Life Insurance Corporation Of India vs S. V. Oak And Another on 29 September, 1964

Equivalent citations: 1965 AIR 975, 1965 SCR (1) 403, AIR 1965 SUPREME COURT 975, 1965 35 COM CAS 388, 1965 (1) COM CAS 241, 1965 (1) SCJ 633, 1965 (1) SCR 403, 1968 BOM LR 117

Author: M. Hidayatullah

Bench: M. Hidayatullah, P.B. Gajendragadkar, K.N. Wanchoo, Raghubar Dayal, J.R. Mudholkar

PETITIONER:
LIFE INSURANCE CORPORATION OF INDIA

Vs.

RESPONDENT:
S. V. OAK AND ANOTHER

DATE OF JUDGMENT:
29/09/1964

BENCH:
HIDAYATULLAH, M.
BENCH:
HIDAYATULLAH, M.
GAJENDRAGADKAR, P.B. (CJ)
WANCHOO, K.N.
DAYAL, RAGHUBAR
MUDHOLKAR, J.R.

CITATION:
1965 AIR 975 1965 SCR (1) 403

ACT:
Life Insurance Corporation Act (31 of 1956), ss. 9 and 28-Scope of-"Surplus", meaning of.

HEADNOTE:
The respondents had made deposits with a mutual life assurance company. The Controller of Insurance had directed that the deposits should be repaid from future valuation surpluses and the respondents agreed to this. The insurance company, while it worked, had not shown any valuation surplus as a result of actuarial investigations under the

Insurance Act, 1938. In fact the Company was insolvent from the point of view of the Insurance Act when it was taken over by the Life Insurance Corporation. When the business of the Company merged in the business of the Corporation, it became indistinguishable after- 1st September 1956, the date when the Life Insurance Corporation Act (XXXI of 1956) came into force. The working of the Corporation. showed an enormous valuation surplus and the respondent claimed that as the condition on which their deposits were held had been fulfilled, the Corporation was bound to return their deposits with interest. The Corporation resisted the demand and the matter was referred to the Life Insurance Tribunal. The Tribunal held that the contracts immediately prior to the date of vesting were not subsisting or effective because they could not be enforced, there being no surplus of the stated kind. Against that decision the depositors filed a petition under Arts. 226 and 227 of the Constitution in the High Court, and the High Court reversed the decision of the Tribunal. The Corporation appealed to the Supreme Court.

HELD : The appeal should be di..;missed. [412D].

(i) It was wrong to contend that as the company had no surplus on 1st September 1956. its contingent liabilities ceased to exist. The contracts subsisted as long as the Company worked but the payments were postponed till the condition about actuarial surplus was fulfilled. Under s. 9 of the Life Insurance Corporation Act the contractual liability of the Company became that of the Corporation there being no express provision the Act negativing it and as the Corporation had actuarial surplus the amounts were payable from that surplus. [410C-F]

(ii) When ss. 9 and 28 of the Life Insurance Corporation Act are does not put any bar in the way of the Corporation in the fulfilment of its obligations under s. 9. The surplus under s. 28 is that which results from an actuarial investigation under the Insurance.Act. It is to be disposed of by allocating not less than 95% of it for the policy holders of the Corporation. The balance of the surplus "may" be utilized for such purposes and in such manner as the Central Government "may" determine. The Government while making directions is,expected to have regard to the liabilities of the Corporation under s. 9 of the Act. As in the instant case there was no special direction of the Central Government, the surplus was available for payment of deposits. [411E-H; 412C].

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JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 443 of 1962. Appeal from the judgment and order dated July 29, 1960, of the Bombay High Court in Special Civil Application No. 279 of 1960.

M. C. Setalvad, S. T. Desai, S. N. Andley, Rameshwar Nath and P. L. Vohra, for the appellant.

K. V. Joshi, S. S. Khanduja, S. K. Manohanda and Ganpat Rai, for the respondents.

G. S. Pathak, I. C. Diwaanji, J. B. Dadachanji O. C. Mathur aand Ravinder Narain, for respondent No. 1. K. Rajendra Chaudhuri, and K. R. Chaudhuri, for Interveners Nos. 2.

