

C.W.P. No. 21865 of 2015 (O&M)

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 21865 of 2015 (O&M)

DATE OF DECISION:21.02.2018

Gajender Yadav

.....Petitioner

Versus

Life Insurance Corporation of India and othersRespondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Neeraj Gupta, Advocate
for the petitioner.

Mr. Rajneesh Malhotra, Advocate
for the respondents.

DAYA CHAUDHARY, J.

The petitioner has approached this Court by way of filing the present petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing of impugned orders dated 20.4.2012 (Annexure P-6), 26.3.2014 (Annexure P-7), 8.11.2014 (Annexure P-8) and also show cause notice dated 23.1.2012 (Annexure P-3) passed by the respondents.

Briefly, the facts of the case as made out in the present petition are that the petitioner had been working as an agent for the respondents- Insurance Corporation since January, 1998 under Code No. 10756-16K in branch office, Narwana under Karnal Division. One Satta Ram was insured by the petitioner's agency on the recommendation made by the petitioner.

Vide letter dated 15.9.2011, an explanation was sought from the petitioner as to why he did not disclose that Satta Ram was suffering from TB. Reply of said notice was submitted on 10.10.2011 stating that Satta Ram was insured on 28.2.2009 and he appeared to be in good health at that time. On enquiry, Satta Ram conveyed himself to be in good health. He was also medically examined by the Doctor appointed by the respondents. Thereafter, a show cause notice dated 23.1.2012 was issued to the petitioner as per provisions of Rule 8 (2) (b) read with Rule 16 (1) (a) (b) & (d) of the Life Insurance Corporation of India (Agents) Rules, 1972 (hereinafter referred to as 'the Rules, 1972'), wherein, a proposal was made to terminate the agency of the petitioner with forfeiture of renewal commission under Rule 19 (1) read with Rule 10 of the Rules, 1972. Reply to the show cause notice was given by the petitioner vide letter dated 5.3.2012 but respondent No.3 terminated the agency of the petitioner vide order dated 20.4.2012. Aggrieved by said order, the petitioner filed statutory appeal, which was also dismissed vide order dated 26.3.2014. The petitioner also filed a memorial to respondent No.1, which was also rejected vide order dated 8.11.2014. Aforesaid three orders as well as show cause notice have been challenged in the present petition by raising various grounds.

Learned counsel for the petitioner contends that there is no allegation of connivance between said Satta Ram and the petitioner and after verifying the health of Satta Ram by making various queries, said Satta Ram was insured. The medical examination of the insured was conducted by a Doctor appointed by the respondents-Insurance Corporation and he was found to be fit. The petitioner cannot be blamed without any sufficient reason. The onus to prove the allegations of fraud lies upon the

person, who is levelling the allegations. There is no proof of any fraud being committed by the petitioner and as such the allegations of fraud are baseless. Learned counsel further contends that the petitioner was not having any prior knowledge about the health of the insured. Respondents have failed to produce any evidence to prove that the petitioner was guilty of suppression of facts or having connivance with Satta Ram. Learned counsel also contends that decision of the respondents in taking action against the petitioner are against the statutory provisions provided under the Rules, 1972. The Life Insurance Corporation of India has framed Regulations defining the method of recruitment of agents of the Life Insurance Corporation. Regulation 16 of the Regulations provides for termination of agency on certain grounds. Regulation 17 of the Regulations provides for termination of agency by notice and as such the orders passed are contrary to provisions as provided under Regulations, 15,16,17 and 19 of the Rules, 1972. Learned counsel for the petitioner also contends that neither any opportunity of hearing was given to the petitioner nor he was allowed to cross-examine the witnesses including the person, who levelled allegations against him. Learned counsel for the petitioner has also relied upon the judgments of Hon'ble the Apex Court in the cases of **P.K. Singh Vs. Life Insurance Corporation of India**, W.P. (C) 10426 of 2006 decided on 21.4.2010, **P.G. Natarajan Vs. Life Insurance Corporation of India and others** 2016 (14) SCC 232, of Karnataka High Court in the case of **C. Navaratanmal Jain Vs. The Chairman, Life Insurance Corporation of India, Jeevan Bhima Marg, Mumbai and others** 2015 (51) RCR (Civil) 550, of Delhi High Court in case of **Life Insurance Corporation of India Vs. R.K. Mahajan** (LPA No. 531 of 2010 decided

on 27.11.2015) and of Gujarat High Court in the case of **Chairman, Life Insurance Corporation of India Vs. Urmilaben N. Prajapati** 2011 (17) SCT 745, in support of his contentions.

