



W.P. No.34046/2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
27.03.2023	31.03.2023

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

**W.P. NO.34046 OF 2019
AND
W.M.P. NO.34700 OF 2019**

K.Jitendra Kumar

.. Petitioner

- Vs -

1. The Senior Divisional Manager
(Disciplinary Authority)
Divisional Office, India Life Building
P.B. No.3810, Trichy Road
Coimbatore.

2. The Branch Manager
LIC of India
Sivagiri Branch, Sivagiri
Erode District.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying
this Court to issue a writ of certiorarified mandamus calling for the records
relating to the impugned order made in Ref. P & IR dated Nil.10.2019 passed



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by the 1st respondent and quash the same as illegal and consequently direct the respondents to unblock the petitioner's portal to continue in the office and give renewal commission from the agent code from the date of blocking to till unblocking.

For Petitioner : Mr. M.Mahendran

For Respondents : Mr. C.K.Chandrasekar, Std. Counsel

ORDER

The blocking of the agency code of the petitioner and the forfeiture of the renewal commission payable to the petitioner pursuant to the punishment imposed in the disciplinary proceedings taken against the petitioner resulting in the blocking of the agency portal of the petitioner has resulted in the filing of the present writ petition.

2. It is the case of the petitioner that the petitioner has been doing Agency business with the 2nd respondent Branch since 16.8.1999 and for the past 19 years, the petitioner has been doing extensive business in procuring policies and had been honoured with the position of Chairman's Club Member and ranks among the top 200 agents all over India. It is the further averment



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of the petitioner that he collects the policy proposal forms along with the cheque/cash from the customer and registers the same with the 2nd respondent Branch for being accepted and issued with a policy, which is thereafter collected by the petitioner and handed over to the customers.

3. The petitioner alleges that the Branch Manager can very well manipulate the payments against a particular policy and in the year 2010, the 2nd respondent Branch manipulated more than 100 policies by using the uncleared pending deposits. It is the further averment of the petitioner that on 31.3.2010, the Branch Manager, Assistant Branch Manager and Administrative Officer had jointly asked all the agents to collect premium till 9.00 p.m. and remit the same with the Branch and in consonance with the said direction, the petitioner remitted Rs.17,820/- by way of cash along with the proposal form before the 2nd respondent.

4. It is the further case of the petitioner that on 26.11.2014, the 2nd respondent served a notice on the petitioner stating that the petitioner had utilised three uncleared deposit of other customers to which the petitioner



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submitted his reply that he was unaware of the deposits as the petitioner is not authorized to utilise the third party uncleared pending deposits. The said explanation, though was accepted by the 2nd respondent, however, on 17.5.2015, the Divisional Officer, Coimbatore raised the same issue seeking the explanation of the petitioner to which the petitioner submitted a detailed explanation.

5. It is the further case of the petitioner that on 5.12.2017, the petitioner was visited with a notice from the 1st respondent stating that three uncleared long pending deposits, dishonour of cheque proceedings against cheque No.433153 for Rs.1805/- was initiated wrongly instead of cheque No.233267 amounting to Rs.1015 for which the petitioner was held responsible and the noticed alleged that the petitioner had violated the rules and procedures of the Corporation. Pursuant to the said notice, the respondents framed five charges against the petitioner for which the petitioner gave detailed explanation on 28.12.2017 stating that the incidents related to the period 2009-2011 and, therefore, time was sought for along with certain documents to file explanation vide request dated 4.1.2018.



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However till 15.2.2018 there was no response and the respondents proceeded with initiating proceedings against the petitioner by appointing enquiry officer, who conducted enquiry and submitted his report dated 25.5.2018.

6. It is the further case of the petitioner that during enquiry, the petitioner was not permitted to ask any questions and was not allowed to peruse any documents and no witnesses were examined by the petitioner to prove his innocence. The enquiry officer submitted his report holding the charges proved, which report was provided to the petitioner to which he submitted his explanation on 27.6.2018 and after considering the explanation of the petitioner, the impugned order has come to be passed.

