2023:DHC:7943-DB

$~ R-2.
* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **Date of Decision: 19.09.2023**

% W.P.(C) 1639/2013

ALL INDIA PUNJAB AND SIND BANK OFFICERS UNION
..... Petitioner
Through: Ms. Avni Singh, Advocate.

versus

UNION OF INDIA AND ORS. ..... Respondents

Through: Mr. Srivats Kaushal, Senior Panel Counsel for R-1.
Mr. Rajat Arora, Mr. Niraj Kumar, Mr. Sourabh Mahla and Mr. Sneh Vardhan, Advocates for R-2, 3 & 5.
Mr. H. S. Parihar, Mr. Kuldeep S. Parihar, Ms. Ikshita Parihar and Mr. Satish Singh, Advocates for R-7/ RBI.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJEEV NARULA

SATISH CHANDRA SHARMA, CJ. (ORAL)

1. The Petitioner before this Court, All India Punjab & Sind Bank Officer's Union, has filed the present writ petition as a Public Interest Litigation ('**PIL**') seeking appropriate action against employees/officials of the Respondent Bank for allegedly misappropriating public funds.

2. The contentions of the Petitioner Union emerge from the Corporate Agency Agreement (the '**Agreement**') dated 13.09.2004, executed by the

Respondent Bank and Aviva Life Insurance Company Ltd ('**Aviva**'). Through the Agreement, the Respondent Bank became a corporate agent i.e., an insurance business solicitor for Aviva, in exchange for commission/fee payable to the Respondent Bank.

3. In furtherance of their partnership and with the purpose of engaging officers at every level of the Respondent Bank, a Business Promotion Scheme (the '**Incentive Scheme**') was introduced by Aviva which offered performance based incentives to officers of the Respondent Bank and reimbursed them for any expenses incurred while soliciting insurance business. The Incentive Scheme was administered and financed by Aviva and it was approved by the Board of the Respondent Bank (the '**Board**') from time to time.

4. It is submitted by the Petitioner Union that Zonal managers and other managers of the Respondent Bank were forcing branch managers to sell Aviva insurance policies to borrowers of the Respondent Bank with a motive to enhance the incentives received by them from Aviva. It is also submitted that in 2007 and 2008, under the garb of training programmes, Aviva financed foreign tours of multiple executives of the Respondent Bank. Being concerned by this modus operandi, the Petitioner Union submitted a complaint to the Chief Vigilance Officer of the Respondent Bank/ Respondent 3 on 26.08.2008 suggesting that any commission/ incentive received from Aviva should be deposited directly to a welfare fund for the benefit of all the employees of the Respondent Bank.

5. Thereafter, the Petitioner Union filed a Right to Information ('**RTI**') application on 20.03.2012 seeking *inter alia* information on incentives/commission received by employees of the Respondent Bank from Aviva. A reply dated 11.05.2012 was received from the Respondent Bank which clarified that as per the Agreement, the Respondent Bank received a commission from Aviva for selling insurance products. Apart from this commission, Aviva also paid performance based incentives to employees of the Respondent Bank in accordance with the Incentive Scheme. The reply stated that these incentives were distributed by the Respondent Bank on receipt of the amount from Aviva along with a list of beneficiaries in this regard.

6. On 26.03.2012, the Petitioner Union submitted a complaint to the Central Vigilance Commission/ Respondent 5 alleging that the incentives received by employees of the Respondent Bank from Aviva during the period of 2005-2012 were in contravention of Clause 21 of the Corporate Agent Guidelines issued by the Insurance Regulatory and Development Authority (the '**IRDA Guidelines**') on 14.07.2005 which prohibits insurers from paying any amount to their corporate agents other than the permitted commission payable under Section 40A of the Insurance Act, 1938. On the same date, the Petitioner Union also submitted an identical compliant to the Insurance Regulatory and Development Authority (the '**IRDA**')/Respondent 4 and thereafter, on 30.03.2023, a similar compliant was also submitted to the Central Board of Direct Taxes/ Respondent 6.

7. Being aggrieved by the inaction of the Respondent authorities, the Petitioner Union has filed the present PIL alleging that the higher officials of

the Respondent Bank are misusing their positions to receive illegal incentives from Aviva, over and above the commission received by the Respondent Bank which is not permitted under Clause 21 of the IRDA Guidelines.

8. The Petitioner Union also highlights a circular issued by the Reserve Bank of India (the '**RBI**') in 2009 which specifiespre-requisites for the entry of banks into insurance business/insurance agency business without approval of the RBI. Clause (ii) of the Circular states that the banks should not adopt any restrictive practices that force customers to opt for a particular insurance company with respect to assets financed by the bank. Further, Clause (iv) states that there should be no direct or indirect linkage between the provision of banking services by the bank to its customers and the insurance products. In light of the above, the Petitioner Union submits that the practice of paying incentives under the Incentive Scheme encourages officials of the Respondent Bank to forcefully sell Aviva insurance policies to the borrowers of the Respondent Bank, thereby violating the aforenoted Circular issued by the RBI.

