

IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN
BENCH AT JAIPUR.

O R D E R

S. B. CIVIL WRIT PETITION NO. 36/1997.

M. D. Souza

Vs.

The Life Insurance Corporation of India, Ajmer & Anr.

Date of Order: - February 28, 2013.

HON'BLE MR. JUSTICE MOHAMMAD RAFIQ

Shri Sunil Samdaria for the petitioner.

Shri J.K. Dhingra for the respondents.

Reportable

BY THE COURT: -

This writ petition has been preferred by M.D. Souza assailing the order dated 11/4/1996 (Exh.11) issued by the Senior Divisional Manager, Life Insurance Corporation of India, Ajmer, who in the disciplinary proceedings inflicted upon him, penalty of termination of his agency under Rule 8 and Rule 16(1)(a)(b)(d) of the Life Insurance Corporation of India (Agents) Regulations, 1972 (for short, the "Regulations of 1972") with forfeiture of all accrued commission. Petitioner has also challenged the order dated 6/11/1996 (Exh.14) by which, a communication was served upon him informing that his appeal filed against the aforesaid judgment has been dismissed by the appellate authority.

Facts as disclosed in the writ petition are that petitioner was appointed as an agent of the respondent-Life Insurance Corporation of India, Ajmer w.e.f. November, 1965. He received a letter dated 22/2/1995 from Senior Divisional Manager, L.I.C. of India, Ajmer calling upon his explanation as to why a bad life of late Shri Kishanlal Sharma was introduced by him for insurance. Petitioner replied to the said letter on 10/3/1995 giving his explanation. He was served with another show cause notice dated 30/3/1995 holding him liable for breach of Regulations 8, 15 & 16(1)(d) of the Regulations of 1972 and called upon him to submit his reply within fifteen days. Petitioner vide his letter dated 2/5/1995, requested to be furnished with copies of documents relevant to the charges such as, proposal form, agent's report copy and medical certificate so as to enable him to submit his reply. This was further followed by yet another letter dated 12/6/1995 reiterating the aforesaid request. Instead of supplying the documents, respondents served upon the petitioner another communication dated 30/5/1995 calling upon him to give reply to the earlier show cause notice within seven days. Petitioner vide letter dated 24/7/1995 again invited the attention of the respondents towards his letter dated 12/6/1995 requesting them to supply copy of the relevant documents. In the meantime, respondents stopped payment of accrued

commission on the policies procured by him. Petitioner thereupon served a legal notice for demand of justice dated 16/7/1995 through his counsel on the respondents. It was at this stage that the Senior Divisional Manager, LIC of India, Ajmer suddenly served yet another show cause notice dated 30/1/1996 calling upon petitioner to submit his reply within fifteen days. Petitioner thereupon by his letter dated 29/2/1996 again requested for supply of those documents. In reply to that, he was advised to visit Divisional Office, Ajmer to inspect all the documents. Accordingly, petitioner visited the office on 27/3/1996 and as per the averments in the writ petition, he was allowed to inspect the Agent's report, ACR dated 19/1/1992 of Udaipur Hospital and Ticket dated 29/1/1992 of Tata Memorial Hospital. Petitioner thereafter submitted a detailed reply to the show cause notice on 1/4/1996 maintaining that he was not at all liable for introducing the alleged bad life. In fact, the decision to accept the proposal was taken by the competent authority after a thorough scrutiny of the relevant papers including confidential medical report of the doctors approved on the panel of the Corporation. The Senior Divisional Manager, LIC of India, Ajmer however by the impugned-order dated 11/4/1996 (Ex.11) terminated his agency, and the appeal filed against the aforesaid order was dismissed as was informed vide communication dated

6/11/1996 (Exh. 14). Hence, this writ petition.

Shri Sunil Samdaria, learned counsel for the petitioner has argued that the Regulations of 1972 have been framed by the Corporation in exercise of its power conferred upon it under Section 49 of the Life Insurance Corporation Act, 1956 with the approval of the Central Government. These Regulations are statutory in nature. The aforesaid Regulations postulates that the respondents while passing any orders in disciplinary enquiry shall have make compliance of the principle of natural justice and ensure fairness, rationality and fair-play as against arbitrariness, whims and capriciousness. Despite repeated demands of petitioner, respondent-Corporation did not supply copies of relevant documents to petitioner on which the charge was allegedly found proved against him. It was contended that the Regulation 8(2)(b) of the Regulations of 1972 provides that an agent shall make all reasonable enquiries in regard to the 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. The word 'reasonable' is very significant, which the petitioner in any manner has not failed to discharge as an agent. Word 'reasonable' has to be construed within the bounds of what is possible.

