

LIFE INSURANCE CORPORATION OF INDIA

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v.

VISHWANATH VERMA AND ORS.

SEPTEMBER 30, 1994

[S. MOHAN AND G.N. RAY, JJ.]

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Life Insurance Corporation Act, 1956 : Sections 30, 37, 44(f).

Life Insurance Corporation—Exclusive power to do life insurance business—Family benefit scheme framed by Jabalpur Municipal Corporation—Held the scheme has essential ingredients of life insurance business—Scheme held violative of Section 30—Scheme held not covered by exemption provided under section 44(f).

C

Insurance Act, 1938 : Section 2(11).

D

Life Insurance Business—Meaning of—Life Insurance Contracts—Types of.

Madhya Pradesh Municipal Corporation Act, 1956 : Section 421.

State Government—Power to suspend resolution or order—Scheme framed in violation of Life Insurance Act, 1956—Held State Government can invoke its power for cancellation of scheme.

E

The Jabalpur Municipal Corporation framed a scheme known as 'Family Benefit Fund Scheme'. The purpose of the scheme was to provide financial help to its employees after retirement or death. The salient features of the scheme were (i) the employees were to make voluntary contribution towards the scheme; (ii) the contribution made by an employee was to be paid to him on his retirement; (iii) in the event of death of an employee while in service, a specified amount was payable to his dependents; (iv) the family was to include wife, husband, minor son who has not attained the age of 18 years, minor unmarried daughter who has not attained the age of 21 years, father or mother; (v) the benefit of the scheme was available to the legal heirs of the deceased in case the aforesaid members of the family were not available and if the nomination letter was not filed in the prescribed form under the rule the benefit was not available

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A to the married daughter under any circumstances.

B During the operation of the scheme, a question arose whether the scheme was violative of Section 30 of the Life Insurance Act, 1956 because under the Act the Life Insurance Corporation has the exclusive power to do life insurance business. By its order dated 31st March 1977 the State Government directed the suspension of the scheme. However, by its order dated 16.12.80 passed in exercise of its power under Section 421 of the Madhya Pradesh Municipal Corporation Act 1956, the State Government directed the Corporation to cancel the scheme. Further, the matter was considered by Controller of Insurance who advised that in terms of section 30 of the Life Insurance Corporation Act, 1956, Life Insurance Corporation has the exclusive privilege to do life insurance business and the scheme framed by the Corporation was not covered by the exemption provided under section 44(f).

D The respondents filed a writ petition in the High Court which held that (i) the Scheme does not fall within the ambit of 'Life Insurance Business' and therefore section 30 was not applicable; (ii) the scheme does not fall within the ambit of section 421 of the Madhya Pradesh Municipal Corporation Act, 1956 because the scheme was wholly run on contributions made by the employees and not on the funds of the Municipal Corporation.

E Therefore, the State Govt. has no jurisdiction to cancel the same.

F In appeal to this Court, it was contended on behalf of the appellant-Life Insurance Corporation that (i) the High Court erred in putting the narrow interpretation of 'Life Insurance Business' ; the scheme was in violation of section 30 of the Life Insurance Act, 1956 in as much as it has the essential ingredients of Life Insurance Business; (ii) it was not covered by the exemption provided under section 44(f) and was also against the interest of employees themselves because the payment was not guaranteed either by the Municipal Corporation or by the State Government.

G Allowing the appeal, this Court

H HELD : 1. The scheme run by the Jabalpur Municipal Corporation for the benefit of its employees is a clear case of life insurance. Under Section 30 of the Life Insurance Corporation Act, 1956, Life Insurance Corporation is to have the exclusive privilege of carrying on life insurance business in India. Consequently it will be illegal on the part of the Jabalpur

Municipal Corporation to run the said scheme. [97-B-C]

2. The High Court is not right in holding that the scheme is not any kind of business as no benefits derived from the scheme go to any one except the contributors. The High Court has taken a narrow view as to the scope of life insurance. It failed to note that there is a large variation of life insurance contracts built up by a combination in various ways of contracts. There may be insurance contracts providing for the payment in the event of death or again there may be endowment contracts providing for payment in the event of survival of the assured for a particular term. Therefore, life insurance has a wide concept in modern days. [97-F-G]

