CHAIRMAN, LIFE INSURANCE CORPORATION AND ORS. A

v.

RAJIV KUMAR BHASKER

JULY 28, 2005

[ASHOK BHAN AND S.B. SINHA, JJ.] B

Contract Act, 1872—Sections 182, 185 and 186—Scheme floated by Insurance Corporation envisaging employer to deduct monthly insurance premium from salaries of employees and remitting the same to the C *Corporation—Lapse of Insurance policy on account of failure to deduct insurance premiums by employer for some reasons—Writ petitions/Cases filed by claimants before High Courts/Consumer Courts—Courts holding that Insurance Corporation and employers are jointly liable to pay the claimants—Correctness of—Held, under the Scheme, the terms and conditions of the insurance policy between the employee and the insurer were to be performed* D *only through the employer—Hence, the employer would be the treated as an agent of the insurer—Insurance Corporation, being a 'State' under Article 12 of the Constitution of India, cannot be allowed to get itself discharged form the contractual obligations in the event of default of the employer—Life Insurance Act, 1956.*

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Appellant-Insurance Corporation floated a "Salary Savings Scheme" envisaging individual life insurance policy for salaried class employees. Under the Scheme, an employer has to deduct insurance premium from the salaried of the employees and remit the same to the Corporation by one cheque. Further, under the Scheme, no individual premium due notice or receipt would be issued F **to the employee. The employers failed to deduct the premium from the salary of the employee for some reasons. On failure to get the assured amount form the Corporation on maturity or on death of an employee, the claimants filed writ petitions and complaints before High Courts and consumer courts for deficiency in service. The Courts, following the decision of this Court in** *Delhi Electric Supply Undertaking* **v.** *Basanti Devi and Anr.*, **[1999] 8 SCC 229** G **allowed the writ petitions/complaints of the claimants.**

The Corporation, in appeal to the Court, contended that the insurance policy was issued in the name of the individual employee and hence it would

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A lapse on non-payment of the insurance premium either by employee or employer; that it is not liable to pay the assured amount on the ground of default committed either by the employee or by the employer; that under the Scheme, the employer acted as an agent of the employee and not of the Corporation and hence, the decision of this Court in *Basanti Devi* requires reconsideration.

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The employer, contended that it could not be jointly held liable to pay the assured amount to the claimants as the contract of insurance is between the insurer and the insured.

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Disposing of the appeals in favour of the claimants, the Court

HELD: 1.1. An employer would not be an agent in terms of the Life Insurance Corporation of India (Agents) Regulation, 1972 on the premise that it was not appointed by the Corporation to solicit or procure life insurance business. The employers had no duty to discharge to the Corporation either under the Life Insurance Corporation Act, 1956 or the rules and regulations framed thereunder but keeping in view the fact that the Corporation did not make any offer to the employees nor would directly make any communication with them regarding payment or non-payment of the premium or any other matter in relation thereto or connected therewith including the lapse of the policy, if any, it cannot be said that the employer had no role to play on behalf of the Corporation. [877-D, E]

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1.2. Under the Scheme, the employers were to make all endeavours to improve the service conditions of the employees and discharge its social obligations towards them. The employees could not approach the insurer directly, and, thus, for all intent and purport they were to treat their employers as agents of the Corporation. The Scheme clearly and unequivocally demonstrates that not only the contract of insurance was entered into by and between the employee and the insurer through the employer but even the terms and conditions of the policy were to be performed only through the employer. In that limited sense, the employers would be the agents of the insurer. If the employee had reason to believe that his employer was acting on behalf of the Corporation, a contract of agency may be inferred. The contention of the Corporation to refer the matter to a large Bench for reconsideration of *Basanti Devi's* cannot be accepted. [877-G, H; 878-A, G, H; 879-F]

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Delhi Electric Supply Undertaking v. *Basanti Devi and Anr.*, [1999] 8 SCC 229, relied on.

