

(2007) 09 KL CK 0008
In the High Court Of Kerala
Case No : O.P. No. 7702 of 2003 (P)

V. Balakrishna Reddiar

APPELLANT

Vs

Branch Manager, LIC of India and Others

RESPONDENT

Date of Decision : 05-09-2007

Acts Referred:

Life Insurance Corporation (Agents) Regulations, 1972 — Regulation 15, 16(1), 19, 4, 8
Life Insurance Corporation (Agents) Rules, 1972 — Rule 10, 11, 12, 13, 14
Life Insurance Corporation Act, 1956 — Section 42, 49

Citation : AIR 2008 Ker 24 : (2007) 4 ILR (Ker) 36

Hon'ble Judges : V. Giri, J

Bench : Single Bench

Advocate : A. Antony and Leelamma Antony, for the Appellant; R.S. Kalkura, for the Respondent

Judgement

V. Giri, J.—Petitioner, who was an agent of the Life Insurance Corporation, from 1980 onwards, challenges the termination of his agency coupled with forfeiture of the renewal commission, as ordered originally by the first respondent and affirmed by the Appellate Authority and Chairman. The appointment of a person as agent of the Life Insurance Corporation and consequently the termination of his agency, with or without the forfeiture of the renewal commission that the agent is entitled to is effected under Statutory Regulations called as "Life Insurance Corporation of India (Agents) Rules 1972 (hereinafter referred to as "the Rules"). The said Rules are framed by the Central Government in exercise of the powers conferred by Section 49 of the Life Insurance Corporation of India Act, 1956. An interesting question as regards the scope of Rule 19 of the Rules in the context of forfeiture of the renewal commission that is due to the agent has come up for consideration in this writ petition.

2. Petitioner, who claims to have been appointed as agent of the Corporation in the year 1980, claims that he was doing well as an agent and had unblemished record of service for more than 20 years. The first respondent--Branch Manager issued Ext. P1 notice to him requiring his explanation in the wake of the fact that

as many as seven cheques were issued by the petitioner in favour of the Corporation. Apparently, the cheques were issued by the petitioner towards payment of renewal premium, in relation to different policies held by different policy holders. It is further seen that the petitioner as an agent had canvassed the business in relation to the said policy and therefore considered it appropriate to collect renewal premium from the policy holders and deposit the same with the Corporation. The cheques were dishonoured for insufficiency of funds and Ext. P1 came to be issued in the wake of the said fact. Petitioner in Ext. P2, accepted his mistake. In Ext. P2, he has essentially pleaded for condonation of the lapses on his part. The fact relating to the issuance of the cheques towards payment of premium by different policy holders is admitted by the petitioner.

3. The Corporation decided that the matter merited an enquiry. Ext. P3 was issued under Rule 16 of the Rules. The second respondent--competent authority noted that the petitioner had admitted in Ext. P2 that he had collected premia by cash from the policy holders, premium so collected was remitted at the branch counter by cheques issued by the petitioner and that some of the cheques were dishonoured. The following allegation forming part of Ext. P3 is significant:

By your willful misconduct, you have acted in a manner prejudicial to the interest of the Corporation and detrimental to the interest of the policy holders. You have tarnished the image of the Corporation by misappropriating the amount and have committed fraud.

The second respondent then intimated that it is proposed to terminate the petitioner's agency under Rule 16(1) with forfeiture of the commission under Rule 19(1) of the Rules. Petitioner was given an opportunity to show cause against the proposal. Ext. P4 explanation submitted by the petitioner also admitted a mistake on his part. Apparently, petitioner undertook the task of issuing his cheques for payment of premium due from different policy holders. According to him, the cheques were later cleared. He assured that he will not repeat the mistake committed by him.

4. The explanation was found to be inadequate and vide Ext. P5 order, the second respondent proceeded to terminate the agency of the petitioner. The order further directed forfeiture of renewal commission under Rule 19 of the Rules.

5. An appeal before the Zonal Manager and a memorial before the Chairman also met with the same fate, vide Ext. P7 and Ex. P9 orders. The termination of the agency was coupled with forfeiture of the renewal commission. Petitioner therefore, challenges Exts. P5, P7 and P9 orders. Petitioner also seeks a direction to the respondents to pay the renewal commission due to him as an LIC agent.

