

(2004) 10 CAL CK 0034

Calcutta High Court

Case No: C.O. No. 5013 (W) of 1991

Usha Chatterjee

APPELLANT

Vs

Life Insurance Corporation of
India and Others

RESPONDENT

Date of Decision: Oct. 12, 2004

Acts Referred:

- Life Insurance Corporation (Agents) Regulations, 1972 - Regulation 16(1), 19, 8

Citation: (2005) 2 CHN 11

Hon'ble Judges: Pranab Kumar Chattopadhyay, J

Bench: Single Bench

Advocate: Kamalesh Bhattacharyya and Biswarup Biswas, for the Appellant; Arun Chatterjee, for the Respondent

Final Decision: Allowed

Judgement

Pranab Kumar Chattopadhyay, J.

The petitioner has challenged the validity of the order dated 3rd August, 1990 passed by the appellate authority, namely, the Zonal Manager, Life Insurance Corporation of India.

2. By the said order, the Zonal Manager, as the appellate authority, decided the appeal preferred by the petitioner challenging the order dated 15th June, 1988 passed by the Senior Divisional Manager, Calcutta Suburban Division of the said Life Insurance Corporation of India in respect of the petitioner herein.

3. From the records it appears that a show cause notice was issued to the petitioner on 30th December, 1987 alleging certain lapses on the part of the petitioner as the agent of the said Corporation. The alleged lapses mentioned in the said show cause notice dated 30th December, 1987 are reproduced hereinbelow:

1) "You have replied in negative against Q. No. 8 of your agency application dated 4.6.82 when actually you were and are related to Sri Nirmal Kumar Chatterjee, an agent of the Corporation, by marriage and thus obtained the agency under the organisation of a Dev. Officer by suppression of a fact of material information causing financial loss to the Corporation;

2) You have secured a proposal for life assurance on the life of Sri Santosh Kumar Barman, a Legal Practitioner of Krishnagar, for Rs. 1 lac in February, 1987 and produced a fake copy of S.F. Certificate of Sri Barman in support of his age and sought to offer lower age benefit when actually Sri Barman was older, by four years as per original certificate (Policy No. 420049232);

3) You have, when communicated seeking your assistance to help arrive at a decision in Sri Barman's case evaded the responsibility of an agent to get at the truth and caused a breach of trust;

4) You have secured another proposal for life assurance on the life of Sri Lakshmi Kanta Sarkar, Asstt. Public Prosecutor of Garaimari, Nadia, in May, 1987 for Rs. 50,000/- and produced a copy of S.F. Admit Card in support of his age (Proposal No. 0138445/87-88) which on enquiry appeared to be fake as the attesting authority has denied attestation of the said S.F. Admit Card of Sri Sarkar, with motive to offer lower age benefit and caused a breach of trust; and thus

5) You have failed to discharge your functions as set out in Regulation 8 of the LICI(Agents) Regulations, 1972 to the satisfaction of the competent authority; and

6) You have acted in a manner prejudicial to the interest of the Corporation."

4. The petitioner replied to the said show cause notice and ultimately the said Senior Divisional Manager passed an order on 15th June, 1988 directing termination of the agency of the petitioner and also forfeiting all the privileges and benefits available to the petitioner in this regard.

5. Challenging the said order, petitioner herein preferred an appeal before the appellate authority and the said appeal has also been disposed of by the appellate authority, namely, the Zonal Manager, Life Insurance Corporation of India by the order dated 3rd August, 1990 whereby, and whereunder the said appellate authority rejected the appeal preferred by the petitioner and affirmed the decision taken by the Senior Divisional Manager regarding termination of the agency of the petitioner.

6. It has been alleged in the show cause notice dated 30th December, 1987 that the petitioner herein produced a fake copy of the School Final Certificate in respect of one Sri Santosh Kumar Barman and fake attested copy of the School Final Admit Card in respect of one Sri Lakshmi Kanta Sarkar in order to offer them lower age benefit in respect of their respective life insurance policy. It has also been alleged that the petitioner replied in negative against Q. No. 8 of the agency application dated 4th June, 1982 even though her husband is an agent of the said corporation

and thus suppressed material facts before the authority.

7. In reply to the said show cause notice, petitioner has specifically mentioned that the responsibility of declaration of age of a policy holder in the proposal form rests on the proposer himself and not on others and in the present case also the proposer, S.K. Barman in his written communication dated 8th September, 1987 informed the respondent, Senior Branch Manager to the effect that if any mistake has been detected regarding the date of birth or any unwarranted paper has been enclosed with the proposal form of Life Insurance Corporation of India, then the same was done by mistake or through oversight.

8. Mr. Barman also requested the said Senior Branch Manager of the Corporation to remove the unwanted papers and rectify his date of birth according to his original School Final Certificate and as a matter of fact the concerned respondent corrected the said mistake regarding recording of the date of birth.

9. Though regarding submission of fake attested copy of School Final Admit Card in respect of Sri Lakshmi Kanta Sarkar, the petitioner herein has been held responsible but admittedly, the said attested copy of the School Final Admit Card was supplied by the proposer, Sri Lakshmi Kanta Sarkar. Undisputedly, the documents in question, namely, the School Final Certificate of the proposer, Sri Santosh Kumar Barman and the attested School Final Admit Card of Sri Lakshmi Kanta Sarkar were supplied by the respective proposer. Under these circumstances, I fail to understand how the petitioner could be held responsible if the said documents are subsequently found as not genuine.

10. The aforesaid policy holders also never claimed that those documents were not handed over by them to the petitioner herein. The petitioner as an agent cannot disbelieve her esteemed customers and she has acted on the basis of the documents supplied by her customers. I do not find anything wrong on the part of the petitioner in this regard.

