

AMAR KRISHNA GHOSE

v.

LIFE INSURANCE CORPORATION OF INDIA & ANR.

November 14, 1972

[J. M. SHELAT AND Y. V. CHANDRACHUD. JJ.]

Life Insurance (Emergency Provisions) Ordinance, 1 of 1956—Cl. 3(2) 'deemed' termination of service—Life Insurance Corporation Act, 31 of 1956, Sec. 11(1) & 11(3).

Life Insurance Corporation Rules, 1956 Rule 12-A—Exclusive jurisdiction of the Life Insurance Tribunal—Whether word "liability of the controlled business of insurer" cover questions of arrears of pay and deemed termination of erstwhile employees.

Appellant, an employee of an erstwhile Life Insurance Company filed a suit against the L.I.C. in the Calcutta High Court *inter alia*, claiming that the purported termination of his service was void and for a declaration that he continued to be in service of the Corporation after the vesting of the business in the Life Insurance Corporation. He further claimed the arrears of rent and other dues accrued before the vesting and salary for the subsequent period. The Calcutta High Court split the two set of reliefs and held that under Rule 12-A—the Life Insurance Tribunal had the exclusive jurisdiction to decide whether the Corporation was liable as a successor to the said companies for the earlier liabilities or not. The High Court further held that the question as to whether the employment of the appellant stood terminated by virtue of sec. 3(2) of the Ordinance was also within the exclusive jurisdiction of the Tribunal. Since the relief for declaration of the continuation of service and subsequent salary depended upon the question of termination of service under sec. 3(2) of the Ordinance, the High Court ordered that that part of the claim may stand over and considered after the Tribunal's decision on the first set of issues. The court gave liberty to the Corporation to agitate (at such an adjourned hearing) that the Central Government has the exclusive jurisdiction under sec. 11(1) & 11(3) of Act to adjudicate the question of continuation of employment.

On appeal the Court,

HELD : (1) The expression "controlled business of the insurer" in Rule 12A means the life insurance business carried on by an insurer before its management became vested in a custodian under the ordinance and then in the Corporation. The appellant was not right in contending that the past liabilities do not relate to "controlled business". Therefore the Tribunal was the proper authority to decide question of arrears of pay and other dues. [1003 E]

(2) Rule 12-A confers on the Tribunal the jurisdiction to try "any question ... of any nature whatsoever in relation to ... liabilities pertaining to controlled business." The question, whether the services of the appellant stood terminated by cl. 3(2) of the Ordinance is related to the 'liability' of the "controlled business" and is covered by the wide wording of Rule 12-A. The Tribunal alone had the jurisdiction to decide the said question. [1005 D]

(3) The High Court was right in splitting the appellants' claim into two, one triable by the Tribunal and the other not, and retaining with it

- A** that part of the suit which did not fall within the scope of R. 12-A with liberty to the parties to raise later on the question whether that part was triable by the court or by the Central Government under S. 11 (3) of the Act. [1005 G]

Appeal dismissed.

- B** CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1331 of 1967.

Appeal by certificate from the judgment and order dated February 28, 1966 of the Calcutta High Court in Appeal from Order No. 88 of 1965.

- C** *M. C. Setalvad and Ram Prosanna Bagchi and Sukumar Ghose* for the appellant.

F. S. Nariman, Additional Solicitor General of India, *K. L. Haihi* and *P. C. Kapur* for the respondent No. 1.

The Judgment of the Court was delivered by

- D** *SHELAT, J.* This appeal, founded on the certificate granted by the High Court of Calcutta, raises questions of interpretation of sec. 3(2) of the Life Insurance (Emergency Provisions) Ordinance, 1 of 1956, sec. 11 of the Life Insurance Corporation Act, 31 of 1956 and R. 12A of the Life Insurance Corporation Rules, 1956 made under s. 48 of the said Act.