6. A counter-affidavit has been filed on behalf of the respondents. It is contended that the petitioner had issued cheques apparently for discharging premium payable by different policy holders. Petitioner, as an agent of the Corporation, has no business to issue cheques from his bank account for discharging premium

payable by the policy holders. There were complaints against the petitioner. Apparently, petitioner had collected premia from the policy holders. There is reason to think that he had misappropriated the same. There was no obligation on the part of the petitioner to issue cheques from his bank account. His job, if at all, could only be to persuade the policy holders to pay the premium in time. "The act and conduct of the petitioner was such that it has created in the mind of the respondent a reasonable apprehension as to the deteriorious effect of the continuance of the agency on other agents of the respondents. The act and conduct of the petitioner also raised considerable doubt with regard to the faithfulness of the petitioner". It is further contended that the issue of his own cheques by the petitioner, for cash collected from the policy holders tantamounts to willful and deliberate fraud. Apparently, policies of two customers lapsed and it tarnished the image of the Corporation.

7. Though Exts. R1(c) and R1(d) are referred to in the counter-affidavit as complaint against the petitioner received from the customers, the same are revealed only to be copies of the proceedings of the Senior Divisional Manager, inter alia relating to the termination of the agency of the petitioner. The said proceedings already form part of the record in the Original petition.

I heard learned Counsel for the petitioner Sri. A. Antony (Jr) and Sri. R.S. Kalkura on behalf of the Corporation.

8. Essentially, two issues arise for consideration. First is whether termination of the agency is legal and proper. Second is whether the direction for forfeiture of the renewal commission is justified.

9. In so far as the first aspect is concerned, I am in complete agreement with the contentions raised by Sri. kalkura. Learned Counsel for the Corporation contended that the orders terminating the agency of the petitioner as in consonance with the statutory Rules and really do not merit any interference at the hands of this Court. Petitioner admitted the issuance of the cheques, apparently, towards payment of premium by different policy holders. The same constitutes a clear lapse on the part of the petitioner. An agent of the Corporation appointed under the Rules has no business to collect the premia to be paid by different policy holders, and then proceed to issue cheques from his own account for payment of such premium. The contract of insurance is between the Corporation and the policy holders. Petitioner was an agent of the Corporation. He could not have acted as an agent of the policy holders. The long experience the petitioner had acquired as an agent of the Corporation from the year 1980 onwards is not a fact which in any manner dilutes the gravity of an act of indiscretion on the part of the petitioner. An inexperienced agent could possibly have been excused for an act of indiscretion resulting from a display of enthusiasm, to canvass more and more business for the Corporation. A seasoned hand can hardly claim such privilege. At any rate, it is perfectly legitimate on the part of the Corporation to take serious note of such lapses and decide to terminate the agency. I find hardly any reason to interfere with Exts. P5, P7 and

P9 in so far as it relates to the termination of the agency of the petitioner. The orders are issued in consonance with the statutory Rules. There is no violation of the principles of natural justice. I reject the first contention raised by the petitioner in this regard.

10. Learned Counsel for the petitioner then contended that assuming that the termination of the agency is proper, the forfeiture of the renewal commission, is at any rate, illegal and unjustified. It is contended that the Rules contemplate forfeiture of the renewal commission otherwise payable to the agent only under exceptional circumstances. It is only when there is fraudulent conduct on the part of the agent that there can be forfeiture. Sri. Kalkura on the other hand contended that in Ext. P3 show cause notice, the Corporation has made it clear that the act of issuing a cheque for the discharge of the premium payable by different policy holders amounts to fraudulent conduct. Such fraud, as assessed by the Corporation, on the part of the agent concerned enables the Corporation not only to terminate the agency, but also direct forfeiture of the commission.

11. Statutory Rules govern appointment of an agent, conditions of his engagement/agency and the circumstances under which such agency could be terminated. The Rules also provide for invoking appropriate remedy and final consideration by the Chairman of the Corporation. The above Rules are formulated by the Central Government. Rule 3(b) defines agent, who was appointed under Regulation 4. Rule 4 of the Rules (Rules or Regulations as it is referred to in certain areas) provides that an agent may be appointed by a competent authority after interview of the candidates. Rule 5 of the Rules prescribes qualifications of an agent. A valid licence u/s 42 of the Insurance Act is one of the qualifications prescribed. Rule 6 of the rules prescribes training and tests to be undergone by an agent and Rule 7 of the Rules prescribes six months probation from the date of appointment. Functions of agents are prescribed under Rule 8 of the Rules. It prescribes the new life insurance business and it requires an agent to take into consideration the needs of the proposers for life insurance and the capacity to pay premium. Rule 9 of the Rules provides minimum amount of business to be secured by an agent. Rule 10 of the rules provides payment of commission to an agent, which is described as compensation and remuneration due to an agent for the discharge of all his functions. Commission includes renewal premium received during the continuance of his agency. Rule 11 of the rules provides gratuity and term insurance benefits admissible in the case of an agent. Rule 12 of the Rules provides that the Corporation shall have a lien and charge on all moneys payable to an agent or his heirs for recovery of all debts due from him to the Corporation. Rule 13 of the rules provides termination of agency in cases where an agent fails to bring in the business required under Regulation 9. Rule 14 of the rules provides for termination of agency in circumstances where the licence of an agent issued u/s 42 of the Insurance Act is cancelled or is not renewed. Rules 15 and 16 of the Rules are crucial. Therefore, they are extracted in their entirety.