S. V. Gupte, Additional Solicitor--General, and B. R. G. K. Achar, for the Attorney-General for India. The Judgment of the Court was delivered by.

Hidayatullah J. This is an appeal by certificate against the judgment of the High Court of Bombay dated July 29, 1960 in a petition under Articles 226 and 227 of the Constitution reversing the decision of the Life Insurance Tribunal, Nagpur dated December 30, 1959. The proceedings arose from the taking over of the controlled business of the Continental Mutual Assurance Company Ltd., Poona by the Life Insurance Corporation under the Life Insurance Corporation Act, 1956 (31 of 1956). The Insurance Company was a mutual Company and thus had no share capital. It received deposits from Directors and other persons and the respondents V. V. Oak and S. V. Oak bad made five deposits totaling- Rs. 7,408.81P. in the last weeks of December 1950 and 1951. These deposits carried interest at 4-1/2% per annum. The Insurance Company was incorporated in 1946 and carried on only life insurance business. As required by the Insurance Act, 1938 (4 of 1938), it caused actuarial investigation and valuation to be made at intervals as laid down in the Insurance Act. The first valuation was of the business as on December 31, 1950 and it showed a loss of Rs. 72,924 and its balance-sheet showed some assets totaling Rs. 11,216, which were perhaps not realizable. The certificate of registration of the Insurance Company was cancelled in 1952 and the Controller of Insurance threatened to wind up the Insurance Company if the insolvency was not removed. In July 1952, all the Directors of. the Insurance Company addressed a letter to the Controller guaranteeing to make good the deficit before the end of October of that year and assured the Controller that the depositors had given their consent not to press for the return of their deposits until the deficit was removed. The Controller then revived the certificate of registration but as the deficit was not removed before the end of October, 1952 the Chairman of the Insurance Company informed the Controller that immovable property of the value of Rs. 49,000 from the deposits was being purchased and the deposits would not be returned except from surplus assets. The Controller then told the Insurance Company that the deposits should be paid from future valuation surpluses and not from surplus assets. The Insurance Company agreed to this and the depositors, including the respondents, gave undertakings to the same effect. The letter of the Controller and the undertaking given by the respondents are set out as they are extremely brief :

> "Copy of letter dated 7th November 1952 from the Assistant Controller of Insurance to the Company. With reference to your letter dated the 29th October, 1952, on the above subject, I have to say that the deposits or loans obtained by the Company to cover its insolvency are to be repaid only out of the future valuation surpluses and not out of surplus assets. This may kindly be noted. Copy of letter dated 29th November 1952, from V. V. Oak, the 1st Respondent to the Company.

> I hereby give my consent to keep the amount of my deposit of Rs. 7,408-0-0 (Rupees Seven thousand four hundred and eight only), with the company and that the same is repayable only out of adequate surplus along with interest thereon, as from the date of the last valuation, and that these amounts will be allowed to be kept with you till such adequate surplus is shown. The amount of interest payable for the intervening period will be paid out of valuation surplus and to the extent of 7 1/2 % of such surplus, with retrospective effect.

Yours faithfully, Sd./- V. V. Oak."

This undertaking was given by V. V. Oak on behalf of his son S. V. Oak also.

The affairs of the Insurance Company did not improve. In fact, they took a turn for the worse. The actuarial valuation as on December 31, 1954 disclosed a deficit of Rs. 89,923 and before the next actuarial valuation the Life Insurance Corporation Act came into operation. Even before that under the Life Insurance (Emergency Provisions) Ordinance, 1956 (which was followed by Act 9 of 1956 of the same name), the business of the Insurance Company had been taken over by the Government of India on January 19, 1956. On the passing of the Life Insurance Corporation Act, the 'controlled business' of all insurers vested on September 1, 1956 in the Life Insurance Corporation. Under the Life Insurance Corporation Act 'controlled business' means life insurance business and in the case of an insurer carrying on only life insurance business, all his business. The Insurance Company was of this description and all its business, therefore, vested in the Life Insurance Corporation under s. 7 of the Life Insurance Corporation Act. Section 9 of the Life Insurance Corporation Act provided for certain effects of this vesting. The first sub-section of that section is material for our purposes and may be reproduced here "9. General effect of vesting of controlled business.

