THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITON No. 6275 OF 2011

ORDER:

Heard.

2. The facts of the case, in brief, are detailed below:

Petitioner was one of the Agents of the Life Insurance Corporation of India (LIC), functioning since 1989. Petitioner claims that he brought business of about Rs.18 lakhs to the Corporation and procured about 600 policies at Devarakonda Village, which is a tribal area. It is the specific case of the petitioner that a charge sheet-cum-show cause notice was issued to him on 26.08.1999 alleging that he had attested one death claim made by one E.Achali, W/o.E.Somla, and processed the said claim claiming that E.Somla died though very much he was alive.

Earlier an order terminating the agency of the petitioner was passed on 14.10.1999 and the same was confirmed by the second respondent, appellate authority, on 10.06.2000. Petitioner had questioned the said orders of termination dated 14.10.1999 and 10.06.2000 before this Court in W.P.No.15576 of 2000, which was allowed by order dated 21.10.2007. Aggrieved by the said order, the respondent-Corporation filed appeal viz., W.A.No.1639 of 2008 and the same stood dismissed by order dated 21.01.2009 granting liberty to the respondent-Corporation to conduct a fresh enquiry into the matter and pass appropriate orders. Thereafter, a fresh show cause notice-cum-charge sheet was issued on 13.03.2009, for which the petitioner had submitted an explanation on 22.04.2009. The Enquiry Officer, after considering the explanation submitted by the petitioner, submitted a report dated 05.05.2009 holding that the charges framed against the petitioner are proved. Thereby, the Disciplinary Authority passed impugned order dated 20.01.2010 terminating the Agency of the petitioner besides holding that the petitioner shall not be entitled to claim the Commission in terms of Regulation 19(1) of Life Insurance Corporation (Agents) Regulations, 1972 (for short, "the Regulations").

3. Questioning the said order of termination dated 20.01.2010, the present writ petition is filed alleging that the petitioner was not given adequate opportunity of hearing and no witnesses were examined. It is the specific case of the petitioner that his request to cross-examine the persons, who had conducted enquiry, was also denied. It was also further contended that petitioner only assisted the claimant and he was informed about the death of Somla, policy holder, as his practice is in rural areas. Petitioner, being the link between the policy holder and the family members of the Corporation, and considering the claimant being illiterate belonging to tribal community, the assistance was rendered by the petitioner in following up of the claim of the said E.Achali and that he was never aware of the fact that the claimant was making a false claim and Mr.Somla is alive. No witnesses were produced before the enquiry officer and the enquiry officer merely basing on the statements of the Sarpanch and taking into consideration of the submission of the Notary, who attested the claim

discharge voucher of E.Achali, W/o.E.Somla, held that the charges are proved. Inasmuch as there is gross violation of principles of natural justice, the order of termination is bad and at any rate the respondent-Corporation ought not to have denied with the Commission which is already been earned.

4. Learned counsel for the petitioner reiterated the contents as pleaded in the affidavit.

5. Sri Bathula Raj Kiran, learned counsel appearing for the respondent-Corporation, by specifically pointing out to the enquiry report submitted by the Enquiry Officer, submits that there is no irregularity or even allegation of irregularity in conducting of the enquiry. Further, the fact that the petitioner after attesting and processing the claim made by the wife of E.Somla, Policy Holder, had *in fact* made a fresh proposal for issuance of policy in favour of E.Achali, W/o.E.Somla specifically stating that Somla is of good health. Yet another policy proposal was made by the petitioner on behalf of Pandy, who is none other than the son of E.Somla, showing E.Somla as nominee and in both the proposals petitioner signed as a witness. In other words, petitioner was very much aware of the fact that E.Somla was alive. Learned counsel also places reliance on Regulation 19(1) of the Regulations to justify the denial of Commission to the petitioner. Petitioner ought to have availed remedy of appeal to the Zonal Manager under Regulation 20 of the Regulations. Thus, learned counsel prays for dismissal of the writ petition.

6. Having considered the respective submissions and perused the entire material on record, the points that arose for consideration before this court are as to:

1) Whether the order of terminating the agency of the petitioner by the Disciplinary Authority dated 20.01.2010 is sustainable?
2) Whether the denial of Commission earned by the petitioner with respect to the earlier policies by the respondent-Corporation is justified?

<u>POINT No.1</u>: -

7. This writ petition came to be admitted by this Court in the year 2011 and as the same was kept pending all these years, I am not in agreement with the request of the learned counsel for the respondent-Corporation to relegate the petitioner to avail alternative remedy of appeal at this stage as it is well settled preposition of law that after long lapse of time dismissing the writ petition on the ground of alternative remedy would not be in the interest of justice.

8. On the facts of the present case and in the light of the categorical findings recorded by the Enquiry Officer concurred by the Disciplinary Authority, there being no other material to attract the finding that after processing the claim made by E.Achali on the premise that the policy holder, E.Somla, died, petitioner had brought two proposals wherein

Somla is alive and is of good health, the order of the Disciplinary Authority cannot be found fault.

9. It may be born in mind that the contract of Insurance is a contract entered into in absolute good faith and the Insurer is bound to honour the policy when the subject conditions are fulfilled. It cannot be disputed that an Agent is a crucial link between the Insurance Company and the Insured. This is more so in rural areas where for the purpose of identity of the parties, reliance would be placed on the Agent, who is normally the local resident, and the authentication and identification of the Insured depends upon the information that would be submitted by the Agent. The Agent is expected to submit true and correct information after due verification both at the time of making a proposal for issuance of a policy and also at the time of recommending a claim for payment.

10. In the case on hand, the findings of the authorities are that while making proposals of payment, on the alleged death of E.Somla, and also while proposing new policies to be issued in favour of E.Achli, petitioner had not acted in good faith. In those circumstances, the said finding as to the termination of the Agency of the petitioner by the Disciplinary Authority, does not call for any interference.

11. Accordingly, Point No.1 is answered in favour of the respondent-Corporation.

<u>POINT No.2</u>: -

12. Insofar as the point with regard to finding of the respondent-Corporation forfeiting of Commission that has been earned by the petitioner with respect to the policies which were brought by him on earlier occasions invoking Regulation 19(1) of the Regulations is concerned, the same does not hold good as Regulation 19(1) of the Regulations authorizes withholding of the Commission already earned only in cases where an Agent had committed fraud. Regulation 19(1) of the Regulations reads 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 such an agent:...."

13. From the above it is clear that Regulation 19(1) of the Regulations strictly prescribes that on termination of Agency of any of the Agents, the Commission earned by them with respect to the earlier policies shall be paid to them except in the cases of those policies which were tainted with fraud. The same cannot be applied to the case on hand for the reason that it is not the case of the Corporation that on earlier occasion any of the policies for which the petitioner had earned Commission were vitiated on account of fraud.

14. In view of the same, this Court finds that the denial of Commission to the petitioner by the respondent Corporation holding that the petitioner had committed fraud is not justified.

15. Accordingly, Point No.2 is answered in favour of the petitioner.

16. In view of the foregoing discussion, the Writ Petition is partly allowed setting aside that portion of the impugned order forfeiting the Commission to the petitioner and confirming the order of the respondent-Corporation in terminating the Agency of the petitioner.

As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

JUSTICE CHALLA KODANDA RAM

November 10, 2016
LMV