11. Regarding the allegation of suppression of material facts in the agency application form by the petitioner I am of the opinion that the said allegation cannot be established in view of the fact that the petitioner in the said application form specifically mentioned the name of her husband together with address and furthermore, declared the said husband as her nominee in respect of the policies secured by the petitioner. The petitioner has also specifically mentioned in her reply to the show cause notice that in each proposal form and in personal statements, necessary particulars about her husband have been duly mentioned for the information of the concerned authorities of the Life Insurance Corporation of India Limited.

12. Mere recording of negative against Q. No. 8 in the agency application form therefore, cannot be construed as wilful non-disclosure and/or suppression of material information particularly when in the same application form, the petitioner

specifically disclosed all the particulars about her husband.

13. In any event, the explanations put forward by the petitioner in reply to the show cause notice were not considered in an appropriate manner and the said Senior Divisional Manager terminated the agency of the petitioner by an unreasoned order on 15th June, 1988 and also forfeited all the privileges and benefits available to the petitioner from the said Corporation. The order of punishment issued by the Senior Divisional Manager on 15th June, 1988 in respect of the petitioner herein is quoted hereunder:

"Your letter dated 27.01.88 to the show cause notice dated 30.12.87 has not been found satisfactory. It has therefore been decided by the competent authority to terminate your agency with the Corporation under abovementioned code number forthwith and to forfeit all the privileges and benefits available thereunder to the Corporation."

14. The aforesaid unreasoned order passed by the Senior Divisional Manager on 15th June, 1988 cannot be sustained in law, particularly when the said authority received the written explanation from the petitioner in answer to the show cause notice.

15. The appellate authority, however, furnished some reasons while rejecting the appeal preferred by the petitioner and affirming the decision of the Senior Divisional Manager. In my view, the aforesaid reasons have been furnished by the appellate authority in order to cover up the laches and/or lapses on the part of the Senior Divisional Manager while awarding punishment to the petitioner herein although I am of the opinion that the said appellate authority should not have ignored the fact that the order under appeal was an unreasoned order and liable to be rejected on the said ground alone. However, the reasons mentioned in the order dated 3rd August, 1990 by the Zonal Manager as the appellate authority are also not tenable for the reasons already explained hereinbefore.

16. From the order of the appellate authority I also find that the said Zonal Manager affirmed the decision of the Senior Divisional Manager regarding termination of the agency of the petitioner and the other part of the order regarding forfeiture of the privileges and benefits available to the petitioner has, however, not been affirmed. The relevant portion of the said order passed by the appellate authority is quoted hereinbelow:

"Accordingly, the undersigned directs that the appeal made by Smt. Usha Chatterjee stands rejected, and that the decision taken by the Sr. Divisional Manager, C.S.D.O. to terminate her agency, is confirmed."

(Underlined by Court)

17. The Senior Divisional Manager although by his order dated 15th June, 1988 directed forfeiture of the privileges and benefits of the petitioner but the learned

Counsel of the petitioner submits that in view of Regulation 19 of the Life Insurance Corporation of India (Agents) Regulations, 1972, such order cannot be passed.

18. Referring to Regulation 19 of the said Life Insurance Corporation of India (Agents) Regulations, 1972, learned Counsel of the petitioner submits that in the present case no fraud has been committed by the petitioner herein.

19. Scrutinising the show cause notice dated 30th December, 1987, I find that the respondent authorities never alleged fraud in respect of the petitioner herein. In absence of any allegation of fraud, the respondent authorities cannot forfeit the privileges and benefits available to the petitioner. The relevant portion of the Regulation 19 is quoted hereunder:

"19. Payment of commission on discontinuance of agency.--

(1) In the event of termination of the appointment of an agent, except for fraud, the commission on the premiums received in respect of the business secured by him shall be paid to him if such agent:

(a) has continually worked for at least 5 years since his appointment and policies assuring a total sum of not less than Rs. 2 lakhs effected through him were in full force on a date one year before his ceasing to act as such agent; or

(b) has continually worked as an agent for at least 10 years since his appointment; or

(c) being an agent whose appointment has been terminated under clause (e) of sub-regulation (1) of Regulation 16 has continually worked as an agent for at least two years from the date of his appointment and policies assuring a total sum of not less than Rs. 1 lakh effected through him were in full force on the date immediately prior to such termination:

Provided that in respect of an absorbed agent the provisions of clause (a) shall apply as if for the letters, figures and word "Rs. 2 lakhs", the letters and figures "Rs. 50,000" had been substituted....."

20. In the present case, the respondent authorities never alleged fraud against the petitioner and as such even in the event of termination of appointment of the petitioner as an agent necessary payment towards the commission on the premiums received in respect of the business secured by her cannot be denied and/or refused.

21. For the reasons mentioned hereinbefore, the impugned order dated 3rd August, 1990 passed by the Zonal Manager, Life Insurance Corporation of India affirming the decision taken by the Senior Divisional Manager cannot be sustained and the same is therefore, quashed.

22. The learned Advocate of the petitioner, however, submits that the petitioner herein is no longer interested to act as an agent of the Life Insurance Corporation of

India.

23. In the aforesaid circumstances, the only direction which can be passed at this stage is to direct the respondents to make necessary payment towards the commission on the premiums received in respect of the business secured by the said petitioner as an agent. Accordingly, I direct the respondents herein to make necessary payment of commission on the premiums received in respect of the business secured by the said petitioner as an agent of the Life Insurance Corporation of India without any further delay but positively within a period of three weeks from the date of communication of this order.

24. This writ petition thus stands allowed. There will be, however, no order as to costs.

25. Urgent Xerox certified copy of this judgment, if applied for, may be handed over to the learned Advocates of the parties upon compliance with usual undertaking.