IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **02.08.2023**

CORAM

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

WP No.17841 of 2019

C.Mayilsamy ... Petitioner

-Vs-

1. The Chairman
Life Insurance Corporation of India
Central Office, Yogakshaema
Post Box No. 19953
Jeevan Bimarg,
Mumbai – 400 021.

2. The Zonal Manager
Life Insurance Corporation of India,
L.I.C. Building, Anna Salai,
Chennai – 600 002.

3. The Senior Divisional Manager
Jeevan Prakash, Divisional Office
Johnsonpet, P.B.No.776,
Salem – 636 007. ... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records relating to the impugned order of the third respondent dated 04.08.2015 bearing Ref:No.DO/P&IR and that of the second respondent dated 17.06.2017 bearing Ref:No. NIL and quash the same and consequently, direct the respondents to reinstate the petitioner as the agent of the respondent Corporation with all continuity of service, monetary benefits and payment of all commissions and arrears.

***

For Petitioner	:	Mr. T. Sai Krishnan
For Respondents	:	Mr. J.T.Raja Suriya

ORDER

The Writ Petition has been filed in the nature of Certiorarified Mandamus seeking records relating to the impugned order of the third respondent / the Senior Divisional Manager, Jeevan Prakash, Divisional Office, Johnsonpet, P.B.No.776, Salem – 636 007, dated 04.08.2015 in Ref:No.DO/P&IR and that of the second respondent/ the Zonal Manager, Life Insurance Corporation of India, L.I.C. Building, Anna Salai, Chennai – 600 002, dated 17.06.2017 and quash both the said orders and direct the respondents to reinstate the petitioner as an agent of the respondent Corporation with continuity of service, monetary benefits and payment of all commissions and arrears.

2. The petitioner was an agent of the second respondent / Life Insurance Corporation of India. Even before proceeding further to address the facts in the Writ Petition, it must be stated in the outset that the role of an agent is akin to a bridge between the customer / assured and the insurer. Any contract of insurance is a contract of utmost good faith.

3. The insured is expected to disclose all existing and known medical conditions before taking a life policy. The agent is responsible to gather all possible evidence and medical records and history of any insured whatever be the age and present the same before the insurer so that the policy is not taken advantage of by anybody, with malicious motive. It is taboo to take a policy suppressing medical ailments and thereafter gain by laying a claim on the premium paid.

4. Viewed from this particular angle, every insurance company places utmost trust that every agent gathers proper and correct details from every insured person before admitting them to an insurance policy.

5. The learned counsel for the petitioner stated that the petitioner herein had been acting as an agent of the respondent / Life Insurance Corporation for well over 20 years prior to the date of the termination of his agency in the year 2013. Therefore, the petitioner is not a novice in the field. He has had considerable experience and should be aware of the rules and regulations and the trust which is placed on him, as agent of the insurance company. He has the responsibility to keep up that trust. Even if he commits fault in any one policy, there will be a complete break down of the trust which would necessitate, particularly if such fault is on the grounds of fraud, to terminate the agency. The rules provide for it. Fraud vitiates every solemn act.

6. In the instant case, the petitioner, who claims to have about 20 years of experience, had, in his own words known a particular insured called

Sudha "*from her childhood*". He was the agent, who introduced her and admitted her to a policy bearing No. 701015025. This was on 26.03.2000, when she was a minor. Later, documents show that she had congenital cyanotic heart disease and had been taking treatment at Chennai and also at Salem. Whether this fact was known to the petitioner or not is a mute question which begs an answer.

7. It is stated by the petitioner in his affidavit that she was thoroughly examined by a medical examiner authorised by the respondent and was declared as having a constitution with no adverse diagnosis. But this is not the end of the story.

8. There is a death certificate which has been produced along with the documents filed with the Writ Petition which states that Sudha had unfortunately died on 09.03.2011. But she had actually died much earlier on 19.12.2010. Again this is a question which begs an answer. The probability or possibility of ignorance of such knowledge by the petitioner having known her *from childhood* and also very importantly as the agent, who would provide the benefits which had accrued to her consequent to her having been admitted to a life insurance policy as early as 2000 is very remote. He cannot claim ignorance. He cannot plead innocence. The policy had been subsisting for atleast more than a decade and if the premiums had been properly paid, her legal heirs would stand to gain. The petitioner disclaims knowledge. But, as a fact, much later on the date of the false date of death ie., three months after the actual date of death on 19.03.2011, he had signed a form as a witness which stated that she died of snake bite. This statement is false. She had actually died in a hospital, taking treatment for her heart disease. The petitioner must realize that truthful facts would be very easily found out.

9. As always, the insurance company had their own private investigators to examine any doubtful claim. Therefore, the fact that she actually died in December 2010 came to light. The fact that she had an earlier heart disease came to light. The fact that she died consequent to such heart disease in a hospital at Salem also came to light.

10. By no stretch can it be said that a snake bite would cause congenital heart disease. Snake bite would be an independent cause of death. Therefore, the fact that the petitioner had signed in a form which indicated that she died on 19.03.2011 and on a form which on the face of it was false, makes it immaterial whether the petitioner knew the actual date and cause of death. That the lady died of snake bite is again a false statement.

11. After having come to know these facts, the respondents have taken recourse to their rights and followed due procedure which gave them the authority to terminate the agency of the petitioner. They followed the Guidelines which was in vogue on that particular date, namely, the Agents Regulations, 1972, Clause 16 provides for termination and they proceeded to do so and terminated the agency of the petitioner.

