HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Writ Petition No.30903 of 2011

ORDER:

Aggrieved by the Final Order dated 23.03.2010 passed by the 3rd respondent confirming the Appellate Order dated 26.05.2010 passed by the 2nd respondent and consequential Memorial Order dated 10.10.2011 of the 1st respondent the present writ petition is filed.

2a) Petitioner's case is that she was appointed as Normal Agent in the respondent—Corporation on 03.05.2005, with licence No.1970640 and allotted Code No.01968698 with the Branch Manager, Kovvuru Branch, Kovvuru, West Godavari District. She introduced 212, 296, 437, 578, 440 and 408 policies during the years 2005, 2006, 2007, 2008, 2009 and 2010 respectively till termination of her agency. During the course of her business, she used to go to the APSRTC training centres and canvassing LIC policies to the trainee conductors and drivers and doing Salary Saving Scheme (SSS) business. In the course of her business in July, 2017 she went to RTC training centre and obtained certain proposals including one M.Srinu who was undergoing training as driver and got filled the proposal forms. In October, 2017 when she enquired about said Srinu in the Depot, she was informed that he (Srinu) was posted at Ravulapalem APSRTC Depot and he was hale and healthy and she informed said fact to the Development Officer and therefore, his policy proposal was processed and completed in December, 2007.

b) It is submitted that M.Srinu died on 13.08.2007, but the said fact was not informed by other employees during her enquiry. Therefore, the policy proposal was processed and after completion of the same, policy bearing No.801464420 for an assured sum of Rs.50,000/- was issued and sent to the address of the policy holder, which was returned undelivered with an endorsement "*party died*". Except issuing the policy, no other process was done.

c) Knowing about the death of policy holder, the 3rd respondent issued notice dated 18.11.2008 to the petitioner to which she submitted explanation on 10.12.2008. Being satisfied with the explanation submitted by the petitioner, the authorities have dropped the further proceedings.

d) After 2½ years of the incident, suddenly the 3rd respondent issued show cause notice dated 23.02.2010 to the petitioner on the same issue and she submitted a detailed explanation. Being not satisfied with the same, the 3rd respondent passed impugned final order dated 23.03.2010 terminating the agency of the petitioner.

e) Aggrieved, the petitioner filed appeal to the 2nd respondent and along with appeal she also filed an application for stay. As the appellate authority has not disposed of the stay application for a long time, she filed W.P.No.10437 of 2010 seeking a direction to the appellate authority to dispose of the stay application. The said writ petition was disposed of on 13.04.2010 directing the appellate authority to dispose of the stay application pending with it. The appellate authority instead of disposing the stay application as directed the High Court, passed an order dated 26.05.2010 rejecting the appeal.

f) Questioning the rejection of appeal, the petitioner filed W.P.No.13576 of 2010. However, after knowing that there was a provision for Memorial to the 1st respondent as per Life Insurance Corporation of India(Agents) Regulations, 1972 (for short “Regulations”) she withdrew the writ petition with a liberty to file Memorial and filed Memorial before the 1st respondent on 04.03.2011. As the 1st respondent has not passed any orders on the Memorial, she filed another W.P.No.22395 of 2011 which was disposed of on 09.08.2011 directing the 1st respondent to pass appropriate orders on Memorial. Pursuant to the said order, the 1st respondent passed an order dated 10.10.2011 rejecting the Memorial.

Aggrieved by the said order, the present writ petition is filed.

3) Respondents filed counter and opposed the petition.

4) Heard arguments of Sri T.P.Acharya, learned counsel for petitioner and learned Standing Counsel for LIC.

5) The points for determination in this writ petition are:

(i) Whether the petitioner failed to make all reasonable inquiries in regard to the life to be insured before recommending proposal for acceptance, and bring to the notice of the Corporation any circumstances which may adversely affect the risk to be underwritten as contemplated in Regulation No.8 (2)(b) r/w 16 (1)(a) of Regulations and also whether she acted

in a manner prejudicial to the interest of the Corporation as contemplated in Regulation No.16(b)?

(ii) If point No.1 is held negatively, whether penalty imposed by the respondent authorities is sustainable?

6) **<u>POINT Nos.1 & 2</u>**: The show cause notice dated 23.02.2010 was issued by the 3rd respondent under Regulation No.16 (1)(a) and (b) alleging as follows:

> *"(1) Policy No.801464420 for a sum assured of Rs.50,000/- was introduced in October, 2007 and completed by Smt.A.S.H. Padma in December, 2007 and resulted into death claim on 13-08-2007.*
>
> *(2) The Life Assured died of Heart Attack.*
>
> *(3) The proposal was introduced and completed after the death of the life assured. The policy bond was returned undelivered with the remarks "party died".*
>
> *(4) The Agent Smt. A.S.H.Padma has not made proper enquiry and taken proper care in procuring the life to be insured."*

Thus the substance of the show cause notice is that the petitioner proposed the policy of one M.Srinu, driver in APSRTC and sent his proposals on 24.10.2017, after his death occurred on 13.08.2007 due to heart attack, without making proper enquiries about his live-status. Whereas in the appeal order dated 26.05.2010, it is mentioned that it was a clear case of fraud perpetrated on Corporation by submitting a proposal on the dead person. In that view, in this writ petition it is germane to discuss and determine whether the writ petitioner committed misconduct in terms of Regulation 16(1)(a) &(b) with a view to defraud the Corporation. Regulation 16 reads thus:

*"**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."