7. It is the further case of the petitioner that even before order was passed by the 1st respondent, the 2nd respondent blocked the agency portal of the petitioner, which is in violation of principles of natural justice and the petitioner was not able to deposit the proposal amounts collected from the customers and had to return the same, which resulted in loss of goodwill. Therefore, the petitioner filed W.P. Nos.9470 and 24998 of 2019, seeking a



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direction to unblock the portal and disburse the renewal commission and for a further direction to quash the enquiry report dated 25.5.2018 passed by the 2nd respondent and direct restoration of his agency code. Pending the said writ petition, the present impugned order has been passed, resultantly, the petitioner has filed the present petition.

8. Learned counsel appearing for the petitioner, at the outset, submitted that though an order of interim stay was granted and renewal commission was directed to be paid to the petitioner, however, the petitioner has not been paid with the renewal commission, though the petitioner has complied with the direction to deposit a sum of Rs.50,000/-, subject to the result of the writ petition.

9. It is the further submission of the learned counsel that inspite of the petitioner seeking for documents during the enquiry, however, the documents have not been given to the petitioner, which is a clear violation of principles of natural justice and, therefore, the same vitiates the enquiry. It is the further submission of the learned counsel that the Branch Office Collection, which is



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maintained by the Branch could be utilised towards any unknown proposer by the Branch of which the Agent has no control. However, fastening the liability on the petitioner with respect to the Branch Office collection is wholly bad.

10. It is the further submission of the learned counsel that neither any witness nor any documents were marked barring a letter, which alone was marked during the enquiry and the petitioner was not provided with any opportunity to either adduce evidence or mark documents, which vitiates the enquiry proceedings and that the enquiry proceedings is a sham and conducted only as an eye wash to save the officials of the Branch from being proceeded with for malpractice.

11. It is the further submission of the learned counsel that the petitioner was not allowed assistance at the time of enquiry, which is in violation of Clause 6 of the 5th Schedule of LIC (Agent) Regulation, 2017. It is the further submission of the learned counsel that the basis on which the penalty amount has been arrived at Rs.2,87,785.50 is not known and no information has been provided to the petitioner. This clearly reveals that the



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order passed by the respondent is a non-speaking order and, therefore, is liable to be set aside.

12. It is the further submission of the learned counsel that even if the agency of the petitioner stands terminated, the renewal commissions, which is due and payable to the petitioner on the policies procured by him being in force, cannot be forfeited by the respondents and in this regard, reliance has been placed on the decision of the Delhi High Court in ***LIC of India – Vs – R.K.Mahajan & Ors. (2015 SCC OnLine Del 13616)***.

13. In fine, it is the submission of the learned counsel that the enquiry bristles with very many infirmities and violations and the enquiry itself not having been conducted in a proper manner by affording all reasonable opportunities to the petitioner by providing all the documents sought for, the consequential order of the 1st respondent, on the basis of the enquiry report, is wholly arbitrary, unreasonable and deserves to be interfered with.



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14. Per contra, learned standing counsel appearing for the respondents submitted that the earlier writ petitions filed against the enquiry report and the blocking of his agency portal in W.P. Nos.9470 and 24998 of 2019 did not elicit any interim orders and that being the case, the blocking of agency portal being in force, the renewal commission as directed to be paid cannot be paid till a quietus is reached in the earlier writ petitions filed by the petitioner.

15. It is the further submission of the learned standing counsel that the enquiry against the petitioner was conducted as per the guidelines envisaged in the 5th Schedule of the LIC of India (Agents) Regulations, 2017 and that the facts of the case as against the petitioner, which has been stated in the earlier writ petitions, has not been fully given in this writ petition. It is the further submission of the learned standing counsel that enquiry was conducted in a proper manner after affording all reasonable opportunity to the petitioner and that the petitioner was given all access to the documents.