> (1) Unless otherwise expressly provided by or under this act, all contracts, agreements and other instruments of whatever nature subsisting or having affect immediately before the appointed day and to which an insurer whose controlled business has been transferred to and vested in the Corporation is a party or which are in favour of such insurer shall insofar a.-, they relate to the controlled business of the insurer be of as full force and effect against or in favour of the Corporation, as the case may be, and may be enforced or acted upon as fully and effectually as if, instead of the insurer, the Corporation had been a party thereto or as if they had been entered into or issued in favour of the Corporation."
>
> (2)....."

The effect of this provision was to substitute the name of the Corporation in place of the Insurance Company in the contracts of deposit of the respondents and the deposits continued to be of full force and effect against the Corporation and the contract were liable to be enforced or acted upon as fully and effectively as if the Corporation itself was the original party to these contracts. As the Act operated on and after the appointed day the operation of S. 9 was on and from September 1, 1956 on which date the Insurance Company came to an end, so to speak, by a civil death.

The Insurance Company while it worked had not shown valua- tion surplus as a result of the actuarial investigations under the Insurance Act. There is no reason to think that if an actuarial investigation was made as on September 1, 1956 or even December 31, 1956 it would have shown a surplus of this kind. Indeed, it would have shown a huge deficit. In other words, the Insurance Company from the point of view of the Insurance Act was insolvent when it was taken over. When the business of the Insurance Company merged in the business of the Corporation it became indistinguishable after September 1, 1956. The working of the Corporation showed an enormous valuation surplus and the respondents claimed that as the Condition on which their deposits were held bad been fulfilled, the Corporation was bound to return their deposit with interest, from the valuation surplus

-shown in the working of the Corporation. The Corporation resisted this demand and hence this litigation. The respondents after serving a notice under s. 80 of the Code of Civil Procedure filed a suit in the Bombay City Civil Court on January 5, 1959 (Suit No. 149 of 1959). That suit, we are, informed is still pending. 'Me Life Insurance-Corporation, on the other hand, filed a petition on October 5, 1959 before the Life Insurance Tribunal, Nagpur praying for a declaration that the respondents were not entitled to the repayment of their deposits, and for an order or injunction restraining the 'respondents from proceeding further in the suit in the Bombay City Civil Court., Bombay. The Tribunal, by its Order dated December 30, 1959 (Case No. 31/XII of 1959), held that the amount was not repayable. The main reason given by the Tribunal was that the contracts immediately prior to the date of vesting were not subsisting or effective because they could not be enforced, there being no surplus of the stated kind. According to the Tribunal, it would have been otherwise if the Insurance Company had earned a surplus before the date of vesting and the deposits only remained to be returned to the depositors. The Tribunal also rejected a claim made under s. 65 of the Indian Contract Act. Earlier the Tribunal had sent an injunction to the Bombay City Civil Court, Bombay and in its final order the Tribunal held that as they had disallowed the claim, the suit to recover the deposits did not lie.

Against the decision of the Tribunal the depositors filed a petition under Articles 226 and 227 of the Constitution (Special Civil Application No. 279 of 1960) in the High Court of Bombay. The petition was disposed of on July 29, 1960 by the order of the High Court, now under appeal. The High Court reversed the decision of the Tribunal. The Divisional Bench held that the intention of the Life Insurance Corporation Act was to take over the controlled business as it was, of an insurer and to realise all assets and to pay all liabilities arising from contracts related to the controlled business. The High Court held that the Tribunal was in error in holding that the liability of the Insurance Company had come to an end immediately before the date of vesting inasmuch as there was no valuation surplus on the date of vesting. The High Court further held that if the contracts were given full force and effect, as required by s. 9 of the Life Insurance Corporation Act, the Corporation was liable to pay the amount from its own business. The High Court pointed out that there was no provision in the Life Insurance Corporation Act, which militated against the clear words of s. 9, and overruled the plea of the Corporation that the amount could not be paid because under s. 28 of the Life Insurance Corporation Act the surplus of the Life Insurance Corporation was to be applied in a manner -which left no room for payment of liabilities of this kind. The learned Judges did not interpret the word "surplus" in that section as valuation surplus but only as the balance left after