Written statement on behalf of the respondents has been filed and the same is on record.

Learned counsel for the respondents has vehemently opposed the submissions made by learned counsel for the petitioner and raised a preliminary objection that the present petition is not maintainable as the petitioner has not discharged his duties vigilantly and honestly. It was for the petitioner to verify about the health of the insured but no verification was done. Insured-Satta Ram died on 4.8.2010 i.e. within a period of one year from the date of issuance of insurance policy. Investigation of the case was done and it was found that deceased-Satta Ram was suffering from pulmonary tuberculosis and was undergoing medical treatment prior to date of proposal for the insurance policy. Learned counsel further contends that the petitioner has given wrong information in the confidential report at the time when the proposal form was filled and factum of ailment of insured was not mentioned, which shows gross negligence and dereliction of duty on his part. Learned counsel also contends that certain material facts have been concealed while filing this petition. The impugned orders are based on reasoning and reasons for rejection of the claim have been mentioned in all the orders.

Heard the arguments advanced by learned counsel for the parties and have also gone through the impugned orders and other documents available on the file.

The facts of the case are not disputed by learned counsel for the

parties. Admittedly, a show cause notice was issued to the petitioner with a proposal to terminate his agency with forfeiture of renewal commission under Rule 19 (1) read with Rule 10 of the Rules, 1972. Reply of show cause notice was filed but finding the same not satisfactory, the agency of the petitioner was terminated. Statutory appeal filed by the petitioner was also dismissed. Regulations 15,16 and 19 are relevant for resolving the controversy in the present case and the same are reproduced as under:-

Regulation 15:

Termination of agency on account of certain disqualification: if an agent:

- (a) is found to be of unsound mind by a Court of competent jurisdiction;
- (b) is found to be guilty of criminal misappropriation or criminal breach of trust or cheating or forgery or an abetment of or attempt to commit any such offence by a court of competent jurisdiction;
- (c) in any judicial proceedings, has been found to have knowingly participated in or connived at any fraud, dishonesty or misrepresentation against the Corporation or any of its subsidiaries or against any person having official dealings with the Corporation or any of its subsidiaries, his appointment shall be liable to be terminated without notice and the competent authority shall forthwith terminate his appointment.”

Regulation 16: Termination of agency for certain lapses:

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 and, 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) 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.

(2) Every order of termination made under sub-regulation (1) shall be in writing and communicated to the agent concerned.

(3) Where the competent authority proposes to take action under Sub-regulation (1) it may direct the agent not to solicit or procure new life insurance business until he is permitted by the competent authority to do so.”

Regulation 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 lakh”, 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 year 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 year subsequent to the said financial year.”

As per Regulation 15 of the Rules, 1972 in case the agent is found to have knowingly participated in or connived at any fraud, dishonesty or misrepresentation against the Corporation, in such a situation his appointment is liable to be terminated. Similarly, Regulation 16 of Regulations, 1972 mandates that the authority may terminate the agency for

certain lapses but nowhere in Regulation 16, term 'fraud' has been used.

In the present case, there is no finding of any judicial proceedings regarding the act of fraud being committed by the petitioner and only the allegations are there that the petitioner had failed to discharge his duties efficiently. As per case of the petitioner, he has taken all the reasonable precautions at the time of the insurance by making queries. Even medical examination of the insured was conducted and insured was found medically fit for the insurance. In the show cause notice, the allegation against the petitioner is that he had acted in a manner prejudicial to the interest of the respondents-Corporation and has tarnished the image of the Corporation and has failed to discharge the functions of an agent, which is breach of Rule 16 (1) (a) (b) and (d) of the Rules, 1972. Regulation 15 has not been invoked against the petitioner and the forfeiture of renewal has been done, whereas, without attracting Regulation 15, no such order can be passed.