- E** These questions arise in the following circumstances :

- F** Prior to January 1, 1956 the appellant was employed as the Principal Officer of the Bengal Insurance and Seal Property Co. Ltd., respondent 2 in this appeal. It was not disputed in the High Court that by Principal Officer the appellant meant that he was the Managing Director. His salary as such officer was Rs. 2630 per mensem which on and from January 1, 1956 was raised to Rs. 3000 per mensem. On January 19, 1956, respondent 2 issued in favour of the appellant four cheques for Rs. 5436-6-0 in all representing his salary for November and December 1955 and for certain other dues. On that very day, i.e., January 19, 1956, the Life Insurance (Emergency Provisions) Ordinance, 1956 came into force, under which January 19, 1956 was the appointed day. The management of the life insurance business carried on by all concerns including that of respondent 2 was taken over and became vested in custodians appointed under the Ordinance. Cl. 3(2) of the Ordinance provided that "any contract, whether express or implied, providing for the management of the controlled business of an insurer made before the appointed day between the insurer and any person in charge of the management of such business immediately before the appointed day shall be deemed to have terminated on the appointed day". The Ord-

nance was substituted by the Life Insurance (Emergency Provisions) Act, 9 of 1956 which came into force as from March 21, 1956. The said cheques, when presented for payment, were not honoured by the Bank on the ground that they were not signed by the custodian.

On June 18, 1956, Parliament passed The Life Insurance Corporation Act, 31 of 1956, which came into force as from July 1, 1956. A Notification, dated August 30, 1956, issued thereunder fixed September 1, 1956 as the appointed day, that is the date when the Corporation was established under sec. 3 of the Act. Sec. 7 of the Act reads as follows :

"7(1) On the appointed day there shall be transferred to and vested in the Corporation all the assets and liabilities appertaining to the controlled business of all insurers.

(2) The assets appertaining to the controlled business of an insurer shall be deemed to include all rights and powers, and all property, whether movable or immovable, appertaining to his controlled business, including in particular, cash balances, reserve funds, investments, deposits and all other interests and rights in or arising out of such property as may be in the possession of the insurer and liabilities shall be deemed to include all debts, liabilities and obligations of whatever kind then existing and appertaining to the controlled business of the insurer."

Sec 11(1) of the Act provides that every whole-time employee of an insurer whose controlled business has been transferred to and vested in the Corporation and who was employed by the insurer wholly or mainly in connection with his controlled business immediately before the appointed day (i.e. September 1, 1956) shall on and from the appointed day become an employee of the Corporation and shall hold his office therein on the same terms and conditions as he was having on the appointed day, unless and until his employment in the Corporation is terminated by the Corporation. Sub-sec. (3) of s. 11 provides that if any question arises as to whether (a) any person was a whole-time employee of an insurer, or (b) as to whether any employee was employed wholly or mainly in connection with the controlled business of an insurer immediately before the appointed day (i.e. September 1, 1956) that question shall be referred to the Central Government, whose decision shall be final. Under s. 17, the Central Government has been empowered to constitute one or more tribunals. Sec. 48 empowers the Central Government to make rules, and in particular among other subjects on the subject of jurisdiction of

A the tribunals constituted under s. 17. Rule 12A of the Life Insurance Corporation Rules, 1956 made under s. 48 reads as under :

"12A. Jurisdiction of Tribunal.

B The Tribunal may exercise jurisdiction in the whole of India and shall have power to decide or determine all or any of the following matters, namely,

(1) any question whether of title or of liability, or of any nature whatsoever in relation to the assets and liabilities pertaining to the controlled business of the insurer transferred to and vested in the Corporation."

It seems clear from s. 11(3) of the Act and the said rule 12A (1) that on a question whether a person was a whole-time employee of an insurer or whether any employee was employed wholly or mainly in connection with the controlled business of such insurer immediately before the appointed day, i.e., September 1, 1956, it is the Central Government which is the deciding authority and whose decision is final, and (2) that where a question, whether of title or of liability or of any nature whatsoever in relation to the assets and liabilities pertaining to the controlled business of the insurer transferred to and vested in the Corporation, arises, it is the tribunal which is the authority invested with the jurisdiction to determine such a question.

On January 20, 1959, the appellant filed a suit in the High Court claiming the following reliefs :

- (a) a decree for Rs. 5436-6-0 as salary for November and December 1955;
- F (b) declaration that the purported termination of his contract of service as the principal officer of respondent 2 and/or as an employee of the Corporation was void;
- (c) declaration that he was and continued to be the employee of the Corporation and for reinstatement;
- G (d) a decree for Rs. 1,01,250 being his salary from January 1956 to December 1958 at the rate of Rs. 2812-8-0 per mensem;
- (e) in the alternative, for a decree for the said amount of Rs. 1,01,250 against respondent 2; and
- H (f) for interest and costs.

