated by the competent authority for any of the lapses mentioned therein. Since the impugned orders of termination were passed in terms of Regulation 16(1), the same may be reproduced hereunder for ready reference:-

“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 policyholders;

- (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 so called upon;

Provided that the agent shall be given a reasonable opportunity to show cause against such termination.”

5. As could be seen, the proviso to Regulation 16(1) mandates that the agent shall be given a reasonable opportunity to show cause against the termination.

6. The writ petitioners were appointed as Agents long back. They were issued notices dated 15.07.2004 by the LIC alleging that irregularities have been observed in various policies under the Salary Savings Scheme with a view to defraud the Corporation and further stating that the entire matter is under investigation and disciplinary action is contemplated and, accordingly, directing them not to procure or solicit any new LIC insurance business unless permitted to do so. Subsequently, the writ petitioners were served with show cause notices informing the alleged discrepancies/lapses on their part on the working of Salary Savings Scheme and calling upon them to show cause as to why they should not be held guilty of the charges and as to why the penalty of termination of agency under Rule 16(1) with forfeiture of renewal commission should not be imposed. The writ petitioners submitted their replies denying the allegations and explaining that no direct and

independent role was ever played by them in adjusting the premia remitted under the scheme in question. However, the disciplinary authority by separate orders dated 24.11.2005 terminated the agency of all the four petitioners under Rule 16(1) of the Regulations concluding that they were guilty of having attempted to defraud the LIC and having acted in a manner prejudicial to the interest of LIC. The appeals preferred by the writ petitioners under Regulation 20 against the orders of termination were also dismissed by the Divisional Manager of LIC.

7. As noticed above, the proviso to Regulation 16(1) mandates that the agents shall be given a reasonable opportunity to show cause against the termination of agency. It is not in dispute that the orders of termination were preceded by show cause notices. The sum and substance of the allegations was that the money deposited by the Paying Authority (PA) pursuant to the Salary Savings Scheme had been, at the instance of the petitioners, misappropriated towards payment of premium for new/fresh policies of private individuals unconnected with the Paying Authority. The grievance of the writ petitioners is that no documents were enclosed with the show cause notices to show that any of the writ petitioners was responsible for the adjustment of the premia remitted by way of cheques of the Paying Authority under Salary Savings Scheme against either the first or any of the subsequent premia payable towards the proposals recommended by them and that except a bald allegation that the writ petitioners had misled the staff of the LIC into adjusting the amounts in question, the show cause notices did not indicate how and in what manner it was done. It was also contended before the learned Single Judge that the alleged fraud had to be proved by producing credible and cogent evidence which the LIC failed to do. The said contentions were sought to be refuted by the LIC contending that the

show cause notices had set out all the relevant details and that the writ petitioners submitted their replies without asking for any of the supporting documents. It was also contended that the writ petitioners were not entitled for personal hearing since there was no such statutory requirement and that termination of agency was on account of loss of confidence of the LIC in the Agent.

8. We may at the outset mention that the proposals in which the alleged irregularities were committed by the writ petitioners were dated several years before the show cause notices. Though the proposal numbers and the amount of premium were set out in the show cause notices, admittedly, the petitioners were not furnished with any of the documents which were stated to have been relied upon by the LIC to conclude that they were guilty of misconduct. It is also relevant to note that though the LIC claimed to have undertaken an inquiry prior to issuance of the show cause notices, the petitioners were not even furnished a copy of such inquiry report. Under these circumstances, the learned Single Judge opined that the requirement of providing a reasonable opportunity to show cause against the proposed termination, as envisaged under Regulation 16(1), was not satisfied. The learned Single Judge has also taken note of the fact that the LIC was unable to furnish to the Court the details of the investigation stated to have been made by it and that even the documents referred to in the show cause notices could be made available for perusal of the Court after several adjournments and that during the hearing on 17.02.2010, it was conceded by LIC 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. On the basis of the replies given to the RTI applications made by the petitioners during the pendency of the writ petitions, the learned

Single Judge also found that the agents had no role to play in terms of making adjustments of premia collected under the Salary Saving Scheme and that there is no material to substantiate the bald statement in the show cause notices that the writ petitioners were responsible for the adjustment of the remittances made under the Salary Saving Scheme against the premium payable against fresh policies. Though an attempt was made by the LIC to justify the orders of termination placing reliance upon the charge-sheet filed by CBI on the basis of the very same documents referred to in the show cause notices, the learned Single Judge declined to accept the same observing that the said charge-sheet was prepared later by the CBI and that it did not form the basis of the termination orders and that at any rate, the acceptability of the said charge-sheet is yet to be decided by the criminal court.

