Life Insurance Corporation of India and Others Vs Sri Jay Kumar Pandey

Court: Patna High Court

Date of Decision: June 30, 2011

Final Decision: Allowed

Judgement

S.K. Katriar, J.
The two appeals under clause 10 of the Letters Patent of the High Court of Judicature of Patna arise out of a common

order dated 13.5.2010, passed by a learned Single Judge of this Court, whereby CWJC No. 6847 of 2010 (Jai Kumar Pandey vs. Life Insurance

Corporation of India), and CWJC No. 6873 of 2010 (Pushpa Pandey vs. Life Insurance Corporation of India) have been allowed, and the

separate orders passed by the appellate Corporation terminating the agency of the two writ petitioners on common ground have been set aside.

CWJC No. 6847 of 2010 has given rise to LPA No. 1068 of 2010 and CWJC No. 6873 of 2010 has given rise to LPA No. 1111 of 2010.

2. LPA No. 1068 of 2010

We shall first deal with LPA No. 1068 of 2010. A brief statement of facts essential for the disposal of the appeal may be indicated. The appellant

had appointed the respondent as an agent within the meaning of Life Insurance Corporation of India (Agents) Regulations 1972 (hereinafter

referred to as "the Regulations"), read with the Insurance Act, 1938, way back in 1990. It is alleged that on 18.4.2004, in the evening, the

respondent herein alongwith his brother Dinesh Pandey (husband of the respondent in the analogous LPA No. 1111 of 2010), had gone to the

office of appellant no. 4, and had insisted that the proposal for insurance they had brought, should be accepted without proof of age. On refusal by

appellant no. 4, both the respondents had hurled abuses, threatened, and assaulted appellant no. 4, and other functionaries of the Corporation from

the Divisional Office who were present there on tour. In exercise of the powers available under Regulation 16(3), appellant no. 3 issued order dt.

24.4.2004, the respondent was ""..... advised not to procure or submit any new business and not to witness any paper of LIC of India like DGH,

Discharge Voucher, etc. till further instructions"". There are indications on record that the appellants lodged F.I.R. against the respondent, and there

has also been counter case at the instance of the respondents, but not relevant in the present context. The appellants served show-cause notice

dated 8.7.2006, upon the respondent informing him of the allegations and to show cause as to why his agency be not terminated in terms of

Regulation 6. The respondent had shown cause on 22.8.2006, wherein he denied the allegations. On a consideration of the materials on record,

the competent authority passed order dated 1.12.2008 in terms of Regulation 16(1)(b), whereby the respondent"s agency was terminated. He

thereafter preferred departmental appeal which was dismissed by order dated 26.4.2010, whereby the aforesaid order dated 1.12.2008 has been

upheld, leading to the present writ petition. The writ petition has been allowed on the ground that the allegations against the respondent, even if

taken to be wholly true, is not covered by the terms of Regulation 16(1)(b). The authorities have committed the error of overlooking the distinction

between an act prejudicial to the interest of the Corporation or the interest of its policy-holders on the one hand, and the personal honour and

dignity of its functionaries, on the other. The writ petition has, therefore, been allowed and the order of termination of agency has been set aside.

Hence this appeal at the instance of the Corporation.

3. While assailing the validity of the order of the learned Single Judge, learned counsel for the appellants submits that the Regulations govern the

relationship between the Corporation and the agent. The same are statutory rules framed by the Central Government in exercise of the powers

vested in it u/s 49 of the Life Insurance Corporation Act, 1956, and, in view of the amendment of 1981, Regulation will now be deemed to have

been framed by the Central Government as Rules u/s 48(2)(cc). He relies on the following reported judgments:--

(i) Harshad J. Shah and another Vs. L.I.C. of India and others, (para 17),

(ii) Life Insurance Corporation of India Limited Vs. The Presiding Officer, Labour Court and an Authority under the Bihar Shops and

Establishments Act and Ramesh Chandra Sinha (at page 180).

He next submits that the action, conduct, and behaviour of the respondent was surely prejudicial to the interests of the Corporation as well as the

interest of its policy-holders. He submits in the same vein that, in view of the position that misbehaviour had taken place in the office premises of

appellant no. 4, it had little to do with the personal honour and dignity of appellant no. 4 and other functionaries of the Corporation and, therefore,

the distinction created by the learned Single Judge is without any valid basis in law. In his submission, the narrow interpretation given by the learned

Single Judge on the wordings of Regulation 16(1)(b) is unwarranted in law.