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1.2. Having induced the employer to act as a model employer and discharge its social obligations vis-a-vis its employees, it may not be permissible for a 'State' within the meaning of Article 12 of the Constitution of India to contend at this belated stage that in the event of default on the part of the employer, it may get itself discharged from its contractual obligations in such a cavalier manner. [879-G]

1.3. In case of non-payment of premium for any reason whatsoever, in view of the object the Scheme seeks to achieve, it was the duty of the insurer to inform the employee about the consequences of non-receipt of such premium form the employer. The Corporation has failed or neglected to do so. In terms of the Scheme, the employee for all transactions was required to contact his employer only. Hence, the Corporation, thus, cannot be permitted to take a different stand to as to make the employee suffer the consequences emanating from the default on the part of the employer. If for some reasons, the employer is unable to pay the salary to the employees, the employee may be held to have a legitimate expectation to the effect that his employer would at least comply with its solemn obligations. Such obligations having been undertaken to be performed by the employer at the behest of the Corporation as its agent having the implied authority therefore, the Corporation cannot be permitted to take advantage of its own wrong as also the wrong of its agent. In any event, the employer was obligated to inform the employee that for some reason, he is not in a position to perform his obligation whereupon the latter could have paid the premium directly to the Corporation. [880-B, C, D, E]

South Sydney District Rugby League Football Club Ltd. **v.** *News Ltd. and Ors.*, **177 ALR 611;** *Branwhile* **v.** *Worcester Works Finance Ltd.*, **(1969) 1 AC 552;** *Armagas Ltd.* **v.** *Mundogas S.A.*, **(1986) AC 717;** *Gurtner and Ors.* **v.** *Beaton and Ors.*, **(1993) 2 Lloyd's Rep. 369 and** *Freeman and Lockyer* **v.** *Buckhurst Park Properties (Mangal) Ltd.*, **(1964) 2 QB 480, referred to.**

Bowstead and Reynolds on Agency, **17th Edition Page 307.** *"Establishing Agency" by GHL Fridman* **- 1968 (84) Law Quarterly Review 224, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6028 of 2002.

From the Judgment and Order dated 12.10.2001 of the Patna High Court in L.P.A. No. 1066 of 2001.

WITH

A C.A. Nos. 6029/2002, 2357, 4463, 4620, 5470-5471, 6820/2003, 4313/2004, 1405, 4558, 4557 and 4559 of 2005.

G.L. Sanghi, L. Nageshwar Rao, A.V. Rangam, A. Ranganadhan, Buddy A. Ranganadhan, S. Rajappa, G. Rama Krishna Prasad, Mohd. Wasay Khan and Dr. Kailashnath with them for the Appellants.

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Dr. Maya Rao, K.R. Nagaraja, (NP), Ajit Kumar Sinha, V.K.Monga, V. Sridhar Reddy, R.Santhana Krishnan, Ms. K. Radha Rani, Abhijit Sengupta, Ajay Sharma, Vinoo Bhagat, Ms. Kirti Mishra, A.K. Sahi and Mrs. K. Sarada Devi for the Respondents.

C The Judgment of the Court was delivered by

S.B. SINHA, J. Leave granted in S.L.Ps.

These appeals involving common questions of fact and law were taken up for hearing together and are being disposed of by this common judgment.

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The basic fact of the matter is as under:

The Life Insurance Corporation (for short "the Corporation") was created under the Life Insurance Corporation Act, 1956 (for short "the Act"). It floated a "Salary Savings Scheme" which envisaged a life insurance policy E for the salaried class employees a proposal wherefor was made to the concerned employers. Although the Scheme as such is not on records of the case, the same has been referred to at some detail in the judgment of this Court in *Delhi Electric Supply Undertaking* v. *Basanti Devi and Anr.*, [1999] 8 SCC 229 and we intend to refer thereto in extenso as it throws considerable F light on the issue which falls for our determination.

The Corporation issued a brochure in relation to the said Scheme wherein it was stated:

> "It is a simple, economical plan whereby your employees may obtain G life insurance protection for their families and retirement income for themselves under advantageous conditions which might not be available to them otherwise. This it accomplishes by savings automatically deducted from their pay and remitted to us once a month.
>
> H This is not a group insurance. Each employee owns his policy

individually, is entitled to all its benefits and can continue the policy in the event of any change in employment.