16. It is the further submission of the learned counsel that the queries, both to the enquiry officer as also under RTI, raised by the petitioner are only



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instruments, with which the petitioner wanted to prolong the enquiry and are in no way connected with the malpractice committed by the petitioner. It is the further submission of the learned standing counsel that the financial interests of the Corporation were jeopardized by the act of the petitioner and the honesty and integrity of the petitioner is necessary for the survival of the Corporation, which is handling public money and the petitioner not being an employee and is bound only by the contractual terms as provided in the LIC of India (Agent) Regulations, cannot seek parity in the enquiry as is evidenced for the employees working in the Corporation.

17. It is the further submission of the learned standing counsel that the petitioner had violated Regulation 16 (1) (b) of the LIC of India (Agents) Regulations, 2017 for which action was taken by framing of charges. The charges framed against the petitioner are grave in nature and the earlier petitions questioning the enquiry as also the unblocking of agency portal are still pending without any interim directions, clearly show the gravity of offence committed by the petitioner.



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18. It is the further submission of the learned standing counsel that based on the enquiry report, the order dated 22.10.2019 has been passed by the 1st respondent imposing the penalty of termination of Agency under Regulation 16 (1) (b) and 16 (1) (h) of the Regulations with forfeiture of renewal commission under Regulation 19 (2) of LIC of India (Agents) Regulations, 2017 and recovery of Rs.2,87,785.50 being the wrongful loss caused to the Corporation. The said amount was recovered from the commission paid for the period from 1.8.2018 to 22.10.2019. Only thereafter, instead of pursuing the earlier writ petitions, the present writ petition has been filed by the petitioner, which attracts the bar of *res judicata*. The petitioner is estopped from agitating the very same grievance, which forms the basis of the earlier writ petitions.

19. It is the further submission of the learned standing counsel that the charges imputed against the petitioner are so grave in nature that continuing the petitioner would not be in the interest of the institution as well as the insured, as the act of the petitioner is detrimental to both the sides, which is



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evident from the charges, which have been framed and proved against the petitioner.

20. It is also submitted by the learned standing counsel that disciplinary action had been initiated against the officials of the Corporation, who had acted in contravention of the manual and they have been inflicted with punishment and that it is not only the petitioner, who has been subjected to punishment, but the erring officials as well, which clearly reveal that the respondents have taken the step to cleanse the system, and, therefore, the act of the respondents in the present case cannot be said to be arbitrary. The respondents having properly considered all the materials to come to the conclusion as to the delinquency committed by the petitioner, has rightly passed the impugned order, which cannot be found fault with and, accordingly, prays for dismissal of the present petition.

21. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.



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22. At the very outset, it is to be pointed out that the relationship between the petitioner and the respondents is not an employer-employee relationship, but is a contractual relationship and, therefore, the strictest manner in which the disciplinary proceedings should be conducted would not be applicable to the present case. However, it should not be forgotten that the proceedings should be in strict compliance of principles of natural justice so that there is no detriment to either party. However, the disciplinary proceedings would always be governed by the ratio laid down by the Courts, where it would be very much within the realm of the disciplinary authority to analyze the evidence on the touchstone of preponderance of probabilities and it is not like the evidence that would be required in a criminal trial where the standard of proof required to establish a charge is strict.

23. The petitioner in the present case is governed by the LIC of India (Agents) Regulations. Disciplinary action has been taken against the petitioner under the aforesaid Regulations and the petitioner charge has been framed for acts falling under Regulation 16 (1) (b) and infliction of punishment has



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been made under Regulations 16 (1) (b) and 16 (1) (h), which are quoted hereunder :-

“16. Termination or suspension of agent for certain lapses. – (1) The competent authority may, by order, in writing, terminate the appointment of an agent, after due notice and after giving him a reasonable opportunity of being heard in accordance with the procedure laid down in the Fifth Schedule, if he –