3. Life Insurance is a promise to pay a certain sum upon the death of the assured. It is a contract whereby the insured agrees to pay certain sums, called premiums, at specified times, and in consideration thereof the insurer agrees to pay certain sums of money on certain conditions and in specified ways. It imports a mutual agreement, whereby the insurer, in consideration of the payment by the assured of a named sum annually or at certain times, stipulates to pay a larger sum on the death of the assured. [94-F-G]

General Family Pension Fund v. Commissioner of Income-tax, West Bengal, A.I.R. (1955) SC 50; *Chandulal Harjivandas v. Commissioner of Income-tax, Gujarat*, A.I.R. (1967) S.C. 816 and *Commissioner of Wealth-tax, Punjab, J&K Chandigarh, Patiala v. Yuvraj Amrinder Singh*, A.I.R. (1986) S.C. 959; referred to.

Gould v. Curtis, (1913) 6 Tax. Cas. 293, cited.

Halsbury's Laws of England, 3rd Edn Vol. 22, P.273, cited.

4. The examination provided in Clause (f) of Section 44 of the Life Insurance Corporation Act, 1956 will not be applicable to the scheme because the scheme is not run with the approval of the Central Government. Further, such an exemption is not available to a scheme framed by a Municipal Corporation. [100-D]

5. The Scheme is against the interest of the employees themselves since the payments under the scheme, whether on retirement or death, are not guaranteed either by the Jabalpur Municipal Corporation or by the Madhya Pradesh State Government. [100-H]

- A** 6. A Careful reading of sub-section (1) of Section 421 of the Madhya Pradesh Municipal Corporation Act, 1956 shows that if the doing of an act is not in conformity with law, the State Government could prohibit the doing of such an act. Since the scheme is in violation of the Life Insurance Corporation Act, particularly Section 30, the State Government is well empowered to invoke its power under Section 421. The exercise of such a power cannot be found fault with. [102-A-B]
- B**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6493 of 1994.

- C** From the Judgment and Order dated 16.2.1984 of the Madhya Pradesh High Court in Misc. P. No. 69 of 1981.

H.N. Salve, A. Ranganathan and A.V. Rangam for the Appellant.

- D** S.K. Gambhir, D.N. Mukherjee, B.Y. Kulkarni and S.K. Agnihotri for the Respondents.

The Judgment of the Court was delivered by

MOHAN, J. Leave granted.

- E** Life Insurance Corporation of India is the appellant.

- F** The Jabalpur Municipal Corporation formulated a scheme for the benefit of its employees known as Nagar Nigam Karamachari Privarik Kalyan Yojna. That scheme provided, in the event of death of an employee while in service a sum of Rs. 10,000 or Rs. 5,000 payable to the dependents, depending upon the rate of monthly contribution. If the monthly contribution was Rs. 10 the amount payable was Rs. 10,000 and where the monthly contribution was Rs. 5 the amount payable was Rs. 5,000. The scheme was also known as Family Benefit Fund Scheme. It was implemented with effect from 1.6.75 by effecting appropriate monthly deductions from the salaries of the employees. The payment of specified amount in terms of the scheme was also made to the retiring employees as also to the dependants of the employees who died while in service.
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- H** While the scheme was in operation the question arose as to the validity of the scheme. The Government of Madhya Pradesh examined that question from the perspective whether the said scheme was violative of the

provisions of the Life Insurance Corporation Act, 1956 (hereinafter referred to as the Act) or the Insurance Act, 1938. By its order dated 31.3.77 the Government of Madhya Pradesh directed the suspension of the scheme as administered by the Jabalpur Municipal Corporation. However, by order dated 15.2.78 the Government directed till further orders appropriate deductions may be continued from the employees' salary. By a Resolution dated 18.8.80 the Municipal Corporation, Jabalpur in order to provide higher benefits to the employees increased the contribution from Rs. 5 to Rs. 10 and from Rs. 10 to Rs. 20. The matter was considered in detail. By order dated 16.12.80 the Government of Madhya Pradesh directed the Jabalpur Municipal Corporation to stop the scheme forthwith. The Municipal Corporation was also advised that on receipt of confirmation of withdrawal of scheme opinion could be obtained from the Central Government. Thereafter the matter was considered by the Controller of Insurance who by his letter dated 23rd March, 1981 advised the Secretary, Local Govt. Department, Government of Madhya Pradesh to the following effect :

"No. 81(1)- Ins. 11/81

Government of India,
Ministry of Finance,
Department of Economic Affairs,
Insurance Division,
Nirvachan Sadan, Ashok Road.

