**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

RSA No.4384 of 2014

Date of Decision: January 18, 2019

Satyawan Solanki

.....Appellant

Versus

Life Insurance Corporation of India & others .....Respondents

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. C.B.Goel, Advocate for the Appellant.

Mr. Nitin Thatai, Advocate for the Respondents.

SUDIP AHLUWALIA, J.

This Appeal has been preferred against the impugned Judgment and Decree passed by the Ld. District Judge, Rohtak in Civil Appeal No.163 of 2012 dated 6.5.2014, vide which the original Judgment & Decree passed by the Ld. Addl. Civil Judge (Senior Division) Rohtak in Civil Suit No.175 of 2010 dated 18.9.2012 in favour of the present Appellant/Plaintiff was set aside.

2. He had filed the aforesaid Suit challenging the termination of his appointment as an Agent of the Respondent-Life Insurance Corporation of India (LICI), as also forfeiture of his renewal commission for the period preceding his aforementioned termination.

3. The gist of the Appellant's case as summarized in the original Judgment of the Ld. Trial Court is set out as below -

"The present suit has been filed by the plaintiff alleging that he had been an agent of LIC vide LIC Code No.4810-176 B.O., Rohtak

Division. The act and conduct of plaintiff always remained outstanding and meritorious through out his career as Agent. The plaintiff had procured a proposal on 20.09.2006 for the fresh insurance on the life of Ram Chander and a policy no.175161610 was issued to him after following due course of law as the insured person was initially interviewed by defendant no.3 and after being satisfied, he was thoroughly medically examined by empanelled doctor defendant no.4 for all necessary pathological and other medical tests and medical examinations. After being found fit for policy, the plaintiff got the insurance policy issued to Ram Chander, who died later on due to Cardiac Asthma allegedly. Similarly, Anita was also got insured after procuring a proposal on 21.07.2006 vide policy no.174987505. In this case also, initially plaintiff had satisfied himself about her health and later on, before making insurance, she was presented before defendant no.3, who also made necessary queries about her health and status and she was also subject to medical examination by defendant no.4 and by way of following due course of law, LIC policy was issued to her.

It is submitted that Ram Chander later died of Cardiac Asthma and Anita allegedly died of Abdomen Cancer. The defendant no.1 issued an impugned order dated 15.01.2009 to the plaintiff, wherein the agency of the plaintiff was terminated with forfeiture of renewal commission illegally, malafidely, arbitrarily, unconstitutionally against the rules of LIC and natural justice.

The impugned order is liable to be set aside on the grounds that the impugned order is not sustainable in the eyes of law as both the insured persons i.e. Ram Chander and Anita were subject to thorough medical examination by defendant no.4 and requisite medical tests and other medical examinations were done before issuing of LIC policy and nothing discriminatory or objectionable was found by the doctor on panel of LIC of India, which are on record of LIC of India. Ram Chander and Anita insured were initially properly interviewed by the plaintiff and later on by defendant no.3. Disease Cancer cannot be predicted even before one month of prior to the death of insured and which cannot be made out by merely contacting and taking interview of a person to be insured, even medical science also has held that the detection of cancer is some times found at very last stage just 10 to 15 days prior to the death of person suffering from cancer. It is submitted that the plaintiff was not at gross negligence or liable for dereliction of duty. No proper inquiry was held or enquiry officer was appointed by the defendants no.1 to 5 to make inquiry regarding death of Ram

> *Chander and Anita. No proper show cause notice was issued to the plaintiff nor any document/reports were issued to the plaintiff. No personal hearing was provided to the plaintiff by the defendants before inflicting major punishment.*
>
> *The plaintiff requested the defendants no.1,2 & 5 to withdraw the impugned order and to reinstate the agency of the plaintiff with all consequential benefits but the defendants have not acceded the genuine request of plaintiff. Hence, the present suit."*

4. The Suit was principally contested on behalf of Respondents/Defendants No.1, 2 & 5 representing the LICI. The contention of the aforesaid Defendants/Respondents was that neither the Suit was maintainable, nor the Plaintiff had any justifiable cause of action or valid reasons to challenge the termination of his appointment and forfeiture of renewal commission.

5. As already noted, the Suit was originally decreed in favour of the Appellant but the contesting Respondents filed the Appeal against the same in the Court of Ld. Distt. Judge, Rohtak who was thereafter pleased to allow it on merits and set aside the judgment and decree of the Trial Court vide its impugned Judgment.