Under this plan, you as an employer give facilities to the representatives of LIC to contact your employees to offer life insurance cover to them. Premium amounts, if an employee agrees to insure under this plan, are to be deducted every month from the employee's salary, in the same manner as the employee's provident fund. All the amounts so collected are paid to the Corporation by one cheque by the employer. This ensures for the employee regular payment, monthly, of his premiums at concessional rates. Deduction of premium from the salary or wages of an employee and its remittance to the Life Insurance Corporation is so beneficial that the recently amended Payment of Wages Act and the Minimum Wages Act make it legally permissible for an employer to do so. On your part, all that the plan involves is a little extra accounting which you will surely consider worthwhile because of the...."

The employer concerned in terms of the said scheme was addressed a letter by the Corporation which is as under:

"Dear Mr Employer,

The Salary Savings Scheme of Life Insurance Corporation has proved of considerable value to many organisations and which we believe will be of keen interest to you and your employees.

The general need on the part of the average employee for more adequate protection of his dependants is recognised as well as the desirability of his adequate provision for his own retirement.

The Scheme is very simple. All that we need is the cooperation by your Payroll Department. They have to make the deductions of the premium on the employee policy-holder's authorisation and remit them regularly to LIC along with a reconciliation statement.

Your employee will, I am confident, appreciate the benefits of your Salary Savings Scheme. It will be a practical demonstration of your personal interest in the welfare of those who help to make your company successful. Moreover, it is in tune with the present social trend.

A May I discuss the matter with you with a view to working out details?

Yours very truly,

sd/-
(Branch Manager)"

B [Emphasis supplied]

In the event, the employer and the employee agreed to the said offer made by the Corporation, the former would express its agreement thereto in the following terms:

C "Dear Sir,

Re: Salary Savings Scheme

PA Code No. ...

In order to make the benefits of your Salary Savings Scheme available to our employees, we agree to make the payroll deductions authorised D in writing by our employees, in amounts sufficient to pay the premiums included under your Salary Savings Scheme.

2. * * *

3. *It is also understood that no form of individual premium due notice or receipt will be issued by you.* E

4. It is also understood that the employee policy-holders shall have the right to discontinue participation in the Scheme at any time. If an employee exercises this right or if he is terminated, we will notify you in writing at the office where the remittance is forwarded and thereafter will not be responsible for collecting his premiums. F

5. * * *

6. * * *

7. In all transactions made by us pertaining to this Scheme and any policies issued by you thereunder, we shall act as the agent of our G employees and not as your agent for any purpose.

Yours truly

sd/-
Signature of employer"
H [Emphasis supplied]

The acceptance letter issued by the concerned Branch Manager of the Corporation envisaged that it was for the employer to deduct premium from the salary of the employee and to remit the same to the Corporation. In other words, the responsibility for collection of the premium by deducting the same from the salary of the employee and making over the same to the Corporation was of the employer. Some of the clauses of the letter of acceptance are as under:

"(a) The employer will receive list of premiums to be deducted called as demand invoice in duplicate each month on the specified date.

(b) One copy of the invoice is to be returned along with the remittance. The second copy is to be retained by the employer for his record.

(c) It is necessary to inform LIC when an employee leaves the service or is transferred from one department to another.

(d) Reconciliation statement in a specified form to be supplied by LIC will accompany the statement.

(e) The Corporation will make changes in the invoice based on the information received from the employer regarding transfer in, transfer out and exits.

(f) Deductions made in each month will have to be remitted to us within a week from the date of making deductions along with a copy of invoice and a reconciliation statement. Make your cheque payable to the Life Insurance Corporation of India and send it along with the copy of invoice with reconciliation statement drawn in the form suggested in (d) above to the appropriate Branch Office. While checking out statement if you find that an item cannot be paid, rule through the item on the original statement and note the reason for non-payment against the item in the remark column. If you find that an addition is to be made, make the addition at the end of the statement giving policy number, name, amount and the reason for addition. If the employee is transferred from one department to another, the names of the departments concerned and code number must be stated.

(g) In order to bring the invoices up to date, it is desirable that the employer informs us of all the changes in the staff immediately as soon as they occur. The employer need not wait to incorporate those

A in the invoice. The changes communicated to us through invoice are received date (sic) and the names of employees continue to appear in the wrong invoice in the meanwhile."

The employer thereafter addressed a letter to each of the employee informing him of the Scheme stating:

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"Realising that an adequate savings and protection scheme will mean so much to you and your family we have arranged for the benefits of the Salary Savings Scheme of the Life Insurance Corporation of India for all employees who desire its privilege. The premium will be automatically deducted from your salary once a month and remitted
C to the Life Insurance Corporation."