New Delhi, the 23rd March, 1981.

To

The Secretary,
Local Govt. Department,
Govt. of Madhya Pradesh.

Subject : Municipal Corporation Employees' Family Benefit scheme.

Sir,

I am directed to refer to this Ministry's letter of even number dated 3rd March, 1981 on the above subject in response to your

A letter no. 684/XVIII/1/80 dated 7th February, 1981 and to say that in terms of Section 30 of the Life Insurance Corporation Act, 1968, the Life Insurance Corporation of India has the exclusive Privilege of carrying on life insurance business except to the extent otherwise expressly provided in the Act. An exception is made in the case of compulsory life insurance schemes for employees of Government, vide Section 44(f) of the Act reproduced below :

"44. Nothing contained in this Act shall apply in relation to -

(f) any scheme in existence on the appointed day or say scheme framed after the appointed day with the approval of the Central Government whereby, in consideration of certain compulsory deductions made by Government from the salaries of its employees as part of the conditions of service, the payment of money is assured by Government on the death of the employee concerned or on the happening of any contingency dependent on his life."

This exception is not available to other employers such as local bodies.

Yours faithfully,

sd/-

For controller of Insurance."

The said order was challenged by an employee of the Municipal Corporation, Jabalpur (the first respondent) and the Jabalpur Corporation Karamchari Sangh (the second respondent) in Misc. Petition No. 69 of 1981. The Division Bench of the High Court under the impugned judgment allowed the writ petition principally on two grounds :

1. The Scheme run by the employees of the Municipal Corporation will not fall within the ambit of Life Insurance Business and, therefore, Section 20 of the Act will not apply.

2. The State Government has no jurisdiction to suspend or cancel the scheme which does not fall within the ambit of Section 421 of the Madhya Pradesh Municipal Corporation Act, 1956.

In questioning the correctness of this judgment Mr. Harish Salve, A
learned counsel appearing for the appellant urges the following:

Section 30 of the Act confers exclusive privilege on the appellant-
Corporation to carry on business of life insurance in India. The sums
assured by all policies issued by the appellant-Corporation including B
bonuses declared in respect thereof in terms of section 37 of the Act are
guaranteed as to payment in cash by the Central Government. The term
"Life Insurance Business" is defined under Section 2(11) of the Act. The
definition contained therein is merely illustrative and not exhaustive. On a
reading of Sections 2(3), 30 and 44(f) it would be clear that on the C
establishment of Life Insurance Corporation of India all life insurance
business which was then carried on by the Central Government or the State
Governments was to come to an end. Of course, the compulsory schemes
of Central Government or the State Governments which were in existence
at the time of establishment of Life Insurance Corporation of India were
allowed to continue. Similar schemes could, in future, be framed with the D
approval of the Central Government. In so far as the family benefits
scheme has the attributes or the essential ingredients of life insurance
business, the High Court went wrong in putting a narrow interpretation on
life insurance business. In fact, the word "business" has a wider meaning.

The scheme run by the Employees' Union is also against the interest E
of the employees themselves because the payment is not guaranteed either
by the Municipal Corporation or by the State Government. The exemption
under Section 44(f) is not applicable because this is a scheme run by
Corporation not the State Government. On the interpretation of Section
421 of the Madhya Pradesh Municipal Corporation Act, 1956 again the F
High Court has committed an error. A scheme which is illegal cannot be
run by a local authority.

Mr. S.K. Gambhir, learned counsel for the respondents would submit
that the family benefits scheme run by the Employees' Union does not G
partake the character of life insurance. It is purely contribution by the
employees which comes to be paid on the retirement of the employees in
lump sum. Therefore, this is not a case it could be said that this Union was
running Life Insurance Business. Consequently, it must be held, there is no
violation of Section 30. In such a case the exemption under Section 44(f)
does not arise. No exception could be taken to the impugned judgment. In H

- A any event, the Government will have no power to cancel the same under Section 421 of the Madhya Pradesh Municipal Corporation Act, 1956. The State Government has no jurisdiction to pass the impugned order stopping the scheme. Rightly, the High Court has set aside the same.