12. The petitioner then filed an Appeal before the Appellate Authority. The Agents Regulations, 1972 stipulates that the Appellate Authority should give a reasonable opportunity of representation to an appellant.

13. The order of termination also included a further order that the petitioner shall also be disentitled to receive any commission from any premium pay for any of the policies which he had earlier obtained for ever in future from that particular date. This is the actual source of grievance for the petitioner herein.

14. This Court had examined whether that would amount to imposing two separate punishments on a delinquent, who is stated to have been committed fraud.

15. The facts above makes it a clear case that termination of agency is warranted. I am not prepared to interfere with the same.

16. The only other aspect is the denial of payment of commission for premium which are earned for policies already admitted by the petitioner herein.

17. The learned counsel for the respondents placed reliance on Clause 19 of Agents Regulations, 1972 which provided about payment of commission on discontinuance of agency.

18. In order to complete the narrative, let me extract clauses 16, 19 and 23 of the Regulations.

*“"**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.*

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 aleast 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 letter, figures and word "Rs.2 lakhs" the letters and figures "Rs.50,000" had been substituted.

(2) *Any commission payable to an agent under sub-regulation (1) shall, notwithstandings 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 if substituting, to his heirs, so long such commission would have been payable h ad the agent been alive, provided he had continually worked as an agent for not less than 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 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 years 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 years subsequent to the said financial year.*

23. Consideration of appeals:

(1) *Where an appeal is received under these regulations, the appellate authority shall consider all the circumstances of the case and pass such orders as it deems fit:*

Provided that the appellant shall be given a reasonable opportunity of representing his case.

(2) *All appeals shall be disposed of as expeditiously as possible but not later than six* *months from the date of the receipt of the appeal by the appellate authority."*

19. The learned counsel for the respondents read Clause 19 by stating that if there is termination of agency on account of fraud then the clause has inbuilt a further punishment of discontinuance of payment of commission on premium for policies which had already been procured by the agent. It is contended that even if words are not so clear they have to be so interpreted. In clause 23 it had been very specifically stated that reasonable opportunity of representing the case must be given to the appellant.

20. The learned counsel for the petitioner however placed reliance on a subsequent regulation which had been issued in the year 2017 and pointed out that the appellate authority had relied on this particular regulation. The insistence of the learned counsel to place reliance on the regulations of the year 2017 is because it had been provided therein that before termination of an agency, an enquiry should be conducted by appointment of an Enquiry Officer and going through the rigour of an enquiry process. This particular feature was not available in the earlier regulation of the year 2017.

21. The termination of the agency against the petitioner was passed in the year 2013 and obviously at that time nobody, neither the petitioner nor the respondents could have ever imagined that four years later a further regulation would come into effect. Therefore, I hold that the regulations of the year 1972 alone would apply and the termination is therefore proper.

22. The only issue which plays on the mind of the Court is about the discontinuance of the payment of commission for business already done by the petitioner. This aspect has to be examined only by the respondents and since that would be an interpretation of their own regulations. It would not be prudent on the part of this Court to step into the shoes of the respondents and interpret their regulations. It would be only appropriate that they are given that particular opportunity.

23. The learned counsel for the respondents raised an apprehension that if such a direction is issued, it might be misunderstood that the Court had directed that the petitioner should be dismissed with payment of commission and discontinuance should be set aside by the respondents.

24. Let me make it very clear that no such directions are issued by this Court. The appellate authority has to provide reasonable opportunity to the appellant to place his representations. Let the representations be examined only to the issue of discontinuance of commission for business already done. Let the appellate authority interpret clause 19 of the 2017 Regulations and examine whether on termination of agency on account of fraud committed on a particular policy, it would also give a right to the respondents / Insurance Company to discontinue the payment of commission for that particular agent for premiums received from previous policies or whether that is an independent punishment which need or need not be imposed.

25. This is an issue which has to be addressed by the respondents as there is no clarity in the impugned orders on that particular issue. It is for that reason, instead of remitting the matter back to the authority in original, I would remit the matter back to the appellate authority on this very narrow ground.

26. On receipt of copy of this order, the respondents may issue notice to the petitioner herein and if at all the petitioner seeks reconsideration of discontinuance of payment of commission on business already done, then examine whether that order should be maintained or not. Fraud is quite evident in the policy which has been introduced by the petitioner relating to Sudha. Let that aspect alone be addressed on a reading of Clause 19 of the (Agents) Regulation Act, 1972.

27. Observing as above, the Writ Petition stands partly allowed by remitting the matter back to the appellate authority. The entire issue is to be disposed of within a period of three months from the date of receipt of a copy of this order. No costs.

vsg 02.08.2023

Index:Yes/No
Neutral Citation:Yes/No
Speaking order : Yes/No
To

1. The Chairman
Life Insurance Corporation of India
Central Office, Yogakshaema
Post Box No. 19953
Jeevan Bimarg,
Mumbai – 400 021.

2. The Zonal Manager
Life Insurance Corporation of India,
L.I.C. Building, Anna Salai,
Chennai – 600 002.

C.V.KARTHIKEYAN,J.

vsg

3. The Senior Divisional Manager
Jeevan Prakash, Divisional Office
Johnsonpet, P.B.No.776,
Salem – 636 007.

WP No.17841 of 2019

02.08.2023