9. Accordingly, the writ petitions were allowed and the orders of termination of agency and forfeiture of Renewal Commission were set aside by the order under appeal.

10. Having heard the learned counsel for both the parties at considerable length, we do not find any justifiable reason to interfere with the conclusion of the learned Single Judge that the orders of termination are in violation of the principles of natural justice. As noticed above, this is a case where Regulation 16(1) itself made mandatory that the agent shall be given a reasonable opportunity to show cause against the proposed termination.

11. In *Khem Chand v. Union of India*, **AIR 1958 SC 300** it was held:

“If the opportunity to show cause is to be a reasonable one it is clear that he should be informed about the charge or charges levelled against him and the evidence by which it is sought to be established, for it is only then that he will be able to put forward his defence. If the purpose of this

provision is to give the Government servant an opportunity to exonerate himself from the charge and if this opportunity is to be a reasonable one he should be allowed to show that the evidence against him is not worthy of credence or consideration and that he can only do if he is given a chance to cross-examine the witnesses called against him and to examine herself or any other witness in support of his defence.....”

12. The standard of reasonableness in affording an opportunity to show cause has been explained by the Supreme Court in *Fedee (P) Ltd. v. S.N. Bilgrani*, **AIR 1960 SC 415** as under:

“There can be no invariable standard for ‘reasonableness’ in such matters except that the court's conscience must be satisfied that the person against whom an action is proposed had a fair chance of convincing the authority who proposes to take action against him that the grounds on which the action is proposed are either non-existent or even if they exist they do not justify the proposed action. The decision of this question will necessarily depend upon the peculiar facts and circumstances of each case, including the nature of the action proposed, the grounds on which action is proposed, the material on which the allegations are based, the attitude of the party against whom the action is proposed in showing cause against such proposed action, the nature of the plea raised by him in reply, the requests for further opportunity that may be made, his admissions by conduct or otherwise of some or all the allegations and all other matters which help the mind in coming to a fair conclusion on the question”.

13. In *Union of India v. H.G. Goel*, **AIR 1964 SC 364**, the Supreme Court has further held that:

“It may be that the technical rules which govern criminal trials in courts may not necessarily apply to disciplinary

proceedings, but nevertheless, the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished applies so much to regular criminal trials as to disciplinary enquiries held under the statutory rules”.

14. In *Natwar Singh v. Director of Enforcement and Anr.*, **(2010) 13 SCC 255**, while dealing with the scope of inquiry of Section 16 of Foreign Exchange Management Act, 1999, which provided that for the purpose of adjudication under Section 13, the Central Government may appoint the adjudicating authorities for holding an inquiry after giving the person alleged to have committed contravention under Section 13 a reasonable opportunity of being heard for the purpose of imposing any penalty, observed that the extent of applicability of the principles of natural justice depends upon the nature of inquiry, the consequences that may visit a person after such inquiry from out of the decision pursuant to such inquiry. While referring to the principle of law as laid down in *Dhakeswari Cotton Mills Ltd. v. CIT*, **AIR 1955 SC 65** that the right to fair hearing is a guaranteed right and that every person before an authority exercising the adjudicatory powers has a right to know the evidence to be used against him, the Supreme Court further held:

“The concept of fairness may require the adjudicating authority to furnish copies of those documents upon which reliance has been placed by him to issue show-cause notice requiring the notice to explain as to why an inquiry under Section 16 of the Act should not be initiated. To this extent, the principles of natural justice and concept of fairness are required to be read into Rule 4(1) of the Rules. Fair procedure and the principles of natural justice are in-built into the Rules. A notice is always entitled to satisfy the adjudicating authority that those very documents upon

which reliance has been placed do not make out even a prima facie case requiring any further inquiry. In such view of the matter, we hold that all such documents relied on by the authority are required to be furnished to the notice enabling him to show a proper cause as to why an inquiry should not be held against him though the Rules do not provide for the same. Such a fair reading of the provision would not amount to supplanting the procedure laid down and would in no manner frustrate the apparent purpose of the statute.”

