M.V. Krishnamoorthy and Another Vs Smt. Anandalakshmi and Others

Court: Madras High Court

Date of Decision: Oct. 13, 1979

Acts Referred: Life Insurance Corporation Provident Fund, s, 1956 â€" Rule 22(4)

Citation: (1980) 93 LW 475 : (1980) 2 MLJ 321

Hon'ble Judges: Sathiadev, J

Bench: Single Bench

Advocate: N. Sivamani and V. Narayanaswami, for the Appellant; M. Srinivasan, V.S. Muthuswami and D. Ramamurthy, for the Respondent

Final Decision: Allowed

Judgement

Sathiadev, J.
Defendants Nos. 1 and 2 are the appellants. The first respondent herein filed the suit claiming that she was entitled to the

provident fund amount of Rs. 9,151 due from the respondents Nos. 2 and 3 herein, who were defendants Nos. 3 and 4 in the trial court, on the

ground that she was the heir and dependent of deceased K. Subramantan, who was working as an assistant in the Life Insurance Corporation at

Coimbatore. Subramanian died on 28th January, 1970, leaving behind his wife, the plaintiff, without any children. Defendants Nos. 1 and 2 are his

father and mother. Plaintiff claimed that though 3rd defendant admitted her claim in some letters and agreed to pay the provident fund amount to

her, later on refused to pay stating that the first-defendant had been nominated by her late husband. In the alternative, she claimed that she will be

entitled to share the amount along with the second-defendant. Hence the present suit.

3. The first-defendant, father of late Subramanian claimed that he had been nominated even as early as 10th March, 1958, to receive the provi

dent fund amount and hence he is wholly entitled to it. Second-defendant mother claimed that she was also an heir to her son and that she was en

titled to a share in the property. The 3rd defendant claimed that under r. 22 of Provident Fund No. 1 Rules (hereinafter will be ""referred to as "" the

Rules ""), the first-defendant alone had been nominated to receive the amount and, therefore, the suit claim has to fall.

4. The trial court dismissed the suit holding that Ex. B-1, the nomination, made by late Subramanian on March 10, 1958, in favour of his father,

entitles him to get the entire amount to the exclusion of others and there being no other nomination made by him subsequently, plaintiff has no legal

right to file the suit.

5. The lower appellate court, on a consideration of the correspondence exchanged between the parties to the proceedings and of the initial stand

taken by the LIC, held that Ex. B-1 cannot be acted upon and the intention of late Subramanian was to benefit only the plaintiff and hence decreed

her claim. The lower appellate court also held that defendants Nos. 3 and 4 have withheld certain material documents, which, if produced, would

have necessarily established that Ex. B-l had been subsequently varied after late Subramanian married the plaintiff in 1965.

6. In this appeal, it is contended that the court is bound to act upon Ex. B-l unless and until it is established that the said nomination had been later

on varied, modified or cancelled and that the conclusion that Ex. B-l nomination ought to have been resiled from later on, and that defendants Nos.

3 and 4 have wrongly withheld certain relevant documents, is uncalled for. It is further contended that the 4th defendant, being the trustees of the

funds, are bound by the Rules and they can only act upon the basis of the nomination and are not concerned with the sharing or the distribution of

the provident fund money to the heirs of late Subramanian.

7. Mr. V. Narayanaswami, learned counsel for the appellant contends that the nomination under Ex. B-l disentitles the plaintiff from claiming any

portion of the amount, and as per the Rules, when a direction is given by the contributor to pay the amounts to the nominee in the event of his

death, it should be distributed to the person named in the nomina- tion. Here the nomination stood only in the name of-the first defendant.

Therefore, the first defendant is the only person entitled to claim the amount. During the course of the hearing of the appeal, an attempt was made

to arrive at a settlement between the parties. After several adjournments, it was reiterated that no amicable settlement had been arrived at. The

counsel for defendants Nos. 3 and 4 was directed to produce the Rules with all the amendments incorporated therein, because Ex. A-8, the letter

dated October 20, 1972, written by the third defendant contained an assertion :

As regards your contention that any nomination made prior to the marriage should be deemed to have been superseded on his marriage, we may

point out that there is no such provision in the L.I.C. P.F. Rules which govern the fund.

