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Hari Om Goyal v/s Life Insurance Corporation of India, Central Office, "Yogakshema"

Civil Writ Petition No. 1081 of 2009

Decided On, 09 September 2016

At, High Court of Rajasthan Jaipur Bench

By, THE HONOURABLE MR. JUSTICE VEERENDR SINGH SIRADHANA

For the Petitioner: Ajay Gupta, Advocate. For the Respondent: Praveen Balwada, Advocate.

Judgment Text

1. In exercise of powers vested in the Senior Divisional Manager (Disciplinary Authority) by virtue of Rules 16(1)(a) & (b) and Rule 19(1) read with Rule 10(6) of Life Insurance Corporation of India (Agents) Rules, 1972 (for short, 'the Rules of 1972'), the agency of the petitioner was terminated with "forfeiture of renewal commission" vide order dated 16th January, 2007. An appeal instituted was declined by the Zonal Manager (Appellate Authority) so also a memorial submitted under Rule 24 of the Rules of 1972, was adjudicated upon vide order dated 16th June, 2008, confirming the order of the Disciplinary Authority as well as Appellate Authority; of which the petitioner is aggrieved of, and therefore, has

instituted the present writ application, praying for the following relief(s) :

"(i) by an appropriate writ, order or direction the impugned orders dated 16.1.2007 (Annexure-9), 24.9.2007 (Annexure-14) and 16.6.2008 (Annexure-16) passed by the respondents may kindly be quashed and set aside.

(ii) by further appropriate writ, order or direction the respondents may be directed to restore the agency of the petitioner with all consequential benefits.

(iii) by further appropriate writ, order or direction the Regulation 16 (3) of the LIC of India (Agents) Regulations, 1972 may be declared to be arbitrary and be quashed and set aside.

(iv) by further appropriate writ, order or direction the respondents may be directed to release the annual renewal commission which is due and payable to the petitioner with all consequential benefits along with interest at bank rate.

(v) any other beneficial order or direction which the Hon'ble Court deems fit and proper in the facts and circumstances of the case may kindly be passed in favour of the petitioner."

2. Briefly stated, the skeletal material facts are that the petitioner was issued Licence No. 1366743, to act as an Insurance Agent to procure insurance business of life insured. It is pleaded case of the petitioner that his licence was renewed from time to time and he collected handsome business for the respondent-Corporation during the financial years 2003-04, 2004-05, 2005-06 and upto October, 2006.

3. However, the petitioner was served with a show cause notice on 3rd October, 2006, with reference to proposal No. 2431 dated 10th October, 2003, on the life of late Shri Manbhan Singh Gurjar, who was introduced by the petitioner agent. The proposal introduced resulted into a death claim within one year from the date of commencement. On an investigation, the claim was repudiated on the ground that the life assured (deceased) withheld material information as to his age at the time of insurance. The petitioner was called upon to file his response

within 15 days. Having considered the response submitted by the petitioner on 4th November, 2006, the agency of the petitioner was terminated with forfeiture of renewal commission" vide o impugned order dated 16th January, 2007.

4. Learned counsel for the petitioner, Mr. Ajay Gupta, reiterating the pleaded facts and grounds of the writ application, vehemently argued that the petitioner, who was an agent for the Corporation, took all the necessary precautions while furnishing the required information of the life insured, including the age. According to the learned counsel, age of the life insured in the Rashan Card, as indicated, was 46 years and by his physical appearance as well, his age was assessed by him as about 45 years. However, he took the life assured to the Medical Officer on the panel of the Corporation; who issued a Medical Certificate, indicating the age of the life assured. Thus, there was no element of any 'fraud' played by the petitioner, as he was charged vide a show cause notice dated 3rd October, 2006. Hence, the finding of guilt arrived at by the Disciplinary Authority of 'misconduct' and 'fraud'; is illegal, arbitrary and contrary to the materials available on record.

5. Referring to Annexure-5, learned counsel asserted that the age of the life assured has been indicated as 46 to 50 years. Annexure-5 is a proforma information issued by none-else but the respondent-Corporation.

