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

+ **W.P.(C) 11352/2017**

MS. SHIKHA KHULLAR

..... Petitioner

Through: **Ms Sikha Sapra and Mr Sumit
Chander, Advocates.**

versus

LIFE INSURANCE CORPORATION OF INDIA Respondent

Through: **Mr Vishwendra, Advocate.**

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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19.12.2017

VIBHU BAKHRU, J

CM No. 46385/2017

1. Exemption is allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 11352/2017 and CM No. 46386/2017

3. The petitioner has filed the present petition impugning a communication dated 05.09.2017 issued by the respondent.
4. The petitioner is essentially aggrieved on two counts. First that the respondent has held that she is not entitled to Renewal Commission on discontinuation of her agency. According to the respondent, the petitioner would be entitled to such Renewal Commission after her ceasing to be an agency, only if she does not directly or indirectly solicit or procure or

promote life insurance business in any capacity or for any other person or company or organisation. Since, according to the respondent, the petitioner intends to continue life insurance work with other life insurance companies as an agent or intermediary, the petitioner would not be entitled to Renewal Commission.

5. Second, that the petitioner is aggrieved as she has been called upon to deposit a sum of ₹ 98,051/- being the excess commission purportedly paid to the petitioner, as a precondition for issue of a No Objection Certificate.

6. Insofar as the petitioner's first grievance is concerned, it is necessary to refer to the Life Insurance Corporation of India (Agents) Regulations, 2017 (hereafter 'the Regulations'). Regulations 10 and 19 of the said Regulation are relevant and are set out below:-

“10. Payment of commission to agents.-(1) An agent shall be paid as compensation and remuneration for the discharge of all his functions under these regulations, commission at the rates fixed for each product of assurance as approved by the competent authority 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 the first year eligible commission as provided in the Third Schedule.

(3) The commission or remuneration payable to an agent in any form is subject to regulations made by the Authority under the IRDAI Act, in force.

(4) Save as provided by regulation 19, no commission shall

be payable to an agent after he ceases to be an agent.

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

- (a) has fulfilled the minimum business required under regulation 9 for at least five years since his appointment and twenty five policies on different lives effected through him were in full force on a date one year before his ceasing to act as such agent; or
- (b) has fulfilled the minimum business required under regulation 9 for at least ten years since his appointment; or
- (c) being an agent whose appointment has been terminated under clause (m) of sub-regulation (1) of regulation 16 has fulfilled the minimum business required under regulation 9 for at least two years since his appointment and policies on twelve different lives effected through him were in full force on a date immediately prior to such termination:

Provided that after his ceasing to act as such agent he does not directly or indirectly solicit or procure or promote life insurance business in any capacity for any other person or company or organisation, which includes broker or intermediary or a life insurance company or a health insurance company for two years thereafter

(2) Notwithstanding anything contained in clause (a) or (b) of sub-regulation (1), an agency terminated by an order passed under regulation 15 or under clause (b) or (h) of

sub-regulation (1) or regulation 16 shall entail forfeiture of his entire commission in respect of all the policies effected under his agency.

(3) Any commission payable under the sub-regulation (1) shall not be paid if the agent commits breach of the proviso thereunder.

(4) Subject to other provisions of this regulation, 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.

(5) 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 if subsisting to his heirs, so long as such commission would have been payable had the agent been alive, provided he had continually worked as an agent for not less than two years from the date of his appointment and policies on twelve different lives effected through him were in full force on a date immediately prior to his death.

(6) If the renewal commission payable under sub-regulation (1) or sub-regulation (4) or sub-regulation (5) is less than ten thousand rupees 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.

(7) Notwithstanding anything contained above, the

payment of renewal commission or hereditary commission shall be as decided by the Corporation from time to time subject to any regulations made by the Authority in this regard.”

7. In terms of the Regulation 10(4) of the Regulations, no Commission would be payable to an agent after he/she ceases to be an agent except as provided under Regulation 19 of the Regulations. The proviso to Regulation 19(1) of the Regulations provides that in case of termination of the appointment of an agency, the agent would be entitled to commission on the premiums received subject to certain conditions, including that he/she does not directly or indirectly, solicit or procure or promote life insurance business in any capacity for any other person or company or organisation.

8. In view of the above, the petitioner’s contention that petitioner is entitled to Renewal Commission after ceasing to be a respondent’s agent without any condition, is not sustainable.

9. The learned counsel for the petitioner had also contended that Regulation 19(1) of the Regulations was inapplicable, as the petitioner’s agency had not been terminated and the petitioner has resigned voluntarily. This contention is not persuasive for two reasons. First of all, the petitioner is not an employee of the respondent but an agent and the petitioner’s resignation amounts to her terminating the relationship as an agent of the respondent.

10. Secondly, if it is accepted that Regulation 19(1) of the Regulations is not applicable, then the provisions of Regulation 10(4) shall be applicable; the only exception to Regulation 10(4) - which proscribes grant of any

renewal commission - is the provision of Regulation 19 of the Regulations. If Regulation 19 is held to be inapplicable, then by virtue of the main provision of Regulation 10(4), no commission would be payable to the petitioner on her ceasing to be an agent of the respondent.

11. Since it is conceded that the petitioner intends to be promoting life insurance business of other companies, the decision of the respondent to deny renewal commission in terms of proviso to Regulation 19(1) of the Regulations, cannot be faulted.

12. Insofar as the second grievance of the petitioner regarding recovery of the excess commission purportedly paid to the petitioner is concerned, the petitioner would be at liberty to file an appropriate representation with the respondent who shall consider the same and pass an appropriate order within a period of four weeks from today.

13. Needless to mention that, if aggrieved, the petitioner would be at liberty to initiate appropriate proceedings as advised.

14. The petition disposed of with the aforesaid liberty. The pending application also stands disposed of.

VIBHU BAKHRU, J

DECEMBER 19, 2017
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