

GAHC010018622015



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

Case No. : WP(C)/4586/2015

INDRA MOHAN KACHARI
S/O- LT. SUREN CHANDRA KACHARI, VILL. and P.O.- BAGDOBA, DIST.-
GOALPARA, ASSAM.

VERSUS

THE LIFE INSURANCE CORP. OF INDIA and 2 ORS,
TO BE REP. BY THE ZONAL MANAGER, EASTERN ZONAL OFFICE,
HINDUSTAN BUILDING, 4 C.R. AVENUE, WEST BENGAL, KOLKATA- 72.

2:THE SENIOR DIVISIONAL MANAGER
L.I.C. DIVISIONAL OFFICE
BONGAIGAON
P.O. and DIST.- BONGAIGAON
ASSAM.

3:THE BRANCH MANAGER
L.I.C. DUDHNOI BRANCH
DUDHNOI
P.O.- DUDHNOI
DIST.- GOALPARA
ASSAM

Advocate for the Petitioners : Mr. A. R. Bhuyan, Advocate

Advocate for the Respondents : Mr. S. Nath, Advocate

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 01.02.2024

Date of Judgment : 01.02.2024

JUDGMENT AND ORDER (ORAL)

Heard Mr. A. R. Bhuyan, the learned counsel for the petitioner and Mr. S. Nath, the learned counsel appearing on behalf of the respondents.

2. The petitioner herein has assailed the termination of his agency and forfeiture of his commission and thereby had challenged the various orders including the order dated 25.03.2015.

3. From the materials on record, it reveals that the petitioner herein was issued an agency licence in the year 1997. During the course of time, the petitioner claimed to have obtained various policies and rendered business to the respondent Corporation. The dispute arises on account of an insurance policy being made of one Bhabani Kalita (since deceased). The record reveals that one Bhabani Kalita had approached the petitioner for a policy amounting to Rs.50,000/- . As a proof of his age, Late Bhabani Kalita produced the age certificate from the Head Master, Hekra High School wherein it was certified that the said Late Bhabani Kalita was 12 years as on 31.12.1958. On the basis of the said certificate, the petitioner submitted the proposal stating inter-alia that he knew Late Bhabani Kalita "since long". Consequently, on the basis of the said certificate and the proposal submitted by the petitioner, an insurance contract was entered into by and between Late Bhabani Kalita and the respondent Corporation on 30.03.2005. Subsequent thereto, on 18.08.2005, Late Bhabani Kalita expired. On the basis of the policy, a claim was made and the death certificate of the Gaonbura was placed before the respondent Corporation dated 17.03.2006 which shows that the age of Late Bhabani Kalita, at the time of death, was 82 years. The respondent Corporation initiated an enquiry against the petitioner by issuing a show cause notice on 03.03.2009. It is also relevant to take note of that prior to the issuance of the show

cause notice, enquiry so made revealed that the certificate on the basis of which the insurance contract was entered into was a fake certificate as was certified by the Principal of Hekra Higher Secondary School stating inter-alia that the said certificate was not issued by the said institution. The petitioner submitted the show cause reply and pursuant thereto, an order was passed on 25.03.2009. In terms with the said order, the petitioner's agency licence was terminated on the ground of fraud and further there was forfeiture of the commission in terms with Regulation 19 of the Life insurance Corporation of India (Agents) Regulation, 1972 (for short, 'the Regulation'). The petitioner duly submitted his representation before the Senior Divisional Manager, Life insurance Corporation, Bongaigaon Divisional office, however to no avail. Thereupon, the petitioner filed an appeal on 22.10.2009 before the respondent No.1 in terms with Regulation 23 of the Regulation. The said appeal which was filed by the petitioner was forwarded by the respondent No.3 to the respondent No.1 with a recommendation for reinstatement on the ground that the petitioner is productive agent but unfortunately due to one fake certificate submitted by the policy holder he was held guilty and it was not an intentional act on the part of the petitioner. Subsequent thereto, an order was passed on 11.01.2010 whereby the appeal of the petitioner was rejected thereby upholding the termination order dated 25.03.2009.