6. It is further urged that the respondent-Corporation has a detailed procedure for seeking informations, necessary of the life assured, as would be reflected from Annexure- 6, which details out the necessary informations required to be furnished i.e. name of the Proposer, name of the Life Proposed, details of income from Employment/Business/Profession, General state of health etc. Moreover, the 'Agent's Confidential Report/Moral Hazard Report' (Annexure-6), when completed and signed by the agent; is to be verified and completed by the Development Officer/ABM/BM/Sr. BM of the Corporation. The Officer, as indicated in the format of the Report, after his inquiry, makes a declaration as to his satisfaction with reference to the identity of the party on the basis of independent enquiries, detailing out his Name, Designation and affixing his Signature.

7. Thus, it is not the petitioner alone but, the employee(s) of the respondent-Corporation; who also verified the facts detailed out in the, petitioner's

confidential report with reference to the life assured. However, no action has been initiated against any of the official/Officer of the Corporation, who verified the report submitted by the petitioner, in the instant case at hand, with reference to the life assured.

8. Further, while the insurance claim of the life assured was repudiated, the matter was examined by the District Forum (Consumer Protection) District Karauli, Camp Hindaun, in Complaint Petition No. 94/2006, wherein after a detailed discussion of the evidence and materials on record, the District Forum recorded a finding to the effect that the deceased was subjected to medical examination with reference to determination of his age and on the basis of non standard policy, premium was also charged.

9. It is further contended that the complaint petition lodged by the claimant(s) before the District Forum (Consumer Protection), Karauli, Camp Hindaun, was adjudicated in favour of the claimant(s) against the respondent-Corporation, with a direction to release the insurance amount along with 8% interest imposing a cost of Rs. 1,000/- (Rupees One Thousand). The order of the District Forum dated 18th June, 2007, has been complied with accepting the verdict of the District Forum.

10. The Appeal, instituted by the petitioner, was declined by the Appellate Authority, without application of mind and without taking into consideration the factual aspects and materials available on record, ignoring the fact that the life proposed was subjected to medical examination with reference to the factum of age determination and the fact was also verified by the Development Officer, an employee of the respondent-Corporation. Similarly, the memorial addressed was also dismissed without application of mind and any reasoning in support thereof.

11. In response to the notice of the writ application, the respondent-Corporation has filed its counter-affidavit, resisting the claim of the petitioner, while supporting the action of the Corporation, in terminating the agency of the petitioner with "forfeiture of renewal commission", as confirmed by the appellate Authority.

12. Mr. Praveen Balwada, learned counsel appearing for the respondent-Corporation, reiterating the stand in the counter affidavit, asserted that the petitioner failed to take necessary steps in discharge his duties as an 'agent' of the Corporation, as contemplated under Rule 8(2) (b) of the Regulations of 1972, which specifically contemplated that "Every agent shall make all reasonable inquiries in regard to lives to be insured before recommending proposals for acceptance and bring to the notice of the Corporation any circumstances which may adversely affect the risk to be under written."

13. According to the learned counsel for the respondent-Corporation, the contents of the reply filed by the petitioner in response to the show cause notice, would clearly reflect that he made the proposal of the life insured without there being any evidence as to the identity and proof of age of the life assured. Further, the petitioner admitted the fact that he assessed the age of the life assured on the basis of his physical appearance. Therefore, the Disciplinary Authority rightly terminated the agency of the petitioner along with "forfeiture of renewal commission" vide impugned order dated 16th January, 2007, confirmed by the Appellate Authority so also by the Chairman, declining the memorial vide order dated 16th June, 2008.

14. Referring to the order made by the Chairman, while dealing the memorial under regulation 24; learned counsel asserted that from the materials available on record and in view of the contents of the reply to the show cause notice, it is evident that the petitioner did not carry out the necessary enquiries to ascertain the identity and age of the life assured; as contemplated under the Regulation of 1972; which resulted into financial loss to the Corporation.