15. It can, therefore, be concluded without any hesitation that the mere issuance of the show cause notice to the petitioners without furnishing any of the documents which were relied upon by the LIC to conclude that they were guilty of the misconduct is not in compliance with the requirement of providing reasonable opportunity under Regulation 16(1).

16. The law is also now well settled that once the application of principles of natural justice is made mandatory by a statutory provision, denial of a hearing would in itself result in prejudice requiring no further proof of prejudice on account of non-observance of principles of natural justice. It was so held by this Court in *Chatro Devi v. Union of India & Ors.*, 137 (2007) DLT 14 and while upholding the same, it was observed by the Supreme Court in *Union of India v. Shiv Raj & Ors.*, 2014 (6) SCC 564 that the issue of prejudice caused to a party in case of violation of principles of natural justice arises in cases dealing with uncoded procedure.

17. For the reasons stated supra, we are of the view that the impugned orders of termination are illegal being in violation of Regulation 16(1) of the Regulations since the petitioners were not provided a reasonable opportunity to show-cause against the proposed termination. We do not find any substance even in the contention that the writ petitioners are mere agents of

LIC but not employees and that the contract of agency between the LIC and the petitioners cannot be enforced under law much less under Article 226 of the Constitution of India. Since the agency in question is governed by the statutory regulations which specifically provide for giving a reasonable opportunity to show cause against the proposed termination, the LIC is bound by the procedure prescribed under the statutory regulations and in case of violation thereof, the contract is always enforceable through Court of Law.

18. However, placing reliance upon Regulation 17 of the Regulations, which entitles LIC to terminate the agency by giving one month's notice in writing even without assigning any reasons, it is contended by the learned counsel for respondents that the writ petitioners cannot seek enforcement of the contract of agency on any ground whatsoever. Regulation 17 may be extracted hereunder for ready reference:

‘17. Termination of agency by notice:

(1) 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.

(2) An agent may, by giving one month's notice in writing to the competent authority, discontinue his agency and after the expiry of the period of one month his agency shall stand terminated.’

19. It may be true that when parties to an agreement were acting purely within the realm of a contract and the terms and conditions of contract included termination of a contract by giving one month's notice, no relief can be granted for restoration of contract as the same would be contrary to the mandate of Section 14(1) of the Specific Relief Act, 1963. Sub-section

(1) of Section 14 of the Specific Relief Act, 1963 specifies the contracts which cannot be specifically enforced, and the same include a contract which is in its nature determinable. In *IOC v. Amritsar Gas Service*, **(1991) 1 SCC 533**, the distributorship agreement contained a similar clause. In the light of the said clause, the Supreme Court held that the contract by its nature being determinable granting relief of restoration of distributorship even on the finding that the breach was committed by the appellant/IOC, is contrary to the mandate in Section 14(1) of Specific Relief Act, 1963.

20. However, in the said decision itself a distinction was drawn by the Supreme Court between a relief that can be granted in a public law remedy and a private law remedy. Having regard to the admitted fact that the respondent therein opted to file a civil suit basing only on breach of contract and remedies flowing therefrom, it was made clear by the Supreme Court that as the questions of public law based on Article 14 of the Constitution of India did not arise for consideration, the matter was decided strictly in the realm of private law rights governed by the general law relating to contracts with reference to the provisions of the Specific Relief Act, 1963, providing for non-enforceability of certain types of contracts.

21. The issue relating to the relief that can be granted in a public law remedy was considered in *Mahabir Auto Stores v. Indian Oil Corporation*, **(1990) 3 SCC 752** and it was held that Article 14 was attracted even where the aggrieved person did not have the benefit of either a contractual or a statutory right. The grievance in that case was made by a person who was not a dealer of IOC but merely claimed to have been treated as one by a long course of conduct. While holding that IOC is an organ of the State or an instrumentality of the State as contemplated under Article 12 of the Constitution of India, the Supreme Court held that it was bound to act fairly

and that fairness in such actions should be perceptible, if not transparent. It was also held that the impugned action of IOC in discontinuing the supplies without giving any intimation, notice or hearing to the appellant therein was an administrative decision and could be impeached on the ground that it was arbitrary or violative of Article 14 of the Constitution of India. In the said case, it was contended on behalf of IOC that a plea of arbitrariness/malafides as being so gross cannot shift a matter falling in private law field to public law field and that permitting the same would result in anomalous situation that whenever State is involved it would always be public law field and all redress against the State would fall in the writ jurisdiction and not in suits before Civil Courts. Referring to the said contention, the Supreme Court held:

“17. We are of the opinion that in all such cases whether public law or private law rights are involved, depends upon the facts and circumstances of the case. The dichotomy between rights and remedies cannot be obliterated by any strait-jacket formula. It has to be examined in each particular case. Mr. Salve sought to urge that there are certain cases under Article 14 of arbitrary exercise of such “power” and not cases of exercise of a “right” arising either under a contract or under a statute. We are of the opinion that that would depend upon the factual matrix.”

22. In *Dwarakadas Marfatia & Sons v. Board of Trustees of the Port of Bombay*, (1989) 3 SCC 293, it was held that every State action must be reasonable and in public interest and an infraction of that duty is amenable to judicial review. It was further emphasized:

“..... Where there is arbitrariness in State action, Article 14 springs in and judicial review strikes such an action down. Every action of the executive authority must be subject to rule of law and must be informed by reason.

So, whatever be the activity of the public authority, it should meet the test of Article 14.....”

23. Concurring with the views expressed in *Mahabir Auto Stores* (supra) and *Dwarakadas Marfatia & Sons* (supra), it was further explained in *Kumari Shrilekha Vidyarthi v. State of U.P. & Ors.*, **(1991) 1 SCC 212**:

“27. Unlike a private party whose acts uninformed by reason and influenced by personal predilections in contractual matters may result in adverse consequences to it alone without affecting the public interest, any such act of the State or a public body even in this field would adversely affect the public interest. Every holder of a public office by virtue of which he acts on behalf of the State or public body is ultimately accountable to the people in whom the sovereignty vests. As such, all powers so vested in him are meant to be exercised for public good and promoting the public interest. This is equally true of all actions even in the field of contract. Thus, every holder of a public office is a trustee whose highest duty is to the people of the country and, therefore, every act of the holder of a public office, irrespective of the label classifying that act, is in discharge of public duty meant ultimately for public good.....”

24. Referring to all the aforesaid decisions in *Veriganto Naveen v. Govt. of A.P. and Others*, **(2001) 8 SCC 344** it was held:

“..... Where the breach of contract involves breach of statutory obligation when the order complained of was made in exercise of statutory power by a statutory authority, though cause of action arises out of or pertains to contract, brings it within the sphere of public law because the power exercised is apart from contract. The freedom of the Government to enter into business with anybody it likes is subject to the condition of reasonableness and fair play as well as public interest. After entering into a contract, in cancelling the contract which is subject to terms of the statutory provisions, as in

the present case, it cannot be said that the matter falls purely in a contractual field. Therefore, we do not think it would be appropriate to suggest that the case on hand is a matter arising purely out of a contract and, therefore, interference under Article 226 of the Constitution is not called for. This contention also stands rejected.”

25. In *LIC of India v. Consumer Education and Research Centre*, **(1995) 5 SCC 482**, the question that fell for consideration was whether LIC is justified in law in restricting the term “policy” only to the specified clause, namely, salaried persons in Government, quasi-Government or reputed commercial firms. One of the contentions of LIC was that Life Insurance Policy being a contract of insurance becomes a binding contract on acceptance by LIC and that refusal to enter into contract does not infringe any fundamental right or a legal right nor the respondents are entitled to compel LIC to enter into favourable relations when they did not fulfil the essential terms of the proposal and therefore writ petition is not maintainable to enforce such rights even before the acceptance of the policy. Rejecting the said contention, it was held:

“.....The actions of the State, its instrumentality, any public authority or person whose actions bear insignia of public law element or public character are amenable to judicial review and the validity of such an action would be tested on the anvil of Article 14. While exercising the power under Article 226 the Court would be circumspect to adjudicate the disputes arising out of the contract depending on the facts and circumstances in a given case. The distinction between the public law remedy and private law field cannot be demarcated with precision. Each case has to be examined on its own facts and circumstances to find out the nature of the activity or scope and nature of the controversy. The distinction between public law and private law remedy is now narrowed down. The actions of the appellants bear public character with an imprint of public interest

element in their offers regarding terms and conditions mentioned in the appropriate table inviting the public to enter into contract of life insurance. It is not a pure and simple private law dispute without any insignia of public element. Therefore, we have no hesitation to hold that the writ petition is maintainable to test the validity of the conditions laid in Table 58 term policy and the party need not be relegated to a civil action.”