The case of the Corporation was (1) that by reason of cl. 3(2) of Ordinance 1 of 1956 the employment of the appellant

with the respondent 2 stood terminated on January 19, 1956, and (2) that as a consequence of such termination, the appellant was not in the employment of respondent 2 wholly or mainly in connection with his controlled business immediately before the appointed day under the Act, i.e., September 1, 1956, and therefore, was not entitled to the benefit of s. 11(1) thereof and could not, therefore, claim to have become an employee of the Corporation. Therefore, there was no question of his employment having to be or having been terminated by the Corporation at all, much less wrongfully. Its case further was that so far as the first relief was concerned, since the claim for Rs. 5436-6-0 raised the question of liability pertaining to the controlled business of respondent 2, the jurisdiction was exclusively with the tribunal as under s. 41 of the Act no civil court has the jurisdiction to entertain and adjudicate upon a matter which the tribunal has been empowered to determine. That being so, it was the tribunal which had to decide whether (a) the appellant's employment stood terminated on January 19, 1956 by virtue of cl. 3(2) of Ordinance 1 of 1956, and (b) whether as a result of the vesting of the management of controlled business in the Custodian or the vesting of that business in the Corporation, the Corporation was liable to pay the arrears of his salary for November and December 1956 and certain other dues. So far as the claim for Rs. 1,01,250, on the footing that there was no such termination of the appellant's service and consequently his having become and having continued to be the Corporation's employee under s. 11(1) of the Act, is concerned, the Corporation's case was that that part of his case had to be determined by the Central Government as under s. 11(3) it is that Government which has to decide whether the appellant was a whole-time employee of respondent 2 wholly or mainly in connection with that company's controlled business immediately before the appointed day, viz., September 1, 1956. That question depended upon the question whether his employment with respondent 2 stood terminated on January 19, 1956 under cl. 3(2) of the said Ordinance, for, if it did, no further question of his becoming or his having continued as the Corporation's employee under s. 11(1) of the Act could possibly arise.

A learned single Judge of the High Court, before whom the suit came up for hearing, held that the High Court had no jurisdiction to entertain or adjudicate the appellant's claim against the Corporation and dismissed the appellant's suit. In a Letters Patent appeal against that judgment and decree, a Division Bench of the High Court sustained the trial Court's finding that the High Court had no jurisdiction in the matter of the appellant's claim for Rs. 5436-6-0 and that it was the tribunal which had that jurisdiction. But it did not uphold the trial Court's finding as regards the relief for the salary and declaration in respect of the

A period from September 1, 1956 to December 1958. The Division Bench held that "this part of the case, so far as the Life Insurance Corporation is concerned, will stand adjourned until the determination of the proceedings before the Tribunal mentioned above. This will be without prejudice to the rights of the defendants to raise the question of competency of the Court to decide any question which comes within the scope of sec. 11(3) of the said Act. So far as defendant No. 2 is concerned, it has been held that the Court has jurisdiction and we are not disturbing that part of the decree". What the Division Bench in effect decided was that it was the tribunal and not the High Court which had the jurisdiction to decide the question as to the Corporation's liability to pay the said arrears of salary for November and December 1955 as that liability pertained to the controlled business of respondent 2. That question would involve the issue as to whether or not the appellant's contract of service with respondent 2 stood terminated by virtue of cl. 3(2) of the Ordinance. As regards his claim for salary for the period from September 1, 1956 to December 1958, the Division Bench left the question open until the tribunal decided the first part of the claim including the question arising under cl. 3(2) of the Ordinance. But it left the question, viz., whether the appellant became and continued to be the employee of the Corporation under s. 11(1) of the Act, open and retained that part of the appellant's suit with the High Court with liberty to the respondents to raise the question of the High Court's jurisdiction in that regard. That question would be whether under s. 11(3) of the Act it is for the Central Government to determine whether the appellant was the whole-time employee of respondent 2 immediately before the appointed day under the Act, viz., September 1, 1956.

F Mr. Setalvad doubted the correctness of such an interpretation of R. 12A of the Corporation Rules and argued that the Rule conferred jurisdiction on the tribunal on questions as to the Corporation's liability in relation to "the assets and liabilities pertaining to the controlled business of the insurer transferred to and vested in the Corporation". The business transferred to and vested in the Corporation could no longer be the controlled business of the insurer and ceased to be so once it became transferred to and vested in the Corporation under the Act. Therefore, he argued, the Tribunal could have no jurisdiction in respect of a liability to which the Corporation succeeded as a result of the assets and liabilities of the insurer having been transferred to and vested in the Corporation. He contended that that being the position, it was not the tribunal but the civil court which had to decide the question whether the Corporation was liable to pay the arrears of salary for November and December 1956, a liability, which the Custodian and later on the Corporation were liable to satisfy,

the former as a result of the management having vested in him under the Ordinance, and the latter as a result of its having succeeded to the assets and liabilities of the insurer. He also contended that the question as to whether the appellant's contract of service with respondent 2 stood terminated on January 19, 1956 under cl. 3(2) of the Ordinance would also not fall under R. 12A. The Addl. Solicitor-General, on the other hand, disputed such a construction of R. 12A and contended that the tribunal had under that Rule the exclusive jurisdiction to determine both the questions, and the High Court could not by reason of s. 41 of the Act entertain or adjudge either of the two questions.