6. It had been urged before the Ld. Lower Appellate Court on behalf of LICI that the Plaintiff/Appellant had no right to challenge his termination/forfeiture of his renewal commission, since he had failed to answer to the two Show Cause Notices issued to him before passing the impugned aforesaid Penal Order, but he did not file any reply to any such notice thereby admitting that he had nothing to say in his defence. He nevertheless challenged the penalties awarded against him by filing an Appeal before the General Manager of the LICI, which was dismissed on 15.2.2012 vide the relevant Order (Ex.P-8) and he was also intimated vide a letter of even date (Ex.P-9) that he had the right to prefer a Memorandum to

the Chairman of the LIC within a period of three months, which right was however, not exercised by him.

7. Furthermore, three Judgments of the Supreme Court in **'R.M. and D.A. State Bank of India Vs. S. Mohammad Gaffar 2002(2) ISJ (Banking) 649; Depot Manager, A.P.S.R.T.C. Vs. Raghuda Siva Sankar Prasad, Legal Digest, April 2007, 181** and **Suresh Pathrella Vs. Oriental Bank of Commerce, Legal Digest, July 2007, 293'** were cited before the Ld. Lower Appellate Court to contend that the punishment/penalty imposed upon the Plaintiff by the Disciplinary as well as Appellate Authorities was not of such a magnitude as to shock conscience of the Court in the given facts and circumstances, and that in any case, the Court ought not to interfere with the same, or substitute its own opinion or impose any other penalty and that no Judicial review of the Disciplinary Authority's proceedings was permissible, since there was no case that the proceedings were tainted, malafide or conducted in violation of the principles of natural justice on account of which, in any case the jurisdiction of the Civil Court to entertain the Plaintiff's Claim stood barred.

8. The aforesaid submissions raised on behalf of the Respondents found favour with the Ld. Lower Appellate Court, which thereafter set aside the judgment & decree of the Trial Court by recording the following observations -

> *"20. After hearing learned counsel for the parties, I am of the view that the agency of the plaintiff was governed by the Rules of 1972. In those rules, before terminating the agency only show cause notice was required to be issued as provided under the Rule 16, and two show cause notices to the plaintiff were issued by the Corporation, but the plaintiff did not file reply to any show cause notice. Meaning thereby, he had nothing to say in his defence and after going into the entire matter, the Senior Divisional Manager of the Corporation, terminated*

the agency as per rules.

21. Had there been violation of the rules while terminating the agency, then, of course, the court could go into the legality or illegality of the termination of his agency. The learned trial court decided the matter as if it was the Appellate Authority over the Senior Divisional Manager and while exercising said power it has committed illegality. It was for the plaintiff to satisfy the corporation that he was not at fault in any way while issuing insurance policies to Anita and Ramchander and he could do so only after filing reply to the show cause notices, but he did not do so.

22. If we go by the general rules of the agency as contained in the Indian Contract Act, 1872, the principal may revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal. Only requirement is that reasonable notice must be given of such revocation or renunciation as provided under section 206 of the Contract Act. In this case, even before revocation of agency the Corporation had issued show cause notices to the plaintiff."

9. This Court is now to decide whether the above mentioned reasonings of the Ld. LAC are valid and justified in the present case. To determine this question, it would be necessary to refer to the relevant provisions of the 'Life Insurance Corporation of India (Agents) Regulations 1972.', which is on record of the Trial Court in the form of Ex.D-7. The vital Regulations cited on behalf of the contesting Respondents to justify their acts of terminating the Appellant's agency and forfeiting his renewal commission, being Regulations 8, 16 and 17 are set out below -

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

(1) Every agent shall solicit and procure new insurance business which shall not be less than the minimum prescribed in these regulation 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 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 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 policyholders of the Corporation through him and shall:

(a) advise every policyholder 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 policyholder 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 filing 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 authorized 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 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.

(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."

*"**17. Termination of agency by notice** :*

(1) The appointment of an agent may be terminated by the competent authority at any time by giving him one month's notice thereof in writing.

(2) An agent may, by giving one month's notice in writing to the competent authority, discontinue his agency and after the expiry of the period of one month his agency shall stand terminated."

