(2004) 04 DEL CK 0051

In the Delhi High Court

Case No : Writ Petition (Civil) No. 6926 of 2003

Mrs. Chandra Prabha Dogra APPELLANT

Vs

LIC of India RESPONDENT

Date of Decision : 19-04-2004

Acts Referred:

Citation : AIR 2004 Delhi 291 : (2004) 112 DLT 168 : (2004) 74 DRJ 500

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : G.S.Chaturvedi, for the Appellant; Kamal Mehta, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Sarin, J (Oral).

1. Petitioner by this writ petition impugns the Orders dated 20.1.2002, 15.5.2002 and 17.4.2003 passed by respondent nos.1, 2 and 3 respectively by which the petitioner''s agency was terminated and the renewal commission forfeited. Petitioner also seeks a direction for restoration of the agency from the date of termination with continuity of benefits. A direction for payment of renewal commission together with interest is also sought.

2. Petitioner had earlier filed W.P.(C).No.5389/2003, which was disposed of with a direction to the Chairman, LIC to decide the memorial of the petitioner dated 30th September, 2002. The said memorial was rejected by the Chairman LIC by the impugned Order dated 17.4.2004.

Notice was issued in the writ petition on 3rd November, 2003. Vide Order dated 12th February, 2004, respondent nos.4 and 5, namely, the Insurance Regulatory Development Authority and Union of India were deleted as parties. Cost of Rs.1500/- was imposed and time to file counter affidavit was granted.

3. Learned counsel for the petitioner today sought time to file rejoinder. On 12.2.2004, two weeks time was granted to the petitioner to file the rejoinder.

Rejoinder has not been filed. I see no ground to grant adjournment for filing of rejoinder. Learned counsel for the petitioner stated that he received the counter affidavit rather late. Considering the nature of issues which arise for consideration in the writ petition, rejoinder even otherwise is not necessary.

4. I have heard learned counsel for the petitioner as well as respondent at some length. It is submitted that petitioner has been an agent of long standing with the LIC. Petitioner claims that she was victimised on account of a complaint made by her against Assistant Branch Manager and Branch Manager of unit 312. Hence this arbitrary and malafide action against the petitioner by respondent no.3. Learned counsel for respondents 1-3 refutes this and submits that the allegation of mala fides is an after-thought and does not even find any mention in the reply to the Show Cause Notice.

5. It is not in dispute before me that a Show Cause Notice dated 5.10.2001, had been duly issued to the petitioner proposing the penalty of ''termination of agency'' under Regulation 16(1)(b) of Life Insurance Corporation of India (Agents) Regulations, 1972 (hereinafter referred to as `Regulations'') and forfeiture of renewal commission under Regulation 19(1) of Regulations.

6. In the said Show Cause Notice, annexed as Annexure P-13 at page 58-59 of the paper book, respondent had brought out that the petitioner had submitted a proposal for insuring the life of Shri Arshad Ullah Khan and tendered a cheque no.416840 dated 15.2.2000 for Rs.8,840/-. The said cheque was dishonoured. The allegation against the petitioner is that she used to receive monies in advance from the prospective persons seeking insurance and then at her convenience issue her own cheques which in a number of cases got dishonoured. Respondent in the Show Cause Notice had also set out the particulars of the persons whose proposals were submitted by petitioner and cheques issued by her got dishonoured. The insurance policies of these persons were received undelivered at the branch office with the comments "no such person at the address". Respondent found these activities of the petitioner to be prejudicial to the interest of the Corporation and proceeded to take action under Regulation 16(1)(b) of Regulations for termination of the agency and forfeiture of the renewal commission. The petitioner, in reply to the show cause notice, admitted her fault by stating : "While I once again, in an unqualified manner, make a submission that there was a mistake on my part in the use of discretion....."

7. Petitioner sought to explain her actions by pleading that since clients/ customers at times suggest that they would make the payment later and the policy could be processed now, she used to put her cheques in anticipation of payment being received. This she sought to justify to explain the dishonouring of the cheques. In the case of Shri Arshad Ullah Khan, she claimed that cheque no.031276 dated 24.11.1999 for Rs.8,600/- given by the party in her name was towards some personal transaction and not towards the insurance premium. This cheque had, Therefore, been encased by her and that amount was deposited in her account. She claimed that Mr.Arshad Ullah Khan, later on desired to go for

insurance and gave a cheque of his friend bearing no.416840 dated 15.2.2000 for Rs.8,840/-. This cheque, she claimed was dishonoured. Later on, payment in cash was made for a higher amount of premium and the policy was diverted by the respondent to the credit of another agent. Petitioner denied allegation of any misappropriation or loss to the LIC. In the event, an order dated 28th January, 2002 was passed terminating the agency of the petitioner under Regulation 16(1)(b) of Regulations and forfeiture of Renewal Commission under Regulation 19(1) of Regulations. By the said order, taking into account the instances of tender of her cheques towards proposal deposit and their dishonour, deposit of cash in lieu thereof, the factum of return of policies "with addressee not being found", she was found guilty of the charges in the show cause notice. An appeal was preferred by her, which was also dismissed vide order dated 15th May, 2002 commenting that there was nothing new in the appeal. Further that she had failed to discharge her duty as an agent under Rule 8 of Regulations. The appeal was rejected. Against the rejection, she preferred the memorial. The Chairman vide orders dated 17th April, 2003 dismissed the memorial. The Chairman observed that investigation revealed that Ms.Dogra had indulged in financial misappropriation in respect of number of policyholders and had breached the trust reposed by the policyholders in her. Further that she had played a fraud on the policyholders and had also tarnished the Corporation''s image. He found the action justified and has dismissed the memorial.

8. Learned counsel for petitioner, firstly, argued that the action against the petitioner was a result of the counterblast to the complaints filed by the petitioner against the action of the Branch Manager. He next contended that no misappropriation in respect of policyholders'' money or deception of the policyholders was proved. The petitioner was at best in breach of the norms in depositing her cheques on behalf of the prospective clients. However, the said omission was not such, which called for the termination of petitioner''s agency.

9. As noted, the petitioner herself had admitted her fault. However, she denied any misappropriation or deception of policyholders. In the instant case, show cause notice was duly issued and replied to. Petitioner has had the opportunity of presenting her case and there is no violation of the principles of natural justice. Besides she herself has admitted her fault. The LIC authorities found this to be a case of misappropriation. In the instant case, cheque No.031276 dated 24.11.99 for Rs.8600/- had admittedly been received by the petitioner from Mr.Arshad Ullah Khan. It had been credited to her account. The authorities have not accepted her Explanation. The non-acceptance of the petitioner''s Explanation by the authorities of the said cheque being on account of some personal transaction in the light of the surrounding circumstances, cannot be flawed. The subsequent cheque for Rs.8840/- purported to be of a friend of Mr.Arshad Ullah Khan, was dishonoured for which subsequently the cash was deposited. There is admission of depositing her own cheques for prospective clients seeking policies. Petitioner claims that this was in anticipation of receiving money. The said policies were also returned back stating "not at the address". The respondents case was that

she was receiving the money for premium and not depositing the same and later on giving her cheques.

10. Be that as it may, giving her own cheques for depositing premium on behalf of policyholders is itself infraction of the Rules. In these circumstances, no ground is made out for assailing the findings reached by the respondents, appellate authority and the Chairman, in terminating the agency. The next limb of petitioners challenge is that under the Regulation, the renewal commission could not have been forfeited. Learned counsel for petitioner submits that the forfeiture is possibly only in the case of fraud. He relies on Regulation 15 which provides for termination of agency on account of certain disqualifications. The said provisions is in the following terms :-

15. Termination of agency on account of certain disqualifications : If any agent:

(a) x x x

(b) x x x

(c.) in any judicial proceeding, has been found to have knowingly participated in or connived at any fraud, dishonesty or misrepresentation against the Corporation or any of its subsidiaries or against any person having official dealings with the Corporation or any of its subsidiaries,

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

9.He, Therefore, submits that petitioner''s case would not fall under Regulation 15(c) and there was no fraud as envisaged under Regulation 15. The termination under Regulation 19(c) not being for fraud, petitioner was entitled to the renewal commission. The said submission proceeds on misreading of Regulations 15, 16 and 19. On a composite reading of the said regulations, it is seen that Regulation 15 merely sets out the disabilities upon the attainment of which the agency was liable to be terminated. It simply provided that in any judicial proceedings, if an agent was found to have participated in any fraud, dishonesty or misrepresentation against the Corporation, then the agency was liable to be terminated. Regulation 15 prescribes an additional ground for termination of agency upon being found guilty of fraud in any judicial proceedings. This does not preclude termination of an agent who is found to be in breach of Regulation 16 and acts not in a manner prejudicial to the interest of the Corporation or to that of the policyholders. A fraudulent act outside judicial proceedings would also be actionable u/s 16(b) and it would be open for the respondent-Corporation to treat the same as a case of fraud for the purposes of Regulation 19. Respondents having found the actions of the petitioner to be fraudulent, they were justified in invoking regulation 19 and forfeiting the renewal commission payable.

10.In view of the foregoing discussion, the writ petition has no merit and is dismissed.