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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2021

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

W.P.NO.2934 OF 2010

AND

M.P.NOS.1 & 2 OF 2010

1.Smitha Jayachandran

2.Nina Michelle

.. Petitioners

vs.

1. The Senior Divisional Manager,
Life Insurance Corporation of India,
Coimbatore Division, India Life Building,
Trichy Road, Coimbatore-641 018.

2. The Manager [OS],
Life Insurance Corporation of India,
Coimbatore Division, India Life Building,
Trichy Road, Coimbatore-641 018.

3. Mr.A.Harinarayanan

4. Mrs.H.Meerabai

.. Respondents

[R3 and R4 impleaded vide order dated
17.02.2010 in M.P.No.3 of 2010]

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the second respondent to quash the communications dated 26.12.2009 and 25.01.2010 issued by the second respondent and consequently, directing the respondents to disburse the terminal benefits and other benefits of Late H.Jayachandran to the petitioners, being Class-I Legal Heirs of Late H.Jayachandran as per the Hindu Law.



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For Petitioners

: M/s.R.Sriram

For Respondents

: Dr.S.S.Swaminathan for R1 and R2

Mr.N.Manokaran for R3 and R4

Mr.T.Arunkumar,
Additional Government Pleader
assisted the Court.

O R D E R

The petitioners, challenging the impugned communications of the second respondent dated 26.12.2009 and 25.01.2010, in and by which the petitioners have been informed that as per their records, nomination for Provident Fund, Gratuity and Group Savings Life Insurance are the respondents 3 and 4 and the nomination for Group Insurance is the first petitioner herein, has filed the present writ petition.

2. The case of the petitioners is that the first petitioner and late H.Jayachandran got married on 18.10.2000 and out of wedlock, they begotten a girl child / second petitioner on 30.04.2001. The first petitioner's husband joined as an "Assistant" on 30.04.1993 under "Sports Quota" in the Life Insurance Corporation of India and posted at Coimbatore Division Office. Subsequent to joining the LIC, the first petitioner's husband had nominated his father Mr.A.Harinarayanan and his mother Mrs.Meera Harinarayanan, the respondents 3 and 4 as nominees, as he was a bachelor at that time. The first petitioner's husband died on 18.12.2009 and upon his demise, the petitioners herein and the fourth respondent are entitled for an equal share in the terminal benefits of her late husband, being Class-I legal heirs of Late H.Jayachandran as per Hindu Law.

3. On 21.12.2009, the first petitioner made a representation to the first respondent to disburse the terminal benefits to herself and the second petitioner, as they are legally entitled to a share in the same, but the second respondent, vide communication dated 26.12.2009 stated that as per office records, the nomination of the terminal benefits of late H.Jayachandran stands in the name of his parents / respondents 3 and 4 and settlement would be effected to the said nominees on submission of death certificate of the deceased Jayachandran. The second respondent also sent a reminder to the first petitioner on 25.01.2010, reiterating their earlier stand and challenging the same, the petitioners have filed the present writ petition.



4. Mr.R.Sriram, learned counsel for the petitioners would contend that the respondents have passed the impugned communications without considering the fact that the petitioners, being Class-I Legal Heirs of late H.Jayachandran, are entitled for 2/3rd of the terminal benefits as per Hindu Law and that the nominees are not the beneficiaries and they are only receivers and the act of the respondents in stating that they would effect settlement of the terminal benefits of late H.Jayachandran to the nominees in exclusion of the petitioners herein, is illegal and therefore, prays for appropriate orders.

5. Mr.N.Manokaran, learned counsel for the respondents 3 and 4 has drawn the attention of this Court to the counter affidavit of the third respondent and would submit that the petitioners have not been nominated in the service records of the deceased and their legal status to get the terminal benefits have to be decided in a competent Civil Court and would further add that the respondents 1 and 2, on the basis of the objection raised by the writ petitioners, cannot withhold the terminal benefits payable to the nominees/respondents 3 and 4 and the writ petition itself is not maintainable, and prays for dismissal of this writ petition.

