

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10768 of 2012

Abhay Kumar Son of Late Madan Prasad, Resident of Village and P.O. Kurtha, Police Station Kurtha, District Arwal (Bihar)

.... Petitioner

Versus

1. L.I.C. of India through its Chairman, Yogya Kshemya Jeevan Bima Marg, Mumbai- 21
2. Zonal Manager, L.I.C. of India, East Central Zonal Office, 5th Floor, Jeevan Deep, Exhibition Road, Patna- 1
3. Divisional Manager, L.I.C. of India, Patna Division, Jeevan Prakash, Mazharul Haque Path, Frazer Road, Patna- 1
4. Branch Manager L.I.C. of India Jehanabad Branch, Jehanabad Court Area, Jehanabad

.... Respondents

Appearance:

For the Petitioner : Mr. Satish Narayan Sinha, Advocate
Mr. Sanjeev Ranjan, Advocate

For the Resp. LIC : Mr. Rajeev Ranjan Prasad, Advocate

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 30-08-2016

Heard learned counsel for the petitioner and learned counsel for the respondents.

2. The present writ petition has been filed for quashing part of the order dated 05.10.2011 passed by the Incharge Chairman, Life Insurance Corporation (the "LIC") in exercise of powers conferred by Regulation 24 of Life Insurance Corporation (Agents) Regulations, 1972 (the "Regulations") terminating the agency of the petitioner.

3. The short facts of the case according to the petitioner are that he was appointed as an Agent of the LIC under Jehanabad Branch on 19.05.1995 and allotted Agency Code No. 004351H and confirmed



on 01.06.1996. He has been performing his duties to the satisfaction of the LIC and has enjoyed an unblemished career for about one and a half decades. In the year 2009, one Kalyan Kumar who was interested in an LIC policy for a sum of Rs. 5,00,000/- submitted his proposal form on 15.09.2005 to the Jehanabad branch office of the respondent LIC upon being introduced by the petitioner. The said proposer, Kalyan Kumar, did not disclose to the petitioner that he had been suffering from any diseases or that he had held any LIC policy in the past. The proposal form had been filled up in the proposer's own handwriting, correctly stating various particulars of the proposer such as his name, address, date of birth etc.. A specific denial was made in respect of of any past ailments, in response to such information sought in the proposal form under the heading "personal history". The proposal was accepted by the Jehanabad Branch. Soon thereafter on 17.01.2006, the life assured died. In view of early death of the life assured, the death claim stood repudiated. A show cause dated 09.11.2009 was given to the petitioner on the ground that the deceased life assured had three lapsed policies prior to submission of the proposal for the new policy. The information in this regard had not been disclosed and had been suppressed by the petitioner to defraud the respondent LIC. The petitioner filed his reply to the show cause on 18.11.2009 which was, however, not accepted. By order dated 22.12.2009, the contention of the petitioner in his show cause reply was held to be untenable and without merit. Consequently, the petitioner's agency was terminated under Regulation 16(1)(a), (b)



and (d) of the Regulations, with forfeiture of all commissions payable to him. On appeal being preferred, the appellate authority concluded that the petitioner had suppressed the information about the previous lapsed policies and had connived with the proposer, thus having failed to discharge his duty in terms of Regulation 8(2)(b). A revision was thereafter preferred by the petitioner which was disposed of by the impugned order dated 05.10.2011, *inter alia*, holding that an agent being the preliminary underwriter, was expected to submit proposals after making all relevant enquiries of the proposed life assured, but the petitioner has failed to discharge his functions as an agent. The order dated 22.12.2009 as confirmed in appeal was thus upheld, with the modification that the petitioner was held to be eligible for the renewal commission.