He next submits that, in view of the proviso to Regulation 16(1), detailed procedure to terminate the agency is obviated. A reasonable opportunity

to show cause is adequate compliance of the provisions of law. He next submits that, in case this Court is not satisfied with observance of the

procedural requirements, a fresh opportunity may be granted to the appellants. He lastly submits that the judgment of Supreme Court in Radhey

Shyam Gupta Vs. U.P State Agro Industries Corporation Ltd. and Another, relied on by the learned counsel for the respondent, is inapplicable to

the facts and circumstances of the present case.

4. Learned counsel for the respondent has supported the order of the learned Single Judge. He submits that the learned appellate authority has

taken into account materials not to be found in the show-cause notice, the cause shown, or the order of the competent authority. He submits that

the show-cause notice is vague, and has not disclosed the nature of misbehaviour attributable to the respondent. He submits in the same vein that

the materials adverse to the respondent and used by the learned competent authority or the learned appellate authority had not been shown to the

respondent before he had shown cause. He next submits that the proviso to Regulation 16(1) mandates that the agent shall be afforded a

reasonable opportunity to show-cause which has manifestly been denied to him in the present case. He lastly submits that the present proceedings

is replete with procedural lapses and is, therefore, fit to be set aside. He relies on the judgment of the Supreme Court in Radhey Shyam Gupta vs.

U.P. State Agro Industries Corporation Ltd. (supra).

5. We nave perused the materials on record and considered the submissions of the learned counsel for the parties. The admitted position is that the

relationship of the Corporation and its agents is governed by the Regulations which has been framed by the Central Government in exercise of the

powers vested in it by Section 49 of the 1956 Act. It appears to us on a perusal of the Regulations that the relationship between the Corporation

and the respondent is one of principal and agent. There is no relationship of master and servant between them, and the agent is not holder of a civil

post within the meaning of Article 311 of the Constitution of India. Such relationship will have a very strong bearing on the interpretation of the

various provisions of the Regulations. The holder of a post within the meaning of Article 311 of the Constitution of India has status. The relationship

ceases to be contractual, and such an incumbent is entitled to full protection under the laws of the land. On the other hand, the relationship between

a principal and agent is basically contractual in nature, the agent has no status, and does not enjoy protection of Article 311 of the Constitution of

India read with the relevant laws of the land. The relationship being contractual in nature, he will be entitled to the limited protection under the

Regulations.

6. Regulation 16 governs the relationship between the parties in the present case, the relevant portion of which is reproduced hereinbelow for the

facility of quick reference:--

16. Termination of agency for 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 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 becomes physically or mentally incapacitated for carrying out his functions as an agent;

(f) 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.

In the present case, action has been taken in terms of Regulation 16(1)(b). The Corporation has come to the conclusion that the action of the

respondent was prejudicial to the interest of the Corporation. The action was taken after affording reasonable opportunity to show-cause against

such termination. The respondent had shown cause followed by the order of termination passed by the learned competent authority. The

respondent also availed of the departmental appeal which has been dismissed by a reasoned order. In our view, the order of the competent

authority conforms to the requirements of Regulation 16(1)(b), and further conforms to the requirements of Regulation 16(2) which provides that

the order of termination shall be in writing and communicated to the agent concerned. Regulation 16(3) enables the competent authority to pass an

order in the nature of an order of suspension in contemplation of action against the agent. It is significant to observe from a plain reading of

Regulation 16 that, in case the act attributable to the agent is covered by anyone of the clauses under Regulation 16(1), perhaps the only action that

can be taken against him is termination of agency. On a perusal of Regulation 16, we get a clear impression that the only protection available to an

agent against the proposed order of termination of agency is to be found in the proviso to Regulation 16(1) which is to the effect that the agent shall

be given a reasonable opportunity to show cause against such termination. As indicated hereinabove, such an opportunity read with the

requirements of Regulation 16(2), was afforded to the respondent. It, therefore, follows as a matter of corollary that the kind of relationship that

exists between the Corporation and the agent, the respondent should be under no impression that he will be entitled to the exhaustive protection

available to the holder of a civil post within the meaning of Article 311 of the Constitution. He is entitled to the limited protection against arbitrary

action of the Corporation. It should also be emphasized that the activities of the Corporation are a good deal commercial in nature, and is not

engaged in discharge of sovereign and regal functions.