6. Dr.S.S.Swaminathan, learned counsel for the respondents 1 and 2 has drawn the attention of this Court to para 7 of the counter affidavit filed by the respondents 1 and 2, wherein it has been stated that the petitioners herein, as nominees of the deceased H.Jayachandran, are entitled for disbursement of the Group Insurance Amount of Rs.7,00,000/- and if the petitioners intend to claim the terminal benefits as Class-I Legal Heirs, the petitioners have to approach the Civil Court for appropriate remedy, as the fourth respondent is also a Class-I Legal Heir and therefore, prays that the present writ petition is not maintainable. The learned counsel for the respondents 1 and 2, in support of his submissions, has placed reliance upon the following decisions:

- (i) Sarabati Devi v. Another v Usha Devi [CDJ 1983 SC 144]
- (ii) Vishin N.Khandchandani v. Vidya Lachmandas Khandachandani [CDJ 2000 SC 353]
- (iii) Vidyaa Hari Iyer v. M/s.Sundaram Finance Limited [CDJ 2020 MHC 4925]

7. This Court has anxiously considered the submissions made on either side and also perused the materials placed before it.

8. Black's Law Dictionary defines "Nominee" as (1) someone who is proposed for an office, membership, award, or like title or status, (2) A person who is designated to act in place of



another, usually in a very limited way and (3) A party who holds bare legal title for the benefit of others or who receives and distributes funds for the benefit of others.

9. As per Law, a nominee is a Trustee, not the owner of the assets. In other words, a nominee is only a caretaker of the assets. Section 39 of the Insurance Act says that appointed nominee will be paid, though he may not be the legal heir. The nominee, in turn, is supposed to hold the proceeds in trust and the legal heir will be the one who is mentioned in the Will. However, if a Will is not available or written, then the legal heirs of the assets are decided according to Rule of Succession, where the structure is predefined on who gets how much. The nominee can also be one of the legal heirs.

10. Let this Court considers the decisions with regard to disbursement of terminal benefits of the deceased in case of inter se dispute between the nominees and legal heirs.

11. The question whether the nominee appointed under Section 39 of the Life Insurance Act, 1938 gets absolute right to amount due under life insurance policy on death of assured, came up for consideration before the Hon'ble Supreme Court in Sarabati Devi & Another v. Usha Devi [CDJ 1983 SC 144 : 1984 AIR (SC) 346], wherein the Hon'ble Supreme Court has held as follows:

"4. At the out set it should be mentioned that except the decision of the Allahabad High Court in Kesari Devi v. Dharma Devi on which reliance was placed by the High Court in dismissing the appeal before it and the two decisions of the Delhi High Court in S. Fauza Singh v. Kuldip Singh & Ors. And Mrs. Uma Sehgal & Anr. v. Dwarka Dass Sehgal & Ors in all other decisions cited before us the view taken is that the nominee under section 39 of the Act is nothing more than an agent to receive the money due under a life insurance policy in the circumstances similar to those in the present case and that the money remains the property of the assured during his lifetime and on his death forms part of his estate subject to the law of succession applicable to him. The cases which have taken the above view are Ramballav DhanJhania v. Gangadhar Nathmall. Life Insurance Corporation of India v. United Bank of India Ltd. & Anr., D. Mohanaeelu Muldaliar & Anr. v. Indian Insurance and Banking Corporation Ltd. Salem & Anr., Sarojini Amma v. Neelakanta Pillai Atmaram Mohanlal Panchal v. Gunavantiben & Ors., Malli Dei and Lakshmi Amma Anr. v. Sagnna Bhagath & Ors., Since there is a conflict of



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judicial opinion on the question involved in this case it is necessary to examine the above cases at some length. The law in force in England on the above question is summarised in Halsbury's Laws of England (Fourth Edition), Vol. 25, Para 579 thus :

"579. Position of third party, The policy money payable on the death of the assured may be expressed to be payable to a third party and the third party is then prima facie merely the agent for the time being of the legal owner and has his authority to receive the policy money and to give a good discharge; but he generally has no right to sue the insurers in his own name. The question has been raised whether the third party's authority to receive the policy money is terminated by the death of the assured; it seems, however, that unless and until they are otherwise directed by the assured's personal representatives the insurers may pay the money to the third party and get a good discharge from him."