4. Learned counsel for the petitioner submits that the impugned order is wholly arbitrary and the authorities could not have terminated the petitioner's agency on a finding of suppression with regard to the three lapsed policies. It is submitted that all materials and relevant particulars of the proposer were filled up in the proposal form by the proposer himself. An agent has no better means of uncovering the details of earlier policies of the proposer other than relying on the statement of the proposer himself. It is evident that in the instant case, if any suppression had been made with regard to past policies having lapsed, that could be attributed only to the proposer himself and not to the petitioner. Learned counsel for the petitioner refers to the proposal



form to show that the proposer had undergone medical examination carried out by the LIC doctors prior to the proposal being accepted, which further shows that the petitioner had acted *bona fide*. In any event, it is further submitted that the final order dated 22.12.2009 is a non-speaking order passed without offering any reasons for rejecting the show cause reply of the petitioner. The appellate order dated 15.06.2010 does not also give any basis for coming to the conclusion that the petitioner had suppressed information with regard to the previous policies of the life assured and of the petitioner's connivance with the proposer. It is submitted that the revisional authority has equally erred in treating the petitioner-agent as a primary underwriter, as it is the Divisional Officer of LIC who is the underwriter.

Learned counsel for the petitioner places reliance on *Life Insurance Corporation of India vs. Raja Vasireddy Komalavalli Kamba and Ors.*, AIR 1984 Supreme Court 1014, in paragraph 13 whereof the expression "underwrite" has been explained to signify "accept liability under". Having regard to the Standing Order in the context of policies of the LIC, the Divisional Manager was held to be the competent person to underwrite a policy for Rs. 50,000/- and above. It is therefore, submitted that the impugned revisional order holding the petitioner as the primary underwriter has no valid basis in law.

Reliance is next placed on *Harshad J. Shah and Anr., vs. LIC of India and Ors.*, (1997) 5 SCC 64, to submit that LIC was not justified in shirking its own responsibility and foisting blame on the petitioner of

having failed to discharge his duty. Support is sought to be taken from the observations contained in paragraph 17 of the said judgment.

It is further submitted that the LIC in exercise of its public power was bound to act in a just and fair manner and its acts have the insignia of public element, in view of the observations in paragraph 23 of the judgment reported in *LIC of India and Anr. vs. Consumer Education & Research Centre and Ors.*, (1995) 5 SCC 482.

5. Learned counsel for the respondent LIC, on the other hand, vehemently opposes the writ petition submitting that the impugned order has been passed in accordance with law and cannot be faulted on grounds of arbitrariness. Reliance is placed on Regulation 8(2)(b) which requires an agent to make all reasonable enquiries with regard to the proposal which, in the instant case, was not done. It is evident on a bare perusal of the proposal form itself (Annexure-D to the supplementary counter affidavit) that the proposer was a resident of Santkabirnagar in the State of Uttar Pradesh, but had sought the policy at Jehanabad for a fairly high sum assured of Rs. 5,00,000/-. The confidential report submitted by the petitioner discloses that the proposer was known to the petitioner-agent for a short period of only ten days. The petitioner had categorically stated in paragraph 4 of the confidential report that he had discussed the status of previous policies with the proposer and that he was satisfied that no policy of the proposer had lapsed within the last three years, emphatically stating "Yes no lapsed". It is submitted that the LIC relies heavily on the agent's



confidential report in the matter of accepting a proposal, considering that the Divisional Manager does not have any mechanism available with him to enquire about the previous policies of a policy holder. It is submitted that any reasonable and prudent person, at the very least, would have taken the precaution of making an enquiry with the LIC branch at the place of permanent residence of the proposer, which has not shown to have been done by the petitioner. Had this been done, the history of the lapsed policies would have come to light and would have been a material consideration in deciding whether or not to issue a policy in favour of the proposer. Failure on the part of the petitioner in this regard was a serious lapse of duty as envisaged under Regulation 8(2)(b) involving gross negligence on the petitioner's part, resulting in prejudice and detriment to the LIC.