15. Termination of agency on account of certain disqualifications:

If an agent:

- (a) is found to be of unsound mind by a Court of competent jurisdiction;
- (b) is found to be guilty of criminal misappropriation or criminal breach of trust or cheating or forgery or an abatement of or attempt to commit any such offence by a Court of competent jurisdiction;
- (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.

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 policy holders;
 - (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 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, or 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 show cause against such termination.

- (2) Every order of termination made under Sub-regulation (1) shall be in writing and communicated to the agent concerned.
- (3) Where the competent authority proposes to take action under Sub-regulation (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.

12. Rule 15 of the Rules therefore contemplates termination of an agency on what is described as a disqualification. Significantly an agency becomes liable to be terminated for the reason of the agent incurring a disqualification in terms of Rule 15(a)(b) or (c). It enables the Corporation to dispense with an enquiry prior to the termination. That seems to be a good reason for dispensing with an enquiry in cases covered by Rule 15 of the Rules. The disqualification which is treated as warranting termination of an agency without notice or enquiry, for the purpose of Rule 15 of the Rules seems to be the outcome of a proceeding in a Court of competent jurisdiction. If an agent is found to be an unsound mind by a competent jurisdiction, his agency is liable to be terminated. If an agent is found to be guilty of criminal misappropriation or the offences mentioned in Rule 15(b) of the Rules, by a Court of competent jurisdiction, the same result follows. If an agent is found to have knowingly participated in or connived at any fraud, dishonesty or misrepresentation against the Corporation, again what follows is termination of the agency without notice. Even the case last mentioned above, the finding as regards fraud having been purported by the agency concerned against the Corporation or any of its subsidiaries must emanate from a judicial proceeding. This seems to be indispensable from Rule 15(c) of the Rules. Obviously, termination of an agency in the circumstances covered by Rule 15(a) (b) and (c) of the Rules seems to be provided as a statutory consequence, resultant upon the agent either suffering an adverse order from a Court of competent jurisdiction or in certain exceptional circumstances being declared as a person of unsound mind by a Court of competent jurisdiction.

13. Rule 16 of the Rules extracted above seems to deal with the cases other than those comprehended by Rule 15 of the Rules. Failure to discharge function in the manner prejudicial to the interest of the Corporation, failure to undergo satisfactory training or pass specified test, allowing or offering to allow rebate of the whole or any part of the commission payable to him are all considered as a sufficient cause of commission and omission on the part of the agent warranting termination of his agency.

14. The crucial provision which comes up for consideration in the context of the termination of an agency, as in the present case is Rule 19 of the Rules which again being relevant is extracted below.

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 continuously 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 continuously 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 continuously 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.

Apparently, the statutory mandate contained in Rule 19(1) of the Rules with regard to payment of commission due to an agent in the case of termination of his appointment seems to be expressed in positive terms. An agent becomes entitled to commission on the premium received by the Corporation in respect of the business secured by him subject to fulfillment of the requirements mentioned in Rule 19(1)(a)(b)(c). Exception seems to be cases where the appointment of an agency is terminated for fraud. It is in this area where an interpretation of the Rules seems to be required. The question that was posed for consideration is whether "fraud" as occurring in Rule 19 of the Rules would comprehend cases where the Corporation alleges and finds that the agent was guilty of fraudulent conduct or fraud having tainted his actions of commission or omission or whether fraud as occurring in Rule 19(1) of the Rules is confined to cases which are comprehended by Rule 15(1) of the Rules wherein, in any judicial proceeding the agent has been found to have knowingly participated in or connived at any fraud. If the Corporation is entitled to forfeit the commission payable to an agent whose appointment has been terminated on the ground of fraud, as found in the orders passed by the officers of the Corporation, then Sri Kalkura's submission that the requirements of the statute is satisfied in the present case would deserve to be accepted in such circumstances. But I am unable to accept the submission.