The employer, thus, accepted the sole responsibility to collect the premium from its employees and remit the same by means of one cheque to the Corporation. It is also evident from the tenor of the correspondences passed between the Corporation and the employer that the Scheme was as
D much as that of the employer as that of the Corporation.

It is not in dispute that for the said purpose a reconciliation statement was sent in the form prescribed by the Corporation and no individual premium notice was required to be sent to any employee and, furthermore, no receipt
E was to be given therefor. It was also for the employer to inform the Corporation about the changes in the staff as soon as they occurred including the factum of cessation of employment. The concerned employee was never made aware of the correspondence between the Corporation and the employer.

A circular titled "Salary Savings Scheme Endorsement" was also issued
F which is in the following terms:

"This policy having been issued under the Corporation's Salary Savings Scheme, it is hereby declared that the instalment premium shall be payable at the rate shown in the schedule of the policy so long only as the life assured continues to be an employee of his
G present employer, whose name is stated in proposal and premiums are collected by the said employer out of the salary of the employee and remitted to the Corporation without any charge. In the event of the life assured leaving the employment of the said employer or the premium ceasing to be so collected and/or remitted to the Corporation, the life assured must intimate the fact to the Corporation and in the

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event of the Salary Savings Scheme being withdrawn from the said employer, the Corporation shall intimate the fact to the life assured and all premiums falling due on and after the date of his leaving employment of the said employer, or cessation of collection of the premiums and remittance thereof in the manner aforesaid, or withdrawal of the Salary Savings Scheme as the case may be, shall stand increased by the imposition of the additional charges for the monthly payment that has been waived under the Salary Savings Scheme at 5% of the premium exclusive of any premium charged for double accident benefits or extended permanent disability benefits and any other extra premiums charged.

During the period in which premium is remitted to the Corporation through the employer, the instalment premium will be deemed to fall due on the 20th day of each month instead of the due date within mentioned."

For one reason or the other, the employers did not deduct the premium from the salary of the concerned employee.

Upon the death of the concerned employee, his heirs and legal representatives either filed writ petition in the High Court or filed applications before the District Consumer Forum constituted under the Consumer Protection Act, 1986.

The High Court in the writ petition in the case of *Rajiv Kumar Bhasker* which is subject matter of Civil Appeal No. 6028 of 2002 and District Forum, State Commission or National Commission in other cases following the decision of this Court in *Basanti Devi* (supra) allowed the same.

In *C. Shakuntala and Anr.* [Civil Appeal No. 2357 of 2003], the District Forum held that both the Corporation and the employer were jointly and severally liable to pay the assured amount to the concerned employee in view of the deficiency in service. The said order having been set aside by the State Commission, the Corporation as also the Employer (BHEL) preferred appeals before the National Commission which in view of the decision of this Court in *Basanti Devi* (supra) set aside the order of the State Commission. A Special Leave Petition was filed by Deputy Manager (Finance Adv.), BHEL being Civil Appeal No. 2357 of 2003 wherein a memorandum of cross objection has been filed by the Corporation.

A The contentions of Mr. G.L. Sanghi, learned senior counsel appearing on behalf of the Corporation are as under:

(i) The employer, in view of the Scheme, not being the agent of the Corporation, *Basanti Devi* (supra) requires reconsideration.

B (ii) As the policy was issued in the name of the individual employees, in the event of non-payment of the requisite premium either by the employee or the employer, the same would result in lapse of the policy. The claimants-Respondents were, therefore, not entitled to the sum assured.

C (iii) The Corporation being only a commercial undertaking and as in pursuance thereof, it had merely extended the facility of collection of premium payable by the employees through the employer, the same would not make it liable to pay the assured sum in terms of the policy having regard to the default in making payment of the amount of premium.

D (iv) The employer acted only as the agent of the employees and not that of the Corporation for any purpose and, in that view of the matter, the Corporation would not be liable to pay the assured amount.

Mr. L. Nageshwar Rao, learned senior counsel appearing on behalf of E the Appellant in Civil Appeal No. 2357 of 2003, would contend that having regard to the decision of this Court in *Basanti Devi* (supra), the National Commission must be held to have committed an apparent error in affirming the judgment of the District Forum as the employer cannot be made liable to pay the amount under the policy.