Reference is made to the Division Bench judgment of this Court in *Life Insurance Corporation of India and Ors., vs. Jai Kumar Pandey and Anr., 2011 (4) PLJR 129*, in paragraph 6 whereof, it has been observed as follows__

"In case the act attributable to the agent is covered by anyone of the clauses under Regulation 16(1), perhaps the only action that can be taken against him is termination of agency. On a perusal of Regulation 16, we get a clear impression that the only protection available to an agent against the proposed order of termination of agency is to be found in the proviso to Regulation 16(1) which is to the effect that the agent shall be given a reasonable opportunity to show cause against such termination. As indicated hereinabove, such an opportunity read with the requirements of Regulation 16(2), was afforded to the respondent. It, therefore, follows as a matter of corollary that the kind of relationship that exists between the Corporation and the agent, the respondent should be under no impression that he

will be entitled to the exhaustive protection available to the holder of a civil post within the meaning of Article 311 of the Constitution. He is entitled to the limited protection against arbitrary action of the Corporation. It should also be emphasized that the activities of the Corporation are a good deal commercial in nature, and is not engaged in discharge of sovereign and regal functions”.

6. I have heard the parties and considered the materials on record. Before proceeding further, I deem it appropriate to set out the relevant extract of the Regulations for the sake of ready reference —

“8. Functions of agents:

(1)...

(2) In procuring new life insurance policies, an agent shall;

(a) ...

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

(c)...

(d) ...

(3)...

(4) Nothing contained in these regulations shall be deemed to confer any authority on an agent to collect any moneys or to accept any risk for or on behalf of the Corporation or to bind the Corporation in any manner whatsoever;

Provided that an agent may be authorised by the Corporation to collect and remit renewal premiums under policies on such conditions as may be specified.

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) ...

(d) ...

(e) ...

(f) ...

(2) ...

(3) ...

7. It may be borne in mind that the relationship between the LIC and its agent primarily arises out of contract and the agent is obliged to carry out his functions in accordance with certain duties envisaged under the Regulations. In the instant case, the confidential report of the petitioner specifically stated that he had satisfied himself that the proposer did not have any lapsed policies within the past three years. He did not express any uncertainty in this regard nor did he indicate that this aspect of the matter could not be enquired into as he did not have the requisite resources to make such enquiry. He did not also request the LIC to make enquiries in this behalf. The petitioner has also failed to satisfy this Court with regard to any reasonable steps which he may have taken to enquire about the lapsed policies except simply relying on the words of the proposer. Under Regulation 8(2)(b), an agent of the LIC is duty bound to make reasonable enquiries and bring any such instance to the notice of the LIC which may adversely affect the risk to be underwritten, but the petitioner has not been able to show that he had undertaken any such enquiries before submitting his confidential report.



8. I am of the view that the decision of the Apex Court in *Raja Vasireddy's* case (supra) does not aid the contention of the petitioner. That decision had been rendered in a completely different context wherein the LIC had denied its liability in respect of a death claim where cheques had been received from the proposer, but acceptance of the proposal had not been communicated to him before his death. It was in that context that the Divisional Manager had been held to be the competent person to underwrite the policy.

9. The decision in *Harshad J. Shah's* case (supra) is also of no help to the petitioner. It was held in the backdrop of the specific provisions contained in Regulation 8(4) that an agent did not have express or implied authority to collect premium on behalf of the LIC. The decision was thus also rendered in a different context altogether and would have little application to the facts of the present case.

10. On the other hand, it has rightly been contended by the respondent LIC on the strength of the judgment of the Division Bench of this Court in *Jai Kumar Pandey's* case (supra), that at the highest the petitioner would be entitled to a reasonable opportunity of being heard against the proposed termination of his agency, which procedure in the present case has admittedly been observed and hence, the petitioner cannot be heard to raise a grievance in that regard. The respondent LIC has also rightly contended that a default committed by an agent in discharging his duties under Regulation 8 invites termination of the agency as the only course of action available to the LIC in terms of

Regulation 16 which, in the instant case, has been taken recourse to.

11. It is well-settled by now that the writ Court would not ordinarily interfere in a matter where a principal has taken a decision not to continue to avail of the services of the agent. This Court is unable to hold that the LIC has acted in a manner so arbitrary or perverse as to invite interference by this Court in its extraordinary writ jurisdiction. The writ petition accordingly stands dismissed.

(Vikash Jain, J)

Chandran/BT

AFR/NAFR	AFR
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