8. The courts below have approached the main issue involved in the proceedings on the basis of the existence or otherwise of a nomination in

favour of the plaintiff. Ex. B-1 nomination was made on 10th March, 1958, and it is only thereafter that late Subramanian married the plaintiff in

1965. Evidence adduced is to the effect that subsequent to his marriage, no fresh nomination had been made by him. No doubt the lower appellate

court had drawn an inference that subsequently there must have been a nomination made by him and defendant No. 3 had withheld certain material

documents. Except Ex. B-1 nomination, no other nomination has been macte by the husband of the plaintiff. Rule 22 of the Rules, which deals with

the nomination to provident fund, was amended in July, 1972, to the following effect:

Rule 22(4): If at the time of making a nomination, the member has no family, the nomination may be in favour of any person or persons, but if the

member subsequently acquires a family, such nomination shall forthwith be deemed to be invalid and the member shall make a fresh nomination in

favour of one or more persons belonging to Ms family.

9. In this case, the plaint was presented on November 25, 1972. Rule 5 states.

These Rules shall come into force on the 1st day September, 1956.

10. Rule 11 empowers the trustees to make such rules and regulations from time to time for regulating the conduct of their meetings and the

management of the fund or otherwise as they shall think proper. Rule 30 provides that the amount shall become payable on the death of the

member. Rule 37 deals with alterations in the rules and states that no alteration shall be retrospective, and when amendments are effected, they

shall be deemed to have been assented therefore and members bound by the revised rules. Plaintiff''s husband died on January 28, 1970. If the

date of death of a member is to be taken as the crucial date for finding out the relevant rules, about disbursement of the amount, the amendments

effected in 1972 will not be applicable. But if the date on which the amount is disbursed by the 4th defendant is to be taken into account,

amendments effected in July, 1972, will necessarily apply to this case because the plaintiff has presented the plaint only in November, 1972.

Trustees in charge of provident fund are bound to apply the rules in force at the time of disbursement. Taking up the position that the amended

rules will apply in view of Rule 22(4) of the Rules, the nomination under Ex. B-1 had become invalid, as soon as the plaintiff got married to late

Subramanian in 1965. There being no fresh nomination, the entitlement to draw the provident fund will go to the heirs of Subramanian and in this

case the plaintiff and the second defendant will be entitled to get an equal share. Hence, the conclusion arrived at by the lower appellate court that

the plaintiff alone will be entitled to the entire amount is erroneous, the plaintiff will be entitled to a declaration that one-half of the provident fund

amount, contributed by late Subramanian, in the hands of the 4th defendant is to be paid to her with interest thereon, and she will be entitled to

interest at 9% per annum from the first defendant from the date of withdrawal of the amount by him from the court deposit.

11. Even if it is to be construed that the Rules effected in July, 1972, will not be applicable in the case of the death of a member prior to the coming

into force of the amended Rules, it will have to be seen whether a nomination made under Ex. B-l would result in an exclusive right in the nominee

to take the entire amount for himself and to the exclusion of the other heirs of the deceased member. Exhibit B-l nomination states that the fund, on

the death, is directed to be paid to the nominee.

12. Rule 22 before the 1972 amendment, provided that all nominations must be in writing and must be registered with the trustees. Rule 23 deals

with payment to nominee and is to the effect that on the death of a member, the full amount shall be paid to the nominee, and such payment shall be

a good discharge to the trustees and to the Corporation.....against all claims whatsoever in respect of the Fund by whomsoever claiming through

the said member. These two rules go to show that the main purpose of taking nomination is for the trustees of the fund to relieve themselves of their

obligation in paying the provident fund amount, irrespective of the persons who may be entitled to the fund. Whenever the provident fund amount is

disbursed, the custodian of the fund is anxious to have a good discharge against all claims from whomsoever claiming through the mem-ber. The

rules nowhere provide that the nomination is to be construed as a ""will"" by the member. If a nomination is to be taken as a final disposition made by

the member as to how it should be taken by his heirs on his death, it would lead to anomalies because till the member dies, the nominee acquires

no right to claim the amount. The legal right of a member to decide from time to time as to how his assets should be taken consequent on his death,

cannot be frozen by a nomination given, as part of his service conditions. His legal rights about disposition of his assets cannot be circumscribed by

such a nomination. If he is to execute a ""will"" later on, contrary to the nomination that has been made earlier, the terms and conditions of the ""will

alone can prevail, and so far as the trustees of the fund are concerned, their obligation will be fully discharged by paying it to the nominee, who will,

in turn, be liable to hand over the funds to the persons entitled to as per the ""will"". In case of intestate succession, the nominee is bound to hand

over the amounts to the heirs of the deceased. The main purpose of a nomination is intended to benefit the custodians/ trustees of the fund to know

as to how or to whom they should hand over the amounts and need not make themselves answerable to multiplicity of claims from different

persons claiming to succeed to the interests of the deceased member. If there is no nomination, the custodian of the fund cannot decide as to who

are the lawful heirs to succeed and they will have to wait for a court order to be produced, and unless finality is reached therein, the disbursement