15. Heard the learned counsel for the parties and with their assistance perused the materials available on record as well as gave my thoughtful consideration to the rival submissions at Bar.

16. Indisputably, the petitioner proposed the life assured in accordance with the procedure prescribed under the Regulations of 1972. The fact that all the details as contemplated under the 'Agent's Confidential Report/Moral Hazard Report',

were furnished. The details furnished by the petitioner agent as to the identity and age of the life assured, were confirmed by the Development Officer/ABM/BM/Sr. BM of the respondent-Corporation. Moreover, the fact that the life assured was taken to Medical Officer for medical examination for ascertainment of his age, is also not in dispute. Though the Corporation has initiated some action against the Medical Officer but there is a complete silence in the counter affidavit about the action, if any, initiated against the official/officer who confirmed the identity and age of the life assured on the basis of his independent inquiries for such a certification is contemplated under the 'Agent's Confidential Report/Moral Hazard Report', which has been placed on record as Annexure-6, for an illustration.

17. Learned counsel for the petitioner has relied upon the opinion of a Coordinate bench of this court in somewhat similar factual matrix in the case of M.D. Souza v. The Life Insurance Corporation of India, Ajmer & Anr.; 2013 (3) WLC (Raj.) 437, wherein the Coordinate Bench taking note of the contemplation under Regulation 16 and 19 of the Regulations of 1972, held thus ;

"6. Upon hearing learned counsel for the parties and perusing the material available on record. I find that Regulation 16 of the Regulations of 1972 provides the grounds of which the agency can be terminated, Regulation 16 of the Regulations of 1972 provides, as under-

"16. Termination of agency on 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 policy holders;

(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 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) may direct the agent not to solicit or procure new life insurance business until he is permitted by the competent authority to do so. '

7. Regulation 19(a)(b)(c) of the Regulations of 1972 provides payment of commission on discontinuance of agency, and eventually in which it can be forfeited, which is reproduced, as under-

"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 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."

8. A conjoint reading of aforesaid two provisions would indicate that the competent authority as per clause (d) of Regulation 16(1) to determine the appointment of any agent 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. Facts of the case in hand are such that petitioner submitted proposal on the insurance life of late Shri Kishanlal Sharma declaring him to be medically fit and such information given by the petitioner in the proposal form was not found to be correct. To that extent, action of the respondent cannot be faulted. But Regulation 19(1) of the Regulations of 1972 required the Corporation to make payment of commission on the premiums received in respect of the business secured by the agent if there is no proof of fraud by the agent, who was 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 being an agent whose appointment has been terminated under clause (e) of sub-regulation(1) of Regulation 16 (which provision is not attracted in the present case). Therefore, payable commission on the premiums received in respect of the business secured by the petitioner could be withheld only on the basis of fraud played by the petitioner on the Corporation. Respondents in reply to Ground C of the writ petition have submitted that "the medical examination is conducted on the basis of prima facie evidence and informations conveyed by the proposer. In case the proposer has taken some medicine, which for the time being covers the illness, there is every likelihood of the sickness escaping the attention of the medical examiner". At the same time, in reply to Ground B of the writ petition, they have asserted that "in addition to information is given by the proposer, an agent must enquire and intimate any adverse circumstance. Evidently, the medical report is not reliable/correct in this case and the medical examiner has been removed from the panel of Medical Examiners". If that is the stand, which the respondents have taken that even such ailment could have escaped notice of the medical examiner, how possibly the respondent could found allegation of fraud proved against petitioner. The respondents did not deny that the proposal submitted by the petitioner to the respondent Corporation on the life of late Shri Kishanlal Sharma, had gone to the medical examiner approved on their panel, who thereupon was not found to be

suffering from serious ailment. It can though may be a case for furnishing an incorrect information but certainly, it does not meet the required standard of proof for making out a case of fraud.