Similar issue was there before this Court in the case of **Rajni Damri Vs. Life Insurance Corporation of India and others** 2013 (2) PLR 623, wherein, it was held as under:-

“The charge is not that the petitioner had personal knowledge of the medical condition of Girdhar and yet proceeded to sell insurance. The entire blame cannot be put on the petitioner and it may not be correct for the Corporation to say that the petitioner cannot pass on her own blame on the panel medical practitioner. The orders passed cancelling the agency of the petitioner and forfeiting her renewal commission are plainly stigmatic. With these orders, the petitioner can never think of

applying for an insurance agency in the public or private insurance sector. The action taken appears to be rather excessive and hit by the doctrine of proportionality and borders on Wednesbury arbitrariness as no reasonable man in the place of the decision maker would take. If the doctor was let off with a simple warning, I see no reason why the same punitive measuring scale could not have been applied to the petitioner to inflict any lesser dose than the extreme step of cancellation of agency. There is also nothing in her past record to justify the extreme step taken. It is not for this Court to enter into the arena of the part played by the petitioner and it would suffice to limit the attention of this Court to an examination on the issue of quantum of punishment inflicted. After all, agents bring business to the Corporation and without them, it would be difficult to sell insurance policy or to enlarge business. The Life Insurance Corporation of India is a statutory Corporation which qualifies as an instrumentality of the State. Its actions must be manifestly fair, transparent and equitable. Though this Court is not concerned with the decision but with the decision making process yet fairness in action, non- discrimination is expected from LIC. What the petitioner did if weighed with what the medical doctor did, the role of the medical doctor critically outweighs what the petitioner did or did not do. The action taken appears to be harsh, perverse, unreasonable and discriminatory and such that disturbs the conscience of the Court. The stigma attached with the orders is required to be

removed in the attending circumstances.”

Delhi High Court in **P.K. Singh's case (supra)** has held as under:-

“The phrase "all reasonable enquiries" contemplates knowledge on the part of the agent not to the extent of a medical practitioner. It must be remembered that policy proposals are accompanied by 'Medical Examiner's Confidential Report' signed by a qualified medical practitioner. The name, address, qualifications, the code number and the limit allotted to the medical practitioner are also mentioned. It would be the medical practitioner who issued such certificate who would be primarily answerable in the event of the medical status declared being found to be wrong at a later point in time. If no action is taken against him and only against the agent who is no better aware of the medical status than a lay person, then it would not be a fair or reasonable action on the part of the LIC.”

The judgment of Hon'ble the Apex Court in the case of **Union of India Vs. M/s Chaturbhai M Patel and Co.** reported in AIR 1976 SC 712 is also relevant for resolving the controversy in the present case. Para No. 7 of the same is reproduced under:-

“It is well settled that fraud like any other charge of a criminal offence whether made in civil or criminal proceedings, must be established beyond reasonable doubt; per Lord Atkin in [A. L. N. Narayanan Chettyar v. Official Assignee, High Court Rangoon](#) AIR 1941 Privy Council 93. However suspicious may be the circumstances, however strange the coincidences, and

however grave the doubts, suspicion alone can never take the place of proof. In our normal life we are sometimes faced with unexplainable phenomenon and strange coincidences, for, as it is said, truth is stronger than fiction.”

In the present case, the allegations against the petitioner are that the insured was suffering from TB and still his case was recommended by the petitioner for the policy of insurance but without conducting any proper inquiry or detailed investigation, respondent-Corporation has come to the conclusion that petitioner is at fault. The respondents-corporation have based their conclusions mainly by taking into consideration the vague allegations, whereas, no inquiry was conducted. At the most, it can be a case of carelessness or negligence. However, there is nothing on record to show that there was any meeting of minds or any conspiracy was hatched for the purpose of defrauding the Corporation.

For the reasons recorded above and by considering the ratio of judgments as reproduced herein above, I am of the view that the respondent-Corporation has wrongly terminated the agency with forfeiture of renewal commission. As such the present petition is allowed and impugned orders dated 20.4.2012 (Annexure P-6), 26.3.2014 (Annexure P-7), 8.11.2014 (Annexure P-8) as well as show cause notice dated 23.1.2012 (Annexure P-3) are quashed. The respondents are directed to restore the agency of the petitioner from the date of termination with all consequential benefits.

February 21, 2018
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes