
(2006) 01 AHC CK 0172

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 36290 of 1997

Bhoopa Devi (Widow) and Ors.

APPELLANT

Vs

Senior Divisional Manager,

RESPONDENT

Date of Decision : 20-01-2006

Acts Referred:

Life Insurance Corporation (Agents) Regulations, 1972 — Regulation 16, 20, 3(1)(b)

Citation : (2006) 01 AHC CK 0172

Hon'ble Judges : Sudhir Agarwal, J

Final Decision : Allowed

Judgement

Sudhir Agarwal, J.—This writ petition was filed by Sri Srinivas Shastri assailing the orders dated 23rd October, 1996 (Annexure No. 1) and 24th July, 1997 (Annexure No. 2) to the writ petition whereby he was terminated as L.I.C. agent under Rule 16 (1) (a) (b) and (d) read with Rule 10 (6) of the Life Insurance Corporation of India (Agents) Regulations, 1972. During the pendency of this writ petition, the said petitioner died and his legal heirs have been substituted to pursue this writ petition.

2. The brief factual matrix of this case is that Sri Srinivas Shastri was appointed as agent in Life Insurance Corporation (in short ?LIC?) in the year 1964. A showcause was issued on 5th August, 1996 (Annexure No. 6) requiring him to showcause as to why his agency be not terminated and the Commission payable may not forfeited since in respect to a policy No. 230045022 of one Guru Sevak Das Gupta, he got it revised on 16th January, 2005 by accepting the deposit of premium on the said date although the said Sri Gupta was hospitalized from 11th January, 1995 to 16th January, 1995 and died on 16th January, 1995 at 11.35 a.m. Thus, his aforesaid act caused loss to the Corporation. He sent a reply dated 2281996 (Annexure No. 7) to the Corporation denying the aforesaid allegations and stating that for 32 years, he has discharged his duties very faithfully and effectively, and, therefore, no action be taken against him. However, the Senior Divisional Manager L.I.C. Kanpur, passed an order on 23rd

December, 1996 rejecting the contentions of the said agent and terminating his agency. An appeal was filed under Regulation 20 of 1972 Regulations, but the same was also rejected by the appellate authority vide order dated 24th July, 1997. Hence this writ petition.

3. The brief submission on the part of the learned Counsel for the petitioners is that against the showcause notice, a detailed reply was submitted to the Senior Divisional Manager but he has passed wholly nonspeaking and unreasoned order, without considering the various issues raised by the petitioner. Similarly, and in the same manner, the appellate authority has also passed its order on the appeal i.e., without giving any reasons at all. It is, therefore submitted by the learned Counsel for the petitioner, that the impugned orders being nonspeaking, unreasoned orders, although the proceedings for termination of the agency of L.I.C. agent are quasijudicial in nature, and, therefore are illegal and liable to be set aside. The learned Counsel for the petitioner on merits also sought to pursue this Court to delve into facts in his attempt to show that there was no error or illegality on the part of the petitioner agent on account whereof he could have been terminated and the conclusion drawn by the respondents is perverse.

4. On the other hand the learned Counsel for the corporation submitted that the proceedings are not quasijudicial as the relationship is purely contractual and, therefore neither the proceeding can be said to be quasi judicial nor the impugned orders are required to be reasoned or speaking.

5. Heard Sri Manoj Kumar learned Counsel for the petitioner and Sri Prakash Padia learned Counsel for the respondent and perused the record. In my view this writ petition is liable to be allowed on the first issue that the impugned orders are wholly nonspeaking and unreasoned. Regulation 16 of 1972 Regulations read as under:

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 policyholders;

(c) if evidence comes 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 showcase against such termination.

(2) Every order of termination made under SubRegulation shall be in writing and communicated to the agent concerned.

(3) Where the competent authority proposes to take action under Subregulation (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.?

6. The aforesaid Regulations have been framed by the Corporation in exercise of the powers vested under Section 49 of the L.I.C. Act, 1956 and with the previous approval of the Central Government.

7. Regulation 3(1)(b) defines 'agent' and Regulation 4 provides for appointment of the agents. Regulation 5 lays down the qualification of agents, Regulation 6 make provision for training and test, which an agent has to undergo and Regulation 7 provides that on initial appointment an agent shall be on probation for a period of 6 months and thereafter shall be confirmed in accordance with the Regulations.

8. A perusal of the aforesaid provisions leaves no doubt that although the term 'agent' has been used but for all practical purposes the agent constitute the employees of the Corporation who has to perform for development and serve the business of the Corporation. The relationship is that of master and servant. The functions of an agent are also prescribed under Regulation 8 held as under:

8. Functions of agents.(1) Every agent shall solicit and procure new life insurance which shall not be less than the minimum prescribed in these Regulations and shall endeavour to conserve the business already secured.

(2) In procuring new life insurance business, and agent shall:

(a) Take into consideration the needs of the proposers for life insurance and their capacity to pay premiums;

(b) Make all reasonable inquiries in regard to the lives to be insured before recommending proposals for acceptance, and bring to the notice of the Corporation any circumstances which may adversely affect the risk to be underwritten;

(c) Take all reasonable steps to ensure that the age of the life assured is admitted at the commencement of the policy; and

(d) Not interfere with any proposal introduced by any other agent.

(3) Every agent shall, with a view to conserving the business already secured, maintain contract with all persons who have become policyholders of the

Corporation through him and shall:

(a) advise every policyholder to effect nomination or assignment in respect of his policy and offer necessary assistance in this behalf:

(b) endeavour to ensure that every instalment of premium is remitted by the policyholder to the Corporation within the period of grace;

(c) endeavour to prevent the lapsing of a policy or its conversion into a paidup policy: and

(d) render all reasonable assistance to the claimants in filling claim forms and generally in complying with the requirements laid down in relation to settlement of claims.

(4) Nothing contained in these Regulations shall be deemed to confer any authority on an agent to collect any moneys or to accept any risk for or on behalf of the Corporation or to bind the Corporation in any manner whatsoever:

Provided that an agent may be authorized by the Corporation to collect and remit renewal premiums under policies on such conditions as may be specified.?

9. The procedure prescribed for termination of agency for certain lapses under Regulation 16 also requires a reasonable opportunity to showcause to the agent where after only a termination order is to be passed which has to be in writing and to be communicated to the agent concern. Therefore, I have no doubt in holding that the procedure prescribed under Regulation 16 makes it clear that the exercise of power under Regulation 16 is quasijudicial. Although, it is not specifically mentioned in Regulation 16 that the order must be a reasoned and speaking order but it is now settled law that unless specifically otherwise provided an order affecting civil rights of a person must be speaking and reasoned only. The civil rights of a person cannot be affected adversely without informing and giving reasons as to why he is being deprived of such civil rights and the explanation, if any forwarded by him has not been found satisfactory. The right of appeal conferred by Regulation 20 also fortify the aforesaid view I have taken hereinabove. In case the order passed under Regulation 16 would not contain reasons, the concerned agent may not be able to effectively avail the remedy of appeal in the absence of reasons.

10. The Apex Court in the case of S.N. Mukherjee v. Union of India, AIR 1990 Supreme Court 1984, emphasized that even an Administrative Action must be supported by reasons, it further held in para 13 of the judgment:

?.....Keeping in view the expanding horizon of the principles of natural justice, we are of the opinion, that the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities.....?

11. Disclosure or record of reasons guarantees consideration and introduces clarity, executing or minimizing arbitrariness. An order which does not disclose

the points which were considered and the reasons for rejecting them was not approved of by the Hon"ble Supreme Court in several cases emphasizing the necessity to give sufficient reasons which disclosed proper appreciation of the issue raised, problem to be solved and the mental process by which the conclusion is arrived at.

12. Recently in the case of *State of Haryana v. Ram Pal*, 2005 SCC 347, the Apex Court emphasizing the need for giving reasons has observed as under:

(10) "Reason is the heartbeat of every conclusion, and without the same it become lifeless. (See *Raj Kishore Jha v. State of Bihar*).

(11) Even in respect of administrative orders Lord Denning, M.R. in *Breen v. Amalgamated Engg. Union* observed: (All ER p. 1154h) "The giving of reasons is one of the fundamentals of good administration." In *Alexander Machinery (Dudley) Ltd. v. Crabtree*, it was observed: "Failure to give reasons amounts to denial of justice." Reasons are live links between the mind of the decisiontaker to the controversy in question and the decision or conclusion arrived at. Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate an application of mind to the matter before the Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made; in other words, a speaking out. The "inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasijudicial performance. "

13. In the present case the order passed by the disciplinary authority is just a three paragraph order which may be quoted as under:

14. Again even the appellate authority has proceeded in the same manner and the order of the appellate authority in its entirety may be quoted as under:

ORDER

"Upon considering the appeal dated 321997 preferred by Sri Srinivas Shastri, aforesaid against order dated 23121996 passed by the Sr. Divisional Manager, Kanpur imposing upon him penalty of termination of agency with forfeiture of renewal commission under Rule 16(1) (a) (b) (c) (d) read with Rule 10(6) of L.I.C. of India (Agents) Rules, 1972 in relation to ShowCause Notice dated 581996 issued to him;

And upon perusing the records of the proceedings instituted against Shri Srinivas Shastri and upon satisfying that in dealing with this case the Sr. Divisional Manager, Kanpur has complied with the procedure prescribed in the L.I.C. of India (Agents) Rules, 1972 and further satisfying that the findings of

fraud are based on the evidence on record and same are fully justified and further that the penalty of termination of agency with forfeiture of renewal commission cannot be considered as inappropriate or excessive in the facts and circumstances of the case;

And further upon considering the submissions made by Sri Srinivas Shastri in the aforesaid appeal, I do not find any scope to interfere in the order dated 23121996 of the Sr. Divisional Manager, Kanpur.

Now, therefore, I hereby order that the said appeal dated 32 1997 of Sri Srinivas Shastri against the aforesaid order dated 23121996 of the Sr. Divisional Manager, Kanpur be and is hereby rejected.?

15. On the face of it none of the aforesaid orders can be said to be reasoned and speaking orders. No reason whatsoever has been mentioned in the two orders.

16. The Apex Court in Union of India v. M.L. Kapoor, AIR 1974 Supreme Court 1987, held as under:

?.....Reasons are the links between the materials on which certain conclusions are based. They disclose how the mind is applied to the subjectmatter for a decision, whether it is purely administrative or quasijudicial they should reveal a rational nexus between the facts considered and the conclusions reached. Only in this way can opinions for decisions recorded be shown to be manifestly just and reasonable.....?

17. In normal circumstances after quashing the aforesaid orders on the ground of, nonspeaking and unreasoned, it is a normal practice to permit the authorities to pass a fresh speaking order in accordance with law. This case also would have same consequences but in the peculiar facts and circumstances of the present case, I am of the opinion that the matter deserves to be closed at this stage. During the pendency of the present writ petition the agent Sri Srinivas Shastri has already expired, leaving widow and sons. The agency of Sri Srinivas Shastri already stood terminated as a result of his death and it is not the case of the parties that any legal heir of the deceased may claim any kind of employment like compassionate appointment on account of such agency. The only thing would be that some amount of commission, which has been forfeited by means of the impugned orders may have to be paid to widow and other legal heirs. However, after the death of the deceased, sitting in equitable jurisdiction under Article 226 of the Constitution of India, I am of the view that matter deserve to be consigned so that departed soul may rest in peace.

18. Therefore, in my opinion, and in the interest of justice, the Court is not inclined to grant any liberty to the respondents to pass any fresh order in the peculiar facts and circumstances of the case.

19. In the circumstances and what has been stated above this Court is clearly of the opinion that the impugned orders are vitiated in law and have resulted in manifest miscarriage of justice. Accordingly the writ petition is allowed and the

impugned orders dated 23101996, 2471997 (Annexures No. 1 and 2 to the writ petition) are quashed. The petitioners shall be entitled for all consequential benefits.

20. No order as to cost.