of the fund will be delayed. Funds, like the provident fund, in the case of State or other public institutions, may be sufficiently safeguarded even if

there is to be a delay in disbursement. But in cases of other institutions, if the amounts are not immediately disbursed on the basis of nomination,

and before proceedings in court are over, if for any reason, the companies or institutions are liquidated, the contributions made by a member of

such bodies, will not enure to the benefit of the legal heirs till finality is reached in court proceedings unless the amount is deposited in court at the

earliest stage. The concept of nomination has been thought of to achieve the disbursement of the amounts, at the earliest point of time, to the

nominee, who will be answerable to claims made by those who are entitled to the amount lawfully. Nomination means "" to mention by name "" ; "" to

appoint "" ; "" to propose formally "".

13. As far as the rules governing the present matter are concerned, Rule 23 itself brings about the purpose for taking a nomination, and it being for

giving a good discharge to the trustees, it cannot be held that Ex. B-l nomination results in the father alone acquiring absolute rights in the amounts

to the exclusion of the legal heirs of late Subramanian, who died intestate. Hence, assuming that the rules as they stood on the date of death of

Subramanian, are alone applicable, Ex. B-l nomination has resulted in the first defendant being entitled to draw the amount from the 4th defendant,

and, in turn, he is bound to hand over the amounts to the lawful heirs in equal shares, they being the plaintiff and the second defendant in this case.

So far as the 4th defendant is concerned, they are not answerable to any claims made by any of the heirs of late Subramanian and on payment of

the entire amount to the first defendant, they are fully discharged of their obligations under the Rules. Looked at from the other point of view, the

resultant position is, the plaintiff will be entitled to one-half of the amounts, as above held.

14. On the aspect of nominations, I have already considered the limited purpose for which they are taken by custodians of funds and as to why

nominations cannot be construed as equivalent to ""will"". A few decisions dealing with this aspect and most of them arising under the Provident

Funds Act, 1925, have been placed before me. It must be remembered that on an interpretation and construction of the section of the Act, the

scope of a nomination made under the Act had been duly construed by different High Courts. At the outset, I will refer to two Division Bench

decisions of this court, they being : Korlam Sitaramaswamy Vs. Korlam Venkatarama Rao, , wherein relying upon the earlier decision of this court

in Lakshmamma (dead) and Another Vs. P.S. Subramanyam, , it was held that since Rule 5 provided that the nominee is conferred with absolute

rights, it is only the nominee and his heirs who can take the amount to the exclusion of others, and Nishtala Subramanya Somayajulu Vs.

Kannepalli Lakshmi Somi Devi, , wherein also it was held that even if the nominee (wife) pre-deceased, her husband (who made the nomination)

the persons entitled to the fund are his wife"s heirs. Here again emphasis was laid on the word "" absolutely "" found in Section 5 of the Act and also

on note II to Rule 17 of the Rules. Subsequently Section 5(1) of the Act has been amended by deleting the word "" absolutely "", which has been

taken note of by the High Court of Punjab and Haryana reported as Hardev Kaur Vs. Jodh Singh, . Hence, the two Division Bench decisions

which are referred to above and cited by the learned counsel for the appellants cannot be of any assistance to him for construing rr. 22 and 23 of

the Rules applicable to employees of the Life Insurance Corporation of India.

15. As I have stated earlier, most of the decisions which are relied upon, are based on the Provident Funds Act, and the decisions of the other

High Courts subsequent to the amendment of Section 5 of the Act have taken the position that the nomination cannot be read as. making the

nominee an owner of the funds, and that he functions as a trustee creating a right in him to receive the money from the government or the holder of

the provident fund, and there is nothing in the section which makes the money to belong to him absolutely.

16. In Union of Bharat, Ministry of Rly. Vs. Mst. Asha Bi, , a Division Bench presided over by Chief Justice Hidayatullah, as he then was, on a

consideration of all the decisions rendered by various High Courts including the Division Bench decisions above referred to, had held that Section

5 of the Act merely wipes out all personal and other laws thus creating right in the nominee to receive the money according to the nomination. But it

does not make the nominee the owner of the fund. The expression "" absolutely "" only gives him a right to demand it unconditionally from the

custodians of the fund to the exclusion of others, so long as the nomination stands, and after receiving the amount, there is no need to show that it

belongs only to the nominee to the exclusion of other heirs. It was also held therein that "" there is nothing in those words which shows that even

before the death of the subscriber, the nominee is entitled to a beneficial interest in the money,"" and that "" the nomination is in its nature

testamentary and being ambulatory, the death of the nominee in the lifetime of the subscriber defeats the nomination, so that on the death of the

member, his legal personal representative is entitled to the property and not the legal representative of the nominee.