.....

12. Moreover there is one other strong circumstance in this case which dissuades us from taking a view contrary to the decisions of all other High Courts and accepting the view expressed by the Delhi High Court in the two recent judgments delivered in the year 1978 and in the year 1982. The Act has been in force from the year 1938 and all along almost all the High Courts in India have taken the view that a mere nomination effected under section 39 does not deprive the heirs of their rights in the amount payable under a life insurance policy. Yet Parliament has not chosen to make any amendment to the Act. In such a situation unless there are strong and compelling reasons to hold that all these decisions are wholly erroneous, the Court should be slow to take a different view. The reasons given by the Delhi High Court are unconvincing. We, therefore, hold that the judgments of the Delhi High Court in Fauja Singh's case (supra) and in Mrs. Uma Sehgal's case (supra) do not lay down the law correctly. They are, therefore, overruled. We approve the views expressed by the other High Courts on the meaning of section 39 of the Act and hold that a mere nomination made under section 39 of the Act does not have the effect of conferring on the nominee any beneficial interest in the amount payable under the life insurance policy on the death of the assured. The nomination only indicates the hand



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which is authorised to receive the amount, on the payment of which the insurer gets a valid discharge of its liability under the policy, The amount; however, can be claimed by the heirs of the assured in accordance with the law of succession governing them. (emphasis supplied)

13. In view of the above conclusion, the judgments and decrees of the High Court, the first appellate court and the trial court are liable to be set aside. They are accordingly set aside. Since it is not disputed that the plaintiffs are under the law of succession governing them each entitled to 1/3 share in the estate of the deceased, it is hereby declared that each of the plaintiffs is entitled to 1/3rd share in the amount received under the insurance policies in question and the interest which may have been earned by its investment. The suit stands decreed accordingly."

12. In Vishin N.Khandchandani v. Vidya Lachmandas Khanchandani [CDJ 2000 SC 353], the question whether the nominee specified in the National Savings Certificate, on the death of its holder, becomes entitled to the sum due under the certificate to the exclusion of all other persons ? Or whether the amount of the certificate can be retained by him for the benefit of the legal heirs of the deceased? came up for consideration before the Hon'ble Supreme Court and it was held as under:

" 9.It is contended on behalf of the appellants that the non obstante clause in Section 6 excludes all other persons, including the legal heirs of the deceased holder, to claim any right over the sum paid on account of the national savings certificates, to the nominee. There is no doubt that by non-obstante clause the Legislature devices means which are usually applied to give overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other statute. In other words such a clause is used to avoid the operation and effect of all contrary provisions. The phrase is equivalent to showing that the Act shall be no impediment to measure intended. To attract the applicability of the phrase, the whole of the section, the scheme of the Act and the objects and reasons for which such an enactment is made has to be kept in mind.



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10. The submission made on behalf of the appellants has no substance in view of sub-section (2) of Section 8 and the Statement of Objects and Reasons necessitating the passing of the Act. Sub-section (1) of Section 8 provides that if any payment is made in accordance with the provisions of the Act to a nominee, the same shall be a full discharge from all further liabilities in respect of the sum so paid. Section 7 of the Act provides that after the death of the holder of the savings certificates payment of the sum shall be made to the nominee, if any, and sub-section (1) of Section 8 declares that such payment shall be a full discharge from all further liabilities in respect of the sum so paid. However, sub-section (2) of Section 8 specifies that the payment made to the nominee under sub-section (1) shall not preclude any executor or administrator or the legal representative of the deceased holder of a savings certificate from recovering from the person receiving the same under Section 7; the amount remaining in nominee's hand after deducting the amount of all debts or other demands lawfully paid or discharged by him in due course of administration. In other words though the nominee of the national savings certificates has a right to be paid the sum due on such savings certificates after the death of the holder, yet he retains the said amount for the benefit of the persons who are entitled to it under the law of succession applicable in the case, however, subject to the exception of deductions mentioned in the sub-section. In the Statement of Objects and Reasons of the Act it is stated:

"The Post Office National Savings Certificate Ordinance, 1944 (42 of 1944), issued under Section 72 of the Ninth Schedule to the Government of India Act, 1935, as originally enacted and continued in force by virtue of the provisions of the India and Burma (Emergency Provisions) Act, 1940 (3 and 4 Geo. 6, Ch. 33) regulates the sale and discharge of National Savings Certificates issued through the Post Office. Suggestions have been made from time to time that as the production of legal proof of succession involves considerable delay and expense, the holders of savings certificates may be allowed the right to nominate one or more persons to receive the amounts due in respect of such certificates in the event of their death without the production of succession certificate or other proof of title. In seeking to amend that



Ordinance for the above purpose, opportunity is taken to replace it by an Act of Parliament." (emphasis supplied)

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11. In the light of what has been noticed hereinabove, it is apparent that though language and phraseology of Section 6 of the Act is different than the one used in Section 39 of the Insurance Act, yet, the effect of both the provisions is the same. The Act only makes the provisions regarding avoiding delay and expense in making the payment of the amount of the national savings certificates, to the nominee of holder, which has been considered to be beneficial both for the holder as also for the post office. Any amount paid to the nominee after valid deductions or becomes the estate of the deceased. Such an estate devolves upon all persons who are entitled to succession under law, custom or testament of the deceased holder. In other words, the law laid down by this Court in Sarbati Devi's case holds field and is equally applicable to the nominee becoming entitled to the payment of the amount on account of national savings certificates received by him under Section 6 read with Section 7 of the Act who in turn is liable to return the amount to those, in whose favour law creates beneficial interest, subject to the provisions of sub-section (2) of Section 8 of the Act. (emphasis supplied)

12. Under the circumstances this appeal is allowed with a direction that the succession certificates shall be issued in favour of the respondents in respect of debts detailed in Annexures A and B to the application filed in the Court of Civil Judge, Senior Division, Thane subject to their payment of necessary court fees and estate duty certificate. The respondents would, however, not be entitled to directly receive the amounts payable on account of debts payable under National Savings Certificates at Sl.Nos.17 to 26 in Annexure A and Sl.Nos.1 to 4 in Annexure B. The appellants are held entitled to receive the sum due on the aforesaid national savings certificates in which they are the nominees upon furnishing the undertaking in terms of sub-section (2) of Section 8 of the Act in the court of Civil Judge, Senior Division, Thane. The amount received by the appellants on account of the national savings certificates in which they are nominees shall be payable to the respondents after deduction of the



amounts of debts or other demands lawfully paid or discharged, if any. Costs made easy."

13. A learned Single Judge of this Court in the decision in *Vidyaa Hari Iyer v. M/s.Sundaram Finance Limited* [CDJ 2020 MHC 4925], by following the ratio laid down in *Sarabati Devi's* case (cited supra) and *Vishin N.Khandchandani's* case (cited supra), has observed as follows:

"17. As far as Section 45ZA of the Banking Regulation Act is concerned, the above section indicate that the amount shall be paid to the nominee. It is also to be noted that Section 45ZD makes it clear that when there is an Order or a certificate or other authority from a Court obtained relating to such article is produced before the bank, the bank shall take due note of such decree, Order, certificate or other authority. Therefore, it cannot be said that even after the succession certificate is granted by the competent Court is produced before the bank, they cannot ignore the same merely on the basis of Section 45ZA of the Banking Regulations Act. Even though 45ZA contained non obstante clause, the Apex Court in *Vishin N. Khanchandani Vs. Vidya Lachamandas Khanchandani* reported in 2000 (6) SCC 724 in para 11 has categorically held that though the over riding effect of non obstante clause to attract the applicability of the phrase, the whole of the section, the scheme of the Act and the objects and reasons for which such an enactment is made have to kept in mind, as the nominee has to be treated as a trustee and he is entitled to receive the amount only and he has to pay the amount to the persons who are entitled under law of succession. Therefore, when the succession certificate already granted, the object of the Indian Succession Act has to be given importance. Accordingly, the contention that only the nominee alone as per section 45ZA of the Banking Regulations Act is entitled to receive the money even after succession certificate is granted, cannot be countenanced. Therefore, merely because a suit has been filed at a later point of time at the instance of the nominee, despite the succession certificate has been produced, the same has no relevance to decide this application. If at all the second respondent in the event of succeeding in the suit in O.S.No.5683 of 2019, to realise the amount, this Court is of the view that some security has to be offered by the applicant herein. The learned counsel for the applicant Mr.Mohan submitted that in C.S.No.899



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of 2017 already 1/4th share of the applicant has been declared and preliminary decree is already passed and charge may be created in respect of the above 1/4th share of the applicant towards the deposit amount till the interpleader suit is decided." (emphasis supplied)

14. The Hon'ble Supreme Court in Sarabati Devi's case (cited supra) held that nomination only indicated the hand which is authorized to receive the amount, on the payment of which the insurer get a valid discharge of its liability under the policy and the amount, however, can be claimed by the heirs of the assured in accordance with the Law of Succession governing them. The decision of this Court in Vidya Hari Iyer's case cited supra emphasis the dictum that the nominee has to be treated as a trustee and he is entitled to receive the amount only and he has to pay the amount to the persons who are entitled under Law of Succession.

15. It is not in dispute that the writ petitioners as well as the respondents 3 and 4 are Class-I Legal Heirs of the deceased. But the fourth respondent / mother of the petitioner has disputed the said fact. The grievance of the petitioners is that the respondents 3 and 4, being the parents of the deceased as well as nominees appointed by the deceased, are making attempts to withdraw the entire terminal benefits of the deceased, except the amount of Group Insurance amount of Rs.7,00,000/- and the respondents 3 and 4 are entitled only to their respective share as per nomination. Though the deceased late H.Jayachandran had nominated his parents, namely the respondents 3 and 4 as nominees, in view of the above settled legal position, the legal heirs of the deceased employee alone are entitled for their respective shares and the nominee cannot have any absolute right to claim the amount of the deceased.

16. In view of the above settled legal position in the decisions cited supra, the dispute with regard to claiming the benefits of the deceased has to be agitated only before the competent Civil Court. Therefore, it is open to either of the parties to approach the Civil Court and based on the Civil Court decree, the parties can approach the respondent 1 and 2 to claim their shares. However, in order to protect the interest of parties in the interregnum, this Court directs the respondent 1 and 2 / Life Insurance Corporation to deposit the terminal and other benefits except Group Insurance Amount of the deceased Late H.Jayachandran, in any one of the Nationalized Banks till obtaining of decree from the competent Civil Court. The respondents 1 and 2 shall also intimate to the petitioners as well as the contesting respondents / respondents 3 and 4, by



furnishing the details as regards the deposit of amounts in nationalised bank.

17. The Writ Petition stands disposed of with the above directions. No costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

Jvm

To

1. The Senior Divisional Manager,
Life Insurance Corporation of India,
Coimbatore Division, India Life Building,
Trichy Road, Coimbatore-641 018.
2. The Manager [OS],
Life Insurance Corporation of India,
Coimbatore Division, India Life Building,
Trichy Road, Coimbatore-641 018.

+1cc to M/s.N.Manokaran, Advocate, S.R.No.67763

+1cc to M/s.S.S.Swaminathan, Advocate, S.R.No.67645

W.P.No.2934 of 2010

UM(CO)
RLP(27/01/2022)