10. It is undisputable that by virtue of Regulation 17, the termination of a an Agent even in the absence of any lapses on his part is permissible merely by giving him notice for a month for which no reasons are required to be assigned. Nevertheless the agency in the present case was terminated in exercise of Regulation 16 in a situation when the Plaintiff/Appellant failed to show cause from his side to the notices issued against him before resorting to the Disciplinary Proceedings. In the given circumstances, his termination on account of such default in replying to the Show Cause Notices cannot be held to be malafide or against the principles of natural justice. For this reason, the dismissal of his Statutory Appeal by the Appellate Authority so far as it relates to the termination of his agency

would also not appear to be disputable, since in any event he had no vested right like a public servant to continue in his employment and his agency was even otherwise liable to be terminated at any stage after one month's notice in terms of Regulation 17 as already noted above.

11. The order by way of forfeiting of his renewal commission on the disputed policies however, stands on a different footing, since this is essentially an order purely of a punitive nature, which otherwise could not have been passed in exercise of any general Regulation, such as Regulation 17 applicable to termination of his agency at will.

12. In justifying their decision to withhold the Appellant's renewal commission, the Respondents have relied upon Regulation 19, which provides as follows -

> *"**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)* ....
>
> *(b)* ....
>
> *(c)* ....*"* (Emphasis added)

13. The assertion of the Respondents therefore, is that as the Plaintiff/Appellant had committed fraud by way of issuance of policies in allegedly undeserving cases, the commission payable to him on the Premiums received against such policies was liable to be withheld in exercise of the aforesaid Regulation.

14. On the other hand, contention of the Appellant/Plaintiff is that even the Charges on which he was penalized by the Respondents did not reveal any element of fraud 'on his part', but had stated explicitly that he was guilty of 'gross negligence' in the matter. To support this submission,

attention of the Court has been drawn to Ex.P-1 which is the impugned Penal Order passed against him by the Disciplinary Authority dated 15.1.2009, in which it has been noted -

> *"WHEREAS, a Show Cause Notice dated 19.11.08 was issued to the above agent charging That he procured a proposal on 20.09.2006 for the fresh insurance on the life of Sh. Ram Chander which resulted into policy no.175161610. Subsequently the said policy resulted into death claim. <u>In the Agents Confidential Report 20.09.06 submitted by him in the above case at the time of fresh insurance of the policy, he withheld the material information regarding the health of the life assured. We hold indisputable evidence to show that the life assured was suffering from Cardiac Asthma before he proposed for the above policy, but the agent did not disclose this fact at the time of insurance. This shows gross negligence and dereliction of duty on the part of agent as an agent of the Corporation</u>.*
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> *Another Show Cause Notice dated 19.11.08 was issued to the above agent charging That he procured a proposal on 21.07.2006 for the fresh insurance on the life of Smt. Anita which resulted into policy no.174987505. Subsequently the said policy resulted into death claim. <u>In the Agents Confidential Report 21.07.06 submitted by him in the above case at the time of fresh insurance of policy, he withheld the material information regarding the health of the life assured. We hold indisputable evidence to show that life assured was suffering from Abdomen Cancer before she proposed for the above policy, but the agent did not disclose this fact at the time of insurance. This shows gross negligence and dereliction of duty on the part of the agent as an agent of the Corporation</u>.*
>
> *A penalty was proposed as agency to be terminated with forfeiture of renewal commission. As per letter of*

Chief Manager, Rohtak dated 03.01.09 the agent was contacted to deliver the notices but the agent refused to receive the same. So the show cause notice was sent by Reg. Post by the Chief Manager, B.O. Rohtak vide Regd. No. A-1389 dated 29.11.08. The agent was directed to reply in writing within a period of 30 days from the date of the Show Cause Notice.

Now a period more than a month has elapsed. We have not received any reply from the agent.

NOW THEREFORE, presuming that the agent has nothing to reply against the charges leveled against him, I found that charges are proved. I order that the penalty of :- "termination of agency with forfeiture of renewal commission." Under the provisions of the rule 8 (2) (b) read with rule 16(1)(a)(b) & (d) of life insurance of corporation of India (Agents) Rules, 1972 and Rule 19 (1) read with rule 10(b) of Life Insurance Corporation of India (Agents) Rules, 1972 be and is hereby imposed on Sh. Satyawan Solanki, Ag. Code No.4810-176 with immediate effect.

Dated at Rohtak this 15th Day of January, 2009."