deducting all liabilities even including contingent liabilities. The High Court, therefore, ordered a remit of the case to the Tribunal for decision in the light of its conclusions. In this appeal Mr. Setalvad for the Corporation pointed out that the undertaking of the respondents was that the deposits were to be repaid from "adequate surplus" but not until such adequate valuation surplus was available. He contended that the word "surplus" in the letter of undertaking meant valuation surplus and not surplus assets. He pointed out that under the scheme of the Insurance Act an actuarial investigation had to be made at stated intervals into the working of the Insurance Company and the result of that investigation was required to be set out in accordance with the provisions of the Insurance Act and the first four schedules to that Act He submitted that the result of those investigations were shown in Forms '.A,' to 'I', the last being the valuation balance sheet which compared the net liability under business as shown in the summary and valuation of policies with the balance of the Life Insurance Fund as shown in the Balance Sheet to find out the surplus or the deficiency, as the case may be, He contended that the word "surplus" had a technical meaning and not the ordinary meaning accepted by the High Court and that this was also pointed out by the Controller in his Memorandum of November 7, 1952 which we have quoted earlier. He contended, therefore, that the contracts were not enforceable because there was no such surplus of the Insurance Company and the amount was payable only from the valuation surplus of the Insurance Company. Alternatively, he contended that if the deposits must be repaid from the valuation surplus of the Corporation s. 28 of the Life Insurance Corporation Act made the payment impossible. He accordingly submitted that the decision of the Tribunal was right.

In reply, Mr. K. V. Joshi for the respondents and Mr. G. S. Pathak, who appeared for the interveners .(Chandra Banghir and Others) contended that s. 9 of the Life Insurance Corporation Act was explicit in its terms and that no express provision from the Act was pointed out to over-ride s. 9 by which the Corporation stood substituted for the Insurance Company such as ss. 14, 15 and 36 of the Life Insurance Corporation Act. They contended that s. 28, on which reliance was placed did not lead to the result suggested by Mr. Setalvad and if it did, s. 28 must be declared ultra vires the Constitution under Articles 19 and 31 because it deprived the respondents of their property without compensation. Mr. S. V. Gupte, the learned Solicitor-General, who appeared on behalf of the Government of India, contended that s. 28 was not ultra vires the Constitution and be interpreted s. 29 in the same way as Mr. Pathak.

Under the Insurance Act an actuarial valuation of the business of an insurance company doing life business had to be undertaken at stated intervals and the result of the actuarial investigation had to be incorporated in a number of Forms (A to 1) in accordance with the regulations set down in the first four Schedules. Form A was Balance Sheet of the Company's business. It showed the assets and liabilities of the Company in India. Form B showed the Account of Profit and Loss. Form D then incorporated the results of the working of the Insurance Company over the investigation period taking into account the results of the Balance Sheet and the Profit and Loss Account and setting out the balance of the Insurance Fund at the end of the investigation period. This Fund was the cover for the insurance liability under the policies worked out actuarially. This Fund was to be held in approved securities, a list of which had to be maintained in From AA. The value of these securities represented the state, of the Fund. A Consolidated Revenue Account was drawn up in Form G in which all the items of the working of a company figured and the Life Insurance Fund was finally

determined. Form H was a summary of the actuarial valuation of all the policies and the net liability arising under them. These two items, namely, the net liability under business as shown in the summary of valuation of policies and the balance of Life Insurance Fund as shown in the Balance Sheet were then compared in Form I to find out whether there was a surplus available or not. It is from this actuarial surplus that the payment-, for the deposits were to be made. This position is admitted on all hands. It is wrong to contend that as the Insurance Company had no surplus in its hand on September 1, 1956, its contingent liabilities ceased to exist on that date. The contracts subsisted as long as the Insurance Company worked but the payments were postponed till the condition about actuarial surplus was fulfilled. That it was a contingent liability on September 1, 1956 did not make it any the less a liability of the Insurance Company on the date of vesting. Under s. 9 of the Life Insurance Corporation Act this r liability became the liability of the Life Insurance Corporation and under the clear terms of that section this liability was to be of full force and effect unless there was some express provision in the Life Insurance Corporation Act which negatived it. Sections 14, 15 and 36 of the Life Insurance Corporation Act illustrate express provisions which have been made in relation to certain contracts contemplated under s. 9. No similar provision was brought to our notice relative to the present purpose and none exists. The contracts were, therefore, binding upon the Corporation as on the Insurance Company and, in fact, as if the Corporation itself had undertaken the liability. The contracts being thus enforceable, the money had to be paid provided there was an actuarial surplus. Since the business of the Insurance Company merged in that of the Corporation, no separate valuation of its business was done. The Corporation as a person substituted, did business, and had actuarial surplus and the amounts were thus payable from that actuarial surplus.

