IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3256 OF 2021

Pune Divisional Insurance Agents
Co-operative Credit Society Ltd.,
Through its Secretary,
Pramod S/o Suresh Kadlag,
Age : 49 years, Occu : Service and Secretary,
R/o. Sangamner, Tq. Sangamner,
Dist. Ahmednagar .. Petitioner

Versus

1. The State of Maharashtra
Through the Secretary
Cooperation and Textile Department
Maharashtra State,
Mantralaya, Mumbai - 32.

2. The Commissioner and Registrar
Co-operative Societies Maharashtra State,
Pune

3. Life Insurance Corporation of India
"Jeevan Prakash" 4th Floor,
Sir PM Road, Fort, Mumbai - 01.
Through its Regional Manager

4. Life Insurance Corporation of India
"Yogakshema", Jeevam Bima Marg,
Nariman Point, (P.B. No. 19953),
Mumbai PIN 400 021.
Through it Chairman / Managing Director

5. Life Insurance Corporation of India,
Pune Divisional Office-I,
Shivaji Nagar, Pune,
District Pune.
Through its Senior Divisional Manager,

6. Life Insurance Corporation of India,
Pune Divisional Office-II,
Mahavir Park, Building, 4th Floor,
Satara Road, Pune,
Through its Senior Divisional Manager,

7. The Branch Manager,
Life Insurance Corporation of India,
Branch No. 95-X, Opposite Bus-stand,
Ahmednagar, District - Ahmednagar

8. The Branch Manager,
Life Insurance Corporation of India,
Branch No. 95-T, Opposite Bazar Tal.,
Shringonda, Tal. Shrigonda,
District – Ahmednagar .. Respondents

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Advocate for the petitioner : Mr. R.N. Dhorde, Sr. Counsel i/b. Mr. V.H. Dighe
AGP for the respondent – State : Mrs. M.A. Deshpande
Advocate for the respondents no. 3 to 8 : Mr. G.S. Rane

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CORAM : MANGESH S. PATIL & SANDEEP V. MARNE, JJ.

RESERVED ON : 25 JULY 2022
PRONOUNCED ON : 02 AUGUST 2022

JUDGMENT (MANGESH S. PATIL, J.) :

Heard.

2. Rule. Rule is made returnable forthwith. Learned AGP waives service for the respondents no. 1 and 2. Mr. Rane G.S. waives service for respondents no. 3 to 8.

3. At the joint request of the parties, the matter is heard finally at the stage of admission.

4. The petitioner is a credit co-operative society duly registered under the Maharashtra Co-operative Societies Act, 1960 (hereinafter ‘the Societies Act’). As a part of its function, it provides financial assistance to its members who are *inter alia* agents of the respondent no. 3 – Life Insurance Corporation of India which has its genesis in the Life Insurance Corporation Act, 1956 (‘LIC Act’). It is being averred by the petitioner - society that the respondent nos. 7

and 8 which are the branches of the LIC had undertaken to deduct monthly installments from the commission to be paid to the agents who have taken loan from it. Since 1979, this has been the arrangement. The installments were deducted from the commission to be paid to such agents and remitted to the petitioner – society. The LIC, however, stopped this practice since February 2020. It, therefore, submitted a representation to the LIC on 26-11-2020 but the latter by its letter dated 21-12-2020 refused to make the deductions saying that the practice will not be followed thenceforth.

5. The learned senior advocate Mr. Dhorde for the petitioner - society would submit that the LIC having been established under the LIC Act is a 'State' under Article 12 of the Constitution of India and amenable to the writ jurisdiction. He would then submit that the conduct of the LIC informing that it would stop making any deduction from the commission is in clear violation of the provisions of section 49 of the Societies Act. It is a statutory obligation of the LIC to deduct the installments from the commission payable to the agents who have borrowed money from the petitioner society and to remit it.

6. Mr. Dhorde would submit that even the agents are the employees of the LIC. To buttress his submission, he would submit that the agents are appointed strictly in accordance with the Life Insurance Corporation of India (Agents) Regulations, 2017 ('Agents Regulations'). For all purposes the relationship of employer-employee exists between

the LIC and the agents. He would rely upon the decisions in the matters of *Indian Banks Association Vs. Workmen of Syndicate Bank and others; (2001) 3 SCC 36*, *Silver Jubilee Tailoring House and others Vs. Chief Inspector of Shops and Establishments and another; (1974) 3 SCC 498* and *Pachora Peoples' Co-operative Bank Ltd. Vs. Employees Provident Fund Organization; (2017) 2 Mh.L.J. 946*.