4. Being aggrieved, the petitioner approached this Court by filing a writ petition which was registered and numbered as WP(C) No.3422/2010 on the ground that the said Appellate Order was passed without giving an opportunity of being heard to the petitioner and also not taking into account the recommendation so made by the respondent No.3. The said writ petition, i.e. WP(C) No.3422/2010 was disposed of vide an order dated 16.10.2014 observing inter-alia that neither the Disciplinary Authority nor the Appellate Authority had considered the recommendation for reinstatement made by the Senior Branch Manager of the concerned Branch which was a relevant aspect of the matter which ought to have been considered by the two authorities. It was also observed that the said recommendation ought to have been taken into account in view of the fact that the termination of agency leads to

loss of livelihood and forfeiture of the commission results in stoppage of earnings which was otherwise due to the business generated by the LIC agent. It was therefore observed that proportionality of the penalty ought to have been considered by the authorities by taking note of the recommendation made by the Senior Branch Manager on 22.10.2009. In terms with the said observation, directions were issued by this Court directing the Appellate Authority, i.e. the Zonal Manager of the LIC to reconsider the punishment by taking into account the recommendation so made by the respondent No.3. Paragraph Nos.7 & 8 of the said order being relevant is quoted herein under:-

“7. In the case in hand, neither the Disciplinary Authority nor the Appellate Authority had considered the recommendation for reinstatement made by the Sr. Branch Manager of the concerned branch and I feel that this aspect ought to have been considered by the two authorities. This was necessary as termination of agency leads to loss of livelihood and forfeiture of commission result in stoppage of earnings which was otherwise due for the business generated by the LIC agent. Therefore the proportionality of the penalty ought to have been considered by the authorities by taking note of the recommendation made by Sr. Branch Manager on 22.10.2009. 8. In view of the above conclusion, I direct the Appellate Authority i.e. Zonal Manager of the LIC to reconsider the punishment by taking into account the recommendation of the Sr. Branch Manager of the Dudhnoi Branch. The impugned order for termination of agency and forfeiture of commission will abide by the fresh decision to be rendered by the Appellate Authority. To facilitate the exercise, the petitioner will furnish this order along with other relevant materials to the Zonal Manager and he should then pass a speaking order within 8 weeks thereafter, in terms of this direction.”

5. Thereupon, the record reveals that on 03.12.2014, the Zonal Manager, i.e. the Appellate Authority passed an order holding inter-alia that as the agency was terminated due to fraudulent activities which are detrimental to the interest of the Corporation as well

as the public, the order of termination dated 25.03.2009 was upheld. From a perusal of the said order which has been enclosed as Annexure-11, it reveals that there is no reason assigned and for that matter there was also no consideration in terms with the direction passed by this Court on 16.10.2014 in WP(C) No.3422/2010.

6. The petitioner thereupon being aggrieved challenged the said order dated 03.12.2014 by filing a writ petition before this Court which was registered and numbered as WP(C) No.492/2015. This Court vide an order dated 04.02.2015 disposed of the said writ petition observing that the order dated 03.12.2014 was not a speaking order and was also not in accordance with the order passed by this Court in WP(C) No.3422/2010. Accordingly, the order dated 03.12.2014 was set aside with a direction to look into the matter once again and pass a speaking order entirely in terms of the order passed by this Court in WP(C) No.3422/2010 as expeditiously as possible within a period of 2 (two) months from the said order. Thereafter, the impugned order was passed on 25.03.2015 which has been put to challenge by way of the instant writ petition.

7. I have heard the learned counsel for the petitioner as well as the learned counsel for the respondent Corporation. This Court has also perused the materials on record including the impugned order dated 25.03.2015. From the impugned order dated 25.03.2015, it transpires that the Appellate Authority observed that by willful understatement of age by as much as 24 years, the petitioner had violated Regulation 8(2)(b) of the Regulation. It was observed that making the statement that the petitioner knew the proposer “for long”, the petitioner misled the Corporation as he ought not to have declared underage by as much as 24 years. Further to that, it was observed that by submitting a doctor’s certificate or forged school certificate, the petitioner had clearly acted against the interest of the LIC and the petitioner being a primary underwriter failed to provide to correct and full information to the LIC for underwriting the risk. On the basis of the same, the Appellate Authority again confirmed the order dated 25.03.2009.