It is useful to extract Regulation 8 also at this juncture, which reads thus:

*"**8. Functions of agents**:*

(1) Every agent shall solicit and procure new life insurance business which shall not be less than the minimum prescribed in these regulations and shall endeavour to conserve the business already secured.

(2) In procuring new life insurance business, an agent shall:

(a) take into consideration the needs of the proposers for life insurance and their capacity to pay premiums;

(b) make all reasonable inquiries 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 be underwritten;

(c) take all reasonable steps to ensure that the age of the life assured is admitted at the commencement of the policy; and

(d) not interfere with any proposal introduced by any other agent.

(3) Every agent shall, with a view to conserving the business already secured, maintain contact with all persons who have become policy-holders of the Corporation through him and shall:

(a) advice every policy-holder to effect nomination or assignment in respect of his policy and offer necessary assistance in this behalf:

(b) endeavour to ensure that every instalment of premium is remitted by the policy-holder to the Corporation within the period of grace;

(c) endeavour to prevent the lapsing of a policy or its conversion into a paid-up policy; and

(d) render all reasonable assistance to the claimants in filling claim forms and generally in complying with the requirements laid down in relation to settlement of claims.

(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."

7) 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 the agents appointed by the LIC for the purpose of soliciting

or procuring life insurance business for LIC. These 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 Regulation 16, which is extracted supra is one of the Regulation speaks for termination of agency for certain lapses. The proviso to Regulation 16 exhorts that the agent shall be given a reasonable opportunity to show cause against such termination. Thus before the Corporation embarks upon terminating the agency of an agent on any of the lapses enumerated under Rule 16, observation of principles of natural justice i.e, giving a reasonable opportunity to show cause against the proposed termination is a must. Therefore, in determining whether the writ petitioner committed the alleged lapses under Regulation 16(1)(a) & (b), it is also necessary to examine whether reasonable opportunity to show cause was afforded to the petitioner because one of the grievances of the petitioner is that her explanation to the show cause notice was not at all considered in proper perspective and she was illegally terminated. It is needless to emphasize that mere issuing show cause notice alone will not amount to giving reasonable opportunity in the context of proviso to Regulation 16 unless the explanation provided against the show cause notice is tested on the probabilities of the facts and law, before the authorities come to a conclusion that it was a case of sheer misconduct. In the decision reported in ***Life Insurance Corporation of India vs. R.K.Mahajan; Man Singh Khushwaha; Nandini Sundriyal; P.K.Singh***[1]**,** relied upon by the writ petitioner, the Division Bench of Delhi High Court in similar circumstances observed that the LIC policy proposals in which the alleged irregularities were committed by the writ petitioners/Agents, were dated several years before the show cause notices and though the proposals numbers and 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. With the said observation, the Division Bench concluded thus:

> *"Para 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)."*
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> *Para 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 can account of non-observance of principles of natural justice."*

In view of the above precedential jurisprudence, it is clear that the responsibility is cast on the authorities not only to give a reasonable opportunity to the petitioner to offer explanation to the show cause notice

[1] 2015 LawSuit (Del) 5822

against the proposed termination but also test the veracity of the explanation by conducting proper enquiry.

8) The explanation dated 12.12.2008 offered by the petitioner against the show cause notice is to the effect that she concentrated much on SSS policies to avoid future lapsation of policies and used to procure business from APSRTC employees from Srikakulam to Krishna Districts and generally APSRTC would give training to its employees just after recruitment which would be for two (2) months and she usually canvass policies in groups at the time of training itself. She would take proposal forms at the time of training and after postings are given to the employees, she would submit the proposals to the branch office along with P.A Code. At the time of submitting proposals, she would telephone to the policy holder to know his health condition. In the instant policy also, she has canvassed policy in August, 2007 and took proposals from M. Srinivas and later on coming to know that he was given posting as driver in Ravulapalem RTC Depot, she enquired the authorities and confirmed that he was posted at Ravulapalem RTC Depot. She met the RTC authorities and also his colleagues but none of them had told that Life Assured (LA) had already expired. Thus thinking that LA was alive and out of good faith in RTC authorities and other employees, she submitted proposal to branch office. She further stated that till date she completed 1958 policies since 2005 and this was the first death claim/early death claim and she had no intention to deceive the Corporation and she was loyal agent to the

Corporation and she was in 3rd Rank in the Division with respect to NOP. She thus prayed to pardon her.