- B In view of the above argument we will first decide the meaning of Life Insurance Business. Section 2(11) of the Insurance Act of 1938 defines 'Life Insurance business' as follows :

- C "Life insurance business means the business of effecting contracts of insurance upon human life, including any contract whereby the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, and any contract which is subject to payment of premiums for a term dependent on human life and shall be deemed to include -

- D (a) the granting of disability and double or triple indemnity accident benefits, if so provided in the contract of insurance,

- (b) the granting of annuities upon human life; and

- E (c) the granting of superannuation allowances and annuities payable out of any fund applicable solely to the relief and maintenance of persons engaged or who have been engaged in any particular profession, trade or employment or of the dependants of such persons."

- F Life insurance is a promise to pay a certain sum upon the death of the assured. Life insurance is a contract whereby the insured agrees to pay certain sums, called premiums, at specified times, and in consideration thereof the insurer agrees to pay certain sums of money on certain conditions and in specified ways. Life insurance imports a mutual agreement, whereby the insurer, in consideration of the payment by the assured of a
- G named sum annually or at certain times, stipulates to pay a large sum at the death of the assured.

- H This Court had occasion to deal with the scope of Section 2(11). In *General Family Pension Fund v. Commissioner of Income-tax, West Bengal*, AIR (1955) SC 50 it was held (no doubt as a concession):

"The business of a company consisting exclusively in granting terminable pensions or annuities dependent on human life in favour of the subscribers or their nominees is insurance business as defined in S. 2(11) of the Insurance Act." A

Again, in *Chandulal Harjivandas v. Commissioner of Income-tax, Gujarat*, AIR (1967) SC 816 at pages 818-819 it was observed : B

"Life Insurance is a broader sense comprises any contract in which one party agrees to pay a given sum upon happening of a particular event contingent upon the duration of human life, in consideration of the immediate payment of a smaller sum or certain equivalent periodical payments by another party (Halsbury's *Laws of England*, 3rd Edn. Vol. 22; p. 273). It was held by the Court of Appeal in *Gould v. Curtis*, (1913) 6 Tax. Cas. 293 that for the purpose of the statutory provisions relating to relief in respect of life insurance premiums for purposes of income-tax, a contract by which a sum is payable on the death of the assured within a specified period and a larger sum if he is alive at the end of the period must be held to be an insurance on life. There is no definition of 'life insurance' in the Act but there is such a definition given in S.2 (11) of the Insurance Act, 1938 (Act 4 of 1938) which reads: C D E

"'Life Insurance business' means the business of effecting contracts of insurance upon human life, including any contract whereby the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, and any contract which is subject to payment of premiums for a term dependent on human life". F

Again, in *Commissioner of Wealth-tax, Punjab, J. & K., Chandigarh, Patiala v. Yuvraj Amrinder Singh*, AIR 1986 SC 959 at page 964 this Court observed thus: G

"The definition of 'life insurance business' as given in S. 2(11) of our Insurance Act, 1938 clearly includes, by a deeming provision, the business of granting of annuities upon human life within the expression 'life insurance business.' H

A In this case, the scheme run by the Jabalpur Municipal Corporation for the benefit of its employees, clearly states as follows:

B "The purpose of establishing the aforesaid Fund is to provide financial help to the family concerned of the confirmed employees employed in the Corporation after retirement or death. The family will mean wife, husband, minor son, who has not attained the age of 18 years, minor unmarried daughter who has not attained the age of 21 years, father or mother. *The benefit of the Scheme will be available to the legal heirs of the deceased in case the aforesaid members of the family are not available and if the nomination letter has not been filed in the prescribed form under the rules* benefit will not be payable to the married daughter under any circumstances." (Emphasis supplied)

D Therefore, we find no escape for the Jabalpur Municipal Corporation. If that be so, it is a clear case of life insurance. The High Court is not right in holding as follows :

E "Admittedly the scheme is not any kind of business as no benefits derived from the scheme go to any one except the contributors. It is also not disputed that the employees of the Corporation make a voluntary contribution although the amount of contribution is deducted because they give declaration to the Corporation for getting the deductions done from their salaries. On their retirement they get whatever is accumulated with interest and on mishap certain amounts is paid to the members of the family as provided in the scheme. It is, therefore, clear neither it is paid as insurance of the business nor anything which could attract the provisions of Section 30 of the Life Insurance Corporation Act."