26. In the light of the settled legal position noticed above, we are of the view that the mere fact that the contract contains a specific clause for termination of agency by notice is not a bar for granting the appropriate relief while exercising the writ jurisdiction under Article 226 of the Constitution of India. Be it noted that the petitioners in the present case elected to assail the impugned termination of agency in a writ court invoking Article 226 and contending that the action of the LIC which is an instrumentality of the State acted arbitrarily and in violation of the statutory provisions while terminating the agency. There can be no dispute that the LIC being an instrumentality of the State is bound to act fairly, reasonably and in conformity with the provisions of the Statute governing the contract. When this Court finds that the termination of the contract is arbitrary and in contravention of the statutory provisions, undoubtedly, Article 14 is attracted and such action of State instrumentality can be checked by this Court applying the doctrine of fair play and natural justice.

27. In a case where the termination is assailed only on the ground of breach of contract, it may be true that the Courts are bound to decide the lis strictly in the realm of private law rights governed by the general law relating to contracts. However, when the impugned action is challenged raising the questions of public law based on Article 14 of the Constitution of India, and it is clearly established that the impugned termination is in

violation of the principles of natural justice as well as the statutory provisions governing the contract, we are of the view that the relief cannot be denied to the petitioners merely on the ground that such relief is not permissible by the general law relating to contracts. Once it is established that the relationship between the writ petitioners and the respondent is purely a statutory contract it is important for us to decide as to whether the power under Article 226 exercised by the learned Single Judge in granting the relief as sought for by the writ petitioners was justifiable or not.

28. For the aforesaid reasons, we do not find any substance in the contention of the appellant that the contract of agency being unenforceable, the learned Single Judge ought not to have directed restoration of the contract.

29. However, the question that remains is what should be the consequence of setting aside the orders of termination on the ground that the said orders are vitiated for violation of the principles of natural justice and whether the learned Single Judge is justified in directing restoration of the agency of the petitioners and payment of renewal commission and arrears together with interest.

30. Placing reliance upon the decision of the Supreme Court in ***Chairman, Life Insurance Corporation of India and Others Vs. A.Masilamani***, **(2013) 6 SCC 530**, wherein it is held that once the Court sets aside an order of punishment on the ground that the enquiry was not properly conducted, the court cannot reinstate the employee but the matter must be remitted to the disciplinary authority for conducting enquiry from the point that it stood vitiated, it is vehemently contended by the learned counsel for the appellant that the learned Single Judge ought to have remitted the matter back for fresh consideration rather than restoring the

agency of the petitioners. In support of the said submission, the learned counsel has also relied upon *ECIL v B. Karunakar*, (1993) 4 SCC 727, *Hiran Mayee Bhattacharaya v S.M School for Girls*, (2002) 10 SCC 293, *UP State Spg Co. Ltd v R. S Pandey*, (2005) 8 SCC 264, *Union of India v Y.S Sandhu*, (2008) 12 SCC 30.

31. It may be mentioned that the learned Single Judge had in fact during the course of hearing on 17.02.2010, enquired of the learned senior counsel appearing for LIC whether the LIC would be willing to consider giving a fresh opportunity of hearing to each of the petitioners by furnishing them the complete material which was used by the LIC to form an opinion about their alleged misconduct resulting in the termination of their agency. However, on 04.03.2010, on instructions it was stated by the learned senior counsel for the LIC that the LIC was not prepared to give any further hearing to any of the petitioners and that his instructions were only to defend the impugned orders of termination of agency on the basis of the existing pleadings. Under those circumstances, the learned Single Judge proceeded to examine the question whether any material is available on record to justify the termination of agency observing:

“56. 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 the

learned Senior Counsel for the LIC, proceeded to examine the materials to determine if they justified the termination orders.”