15. As regards the liability of the corporation to pay the commission due to an agent on the premium received in respect of the business secured by him, the exception is confined to cases of fraud as the term occurs in the statute in question. Then it seems to be quite logical to confine such cases of fraud having been perpetrated by the agent, and so found in any judicial proceeding involving the Corporation or any of its subsidiaries or against any person having official dealing with the Corporation (Rule 15(c) of the Rules). It is to be noted that the Rules in question, which are obviously statutory in character define the method of recruitment and the terms and conditions of appointment of an agent! An agent of the Corporation is not entitled to any salary. He is entitled to only such benefits payable to him by way of commission in terms of Rule 10 of the Rules and gratuity and term insurance benefits due to him under Rule 11 of the Rules. Thus, where the statute provides for the mode of termination and the statute itself, couched in a positive way, mandates payment of commission on the premium received in respect of the business secured by the agent, in the event of termination of his appointment as an agent, the statutory consequences will have to be given effect to. Termination of the appointment of an agent will have to be resorted to only under the circumstances provided under Rules 13 to 18 of the Rules. Obviously, they deal with different circumstances. Rule 15 of the Rules contemplates termination of agency on account of certain disqualifications

incurred by the agent concerned and Rule 16 of the Rules deals with termination of agency for certain lapses on the part of the agent.

16. The Rule making Authority seems to have kept in its mind different situations warranting application of Rule 15 or Rule 16 of the Rules, as the case may be. The term "fraud" or "fraudulent" does not find a place in Rule 16. "Fraud" either resultant upon act of commission or omission on the part of the agent is contemplated and provided for only under Rule 15(c) of the Rules. If that be so, it is only where the termination of appointment of an agent is resultant upon Rule 15(c) of the Rules, that the Corporation is given liberty to forfeit the commission payable to an agent. Of course, such forfeiture as provided under Rule 19(1) of the Rules need not necessarily be resultant upon proof of any monetary loss suffered by the Corporation. If in any judicial proceeding, it is found that the agent concerned has knowingly participated in or connived at any fraud, against the Corporation or any of its subsidiaries or against any person having official dealings with the Corporation or any of its subsidiaries, then termination of agency can be followed by or accompanied by forfeiture of the commission in terms of Rule 19(1). But the crucial aspect is that the finding of fraud must be in any judicial proceeding as provided for under Rule 15(c) of the Rules. In other words, it is only if the termination of the agency is under Rule 15(c) of the Rules that the Corporation is entitled to forfeit the commission payable to the agent. Subject to this exception, if the agent's appointment stands terminated he is entitled to receive the commission payable to him in terms of the Rules.

17. There is yet another factor which persuades me to arrive at the same conclusion. Money is payable to an agent by way of commission for the business secured by him. No person shall be deprived of his property except in accordance with law. No doubt, right to property is no longer a fundamental right. But nevertheless, the right to retain a property and receive the same and protect it are valuable rights in the hands of a citizen. Deprivation of such right can only be in accordance with law, which in the given circumstances would be the statutory Rules defining the method of appointment and provide for conditions of service of the agents. The Rules provide for payment of commission to an agent whose appointment has been terminated except in a case, which is also specifically provided for under the Rules. In such circumstances, the forfeiture must also be strictly in accordance with the Rules. Where fraud is considered as sufficient to terminate the appointment of an agent, then the circumstances so provided under the Rules alone can form the basis of a legitimate action on the part of the Corporation to forfeit the commission payable to an agent.

18. In short, the upshot of the discussion would be that in cases where fraudulent conduct on the part of the agent has been found in a judicial proceeding, the Corporation would be entitled to terminate the agency under Rule 15(c) of the Rules and also forfeit the commission payable to him under Rule 19(1) of the Rules. The allegation of fraudulent conduct on the part of the

agent and finding in that regard by the officer of the corporation, who exercises the powers under the Rules in question is not a substitute for the same; nor is it otherwise sufficient to justify the forfeiture of the commission payable to an agent.

19. Learned Counsel for the Corporation relied on the judgment of a Division Bench of this Court in W.A. No. 1396 of 2004, judgment of the Delhi High Court reported in *Mrs. Chandra Prabha Dogra Vs. LIC of India*, , as also the judgment of a Division Bench of the Madras High Court dated 23-2-2004 in W.A. No. 239 of 2003 *A. Seshadri v. The Chairman and Managing Director, LIC of India*. The Division Bench of this Court in W.A. No. 1396 of 2004 posed the question for consideration in the following manner:

From a perusal of Regulation 19 reproduced above it is clear that in the termination of 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 the agent thus might indulge in a fraudulent act, commission on the premiums can be forfeited. The only question thus arises in the present case is as to whether the misconduct alleged against the petitioner was fraudulent or not. In so far as, the finding of the learned single Judge that the Corporation had no case that the petitioner had committed any fraud is concerned, the same is contrary to the records of the case.