17. In Hardev Kaur Vs. Jodh Singh, a Division Bench came to the conclusion that the contention that the rules of the fund do not prevent a

declaration from being treated as a ""will"" cannot be upheld. If there is no nomination, there is no provision in the relevant rules to suggest that the

deceased officer did not have disposing power over his provident fund and merely because the provident fund is to be administered in accordance

with the relevant rules, it does not preclude the legal right of a subscriber to dispose it of by a will.

18. A Full Bench of the Kerala High Court in Sarojini Amma Vs. Neelakanta Pillai, , dealing with the Employees'' Provident Fund Rules of the

Central Govt. of India, (sic), held that a nominee had a bare right to collect the policy money on the death of the assured, and to give a good

discharge to the insurance company, and that he did not become the owner of the money payable under the policy and he is liable to make it over

to the legal representatives of the assured.

19. A Division Bench of this court while dealing with a case that arose in respect of a nomination made u/s 39 of the Insurance Act, 1938, held in

CONTROLLER OF ESTATE DUTY, MADRAS Vs. ESTATE OF PICHAI THAMBI. (BY ACCOUNTABLE PERSON).,

The effect of nomination is not to clothe the nominee with beneficial interest in the policy or the money payable thereunder, but to clothe him or her

only with the power to receive the money under the policy from the insurer without prejudice to the question of title to the money. Consequently it

confers on the nominee a bare right to collect the policy money when the money becomes payable and by such nomination and the collec- tion of

the money, the nominee does not become the owner of the money payable under the policy and he or she is liable to make it over to whomsoever

is entitled to the same under the law.

20 In M. Malati and Others Vs. M. Dharma Rao and Another, , a Division Bench, in construing the provisions of the Provident Funds Act, had

taken the contrary view to the effect that the amount received by the nominee vests absolutely in the nominee to the exclusion of any other heir. It

has also taken into account the object of the depositor in nominating a person to take the amount and if it is to be held that the legal heirs are to

take the amount, it would frustrate the purpose of nomination.

21. M. Mon Singh Vs. Mothi Bai, , prior to the amendment of r. 5, a Division Bench had taken the view that the words ""absolute right to receive

mean that the money which is paid under the Rules, gives a vested right to the heir of the nominee to receive it, even though the nominee

predeceased the subscriber.

22. Most of the decisions above referred to arose under the Provident Funds Act and even then subsequent to the amendment it has been held that

the nominee does not acquire absolute interest in the funds. The provision for nomination is made for the benefit of discharging the liability of the

custodian of the fund, which aspect I have dealt with at length in the earlier part of this judgment, and unless a specific provision is made in the

relevant Act or even in the nomination and a direction for bequeathing the amount is given to the effect that except the nominee, none of the legal

heirs would acquire rights and such directions are not varied later on, the right of a nominee cannot be anything more than being the sole person

entitled to draw out the amount and he would be doing so in the capacity of a trustee of the funds answerable to the claims of the lawful heirs of the

deceased member. The use of the word "" nomination "" which means only appointment to receive the amount, cannot be construed as to confer any

absolute right in the funds to the exclusion of the rights of the lawful heirs, because even a stranger may be nominated in whom the nominator may

have trust. If the intendment is to make the nominee the absolute owner, there can be no difficulty in incorporating the necessary recitals to the

effect that he has got, on the date of nomination, his legal heirs, and in spite of it, he bequeaths the amount only to the nominee to take the funds to

the exclusion of the other heirs. When such an unequivocal expression is not present in a nomination, it would not be proper to hold that such a

nomination would result in an absolute conferment of rights in the nominee to take the amount for himself.

23. In view of this, Ex. B-l nomination having directed the first defendant to receive the amounts from the 4th defendant, who are only anxious to

have a good discharge under Rule 23 of the Rules, the first defendant will not be entitled to claim any amount on the basis of Ex. B-1,

24. In the judgment of the lower appellate court, it has been held in more than one place that the third defendant had withheld certain essential

documents, particularly the letter dated 27-12-1971, referred to in Ex. B-3. It had also referred to the earlier stand taken by the Divisional Office,

Coimbatore and the Zonal Office and the contradictory stand taken by them later on under Exs. B-14 and B-2. The learned counsel appearing for

defendants 3 and 4 plead that these conclusions are not warranted. Now that the scope or Ex. B-1 nomination has been properly construed and

considered, the judgment of the lower appellate court is set aside and there is no need to go into these aspects.

25. In this view, the second appeal is allowed to the extent indicated above in that the first respondent herein will be entitled only to one-half of the

provident fund amount with interest, as indicated above, and not to the entirety of the amount. No costs.