The argument that s. 28 precluded the discharge of this liability and must be regarded either expressly or impliedly to bar recovery may now be considered. In fact, that was the only argument which was pressed upon us on behalf of the Corporation by Mr. Setalvad. Section 26 of the Life Insurance Corporation Act provides as follows:-

> "26. Actuarial valuations. The Corporation shall, once at least in every two years. cause an investigation to be made by actuaries into the financial condition of the business of the Corporation, including a valuation of the liabilities of the Corporation, and submit the report of the actuaries to the Central Government."

Section 28 then lays down the following method of the utilization of the surplus :

> "28. Surplus how to be utilised. If as a result of any investigation undertaken by the Corporation under section 26 any surplus emerges, not less than 95 per cent of such surplus shall be allocated to or reserved for the policy-holders of the Corporation and the remainder may be utilised for such purposes and in such manner as the Central Government. may determine."

It was contended by Mr. Setalvad that the word "surplus" here has the same meaning as the surplus in s. 26 and the High Court was in error in giving it an extended meaning. We accept this argument. The word "surplus" here has the technical meaning which arises from the Insurance Act which is

made applicable for. purposes of valuation by s. 43 of- the Life Insurance Corporation Act read with Notification No. G.S.R. 734 dated August 23, 1958. That meaning is also apparent from s. 26 of the Life Insurance Corporation Act quoted above. Indeed, the two sections are intimately connected.

Under s. 28 the surplus which results from an actuarial investigation is to be disposed of by allocating not less than 95% of the surplus for the policy-holders of the Corporation. The Corporation has its own fund to which all receipts must be credited and from which all payments must be made (s. 24). 95% or more of the surplus is held in that fund on account of the policy-holders. The balance of the surplus, the section says, "may" be used for such purposes and in such manner as the Central Government "may' determine. We were told at the hearing that there is no special direction of the Central Government disposing of the entire balance. If this is the case the surplus would be available for payment of deposits contingent upon there being surplus. We were, however, told that the Life Insurance Corporation hands over its balance to the Central Government. The learned Solicitor General pointed out that under the Act this could not be done and we entirely agree with him. Even if handed over the money would still continue to belong to the Corporation. The Government while making directions is expected to have regard to the liabilities of the Corporation under s. 9 of the Act. The learned Solicitor General naturally apprehended that if Government made orders for utilising the entire amount leaving no balance for meeting the obligations under s. 9 of the Act, s. - 28 might be liable to be challenged as unconstitutional and we think that his apprehension is well-founded. That question cannot, however, arise because we agree with him that there is nothing peremptory in the latter part of s. 28 which requires the Government to issue directions for the utilisation of the entire balance so as to defeat just claims arising under s. 9 of the Act. Indeed, s. 9 is so compulsive in its wording that s. 28 which is discretionary, at least so far as the Central Government is concerned, may be taken to be controlled by the former. The two sections must be read harmoniously and it could not have been intended that s. 28 was to be used to negative what s. 9 provided so explicitly. We think that on this harmonious construction we must hold that s. 28 does not put any bar in the way of the Corporation in the fulfilment of its obligations arising under s. 9. To this interpretation we readily incline because, as pointed out above, to hold otherwise would render s. 28 in its latter part ultra vires the Constitution as it would amount to taking away by, a side wind property of other persons. On the whole, therefore, we agree with the conclusions of the High Court though for very different reasons. The appeal, therefore, fails and is dismissed with costs.

Appeal dismissed.

L2Sup. Court/64 GIPF.