

(1979) 10 MAD CK 0016
In the Madras High Court

M.V. Krishnamoorthy and Another

APPELLANT

Vs

Smt. Anandalakshmi and Others

RESPONDENT

Date of Decision : 13-10-1979

Acts Referred:

Insurance Act, 1938 — Section 39

Citation : (1980) 2 MLJ 321

Hon'ble Judges : T. Sathiadev, J

Bench : Division Bench

Judgement

T. Sathiadev, J.—Defendants 1 and 2 are the appellants. The first respondent herein filed the suit claiming that she is entitled to the Provident

Fund amount of Rs. 9,151 due from the respondents 2 and 3 herein, who were defendants 3 and 4 in the trial Court, on the ground that she is the

heir and dependant of deceased K. Subramanian, 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 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 first defendant has 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.

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

fund amount and hence he is wholly entitled to it. Second defendant, mother claimed that she is also an heir to her son and she is entitled to a share

in the property. 3rd defendant claimed that under Rule 22 of Provident Fund No. 1 Rules, (hereinafter will be referred to as Rules), the first

defendant alone has been nominated to receive the amount and therefore the suit claim has to fail.

3. The trial Court dismissed the suit holding that Exhibit B-1, the nomination, made by late Subramanian on 10th March, 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.

4. 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 Life Insurance Company, held that Exhibit 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 3 and 4 have withheld certain material documents,

which, if produced, would have necessarily established that Exhibit B-1 had been subsequently varied after late Subramanian married the plaintiff in

1965.

5. In this appeal it is contended that the Court is bound to act upon Exhibit B-1 unless and until it is established that the said nomination had been

later on varied, modified or cancelled and that the conclusion that Exhibit B-1 nomination ought to have been resiled from later on, and that

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

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

the provident fund money to the heirs of late Subramanian.

6. Mr. V. Narayanaswami, learned Counsel for the appellant contends that nomination under Exhibit B-1 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 nomination. 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. Counsel for defendants 3 and 4 was directed to produce the rules with all the

amendments incorporated therein, because Exhibit A-8 the letter dated 20th October, 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 life Insurance Corporation Provident Fund Rules which govern the fund.

The Courts below have approached the main issue involved in the proceedings on the basis of existence or otherwise of a nomination in favour of

the plaintiff. Exhibit B-1 nomination was made on 10th March, 1958 and it is only thereafter 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 Exhibit B-1 nomination no other nomination has been made 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 his family.

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

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

Rule 11 empowers trustees to make such Rules and Regulations from time to time for regulating the conduct of their meeting and 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 no alteration shall be retrospective, and when amendments are effected, they shall be deemed to have

been assented therefore and bound the revised rules. Plaintiff's husband died on

28th January, 1970. If the date of the death of a member is to be taken as the crucial date for finding out the relevant rules, about disbursement of amount, 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 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, nomination under Exhibit B-1, has 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 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, and 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 an interest at 9% per annum from first defendant from the date of the withdrawal of the amount by him from Court deposit.

7. Even if it is to be construed that the rules affected in July 1972 will not be applicable in the case of a 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 Exhibit B-1 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-1 nomination states that the fund on the death is directed to be paid to the nominee.

8. Rule 22 before 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 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 member. 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 to 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 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 handover the funds to the persons entitled to as per the "will". In case of intestate succession, the nominee is bound to handover the amounts to the heirs of the deceased. The main purpose of nomination is intended to benefit the custodians trustees of the fund to know as to how or to whom they should handover 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 reasons, 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".

9. As far as the rules governing the present matter is concerned Rule 23 itself brings about the purpose of taking the nominations, and it being for

giving a good discharge to the trustees it cannot be held that Exhibit B-1 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, Exhibit B-1 nomination has resulted in 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 other point of view

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

10. 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 "wills". A few decisions dealing with this aspect and most of them arising under 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

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 *Lakshamma*

(dead) and *Another Vs. P.S. Subramanyam*, , it was held that since Rule 5 provides that the nominee is concerned 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 predeceased the person entitled to the fund is his wife's heir. Here again emphasis was laid

on the word "absolutely" found in Section 5 of the Act and also to 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 in 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 rules 22 and 23 of the Rules applicable to employees in Life Insurance Corporation of India.

11. 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 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.

12. 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 off 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 life-time 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.

13. 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 of it by a will.

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

Government of India, 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.

15. 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 v. Estate of Pitchai Thamb (1976) T.L.N.J. 393.

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 collection 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

entitled to the same under the law.

In *M. Malati and Others Vs. M. Dharma Rao and Another*, , a Division Bench in construing the provisions of 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.

16. In *M. Mon Singh Vs. Mothi Bai*, , prior to the amendment of Rule 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.

17. Most of the decisions above referred to arose under the Provident Funds Act and even then subsequent to amendments 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 a direction of bequeathing the amount is given to the effect that except the nominee, none of the legal heirs

would acquire rights and such directions is 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 as 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 absolute conferment of rights in the nominee to take the amount for himself.

18. In view of this, Exhibit B-1 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 Exhibit B-1.

19. 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 27th December, 1971, referred to in Exhibit 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 Exhibits B-14 and B-2. The learned

Counsel appearing for defendants 3 and 4 plead that these conclusions are not warrant-ed. Now that the scope of Exhibit 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.

20. 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.