F The Salary Savings Scheme, as noticed hereinbefore, provides for a tripartite arrangement.

The Corporation itself had approached the employers and they agreed to such proposal; upon acceptance whereof by the Corporation, the employer G addressed a letter to the concerned employees giving details about the Scheme. In the letter of the Corporation, it was projected that it was the scheme of the employer itself. The employers were, thus, allured to ask their employees to agree to the proposal, on the premise that the same would amount to a practical demonstration of their interest in the welfare of those who help to make the companies successful and, furthermore, which would also be in tune H with the 'present social trend'.

The employers in terms of this tripartite arrangement accepted the responsibility of deducting the premium from the salaries of the same and send the same to the Corporation by one cheque. As noticed hereinbefore, the concerned employees would have no knowledge about the contents of correspondence passed between the Corporation and their employers.

Paragraph 3 of the employer's letter to the Corporation indicates that no form of individual premium due notice or receipt would be issued by the Corporation which clearly shows that the entire responsibility was thrust upon the employer by the Corporation.

An agency can be created expressly or by necessary implication. It may be true that the employers in response to the proposal made by the Corporation stated that they would act as agents of their employees and not that of the Corporation. But, the expression "agent" in such circumstances may not mean to be one within the meaning of the Life Insurance Corporation of India (Agents) Regulation, 1972 made in terms of Section 49 of the Act; but would mean an agent in ordinary sense of the term. An employer would not be an agent in terms of the said Regulation on the premise that it was not appointed by the Corporation to solicit or procure life insurance business. The employers had no duty to discharge to the Corporation either under the Act or the rules and regulations framed thereunder but keeping in view the fact that the Corporation did not make any offer to the employees nor would directly make any communication with them regarding payment or non-payment of the premium or any other matter in relation thereto or connected therewith including the lapse of the policy, if any, it cannot be said that the employer had no role to play on behalf of the Corporation.

In a plain and simple contract of insurance either the Corporation or the agent, on the one hand, and the insured, on the other, is liable to comply with their respective obligations thereunder. In other words, when a contract of insurance is entered into by and between the insurer and the insured no third party would have any role to play, but the said principle would not apply in a case of this nature. In a scheme of this nature, the employers were to make all endeavours to improve the service conditions of the employees and discharge its social obligations towards them. So far as the employees are concerned, they could not approach the insurer directly, and, thus, for all intent and purport they were to treat their employers as 'agents' of the Corporation. The Scheme clearly and unequivocally demonstrates that not only the contract of insurance was entered into by and between the employee

A and the insurer through the employer but even the terms and conditions of the policy were to be performed only through the employer.

In that limited sense, the employers would be the agents of the insurer. In Bowstead & Reynolds on Agency, Seventeenth Edition, at page 307, it is stated:

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> "Where a person, by words or conduct, represents or permits it to be represented that another person has authority to act on his behalf, he is bound by the acts of that other person with respect to anyone dealing with him as an agent on the faith of any such representation, to the same extent as if such other person had the authority that he
> C was represented to have, even though he had no such actual authority."

Section 182 of the Indian Contract Act, 1872 reads as under:

> " 'Agent' and 'principal' defined - An 'agent' is a person employed
> D to do any act for another, or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the 'principal'."

The definition of 'agent' and 'principal' is clear. An agent would be a person employed to do any act for another, or to represent other in dealings
E with third parties and the person for whom such act is done or who is so represented is called the principal. It may not be obligatory on the part of the Corporation to engage an agent in terms of the provisions of the Act and the rules and regulations framed thereunder, but indisputably an agent can be appointed for other purposes. Once an agent is appointed, his authority may
F be express or implied in terms of Section 186 of the Contract Act.

For creating a contract of agency, in view of Section 185 of the Indian Contract Act, even passing of the consideration is not necessary. The consideration, however, so far as the employers are concerned as evidenced by the Scheme, was to project their better image before the employees.

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It is well-settled that for the purpose of determining the legal nature of *the relationship* between the alleged principal and agent, the use of or omission of the word "agent" is not conclusive. If the employee had reason to believe that his employer was acting on behalf of the Corporation, a contract of agency may be inferred.