9) A perusal of the proposal form a copy of which is filed by the respondents along with counter, would show that the said proposal form was sent by the petitioner through the Development Officer. It was dated 24.10.2007. Then a perusal of the copy of the policy issued by LIC, which is filed along with counter shows that the Policy No.801464420 was issued in favour of Merugupuvvu Srinu (deceased) and the date of commencement of the policy was 15.12.2007 and date of proposal was 24.10.2007. It is not in dispute that said M. Srinu died due to heart attack on 13.08.2007. It is in this factual background, the veracity of the explanation offered by the petitioner needs to be examined. As stated supra, her case is that she concentrated mainly in procuring business on SSS policies from APSRTC employees from Srikakulam to Krishna Districts. She says that she used to go to Training Centre, where fresh recruited employees were undergoing training and obtain their proposals and sent to the Development Officer and after the employees were posted in different depots, she used to contact them and obtain their PA Code and then send the proposals to the branch office through the Development Officer. In the instant case, she submits, while M. Srinu was undergoing driver training, she obtained his consent and sent the proposal to the Development Officer along with some other proposals and after sometime when she contacted the RTC authorities, they informed her that after training he was posted at Ravulapalem and none has told that he died of

heart attack on 13.08.2007 and on a bonafide belief, she sent the proposals through the Development Officer on 24.10.2007 assuming that M.Srinu was alive and working at Ravulapalem as Driver. She admitted that she has not personally contacted M. Srinu to confirm about his live status after sending the proposal. Believing her version, the Development Officer also forwarded the proposal. The record shows that all the authorities right from Senior Development Manager to the in-charge Chairman, disbelieved her version and held that she has not made proper enquiries before sending proposals and thus acted in a manner prejudicial to the interest of the Corporation. The Appellate Authority in its order dated 26.05.2010 has further observed that it was a clear case of fraud being perpetrated by the petitioner on Corporation by submitting a proposal on the dead person and there was no necessity to conduct any enquiry as the death certificate produced by the claimant was issued by the Government authority.

10) On a careful scrutiny of the facts and probabilities, I am constrained to hold that the respondent authorities have not properly appreciated the case of the petitioner in right earnest, before branding her as guilty of misconduct on account of fraud being perpetrated on the Corporation. As already noted supra, mere affording an opportunity to offer explanation against the show cause notice is not be all and end all of observation of principles of natural justice. The explanation offered by the concerned employee should be tested on the anvil of due enquiry. In the instant case, the authorities have not conducted any enquiry and simply held that the

death of M. Srinu on 13.08.2007 and submission of proposals on 24.10.2007 were not in dispute rather could not be disputed and therefore, no further enquiry in that regard was necessary. In my view, that alone is insufficient to brand her guilty of misconduct by cheating. Admittedly, the deceased died on 13.08.2007 and proposals were sent on 24.10.2007 and policy was issued w.e.f. 15.12.2007. In this backdrop, assuming that the petitioner had any intention to cheat the Corporation, she would not have submitted the proposals through Development Officer on 24.10.2007 when the deceased died on 13.08.2007 itself. She being an experienced agent, who admittedly procured around 2000 policies, knew pretty well that since the proposals were sent only on 24.10.2007, the LRs of the deceased cannot make any undue claim as the policy holder died on 13.08.2007 itself i.e., long prior to the date of making proposal. Therefore, in this episode, the petitioner cannot be imputed with fraudulent intention to cheat the Corporation. If really she had such a malicious intention, she would have tried to create a proposal with a date much prior to the death of the policy holder so as to enable the LRs of the deceased to make claim, which is not the case here. Moreover, the respondents have not challenged the genuinity of the signature of the deceased on the proposal form, from which it can be inferred that the deceased had signed on the proposal form while he was alive and thereby it can be further inferred that she genuinely procured his proposal while he was alive and sent the same to the Development Officer and after making enquiry with RTC authorities and on knowing that he was posted at

Ravulapalem, requested the Development Officer to send the proposal to the Branch Office. The only mistake if any, committed by her is that, she did not personally contact the deceased to confirm his live-status. This can be regarded as a bonafide mistake. Having regard to the fact that she procured around 2000 policies prior to the present one without any blemish, this incident should be treated only as a bonafide mistake rather than a misconduct. Unfortunately, the authorities have considered her case only on one side holding that she has not conducted proper enquiries and thus she was guilty of misconduct which is not correct. Therefore, the impugned order is not sustainable on facts and in law.

11) In the result, this Writ Petition is allowed and the impugned order dated 23.03.2010 passed by the 3rd respondent which was approved by the 2nd respondent in his order dated 26.05.2010 and confirmed by the 1st respondent in his order dated 10.10.2011 is set aside and the respondents are directed to continue the petitioner as LIC Agent with all consequential benefits. No costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 27.08.2018

Murthy/scs