G Then the question is whether Section 30 of the Life Insurance Corporation Act, 1956 is attracted. The said Section reads as follows :

H "Corporation to have the exclusive privilege of carrying on life insurance business. - Except to the extent otherwise expressly provided in this Act, on and from the appointed day the Corporation shall have the exclusive privilege of carrying on life insurance

business in India; and on and from the said day any certificate of registration under the Insurance Act held by any insurer immediately before the said day shall cease to have effect in so far as it authorises him to carry on life insurance business in India." A

If the scheme run by the Jabalpur Municipal Corporation amounts to life insurance business Section 30 (quoted above) will apply in all its rigour. It is the Life Insurance Corporation alone which is vested with the power to run such a business. The history leading to the passing of Life Insurance Corporation Act, 1956 is analysed. It is clear the life insurance business in the country was run by a large number of private insurance. They were not managing the affairs honestly. As a result, savings of a large number of policy holder were neither safe nor secure. It was in this background, with a view to provide security to policy holders and insurers the savings were employed in nation building activities and the life insurance business was nationalised in 1956 by establishing the Life Corporation of India. B C D

As the Statement of Objects and Reasons clearly points out all the contracts for assurance executed by the Corporation are guaranteed by the Central Government. That is also evident from Section 37 of the Act. If, therefore, under Section 30 Life Insurance Corporation is to have the exclusive privilege of carrying on life insurance business in India, certainly it will be illegal on the part of the Jabalpur Municipal Corporation to run the said scheme. Unfortunately, the High Court has taken a narrow view as to the scope of life insurance. The High Court failed to note that there is a large variation of life insurance contracts built up by a combination in various ways of contracts. There may be insurance contracts providing for the payment of premier in the event of death or again there may be endowment contracts providing for payment in the event of survival of the assured for a particular term. Therefore, life insurance has a wide concept in modern days. Life insurance is designated by various names according to the nature of the terms and conditions of the different forms of contracts or policies. They may be- E F G

(i) Endowment insurance, i.e., a contract to pay a fixed sum to insured if he survives for a specified period, or, if he dies within such period, to some other person nominated or indicated. Under H

A this head includes child's endowment or deferred life insurance. Considerable difficulties have arisen with regard to the latter type of insurance as normally a person has no insurable interest in the life of his child and such a policy would, therefore, be illegal but when the policy is in the form now commonly current, the proposer will be regarded as holding the policy in trust for the child.

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(ii) Limited-payment insurance, i.e., a form of life insurance which contemplates payment of premiums by insured for a specified period or until his death with such period and for payment by insurer on the death of the insured.

C The difference between the endowment insurance and the limited-payment lies in this that the latter becomes payable on the death of insured while the former is payable at the termination of the endowment period or on the death of the insured if it occurs earlier.

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(iii) Wholelife insurance is the normal form of insurance which contemplates payment of insurance money on the death of the insured to his legal representatives or assigns in consideration of periodical payment of fixed premium.

E (iv) Paid-up insurance, i.e., where no further premiums are to be paid. It may be of two kinds : (a) where premium is paid as a single payment and the money becomes payable at a time stipulated or at death if it occurs earlier; (b) where the original policy is converted into a paid-up policy, because of a default in the payment of premiums it means insurance reduced to an amount corresponding to the premiums paid, so that no further premiums are required to be paid.

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G (v) Term insurance, i.e., insurance for a term of year only, or unit insured shall arrive at a certain age or for the term or period for which a premium has been paid with the right to continue it from term to term on payment of the required premium. Two-year temporary assurance policies issued by the Life Insurance Corporation of India may be cited as an example, where agreement to pay specified amount if death occurs before expiration of one

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year and to renew and extend the insurance during successive years if required premiums were paid was held to be a contract of insurance for the term of one year only, with provisions for renewal for successive years. A

(vi) Advance insurance, i.e. insurance providing for the payment to insured of a lump sum immediately for consideration of his agreeing to make certain periodical payments to insurer for a specified period or for the life of insured if his life should terminate before the end of that period. Examples of this kind of insurance may be found in contracts to furnish funds for the building of a house, to be repaid by monthly or quarterly instalments, which shall cease on death. B C