** * * * **

(b) acts in a manner prejudicial to the interests of the Corporation or to the interests of its policyholders;

** * * * **

(h) if the competent authority is satisfied that either directly or indirectly the agent is involved in embezzlement of premiums or cash collected from policyholders or prospects or on behalf of Insurer and he has been knowingly involved in or connived at any fraud, dishonesty, misrepresentation, misappropriation, cheating and forgery against the Corporation or its policyholders or any of its subsidiaries or against any person having official dealings with the Corporation or any of its subsidiaries;

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24. There is no quarrel from the petitioner with regard to the invocation of Regulation 16 (1) (b) and (h). The whole grievance of the petitioner is only with regard to violation of principles of natural justice, in that, he has not been granted with the materials which he has sought for to defend himself. The further grievance of the petitioner is with regard to the punishment imposed, as his act would not warrant such a punishment even if it is accepted that he has committed the said act.

25. In this background, a perusal of the materials available on record reveal that notice has been issued to the petitioner relating to the enquiry proceedings by framing the necessary charges. Thereafter, sequentially, on 4.1.2018, 15.2.2018, 13.4.2018 and 23.4.2018, the petitioner has sought for certain documents, which was thereafter sought for by the petitioner by filing a request under the Right to Information Act.

26. From a perusal of the letters and the application under RTI Act, the documents sought for by the petitioner does not relate to the proposals and the Branch Office Collection receipts, which are the matters in issue in which



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the Branch Office Collection pertaining to one proposal has been utilised for another proposal without following the due procedure, but the said documents are queries on which certain answers are solicited by the petitioner. In fact, some of the queries relate to the operation of the Corporation. The queries are more in the nature of a fishing expedition by which the petitioner is seeking to wriggle out of the charge.

27. All the charges relate to policy transactions of various persons, who had given proposal for insurance and payment of policy amount, which is alleged to have been misused by the petitioner without proper authorisational mandate. Nowhere in the letters, the documents sought for by the petitioner relate to some piece of information, which could absolve the petitioner from the offence. It is the procedural operation of the Corporation that is sought for by the petitioner. Even the application under the Right to Information Act is of the same substance for which the respondents have replied that on certain counts no documents are available and for the other queries, certain information have been provided. Therefore, it is not as if the petitioner has not been provided with any document. In such a background, it cannot be



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held that the petitioner has not been provided with the requisite materials to defend himself and, therefore, the violation attributed by the petitioner does not have any legs to stand.

28. Further, if the queries as raised by the petitioner are sought to be fulfilled so as to proceed with the enquiry, the enquiry can never see the light of the day. The petitioner has broken the trust reposed on him by the Corporation and the act of the petitioner, as is evidenced from the typed set of documents, more specifically the various communications addressed by the petitioner soliciting information and documents, clearly show the manner in which the petitioner had prolonged the enquiry. Much of the questions, which have been raised in the said letters, addressed by the petitioner to the respondents do not have any nexus with the charges and are nothing but roving expedition conducted by the petitioner for the purpose of prolonging the enquiry.

29. Thereafter, the other grievance of the petitioner with regard to the disciplinary proceedings is that he is not allowed to have a defence assistant to



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assist him. It is to be pointed out that the Agents are covered by the Regulations, which does not provide for assistance in the event of a disciplinary proceeding being undertaken against an agent. Fifth Schedule of the Regulation deals with disciplinary action against an agent. The clauses contained therein do not provide for a defence assistant to be provided for enabling the Agent to defend himself. What is provided for therein is that, either the Agent may appear in person or appear through any person duly authorised by him, subject to the prior approval of the competent authority. In the case on hand, the petitioner had requested the assistance of a Defence Assistance, which is not provided under the Regulations and such being the case, it was well within the domain of the Disciplinary Authority to negate the said request and no fault can be found with the said act of the disciplinary authority.