7. As far as the liability of employer under section 49 of the Societies Act, Mr. Dhorde would rely upon the decisions in the matters of *New Phaltan Sugar Works Ltd. and others Vs. State of Maharashtra and others; 2004(3) Mh.L.J. 266* and *Poona Post and Telecom Co-operative Credit Society Ltd. Vs. Union of India and others; 2010(1) Mh.L.J. 858*.

8. The learned Advocate Mr. Rane who appears for the respondents no. 3 to 8 submits that the LIC agents who are appointed and whose services are regulated by the Agents Regulations are not the employees but merely agents. Section 49 of the Societies Act would enjoin the employer and pre-supposes that there exists employer-employee relationship between the employer and the agents who are the members of the credit co-operative society. That being not the case, there is no statutory obligation on the LIC to make any deduction. There is a vast distinction between the employees of the LIC and its agents. They are only paid commission. The essential element to establish the employer-employee relationship in the nature

of salary or regular remuneration etc. are clearly absent in case of agents. They are merely paid commission which in turn depends upon the business they provide to the LIC. Though there are certain regulations regarding their appointments and tenure, they are not the employees. There is no scope for any such interpretation. The special enactment has come into force pursuant to the enabling powers under section 49 of the LIC Act. There is no scope to draw any other interpretation.

9. Lastly, Mr. Rane would submit in the alternative that even if it is assumed that there exists some non-statutory contract, the remedy lies elsewhere and not in the form of a writ petition. In support of this submission, he would rely upon the decisions in the matters of *Bareilly Development Authority and another Vs. Ajay Pal Singh and others; AIR 1989 SC 1076(1)* and *State of Bihar and others Vs. Jain Plastics and Chemicals Ltd.; AIR 2002 SC 206.*

10. We have considered the submissions of the learned advocates of both the sides and perused the papers.

11. At the outset, it is necessary to note that in view of the specific wordings of section 49 of the Societies Act, it is indeed a statutory duty of an employer to honour the agreement between its employee and the credit society from whom he borrows money, to make monthly deductions from his salary and to remit it to such society.

Section 49 of the Societies Act reads thus :

> "**Section 49 - Deduction from salary to meet Society's claim in certain cases**
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> (1) A member of a society may execute an agreement in favour of the society, providing that his employer shall be competent to deduct from the or wages payable to him by the employer, such total amount payable to the society and in such installments as may be specified in the agreement and to pay to the society the amounts so deducted in satisfaction of any debt or other demand of the society against the member. A copy of such agreement duly attested by an officer of the society shall be forwarded by the society to the employer.
>
> (2) On receipt of a copy of such agreement, the employer shall, if so required by the society by a requisition in writing, and so long as the [total amount shown in the copy of the agreement as payable to the society has been deducted and paid to the society,] make the deduction in accordance with the agreement and pay the amount so deducted to the society, as if it were a part of the wages payable by him as required under the Payment of Wages Act, 1936 on the day on which he makes payment.
>
> (3) If after the receipt of a requisition made under the foregoing sub-section,the employer at any time fails to deduct the amount specified in the requisition from the salary or wages payable to the member concerned, or makes default in remitting the amount deducted to the society, the employer shall be personally liable for the (payment of such amount or where the employer has made deductions but the amount so deducted is not remitted to the society, then such amount together with interest thereon at one and half times the rate of interest charged by the society to the member for the period commencing on the date on which the amount was due to be paid to the society and ending on the date of actually remitting it to the society; and such amount together with the interest thereon, if any, shall, on a certificate issued by the Registrar, be recoverable from him as an arrear of land revenue, and the amount and interest so due shall rank in priority in respect of such liability of the employer as wages in arrears.

> (4) Nothing contained in this section shall apply to persons employed in any railways (within the meaning of the Constitution) and in mines and oil fields.”

As can be gathered, the legal obligation would occur on an employer provided there exists the employer-employee relationship. Precisely here, the parties are at two poles. According to the petitioner – society, the LIC’s agents are its employees whereas the respondent – LIC is disputing the fact.

12. There is a specific regulation in the form of Agents Regulations which lays down elaborate provisions for their appointments, as also regulates their relationship with the LIC. All the provisions regarding their qualification, appointments, training, examination/re-appointments, functions, commission, gratuity, termination, resignation, disqualification, appeals have all been provided for in these regulations.

13. Though attractive the submission of Mr. Dhorde, does not appeal to us. True it is that the agents of the LIC have a special relationship with it but it cannot be equated with the relationship between the regular employees and the LIC.