32. The learned counsel appearing for the appellants/LIC submits that it was a fact that the LIC sought to justify the impugned orders of termination of agency on the basis of the material available on record and did not intend at that stage to give the petitioners any fresh hearing, however, the same does not preclude the learned Single Judge to issue a mandamus to conduct the enquiry afresh after furnishing the documents. Placing reliance upon *A.Masilamani Case* (supra), it is also contended that the mere fact that the impugned orders of termination were passed about five years ago cannot be a valid ground to conclude that the petitioners would be prejudiced if they were relegated to a fresh hearing by the LIC.

33. It is no doubt true that in *A.Masilamani's Case (Supra)*, the Supreme Court held:

“17. The Second question involved herein is also no longer res integra. Whether or not the disciplinary authority should be given an opportunity to complete the enquiry afresh from the point that it stood vitiated depends upon the gravity of delinquency involved. Thus, the Court must examine the magnitude of misconduct alleged against the delinquent employee. It is in view of this, that courts/tribunals are not competent to quash the charge-sheet and related disciplinary proceedings, before the same are concluded on the aforementioned grounds.

18. The court/tribunal should not generally set aside the departmental enquiry, and quash the charges on the ground of delay in initiation of disciplinary proceedings, as such a power is de hors the limits of judicial review. In the event that the court/tribunal exercises such power, it exceeds its power of judicial review at the very threshold. Therefore, a charge-sheet or show-cause notice, issued in the course of disciplinary

proceedings, cannot ordinarily be quashed by the court. The same principle is applicable in relation to there being a delay in conclusion of disciplinary proceedings. The facts and circumstances of the case in question have to be examined taking into consideration the gravity/magnitude of charges involved therein. The essence of the matter is that the court must take into consideration all relevant facts and to balance and weigh the same, so as to determine if it is in fact in the interest of clean and honest administration, that the judicial proceedings are allowed to be terminated only on the ground of delay in their conclusion. (Vide *State of U.P. v. Brahm Datt Sharma* [(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943] , *State of M.P. v. Bani Singh* [1990 Supp SCC 738 : 1991 SCC (L&S) 638 : (1991) 16 ATC 514 : AIR 1990 SC 1308] , *Union of India v. Ashok Kacker* [1995 Supp (1) SCC 180 : 1995 SCC (L&S) 374 : (1995) 29 ATC 145] , *Prohibition & Excise Deptt. v. L. Srinivasan* [(1996) 3 SCC 157 : 1996 SCC (L&S) 686 : (1996) 33 ATC 745] , *State of A.P. v. N. Radhakishan* [(1998) 4 SCC 154 : 1998 SCC (L&S) 1044 : AIR 1998 SC 1833] , *M.V. Bijlani v. Union of India* [(2006) 5 SCC 88 : 2006 SCC (L&S) 919 : AIR 2006 SC 3475] , *Union of India v. Kunisetty Satyanarayana* [(2006) 12 SCC 28 : (2007) 2 SCC (L&S) 304] and *Ministry of Defence v. Prabhash Chandra Mirdha* [(2012) 11 SCC 565 : (2013) 1 SCC (L&S) 121 : AIR 2012 SC 2250] .)”

35. However, the facts in the present case are entirely different. Moreover, the impugned order of termination were not set aside by the learned Single Judge on the ground of delay in initiation or conclusion of the disciplinary proceedings. It may be mentioned that the orders of termination of agency of the petitioners were passed on 24.11.2005. The appeals of the petitioners were dismissed on 30.05.2006 and the writ petitions came up for hearing before the learned Single Judge in the year, 2010. The specific stand taken by the LIC before the learned Single Judge that they wish to defend the impugned orders only on the basis of material brought on record in the writ petition implies that there was no further

material to substantiate the allegations upon which the orders of termination were passed. In that context, the learned Single Judge while taking into consideration the fact that the impugned orders were passed nearly five years ago opined that the petitioners might be prejudiced if they were relegated at that stage to a fresh hearing before the LIC, particularly in the absence of further material to be disclosed little purpose would be served sending the petitioners for fresh hearing. The learned Single Judge was considering the issue whether any purpose would be served in relegating the petitioners before LIC for fresh hearing since the LIC could not assert that further material was available to justify the impugned orders of termination and further a period of about five years had already elapsed from passing of the orders of termination. It may be added that even in the appeals before us, it was neither pleaded nor any attempt is made during the hearing that further documents are available with the appellants on the basis of which the orders of termination can be justified.