9. By way of the present PIL, the Petitioner Union prays*inter alia* for issuance of directions against the Respondent Bank to take appropriate actions against the officialsreceiving incentives from Aviva under the Scheme and; directions against these officials to reimburse the incentives received under the Scheme.

10. *Per Contra*, the Respondent Bank submits that there was no misappropriation of public funds as the incentives received under the

Incentive Scheme never belonged to the Respondent Bank; it was merely deposited with the Respondent Bank for further distribution in accordance with the formula of distribution and list of employees determined by Aviva. Furthermore, the Respondent Bank has placed on record minutes of the meeting of the Board to establish that the incentives received were not illegal as the Incentive Scheme was duly approved and extended by the Board from time to time.

11. Due to the nature of issues highlighted by the writ petition and for effective adjudication of the matter, this Court deemed it necessary to implead the RBI as a party. Accordingly, a counter-affidavit has been filed by the RBI/Respondent 7 in the matter.

12. It is submitted by the RBI that *vide* notification dated 03.08.2000, the Central Government notified "insurance" as a lawful form of business for a banking company to engage in under Section 6(1)(o) of the Banking Regulation Act, 1949 (the '**BR Act'**). It is further submitted that *vide* circular dated 22.09.2003 issued by the RBI, banks were permitted to undertake insurance business as agents of insurance companies without prior approval of the RBI on fee basis, without any risk participation and subject to certain conditions.

13. On the question of incentives being paid to employees of banks by insurance companies, the RBI submits that it had received multiple complaints regarding this practice including a reference from the Central Government. In response, the RBI conducted an investigation and found that employees of banks that were engaged as corporate agents of insurance

companies were in truth being offered commissions and foreign trips that were not in conformity with the provisions of the BR Act. The RBI also found that the practice of providing incentives was responsible for transactions taking place in banks without strict adherence to the applicable regulations.

14. The RBI further submits that the Board for Financial Supervision of the RBI conducted a review of the existing regulatory framework and accordingly issued comprehensive guidelines on all aspects of conduct of insurance business by banks *vide* circular dated 15.01.2015. It is pertinent to note that the circular incorporates a specific prohibition on the payment of commission/incentives directly to the bank staff by the insurance companies. The relevant portion of the circular reads as under:

> *"4.* ***Prohibition on Payment of Commission/Incentive directly to Bank Staff***
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> *There should be no violation either of Section 10(1)(ii) of the BR Act, 1949 or the guidelines issued by IRDA in payment of commissions/brokerage/incentives. This may be factored in while formulating a suitable performance assessment and incentive structure for staff.* ***Further, it must be ensured that no incentive (cash or non-cash) should be paid to the staff engaged in insurance broking/corporate agency services by the insurance company.****"*

15. The RBI also submits that during the Annual Financial Inspection conducted by the RBI for the Respondent Bank in 2012, it was informed that the Corporate Agency Agreement between Aviva and the Respondent Bank had been terminated. Further, during the course of the hearing, a question regarding the status of the Agreement was put to the Learned Counsel for

the Respondent Bank who confirmed that the Agreement came to an end in 2012.

16. Learned Counsel for the Respondent Bank has also brought to the notice of this Court Board Resolution No. 21294 issued by the Board on 12.08.2014 which states that the Board has resolved to initiate recovery proceedings for incentives received by officials from Aviva with retrospective effect.

17. This court has heard the learned counsel for the parties and carefully perused the record.

18. In light of the developments that took place during the pendency of the proceedings, this Court is of the opinion that the issues raised by the present petition have been adequately addressed by the actions of the Respondent Bank and the RBI. To counter the prevalence of incentives being paid directly to bank employees by insurance companies and its consequent impact on the lending practices of banks, the RBI has implemented an unambiguous and specific prohibition on the payment of such incentives. As for the Respondent Bank, not only has the corporate agency agreement with Aviva been terminated, additionally, as prayed for by the Petitioner Union, the Respondent Bank has also initiated recovery proceedings for the incentives paid to officials under the Scheme. It is needless to state that in the event that the Respondent Bank enters into another corporate agency agreement with an insurance company, it is directed to ensure strict compliance with the statutory framework in that

regard and the notifications and circulars issued by the RBI and the IRDA from time to time.

19. In light of the aforesaid, there are nofurther ordersrequired to be passed in the present petition and therefore, the same stands disposed of along with pending applications, if any.

SATISH CHANDRA SHARMA, CJ

SANJEEV NARULA, J.

SEPTEMBER 19, 2023