9. Fraud is proved when it is shown that a false representation has been made knowingly or without belief. Fraud is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand in response to the conduct of the former. If a party makes representation; which he knows to be false, and injury ensues therefrom to the other party, it would be a case of fraud. Fraud thus arises out of deliberate active role of representator about a fact, which he knows to be untrue, yet he succeeds in misleading the representee by making him believe it to be true, Supreme Court in S.P. Chengalvaraya Naidu (dead) by L.Rs. v. Jagannath (dead) by L.Rs. and others; AIR 1994 SC 853 as to the meaning of 'fraud' in para 8 of the judgment, held as under-

8. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another's loss, it is a cheating intended to get an advantage.

10. Dealing with the concept of 'fraud' the Supreme Court in Smt. Shrisht Dhawan v. M/s. Shaw Brothers, AIR 1992 SC 1555 in para 20 of the judgment held, as undergo.

'20. Fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It is a concept descriptive of human conduct. Michael Levi likens a fraudster to Milton's sorcerer, Comus, who exulted in his ability to, 'wing me into the easy-hearted man and trap him into snares'. It has been defined as an act of trickery or deceit. In Webster fraud inequity has been defined as an act of omission to act or concealment by which one person obtains an advantage against conscience over another or which equity or public forbids as being prejudicial to another. In Black's Legal Dictionary, fraud is defined as an intentional perversion of truth for the purpose of inducing another in reliance upon it to part some valuable thing belonging to him or surrender a legal right; a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act

upon it to his legal injury. In Oxford, it has been defined as criminal deception, use of false representation to gain unjust advantage, dishonest artifice or trick. According to Halsbury's Laws of England, a representation is deemed to have been false, and therefore a misrepresentation, if it was at the material date false in substance and in fact. Section 17 of the Contract Act defines fraud as act committed by a party to a contract with intent to deceive another. From dictionary meaning or even otherwise fraud arises out of deliberate active role of representator about a fact which he knows to be untrue yet he succeeds in misleading the representee by making him believe it to be true. The representation to become fraudulent must be of fact with knowledge that it was false.

12. Moreover, the respondents issued first show cause notice on 30.3.1995 (Ex. 1) and the subsequent show cause notice was issued on 30.1.1996 (Ex. 7) after a lapse of more than nine months, in which they themselves consciously dropped allegation of fraud, therefore, decision of the resp

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ondents to the extent of withholding of all accrued commission, cannot be justified." 18. From a glance of the observations made by the Coordinate Bench while dealing with the meaning and import of the term 'fraud', in the backdrop of the law declared by the Supreme Court in the case of S.P. Chengalvaraya Naidu (dead) by LRs. v. Jagannath (dead) by LRs. And Others; AIR 1994 SC 853, and Smt. Shrisht Dhawan v. M/S. Shaw Brother; AIR 1992 SC 1955; would reveal that the word 'fraud' has to be interpreted in the backdrop of the attendant circumstances and is required to be proved with strict standard of proof and not by merely alleging the charge of 'fraud'. Moreover, the burden of proving such serious allegation was on the respondent-Corporation. 19. In the case of M.D. Souza (supra), there was a delay of 9 months. In the instant case at hand, 'the proposal of the life assured was made on 10th October, 2003, and the claim was lodged on 14th November, 2004, on the death of the life proposed. Thus, it is apparent on the face of record that for over a year, the respondent-Corporation did not raise any grievance as to informations furnished by the petitioner-agent, verified by Development Officer/ABM/BM/Sr. B.M. of the Corporation, as to the identity and the age of the life assured. The issue was raised only after the claim was lodged on the death of the life assured. 20. Having considered the rival submissions at Bar and materials available on record as discussed herein above;

the writ application partly succeeds. 21. In the result, to the extent of termination of the agency of the petitioner, the impugned orders dated 16.1.2007 (Annex.9), 24.9.2007 (Annex.14) and 16.6.2008 (Annex.16) are upheld; but the later part with reference to 'forfeiture of the accrued commission is quashed. 22. The respondent-Corporation is directed to release the accrued commission to the petitioner. 23. Compliance of this order be ensured within a period of eight weeks from the date a certified copy of this order is presented. 24. No costs. Writ petition allowed in part as above-commission directed to be released to petitioner.

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