36. In the facts and circumstances noticed above, it appears to us that the view expressed by the learned Single Judge that relegating the petitioners at that stage for a fresh hearing before the LIC might turn out to be an empty formality is neither erroneous nor contrary to law.

37. Once the Court sets aside an order of punishment on the ground that the inquiry was vitiated, whether the Court can go into the merits of the case and set aside the order of punishment is the question that fell for consideration by the Courts on many occasions.

38. One of the cases is *ECIL Vs. B.Karunakar* (supra), in which the Constitution Bench held:

“31. Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of

the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. Where after following the above procedure, the Court/Tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such

fresh inquiry is held. That will also be the correct position in law.”

39. The same principle has been reiterated in several later decisions and in the recent decision in *LIC Vs. A.Masilamani* (supra), it is held:

“14. In the present case, the High Court after reappreciating the entire evidence available on record, came to the conclusion that in the course of enquiry proceedings, certain witnesses had not been examined in the presence of the delinquent respondent, and that hence, no proper opportunity was given to him to cross-examine such witnesses. Moreover, the documents relied upon by the enquiry officer, were not properly proved by any witness and ultimately, it was held that the findings of the enquiry officer stood vitiated for non-compliance with mandatory requirements of the Regulations applicable herein, as well as for violating the principles of natural justice. The Court further held that the appellate authority had not applied its mind to the case, and had failed to consider the case as required under Regulation 46(2) of the 1960 Regulations. Thus, in light of the aforementioned observations, the Court set aside the punishment imposed upon the respondent, and also refused to give the appellant any opportunity to continue the enquiry from the point that it stood vitiated, consequently therefore, denying any opportunity to prove the documents relied upon, as also denying the respondent adequate opportunity to cross-examine the witnesses concerned, etc. only on the ground that a long time had now passed.

15. xxx xxx xxx

16. It is a settled legal proposition, that once the court sets aside an order of punishment, on the ground that the enquiry was not properly conducted, the court cannot reinstate the employee. It must remit the case concerned to the disciplinary authority for it to conduct the enquiry from the point that it stood vitiated, and conclude the same. (Vide *ECIL v. B. Karunakar* [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704 : AIR 1994 SC 1074] , *Hiran Mayee Bhattacharyya v. S.M. School for Girls* [(2002) 10 SCC 293 : 2003 SCC (L&S) 1033] , *U.P. State Spg. Co. Ltd. v. R.S. Pandey* [(2005) 8

SCC 264 : 2006 SCC (L&S) 78] and *Union of India v. Y.S. Sadhu* [(2008) 12 SCC 30 : (2009) 1 SCC (L&S) 126] .)”

40. As could be seen, the law is well settled that after setting aside the orders of punishment imposed by the disciplinary authority on the ground that the inquiry was vitiated for violating the principles of natural justice or other technical ground, the matter has to be left there by the Court since it is for the concerned authority to decide whether or not to take the matter further.

41. However, in the light of the specific finding recorded by the learned Single Judge that sending the petitioners before LIC for fresh hearing would be nothing but an empty formality and in the absence of any material before us to show that the said finding recorded by the learned Single Judge is without any basis, we are of the view that the case on hand stands on a different footing and, therefore, the ratio laid down in the above-noticed decisions is not applicable. In this context, we may refer to **(1998) 7 SCC 84** wherein following the *Karunakar’s Case* (supra), the penalty was set aside, however, so far as the further relief to be granted, it was held:

‘21. Both the respondents superannuated on 31.12.1983. During the pendency of these appeals, Misra died on 6.1.1995 and his legal representatives were brought on record. More than 14 years have elapsed since the delinquent officers had superannuated. It will, therefore, not be in the interest of justice that at this stage the cases should be remanded to the disciplinary authority for the start of another innings. We, therefore, do not issue any such directions and while dismissing these appeals, we affirm the decisions of the High Court which had set aside the orders imposing penalty and had directed the appellants to release the retirement benefits to the respondents. There will, however, be no order as to costs.’

42. That being so, the learned Single Judge cannot be held to have committed any error in considering the matter on merits and recording the findings on the sustainability of the impugned orders of termination.

43. As could be seen from the order under appeal, the learned Single Judge had painstakingly examined the voluminous documents produced by the LIC and thereupon recorded the findings of fact as under:

“57. On a detailed examination of the documents produced by the LIC, it appears to this Court 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.

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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 granted 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 notices."