The reliefs prayed for by the appellant in his plaint pertained to two periods; (1) Rs. 5436-6-0 being the arrears of salary and other dues for the months of November and December 1955, and (2) Rs. one lac and odd being the salary from January 1, 1956 to December 1958. Under R. 12A, a question either of liability or of any nature whatsoever in relation to the assets or liabilities pertaining to the controlled business of the insurer transferred to and vested in the Corporation falls within the jurisdiction of the tribunal and cannot be entertained and adjudicated by a civil court under s. 41 of the Act. In respect of the claim for arrears of salary for November and December 1956, the question really would be one of liability in regard to or pertaining to the controlled business of the insurer which became transferred to and vested in the Corporation. That question, therefore, fell fairly and squarely within the jurisdiction of the tribunal. The expression "controlled business of the insurer" in R. 12A means the life insurance business carried on by an insurer before its management became vested in a custodian under the Ordinance and whose assets and liabilities became transferred to and vested in the Corporation under the Act. R.12A clearly deals with questions arising out of and pertaining to such controlled business. Under R. 12A, jurisdiction to try questions in respect of the liability pertaining to such business has been vested in the tribunal. The question of the liability of the Corporation in regard to the arrears of salary for November and December 1955 clearly related to the controlled business then carried on by respondent 2. The Corporation was sought to be made liable to pay those arrears on the ground that that liability was transferred to and vested in the Corporation. Clearly R. 12A applied to such a question and the jurisdiction to try such a question was in the tribunal and not the High Court. Any question, therefore, as to the liability pertaining to the business which was the controlled business as defined by the Act would have to be tried by the tribunal.

As regards the second claim of the appellant, that claim involved the question as to whether his contract of service with respondent 2 stood terminated on January 19, 1956 by virtue

A of cl. 3(2) of the Ordinance. If it did, he would not be a person who was employed by the insurer wholly or mainly in connection with his controlled business immediately before the appointed day (which is September 1, 1956 under the Act) as required by s. 11(1) of the Act, and therefore, he could not claim to be one who became and continued to be an employee of the Corporation as envisaged by that sub-section. Under sub-sec. (3) of sec. 11, the question whether an employee was employed wholly or mainly in connection with the controlled business of an insurer immediately before the appointed day under the Act (i.e., September 1, 1956) is determinable by the Central Government and not by a civil court. That question, however, would depend upon the question whether the appellant's contract of service stood terminated by reason of cl. 3(2) of the Ordinance on September 1, 1956. Has the tribunal the exclusive jurisdiction to decide that question? The High Court thought so, and in our view rightly because R. 12A confers on the tribunal the jurisdiction to try "any question—of any nature whatsoever in relation to—liabilities pertaining to the controlled business of the insurer transferred to and vested in the Corporation". These are very wide words which would include the question whether the appellant as the principal officer of respondent 2 continued to be such officer after January 19, 1956 in relation to the controlled business which on and after January 19, 1956 was to be managed in terms of the Ordinance by a custodian appointed thereunder and whose assets and liabilities on the passing of the Act were transferred to and vested in the Corporation. The question whether his contract of employment as the principal officer of the business, defined as the controlled business both under the Ordinance and the Act, continued or not after January 19, 1956 would be a question in relation to the liability pertaining to such controlled business and was therefore within the scope of R. 12A. But the question as to whether he became an employee of the Corporation under s. 11(1) on and from January 1, 1956, though dependent on the answer as to whether his contract stood terminated under cl. 3(2) of the Ordinance, would not fall within R. 12A and was not therefore triable by the tribunal. The High Court, therefore, was right in splitting the appellant's claim into two, one triable by the tribunal and the other not, and retaining with it that part of the suit which did not fall within the scope of R. 12A with liberty to the parties to raise later on the question whether that part was triable by the Court or by the Central Government under s. 11(3) of the Act.

H The appeal thus fails and is dismissed with costs.