While introducing the proposal, the petitioner acted in accordance with the Regulations and took reasonable care. In case, proposer furnishes a wrong information, which could not be detected by the petitioner despite exercise of reasonable care, he cannot be made liable for the mischief of the proposer. Petitioner was not a medical man so as to diagnosis all such sickness/ailments with which the proposer was suffering. Confidential medical report was furnished by the doctors, who were on approved panel of the Corporation, which proposal was having been accepted by the competent authority. Petitioner cannot therefore be held liable for any suppression of material information and facts. As an agent, petitioner had no valid reason to dispute the correctness of the medical report of the medical examiner therefore action cannot be taken against him under Regulation 16(1)(a)(b)(d) of the Regulations of 1972. Hence, according to the petitioner, he did not act in prejudice to the Corporation. The disciplinary authority by recording such a finding has not considered the submission made by the petitioner in proper perspective and has not given any cogent/valid or sound reason to reject his appeal.

Shri Sunil Samdaria, learned counsel for the petitioner further argued that penalty inflicted vide the impugned-order dated 11/4/1996 shows that petitioner could not submit any

documentary or oral evidence in his defence to refute the charges, and therefore the charges have been taken to have been proved, whereas burden of proving charges was always on the respondent Corporation, which could not be placed on the petitioner. It was argued that the Corporation has grossly erred in law in terminating petitioner's agency and withholding all accrued commission without any sufficient reason, which is double jeopardy as per Article 20(2) of the Constitution of India, which ordains that a citizen cannot be vexed twice for the same offence, whereas petitioner was subjected to two penalties for the same alleged offence inasmuch as, not only his agency was terminated but also the all his accrued commission has been withheld. The appellate authority has failed to consider all the grounds urged by the petitioner in eighteen page memo of appeal and has conveyed dismissal of appeal in one para order. The order passed by the disciplinary authority as also the appellate authority ought to be reasoned one. Learned counsel submitted that the disciplinary authority could not have directed forfeiture of the accrued commission in any case because this could be done only as per Regulation 19 of the Regulations of 1972. Neither in the first show cause notice dated 30/3/1995 (Ex.1) nor in the subsequent show cause notice dated 30/1/1996 (Ex.7) was any reference made to Regulation 19 of the

Regulations of 1972. Though in the first show cause notice dated 30/3/1995 (Ex.1) it was alleged that by booking a bad life, petitioner has tried to defraud the Corporation but when the subsequent show cause notice dated 30/1/1996 (Exh.7) was served upon the petitioner, that allegation was omitted, which would mean that allegation of fraud was dropped by the Corporation. In any case the facts, do not bring the matter within the purview of fraud, as it was at the maximum bonafide mistake on the part of the petitioner. It is therefore prayed that writ petition be allowed.

Per contra, Shri J.K. Dhingra, Learned counsel for the respondent-Corporation has opposed the writ petition and submitted that non-disclosure of history of illness and treatment prior to such decision tantamounts to a fraud against the Corporation. Petitioner has deliberately concealed the fact of the life proposed suffering illness and obtaining medical treatment taken by him at Udaipur and Bombay hospitals. It was incumbent upon the petitioner to have verified about the past illness and actual state of health of the life proposed in his agency. It was argued that tenor of allegation in both the show cause notices is the same. It cannot therefore be said that allegation of fraud was waived or given up. Learned counsel submitted that all the documents that were relevant were made available to the petitioner for perusal/inspection

not once but twice when two show causes notices were served upon the petitioner. Repeated opportunities were given to the petitioner to submit his reply. In fact, petitioner submitted his reply, which was duly taken into consideration by the disciplinary authority of the Corporation. The order of penalty dated 11/4/1996 cancelling the agency of the petitioner and forfeiture of all accrued commission is therefore just and reasonable. It is therefore prayed that the writ petition be dismissed.

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 on which the agency can be terminated. Regulation 16 of the Regulations of 1972 provides, as under: -

"16. Termination of agency of 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) 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."

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".

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 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 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.

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. Vs. 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. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage".

Dealing with the concept of 'fraud', the Supreme Court in **Smt. Shrisht Dhawan Vs. M/s. Shaw Brothers : AIR 1992 SC 1555** in para 20 of the judgment held, as under: -

"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 or 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 represented by making him believe it to be true. The representation to become fraudulent must be of fact with knowledge that it was false".

In view of the import and the meaning attached with the word "fraud", it must be held that allegation of fraud against petitioner has not been proved by the required standard because even though this charge was required to be proved in a domestic enquiry by preponderance of probabilities, yet burden of proving such serious allegation was on the respondent-Corporation, which it has utterly failed to discharge in the facts of the present case.

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 respondents to the extent of withholding of all accrued commission, cannot be justified.

In the circumstances, the writ petition deserve to succeed in part and is accordingly allowed in part. The impugned-order dated 11/4/1996 (Exh.11) is upheld so far as terminating the agency of the petitioner is concerned, but part of the order by which entire accrued commission payable to the petitioner was forfeited, cannot be upheld. To that extent, the impugned-order dated 11/4/1996 (Exh.11) is set-aside and accordingly, the order communicating rejecting appeal dated 6/11/1996 (Exh. 14) stands modified.

(MOHAMMAD RAFIQ), J.

Anil /10

All corrections made in the judgment/order have been incorporated in the judgment/order being e-mailed

Anil Kumar Goyal
Sr. P. A. Cum JW