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In *Basanti Devi* (supra), this Court stated the law thus: A

> ".....Formation of the contract of insurance is between LIC and the employee of DESU. Scheme has been introduced by LIC purely on business considerations and not for any particular benefit of insurance conferred on the employee working in an organisation. Though in the proforma letter written by DESU to LIC it is mentioned that DESU B would be an agent of its employee and not that of LIC but this understanding between LIC and DESU was not communicated or made known to the employee. As far as the employee is concerned he is told that premium will be deducted from his salary every month and remitted by DESU to LIC under an agreement between LIC and C DESU. For the employee of DESU, therefore, DESU had implied authority as an agent of LIC to collect premium on its behalf and then pay to LIC. There is nothing on the record to show that Bhim Singh was ever made aware of the fact that DESU was not acting as an agent of LIC. Rather in the nature of the Scheme, the employee was made to believe that it is the duty of the employer though gratuitously cast D on him by LIC to collect premium by deducting from the salary of each employee covered under the Scheme every month and to remit the same to LIC by means of one consolidated cheque. Now it could be said that DESU would not be liable as an agent of its principal, i.e., LIC and also it was rendering service of collecting the premium and E remitting the same to LIC free of any cost to the employee. As to what is the arrangement between LIC and DESU the employee is not concerned. In these circumstances DESU cannot perhaps be held liable under the Act...."

We, with respect agree with the said observations and, thus, are unable F to accept the contention of Mr. Sanghi that the matter be referred to a larger Bench.

We may, furthermore, observe that having induced the employer to act as a model employer and discharge its social obligations *vis-a-vis* its employees it may not be permissible for a 'State' within the meaning of Article 12 of the G Constitution to contend at this belated stage that in the event of default on the part of the employer, it may get itself discharged from its contractual obligations in such a cavalier manner.

The Scheme clearly provides that in the event of cessation of employment the concerned employee if continues his employment under a new employer, H

A the former employer has to inform the Corporation thereabout. Furthermore, upon retirement or in situations other than taking up of any job with any other employer, the employee would be entitled to continue with the policy but therefor, he will have to pay a higher premium. Even at that stage, the Corporation would have a duty to inform the employee concerned towards his right. Even in case of non-payment of premium for any reason whatsoever, B in view of the object the Scheme seeks to achieve, it was the duty of the insurer to inform the employee about the consequences of non-receipt of such premium from the employer. The Corporation has failed or neglected to do so. In that view of the matter, we do not find any reason to take a different view.

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In terms of the Scheme, significantly the employee for all transactions was required to contact his employer only. In view of our findings aforementioned, the Corporation, thus, cannot be permitted to take a different stand so as to make the employee suffer the consequences emanating from the default on the part of the employer. If for some reasons, the employer is D unable to pay the salary to the employees, as for example, its financial constraints, the employee may be held to have a legitimate expectation to the effect that his employer would at least comply with its solemn obligations. Such obligations having been undertaken to be performed by the employer at the behest of the Corporation as its agent having the implied authority therefor, the Corporation cannot be permitted to take advantage of its own E wrong as also the wrong of its agent. In any event, the employer was obligated to inform the employee that for some reason, he is not in a position to perform his obligation whereupon the latter could have paid the premium directly to the Appellant herein.

F In *South Sydney District Rugby League Football Club Ltd.* v. *News Ltd. and Ors.*, [177 ALR 611], a similar question came up for consideration. In that case there existed an exclusionary provision contained in clause 2.2 in the agreement entered into by the parties thereto to the following effect:

> "NRL will act solely as an independent contractor. Nothing in this G agreement will constitute, or be construed to be or create, the relationship of employer and employee, principal and agent, trustee and beneficiary, joint venturers or partnership between the partners and NRL."