7. Coming to the facts and circumstances of the present case, it appears from the materials on record that the occurrence is alleged to have taken

place in the official chambers of appellant no. 4 where the visiting officers of the Corporation from the Divisional Office were present and were

engaged in discharge of duties. It was evening time, though it has been described as "midnight" in the order of the learned appellate authority. Be

that as it may, it further appears to us that the respondent alongwith Dinesh Pandey, brother of the respondent (and the husband of the respondent

of the analogous LPA No. 1111 of 2010), entered the chambers of appellant no. 4 and insisted that their proposal forms of the persons seeking

insurance must be accepted without furnishing convincing proof of age. It further appears that the authorities did not agree with this idea and

repelled the proposals followed by abusive behaviour and threat of assault by the respondent and his brother. This was followed by the order

dated 24.4.2004, prohibiting him from working as an agent in contemplation of action under Regulation 16, and the follow-up action leading to the

order of termination of agency summarised hereinabove.

8. We have no manner of doubt that the action of the respondent herein was undoubtedly prejudicial to the interest of the Corporation, because it

would surely not like to issue insurance policies without convincing proof of age. Age has a direct bearing on the question of acceptance of the

proposal, on the amount of premium etc. Such an action may also be prejudicial to the interest of its policyholders. If such a defective proposal is

accepted, then the policy-holder or his heir and successor may face difficulty when the claim arises if the form is found to be deficient. We,

therefore, conclude that the action of the respondent was undoubtedly prejudicial to the interest of the Corporation, possibly the policy-holders

also.

9. We must deal with the distinction brought about by the learned Single Judge in his order. He has observed that the Corporation overlooked the

vital distinction between the interest of the Corporation and its policy-holders on the one hand, and the personal respectability and honour of the

functionaries, on the other. Even if such a distinction were valid in law, the same is surely not available to the respondent in the present case for the

reason that, on account of use of abusive language and threat of assault, he insisted that defective proposal be accepted. Such an action is

undoubtedly covered by Regulation 16(1)(b), and is prejudicial to the interest of the Corporation, and possibly the policy-holders also.

10. We now pass on to the grievance raised by the respondent that the proceeding taken against the respondent is very deficient in observance of

procedural requirements. The grievance may have been justified, had the respondent been holder of a civil post. He completely overlooks the vital

legal position in the present case as to the relationship between him and the Corporation within the meaning of the Regulations. This is one of

master and servant, is contractual in nature, and who does not enjoy status. It is indeed contractual relationship, is one of principal and agent, is not

for salary but for commission or remuneration indicated in the Regulations, and is entitled to the limited protection available to him under Regulation

16 against the possible arbitrariness of the authorities. Regulation 4(5) provides that notwithstanding anything contained in the foregoing sub-

regulations, the competent authority may, by notice in writing to an agent, direct that his agency year shall be every successive period of twelve

months from the date mentioned in the notice. In other words, the agency can subsist for a limited period. Regulation 15 provides that the

appointment of an agent shall be liable to be terminated without notice and the competent authority shall forthwith terminate his appointment. In

view of this legal position, read with the relationship that exists between the Corporation and the agent, the procedural safeguards contemplated by

the Regulations have been observed. We do not see any arbitrariness attributable to the functionaries of the Corporation.

11. We are reminded of the judgment of the Chancery Division of England in Maclean vs. Workers Union, (1929) All.E.R. 460 . That was a case

of action and expulsion of the defendant union. The plaintiff was a member of the defendant union, and a member of the executive committee

thereof. During that year, the presidency of the union fell vacant and the plaintiff was nominated as a candidate. As such candidate he caused to be

issued election addresses in the form of circulars, which were in due course sent to the branches of the union. They contained reflections on the

conduct of the executive committee, the president and secretary. No approval by the executive committee of the circulars had been asked or

obtained by the plaintiff prior to their issue, and at a meeting of the committee held in September, 1927, attended by the plaintiff, who spoke on his

own behalf, it was resolved that a serious breach of the rules had been committed by him and that he be expelled. The plaintiff then issued the writ

in this action, claiming a declaration that such resolution was ultra vires and an injunction to restrain the defendants from enforcing it or interfering in

any way with his rights as a member.