14. Apart from the fact that the legislature has consciously used separate description for an employee and an agent in the LIC Act as also the Agent Regulations, merely because the Agent Regulations have been brought on the statute book providing for the afore-

mentioned aspects, in our considered view, the necessary attributes which are required for constituting the relationship of an employer-employee is clearly missing between the LIC and its agents. Merely by using similar words which are generally used in respect of a regular employee like qualification, appointments, training, re-appointment, commission, termination, gratuity etc., it cannot be said that the legislature intended that such agents would constitute LIC's employees.

15. Needless to state that in view of the peculiar constitution of the LIC and its function of indulging in insurance business, it was imperative for it to have the agents to provide it business. However, such agents cannot be equated with the regular employees. There is no fixed tenure, age limit or fixed remuneration. There is no progression, there is no age of superannuation which are all the attributes which come with an employment.

16. In the case of *Indian Banks Association* (supra) though it was held that commission agents of the banks would be workmen under section 2(s) of the Industrial Disputes Act, 1947, clearly it was a matter under that Act. Again in the matter of *Silver Jubilee Tailoring House and others* (supra) it was also a matter under Andhra Pradesh (Telangana Area) Shops and Establishments Act, 1951, section 2(14) and the issue was pertaining to applicability of Payment of Wages Act, 1936, in case of tailoring shops and the tailors and the issue was

whether the latter were employees of the former. Present one is a matter under the LIC Act and the Agents Regulations and will have to be understood in the same context.

17. Pertinently, in the matter of *Indian Banks Association* (Supra), it was held that the commission being received by the Deposit Collectors was 'wage' within the meaning of section 2(rr) of the Industrial Disputes Act, 1947. The provision similar to which is not available either under the LIC Act or the Agents Regulations. More importantly, it has been observed in the case of *Indian Banks Association* (supra) that though the Deposit Collectors of a bank were held to be workmen, there was no question of their absorbtion in the regular cadre as employees because not only the modes of selection and qualification of Deposit Collectors were not comparable with those of the regular employees and the work was not comparable and even the claim of the Deposit Collectors to have same pay scales, allowances and service conditions as that of the regular employees of the bank was not acceptable.

18. We are, therefore, of the considered view that the LIC agents cannot be considered and equated with the regular employees of the LIC.

19. In view of such a conclusion, the logical and legal corollary would be that the relationship between the LIC and its agents will not

be that of an employer-employee which is a sine qua non for attracting the statutory liability under section 49 of the Societies Act.

20. Needless to state that in an appropriate case like the one decided by this Court in *Poona Post and Telecom Co-operative Credit Society Ltd.* (supra), an employer would be under statutory obligation under section 49(2) of the Societies Act, to deduct monthly installments from the salaries of its employees and remit it to the credit co-operative society.

21. Resultantly, we cannot accept the submission of learned senior advocate Mr. Dhorde that the respondent – LIC is under statutory obligation to make the remittances to the petitioner.

22. However, at the same time, we find that there is ample material to demonstrate that irrespective of afore-mentioned position of law, factually, the respondent nos. 7 and 8 which are the branches of the LIC, by its consistent conduct in expressly resorting to and conducting itself as if it was bound by section 49 of the Societies Act for decades together, it would be a case of *promissory estoppel* and implied contract wherein it must be held to have agreed to make periodical deductions and remittances as contemplated in that section. By such a conduct, the petitioner - society has been made to believe that it would continue the practice of deducting the installments from the commission of the LIC agents and would make remittances periodically. It would not be permissible for them now, to turn around

after following such a course for years together and to refuse to make remittances.

23. However, since we have already held that the LIC is not under any statutory obligation under section 49 of the Societies Act, it is entitled to refuse to follow the course, but that can be only in respect of the loans disbursed by the petitioner - society to such LIC agents to whom the loans have been advanced after the petitioner - society was specifically put to notice by the communication in February 2020 whereby, for the first time it seems to have informed the petitioner - society its inability to make the remittances by deducting the commission. In other words, it is only in respect of the loans advanced by the petitioner - society to the agents of LIC till February 2020 that the respondent - LIC would be under an obligation to make deductions from the salaries and to remit the money to the petitioner - society. The respondent - LIC having put the petitioner - society to notice, if any advances were made by it after the receipt of this communication of February 2020, the petitioner - society can be stated to have done so at its own peril.

24. In view of above, we allow the petition partly.

25. The impugned communication dated 21-12-2020 would operate only prospectively. Respondent no. 6 should continue to make deductions from the salaries and remit the money to the petitioner - society in respect of the loans advanced by the petitioner prior to

February 2020. However, it will not be under any obligation statutory or otherwise to follow such a course in respect of the loans advanced by the petitioner - society after that date.

26. Rule is made absolute in above terms.

[SANDEEP V. MARNE]
JUDGE

[MANGESH S. PATIL]
JUDGE

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