20. The Bench essentially considered the question as to whether the allegation of fraud was actually raised in the same case and was duly communicated to the party. The case of the Corporation that it was so communicated was accepted by the Bench on facts. The orders which were impugned in the writ petition from which the Bench was considering the appeal contained findings by the appropriate authorities to the effect that there was fraudulent conduct on the part of the delinquent officer. Learned single Judge, in the judgment leading to the appeal before the Bench interfered with the order forfeiting the renewal commission on the ground that the Corporation had no case that the petitioner in the said case has committed any fraud. The Bench disagreed with the learned single Judge in that respect. It is therefore that W.A. No. 1396 of 2004 filed by the Corporation came to be allowed.

21. The question as to whether there can be forfeiture of the commission payable to an agent, under Rule 19(2) of the Rules, on the ground of fraud even in the absence of a finding of fraudulent conduct on the part, of the delinquent official in any judicial proceeding as contemplated by Rule 15(c) of the Rules did not come up for consideration by the Bench. Apparently, the said issue was not urged and therefore not considered. The decision of the Bench cited by Sri Kalkura turned on the facts and the issue which is being considered in the present case involving an interpretation of Rule 19 of the Rules was not posed for consideration before their Lordships in the said case.

22. Sri Kalkura then relied on the judgment of the Delhi High Court, referred

supra, reported in Mrs. Chandra Prabha Dogra Vs. LIC of India, . The said judgment supports the stand taken by him. Learned Judge of the Delhi High Court found on a composite reading of the Regulations that Regulation 15 merely sets out the disabilities upon the attainment of which the agency was liable to be terminated. Learned Judge found that a fraudulent act outside the judicial proceeding would also be actionable under Rule 16(b) and it would be open for the Corporation to treat the case as a case of fraud for the purpose of Regulation 19. With great respect, I am afraid, I am unable to agree with the said proposition. In my opinion, fraud as a basis for forfeiting the commission payable to an agent in terms of Rule 19 of the Rules should have been found as a fact against an agent in a judicial proceeding, in the manner indicated in Rule 15(c) of the Rules. The termination of the agency should have been under Rule 15(c) of the Rules, on the ground of fraud, to justify the forfeiture of the commission otherwise payable to the agent in terms of Rule 19 of the Rules.

23. Sri Kalkura then referred to the judgment of the Bench of the Madras High Court in A. Seshadri v. The Chairman and Managing Director LIC of India W.A. No. 239 of 2003. I have gone through the said judgment as well as the judgment of the learned single Judge affirmed by the Division Bench. The case turns purely on facts. The said judgment has no application to the present case.

24. Learned Counsel for the petitioner contended very vehemently that the forfeiture of the renewal commission was illegal and the Corporation ought to be directed to pay to the petitioner the agency commission he is otherwise entitled to. There is a dispute between the petitioner and the respondent as to what would be the commission that is payable. Petitioner contends that the commission relating to the premium payable in relation to all policies secured by the petitioner would be due. The corporation maintains that at any rate, only such premia due prior to the termination of the agency would become payable. I do not think that it is necessary to go into that question in the light of the directions which I propose to issue. I hasten to make it clear that the entitlement of an agent for commission in terms of Rule 19 of the Rules cannot be in derogation of the right of the Corporation to exercise its lien in terms of Rule 12 of the Rules, which provides that the Corporation shall have the first lien and charge on all moneys payable to an agent and may apply any such moneys directly towards realisation of any debts due from an agent. Thus, if any loss has been caused to the Corporation by the petitioner, then it is obviously open to the Corporation to compensate itself for such, loss. A settlement of accounts cannot be undertaken in the present case.

25. In the result, the Original Petition is allowed in part. Exts. P5, P7 and P9 are quashed to the extent to which they provide that the renewal commission payable to the petitioner shall be forfeited. The second respondent is directed to compute the agency commission payable to the petitioner in terms of the Rules. If any amounts are due to the Corporation from the petitioner as an agent, then it is open to the Corporation to exercise its lien in terms of Rule 12 of the Rules.

Once the exercise is over, the amount which is due to the petitioner by way of renewal commission shall be paid to him. Orders in this regard and payment will be effected by the second respondent within a period of three months from the date of receipt of a copy of this judgment. To enable the Corporation to do so, it is open to the petitioner to file a statement before the second respondent, which he may do so within a period of two weeks from the date of receipt of a copy of this judgment. Exts. P5, P7 and P9 are upheld in so far as they relate to the termination of the petitioner's appointment as an agent.

Original Petition is allowed in part. No order as to costs.