In this factual background, the Chancery Division held as follows:--

The jurisdiction of the courts in regard to domestic tribunals--a phrase which may conveniently be used to include the committees or the councils or

the members of trade unions, of members'' clubs, and of professional bodies established by statute or royal charter which acting in a quasi-judicial

capacity--is clearly of a limited nature. Parenthetically, I may observe that I am not confident that precisely the same principles will apply in all

these cases; for it may be that a body entrusted with important duties by an Act of Parliament is not in the same position as, for example, the

executive committee in the present case. Speaking generally, it is useful to bear in mind the very wide differences between the principles applicable

to courts of justice and those applicable to domestic tribunals. In the former the accused is entitled to be tried by the Judge according to the

evidence legally adduced and has a right to be represented by a skilled legal advocate. All the procedure of a modern trial, including the

examination and cross-examination of the witnesses and the summing-up, if any, is based on these two circumstances. A domestic tribunal is in

general a tribunal composed of laymen. It has no power to administer an oath, and--a circumstance which is, perhaps, of greater importance--no

party has the power to compel the attendance of witnesses. It is not bound by the rules of evidence: it is. indeed, probably ignorant of them. It may

act, and it sometimes must act, on mere hearsay, and in may cases the members present or some of them--like a British Jury in ancient days--are

themselves both the witnesses and the Judges. Before such a tribunal counsel have no right of audience and there are no effective means for testing

by cross-examination the truth of the statements that may be made. The members of the tribunal may have been discussing the matter for weeks

with persons not present at the hearing, and there is no one even to warn them of the danger of acting on preconceived views. It is apparent, and it

is well settled by authority, that the decision of such a tribunal cannot be attacked on the ground that it is against the weight of evidence, since

evidence in the proper sense there is none and since the decisions of the tribunal are not open to any sort of appeal unless the rules provide for

one.

There must be due inquiry. The accused person must have notice of what he is accused. He must have an opportunity of being heard, and the

decision must be honestly arrived at if he has had a full opportunity of being heard. With respect of the charge made, the charge of which he has

notice, it is a charge of infamous conduct in some professional respect, and the particulars which should be brought to his attention in order to

enable him to meet that charge ought to be particulars of conduct which, if established, is capable of being viewed by honest persons as conduct

which is infamous. That is all. We have seen these conditions have been fulfilled by the inquiry and by the tribunal which institutes it. The functions

of the court of law are at an end. It appears to me that we have no power to review the evidence any more than we have a power to say whether

the tribunal came to a right conclusion. If, needed, it could be shown that nothing was brought before the tribunal which could raise in the minds of

honest persons the inference that infamous conduct had been established, that would go to show that the inquiry had not been a due inquiry; but if

there is no blot of that kind upon the proceedings the jurisdiction of the domestic tribunal which has been clothed by the legislature with the duty of

discipline in respect of a great profession must be left untouched by courts of law.

(Emphasis added)

12. In our view, the law enunciated by the Chancery Division as to the procedure to be followed by the domestic tribunal and its latitude to

ascertain the truth by different methods, which may be a major departure from the procedure to be followed with respect to the holder of a civil

post, is quite different and fully applicable to the facts and circumstances of the present case. The law laid down in Maclean''s case may not be

applicable in a case where action has been taken against the holder of a civil post covered by Article 311 of the Constitution, which is not the case

here. Therefore, we reject the contention advanced on behalf of the respondent that the learned appellate authority had taken into account certain

adverse materials which were not found in the enquiry proceedings, and had not been disclosed to the respondent. As stated hereinabove, such an

enquiry and wide latitude to the domestic tribunal is permissible in law. The primary questions are three-fold, namely, an agent should be afforded

reasonable opportunity within the meaning of Regulation 16, and the court should be convinced that the authorities are not engaging themselves in

act of arbitrariness, and the order against the agent is in writing and has been communicated to the agent. We are convinced on the three counts

and hold in favour of the appellants. The appeal is allowed.

13. LPA No. 1111 of 2010

The facts and circumstances of the present appeal are identical to those of the aforesaid LPA No. 1068 of 2010. The minor difference is that in the

instant appeal, the respondent Pushpa Pandey is the agent, was personally not present at the time of the occurrence. Her husband. Dinesh Pandey,

alongwith his brother being the respondent in the analogous appeal, had together committed the same acts of omission and commission and were

parties to the same occurrence. Dinesh Pandey really acted as an agent and representative of Pushpa Pandey. The fact that Pushpa Pandey was

personally not present and was represented by her husband in committing the acts of omission and commission, makes no difference in. our

conclusion. The present appeal is entirely covered by the foregoing discussion.

14. In the result, both the appeals are allowed. We disagree with the judgment dated 13.5.2010, passed by the learned Single Judge in CWJC

No. 6847 of 2010, and the analogous CWJC No. 6873 of 2010. The order dated 1.12.2008, passed by the competent authority, and upheld in

appeal by order dated 26.4.2010, are hereby restored. In the circumstances of the case, there shall be no order as to cost.

Amaresh Kumar Lal, J.

I agree.