15. From the highlighted extracts of the aforesaid Ex.P-1, it is seen that the Plaintiff/Appellant was charged for having withheld the material information regarding the bad health conditions of the deceased/Policyholders in his relevant agent's Confidential Reports. Significantly, the Respondents went on to add in each case that they held *'indisputable evidence to show that the life was assured from Cardiac Asthma/Abdomen Cancer' before the Policyholders proposed for the Insurance Policies, 'but the agent did not disclose this fact at the time of Insurance'*. It is however, nowhere noted in the aforesaid Charges that the Plaintiff was himself aware about the health conditions of the Policyholders,

or of the fact that they were suffering from Cardiac Asthma/Abdomen Cancer. In fine, there is no tangible material in the Charges whatsoever to suggest that he was actually aware about the diseases of Cardiac Asthma/Abdomen Cancer in either case, only in which event, he could have been blamed of 'not disclosing' such fact at the time of Insurance. In other words, if there had been any convincing material to show that the Plaintiff was actually aware about the fact that the insured persons were suffering from Cardiac Asthma/Cancer, only then could a case have been made out that he had practiced 'fraud' by way of willful suppression of such fact within his knowledge.

16. Furthermore, in their respective Written Statements, the Defendants/Respondents did not deny the specific averments made in Paras 4 (i) to (iv) of the Plaint to the effect that both the insured persons were subjected to thorough medical examinations by the approved Doctor of the LICI, who himself happened to be Defendant No.4 in the case and that such medical examinations were done before issuance of the LIC Policies, which were thereafter issued when no abnormality or evidence of disease was detected in the examinations, and that in any event, the Plaintiff could have known about the fact that the concerned persons were suffering from Cardiac Asthma/Abdomen Cancer when the same could not be detected in spite of subjecting them to the rigours of the Medical Examinations. As such, the alleged element of 'fraud' by way of non-disclosure of the Policyholders' medical conditions, which is a *sine qua non* for withholding of the agent's commission of Premiums received in terms of Regulation 19 is squarely missing. Not only in the impugned decision of the Respondents/Authorities, but even in the original articles of Charge, there

was no assertion that the Appellant was actually aware about the Policyholders suffering from Cardiac Asthma/Abdomen Cancer, which information he 'failed to disclose' at the time of insurance. This, in the opinion of the Court is a manifest perversity in the impugned decision to forfeit the Appellant's commission against the received Policy Premiums, which therefore, certainly warrants interference by this Court.

17. The Ld. counsel for the Respondents has nevertheless cited a decision of the Division Bench of Allahabad High Court in **'Rameshwar Verma Versus The Life Insurance Corp. of India thru' its Chairman and Ors.' 2018(1) ADJ 418**, in which the Writ Petition filed on behalf of Insurance Agent was dismissed in a case where *'the Petitioner fully knowing the status of the health of policy holder deliberately manipulated the revival of the policy with an ulterior motive after it had lapsed*'. A careful reading of the aforesaid Judgment of the Allahabad High Court however, clearly shows the facts involved therein to be vastly different from those in the present case. In fact, perusal of Paras 18 to 20 of the aforementioned Judgment goes to reveal that in the said case, there was an element of deliberate fraud by way of introduction/production of a fake person in place of the actual policyholder for the purpose of his medical examination, which took place on 8.2.2004. In the present case however, there is no allegation whatsoever to the effect that there was any manipulation or foul play in the matter of prescribed medical examination of the concerned Policyholders, which did not reveal any signs of them being afflicted with Cardiac Asthma/Cancer. The decision cited on behalf of the Respondents therefore, does not help them in this case.

18. For the aforesaid reasons, the present Appeal is allowed in part after

setting aside the impugned Judgment of Ld. District Judge, Rohtak and partially modifying the earlier judgment and decree passed in favour of the Appellant by the Ld. Addl. Civil Judge (Senior Division) Rohtak. The decision of Ld. Trial Court in setting aside the Appellant's Punishment Order dated 15.1.2009 passed by the Defendant Nos.1, 2 & 5 in totality is thus modified by upholding the directions upon the Defendants/Respondents to release the admissible renewal commissions against the Policies issued at the instance of the Appellant, but the direction of the Trial Court upon them to make the Appellant's Agency operational again is set aside.

(SUDIP AHLUWALIA)
JUDGE

January 18, 2019
AS

1. Whether speaking/reasoned ? Yes/No
2. Whether reportable ? Yes/No