Construing the said clause it was held that by conduct of the parties

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a relationship was designed in which, at the level at which NRL was to perform its part in the operation of the business of the Appellant therein, NRL represented the partnership's business, and invited participation therein by clubs etc. The Court held that by reason thereof a fiduciary relationship came into being which was in substance that of an agency, stating :

> "There are several ancillary matters to which I should refer briefly. First, I have not referred directly to an argument advanced by News and NRLI to the effect that the recitals in the services agreement cannot in any way be used to contradict cl. 2.2. I do not for one moment cast doubt on the long-established proposition that in the construction of an instrument the recitals are subordinate to the operative part so that where the operative part is clear, it is treated as expressing the intention of the parties and it prevails over any suggestion of a contrary intention afforded by the recitals : see 10 Halsbury's Laws of England, 1st ed, 1909, para 803; Norton on Deeds, 2nd ed, 1928, p. 197. The question is not whether the *intent of cl. 2.2* was clear. It is whether, in the context of the factual relation consensually created, it was effective in its purpose.
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> Secondly, having found NRL to be the partnership's agent, I do not thereby suggest that any particular contract entered into by NRL did, or for that matter did not, bind the partnership. That question is one of fact in each instance and raises issues that go far beyond what is of present concern."

A somewhat similar view was taken by the House of Lords in *Branwhite* v. *Worcester Works Finance Ltd.*, (1969) 1 AC 552 in the following terms :

> "In the *Garnac* case Lord Pearson with the concurrence of the House, used these words :
>
> "The relationship of principal and agent can only be established by the consent of the principal and the agent. They will be held to have consented if they have agreed to what amounts in law to such a relationship, even if they do not recognize it themselves and even if they have professed to disclaim it. But the consent must have been given by each of them, either expressly or by implication from their words and conduct."
>
> The significant words, for the present purpose, are "if they have

A agreed to what amounts in law to such a relationship." These I understand as pointing to the fact that, while agency must ultimately derive from consent, the consent need not necessarily be to the relationship of principal and agent itself (indeed the existence of it may be denied) but may be to a state of fact upon which the law imposes the consequences which result from agency. It is consensual, B not contractual. So interpreted, this formulation allows the establishment of an agency relationship in such cases as the present."

Yet again in *Armagas Ltd.* v. *Mundogas S.A.* (1986) AC 717], the House of Lords pointed out that even in absence of any express contract of agency in relation to the transaction made with the third party, ostensible authority C may be presumed, stating :

".....Ostensible authority comes about where the principal, by words or conduct, has represented that the agent has the requisite actual authority, and the party dealing with the agent has entered into a D contract with him in reliance on that representation. The principal in these circumstances is estopped from denying that actual authority existed. In the commonly encountered case, the ostensible authority is general in character, arising when the principal has placed the agent in a position which in the outside world is generally regarded as carrying authority to entered into transactions of the kind in question. E Ostensible general authority may also arise where the agent has had a course of dealing with a particular contractor and the principal has acquiesced in this course of dealing and honoured transactions arising out of it."

In *Gurtner and Ors.* v. *Beaton and Ors.,* (1993) 2 Lloyd's Rep.369] their F Lordships quoted with approval the following dicta from *Freeman & Lockyer* v. *Buckhurst Park Properties (Mangal) Ltd.,* (1964) 2 QB 480]:

"The representation which creates "apparent" authority may take a variety of forms of which the commonest is representation by conduct, that is, by permitting the agent to act in some way in the G conduct of the principal's business with other persons."

It was further held:

"In applying that principle the correct approach is to consider the whole of the conduct of Cleanacres Ltd. in the light of all the H circumstances in order to determine whether that conduct amounted

to a holding out by them of Mr. Beaton as having the necessary authority : see per Lord Justice Browne-Wilkinson in The Raffaella at p. 41. It is not right to concentrate on the use of the word "usually" by Lord Justice Diplock in Freeman & Lockyer at p. 503 and to treat it as decisive in this case on the ground that an aviation manager cannot be regarded as "usually" having authority to make a contract for air taxi work when the aviation business of which he is manager does not include such work."

Agency as is well-settled, is a legal concept which is employed by the Court when it becomes necessary to explain and resolve the problems created by certain fact situation. In other words, when the existence of an agency relationship would help to decide an individual problem, and the facts permits a court to conclude that such a relationship existed at a material time, then whether or not any express or implied consent to the creation of an agency may have been given by one party to another, the court is entitled to conclude that such relationship was in existence at the time, and for the purpose in question. [See "Establishing Agency" by GHL Fridman - 1968 (84) Law Quarterly Review 224 at p 231].

For the reasons aforementioned, the appeals preferred by the Corporation including the cross objections filed by it in Civil Appeal No. 2357 of 2003 are dismissed and Civil Appeal No. 2357 of 2003 is allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.

B.S. Appeals disposed of.