(vii) Joint-life insurance, i.e., insurance on the joint-life of husband and wife, insurance money payable if death should occur to either of them. D

(viii) Annuity insurance, i.e., insurance whereby insurer agrees to pay certain fixed sum as annuity by monthly payment either at the expiration of the specified period or earlier if death should occur to the insured. E

The Life Insurance Corporation of India undertakes various kinds of life insurance, of which mention may be made of-

- (1) limited payment life insurance;
- (2) endowment insurance; F
- (3) joint-life insurance;
- (4) multi-purpose insurance;
- (5) children's deferred insurance; G
- (6) two-year temporary insurance;
- (7) whole life-insurance;
- (8) double endowment insurance; H

- A (9) triple benefit insurance;
- (10) anticipated endowment insurance;
- (11) convertible whole life insurance ;
- B (12) special whole life insurance ;
- (13) annuity insurance including single premium to immediate or deferred annuity insurance and including single premium to immediate or deferred annuity insurance and educational annuity insurance;
- C (14) fixed-term marriage endowment insurance.

We are unable to support the finding of the High Court. This scheme run by the Jabalpur Municipal Corporation is against the interest of the employees themselves since the payments under the scheme, whether on retirement or death, are not guaranteed either by the Jabalpur Municipal Corporation or by the Madhya Pradesh State Government.

Section 44 makes Life Insurance Corporation Act inapplicable in certain cases. Clause (f) of the said Section will not also come to the rescue of the Jabalpur Municipal Corporation. That is evident from the following:

- E "(f) any scheme in existence on the appointed day or any scheme framed after the appointed day with the approval of the Central Government whereby, in consideration of certain compulsory deductions made by the Government from the salaries of employees as part of the conditions of service, the payment of money is assured by Government on the death of the employee concerned or on the happening of any contingency dependent on his life;"
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This is not a scheme run with the approval of the Central Government.

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- The scheme may be similar to the one run by the Government of Madhya Pradesh but what requires to be carefully noted, is the scheme of the State Government will be eligible to exemption under Section 44(f) of the Act. Such an exemption is not available to the scheme of the Jabalpur Municipal Corporation.
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What remains now to be considered is whether the State Government could exercise its jurisdiction under Section 421 of the Madhya Pradesh Municipal Corporation Act, 1956. That Section runs as follows:

"Powers of Government to suspend any resolution or order. -

(1) If, the Government is of opinion that the execution of any resolution or order of the Corporation or of any other authority or officer subordinate thereto or the doing of any act which is about to be done or is being done by or on behalf of the Corporation, is not in conformity with law or with the rules or bye-laws made thereunder, or is likely to lead to a breach of the peace or to cause injury or annoyance to public or to any class or body of persons or is likely to cause waste of or damage to Municipal funds, the Government may, by order in writing, suspend the execution of such resolution or order or prohibit the doing of any such act.

(2) A copy of such order of the Government shall be sent to the Corporation by the Government.

(3) On receipt of copy of the order as aforesaid, the Corporation may, if it is of opinion that the resolution, order or act is not in contravention or excess of the powers conferred by any law for the time being in force, or the execution of the resolution or the doing of the act is not likely to cause waste of or damage to the Municipal funds, make a representation to the Government against the said order.

(4) The Government may, after considering the said representation, either cancel, modify or confirm the order passed by it under Section 1 or take such other action in respect of the matter as may in the opinion of the Government be just or expedient having regard to all the circumstances of the case."

The High Court is of the view that the scheme does not fall within the ambit of the above Section. No. question of municipal funds arises in this case as the scheme is wholly run on contributions made by the employees and not on the funds of the Jabalpur Municipal Corporation. Therefore, the State Government has no jurisdiction to cancel the Resolution.

- A A careful reading of sub-section (1) of Section 421 shows that if the doing an act which is not in conformity with law, certainly it could prohibit the doing of such an act. We have already found that the scheme is in violation of the Life Insurance Corporation Act, particularly Section 30. Therefore, the State Government is well empowered to invoke the power under Section 421. The exercise of such a power cannot be found fault with.
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In the result, the civil appeal will stand allowed with costs.

T.N.A.

Appeal Allowed.