30. The last of the issue relates to affording a reasonable opportunity of hearing. Regulation (5) of Regulation 1 of the Fifth Schedule provides that the enquiry officer shall give a reasonable opportunity of hearing to the agent to enable him to make submissions in support of his reply. In the case on hand, a



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careful perusal of the materials available on record clearly reveal that the petitioner has been given an opportunity of hearing and that he had appeared before the enquiry authority to defend himself. Such being the case, the allegation of violation of principles of natural justice by the petitioner is wholly whimsical and an after-thought thought about only for the purpose of the present case.

31. On a holistic consideration of the entire materials available on record, this Court is of the considered view that the enquiry has been conducted in a proper manner and a finding has been recorded on the basis of materials and this Court cannot step into the shoes of the enquiring authority and disciplinary authority and substitute its views by reappreciating the entire evidence, which is not within the domain of this Court. The proof has to be appreciated on preponderance of probability, as is the normal manner in which disciplinary proceeding against an employee would be conducted, but in this case, it is to be confined within the four corners of the Regulations. The respondents have properly considered the issue and conducted the enquiry and held the petitioner guilty, which cannot be interfered with by this Court.



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32. Coming to the question of punishment, it is to be pointed out that it is always within the powers of the disciplinary authority to impose punishment with regard to the delinquency committed. Further the punishment that is to be imposed is also provided for in the Regulations. The only issue that is of concern is whether the petitioner would be entitled for renewal commission upon termination or the respondents are within their authority to forfeit the same. In this regard, the decision of the Division Bench of the Delhi High Court in *Mahajan's case* has been relied upon by the petitioner, which also relates to Agency under the Life Insurance Corporation of India.

33. Regulation 19 is the pivotal Regulation covering the payment of commission to an agent upon discontinuance of agency. For better appreciation, the said Regulation is extracted hereunder:-

"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



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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 lakhs", 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



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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 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."

(Emphasis Supplied)

34. From a careful perusal of the aforesaid Regulation, it transpires that except for fraud played by the agent, the commission of premiums received in



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respect of the business secured by him shall be paid to him. In the case on hand, the imputations made against the petitioner relate to monetary transactions covering the prospective proposers of the policy. The Corporation reposing faith in an agent allows the Agent to secure business and the persons, acting as Agents of the Corporation are required to exhibit utmost honest, integrity and is expected to act with utmost sincerity. However, the act of the petitioner is not only against the interest of the Corporation, but also against the interest of the insured persons, who repose faith in the agent and apply for policies. Any deviation from the well established procedures of the Corporation would not only be a death-knell for the Corporation, but more so for the proposers, who have taken the policy as the activeness of the policy alone will determine the outcome in case of any issues to the life of the insured. Therefore, definitely the act of the petitioner would very well fall within the meaning of fraud and the act perpetrated by the petitioner would definitely warrant discontinuance of agency and discontinuance of the renewal commission due and payable to him.



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35. The decision in *Mahajan's case* would not in any manner help the petitioner as in the said case there was clear admission on behalf of Life Insurance Corporation with regard to the deposit of the amount vis-à-vis the Branch Office Collection. However, in the case on hand, there seems to have been a collusion between the employees of the Corporation with the Agents, of which the petitioner is one, warranting the Corporation to take action against its employees, who have also not been spared. Therefore, not only the aforesaid decision would not help the petitioner in any way, but the act of the Corporation in proceeding against the petitioner and imposing the penalty/punishment cannot be said to be arbitrary, unreasonable or perverse. The materials available on record justify the act of the respondents and the punishment imposed is on the basis of the Regulations and it in no way shocking to the conscience of this Court and, therefore, no interference is warranted with the same.

36. For the reasons aforesaid, there are no merits in this writ petition and accordingly the same is dismissed. Consequently, the interim order



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granted by this Court stands vacated and the miscellaneous petition is also dismissed. However, there shall be no order as to costs.

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GLN

**PRE-DELIVERY ORDER IN
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31.03.2023

Pronounced on