44. The above said findings of fact recorded by the learned Single Judge, on proper appreciation of the material available on record, are unexceptionable and warrant no interference. Therefore, the agency of the writ petitioners was rightly directed to be restored by the learned Single Judge.

45. So far as the aspect of renewal of commission is concerned, Regulation 19 provides as under:

"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.1 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 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 policies assuring a total sum of not less than Rs.1 lakh effected through him were in full force on the date immediately prior to his death.

(4) If the renewal commission payable under sub-regulation (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 of renewal commission paid in the said financial year, and on the payment of such lump sum to the agent or his nominees 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.”

46. We may also refer to Regulations 10 & 12 to understand what is renewal commission:

“10. Payment of commission to agents:

- (1) As compensation and remuneration for the discharge of all his functions under these regulations, an agent shall be paid commission at the rates set out in Schedule II on the first year premiums and renewal premiums received during the continuance of his agency in respect of the completed business under his agency.
- (2) An agent shall, in addition to the commission payable under sub-regulation (1), be entitled to bonus commission on first year premiums as provided in Schedule III.
- (3)(a) Notwithstanding anything contained in sub-regulation (1) and sub-regulation (2), an agent who has been confirmed may, at any time during the continuance of his agency, opt to receive commission as provided in Schedule IV.
- (b) Where an option under clause (a) is exercised, the commission and bonus commission payable to the agent shall be at the rates set out in Schedule IV and Schedule V respectively in respect of the business which may be completed in his agency from the commencement of the agency year following the date on which he exercises the option, but in respect of the business completed in his agency up to the end of the agency year in which he exercises the option, the commission or bonus commission payable to him shall be as provided in Schedule II and Schedule III respectively.
- (c) The option once exercised under clause (a) shall be final and irrevocable.
- (4) Save as hereinafter provided, no agent shall be paid any commission or remuneration in respect of any policy not effected through him.

Provided that where a policy of life insurance has lapsed and it cannot under the terms and conditions applicable to it be revived without further medical examination of the person whose life was insured thereby and where notice has been given in writing to the agent through whom the policy was effected (if such agent continues to be an agent of the Corporation), to effect the revival of the policy within a specified period of not less than one month from the date of receipt by him of the notice and the policy is not so revived, the Corporation may pay to another agent, who

effects the revival of the policy an amount calculated at a rate not exceeding half the rate of commission at which the agent through whom the policy was effected would have been paid had the policy not lapsed, on the sum payable on revival of the policy on account of arrear premiums (excluding any interest on such arrear premiums) and also on the subsequent renewal premiums payable on the policy.

- (5) Notwithstanding anything contained in sub-regulation (1), sub-regulation (2) and sub-regulation (3), an agent who is on probation shall be entitled only to the commission payable on the first year premiums received in respect of the business completed during the continuance of his agency and not to the bonus commission or commission on renewal premiums in respect of such business:

Provided that the agent shall, on his confirmation, be entitled to the bonus commission or commission on renewal premiums in respect of such business.

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

12. Corporation’s Lien on agent’s dues:

The Corporation shall have a first lien and charge on all moneys payable to an agent or his heirs for recovery of all debts due from him to the Corporation and may apply any such moneys directly towards realisation of such debts.”

47. On a reading of the above provisions, it is clear that notwithstanding the termination of the agency on any of the grounds mentioned in Regulations 13 to 16 or under Regulation 17, the terminated agent remains entitled to earn commissions on premiums earned by LIC on successive renewals of the policies procured by the terminated agent except when his agency has been terminated for fraud. Of the Regulations 13 to 17 providing for termination of agency, the word “fraud” finds mention only in Regulation 15(c) (supra) and in none other. It follows that while an agent,

whose agency has been terminated on any of the other grounds mentioned in Regulations 13 to 17, notwithstanding such termination remaining entitled to commission on the business procured by him, it is only an agent whose agency has been terminated for fraud who is deprived of such commission.

48. Therefore, further direction by the learned Single Judge for payment of the renewal commission and the arrears together with simple interest @ 6% p.a. to the petitioners is also unexceptionable.

49. Hence, all the appeals are liable to be dismissed and the same are accordingly dismissed. No costs.

CHIEF JUSTICE

RAJIV SAHAI ENDLAW, J

NOVEMBER 27, 2015

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