8. This Court has duly taken note of regulation 8 of the Regulation whereby the functions of the agent in procuring new Life Insurance Business has been stipulated. The

said Regulation 8 of the Regulation is quoted herein below:-

“8. Functions of agents :

(1) Every agent shall solicit and procure new life insurance business 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, an agent shall:

(a) take into consideration the needs of the proposers for life insurance and the 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 contact with all persons who have become policy-holders of the Corporation through him and shall:

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

(b) endeavour to ensure that every installment of premium is remitted by the policy-holder to the Corporation within the period of grace ;

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

paid-up 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. From the above quoted Regulation and more particularly Regulation 8 (2) it would transpire that the agent is required to take into consideration the needs of the proposers for life insurance and the capacity to pay premiums; 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 ; take all reasonable steps to ensure that the age of the life assured is admitted at the commencement of the policy; and not interfere with any proposal introduced by any other agent. From the above Regulation 8 (2), there is a requirement that the agent concerned make necessary enquiry in regard to the life to be insured before recommending proposals. But the question arises as to what would constitute reasonable enquiries. In the opinion of this Court, the reasonable enquiry to be made has to be taken into account on the basis of the principles of the Wednesbury reasonableness or in other words what a sensible person who upon application of mind would do.

10. In the instant case, it would be seen that the certificate was placed before the petitioner. The Regulations do not mandate that the certificate placed by the proposer is required to be verified by the Agent with the issuing authority. What is required for an agent

to do is what a prudent person do in such circumstances. At this stage, this Court also finds it very pertinent to take note of two pointed queries made to the learned counsel appearing on behalf of the respondent Corporation. First, as to whether the Regulation or for that matter there is any notification issued by the respondent Corporation that the age certificate so produced by the proposer is required to be verified by the agent with the authority issuing the said certificate before submission of the proposal, and secondly, as to whether the insurance contract made with Late Bhabani Kalita was honoured in view of the false declaration so made.

11. The learned counsel for the respondent Corporation submitted that to his knowledge there is no such notification or order of the respondent Corporation which mandates that the agent is required to make verification of the age certificate with the issuing authority prior to submission of the proposal. He further submitted that the insurance contract with Late Bhabani Kalita was not honoured in view of the false declaration.

12. This Court also cannot be unmindful of the fact that the respondent No.3 who is the Senior Branch Manager of Bongaigaon Branch had made a recommendation to the effect that the petitioner is required to be reinstated as the petitioner is very productive but unfortunately due to one fake certificate submitted by the policy holder, he was held guilty and that it was not an intentional act of the petitioner. The respondents in the affidavit also have not stated that the petitioner has been found guilty in respect of any other policy wherein the petitioner has submitted the proposal. Therefore, the said act on the part of the petitioner appears to be a solitary one.

13. This Court has also taken note of that the Appellate Authority has placed great reliance on the aspect that in the proposal so submitted by the petitioner, he had mentioned that he knew the proposer “for long”. The question however arises as to what the interpretation to be given to the aspect “for long”, more particularly taking into account the Regulations 9 & 13 of the Regulation which stipulates that the agents are required to provide business and non-providing of business would entail termination at the end of such year.

14. This Court further finds it relevant to observe that the penalty which has been imposed upon the petitioner is not only a penalty for the purpose of termination of his agency but also forfeiture of all commission which the petitioner would have otherwise earned. This punishment touches on the right of livelihood of the petitioner. It is well settled by the various judgments of the Supreme Court that the principle of proportionality which involves “balancing test” and the “necessity test” can be applied to administrative decisions. The “balancing test” permits scrutiny of excessive and onerous penalties or infringement of rights or interest and manifest imbalance of relevant consideration. The “necessity test” requires infringement of Human Rights through the least restrictive alternatives. In this regard, this Court finds it pertinent to take note of the judgment of the Supreme Court in the case of *Kerala State Beverages (M AND M) Corporation Ltd. Vs. P. P. Suresh & Others*, reported in *(2019) 9 SCC 710* and more particularly paragraph Nos.28 to 31 which is quoted herein below:-

“28. In Om Kumar v. Union of India, this Court held as follows:

“28. By “proportionality”, we mean the question whether, while regulating exercise of fundamental rights, the appropriate or least restrictive choice of measures has been made by the legislature or the administrator so as to achieve the object of the legislation or the purpose of the administrative order, as the case may be. Under the principle, the court will see that the legislature and the administrative authority “maintain a proper balance between the adverse effects which the legislation or the administrative order may have on the rights, liberties or interests of persons keeping in mind the purpose which they were intended to serve”. The legislature and the administrative authority are, however, given an area of discretion or a range of choices but as to whether the choice made infringes the rights excessively or not is for the court. That is what is meant by proportionality.”

(emphasis in original)

In this case, M. Jagannadha Rao, J. examined the development of principles of proportionality for review of administrative decision in England and in India. After referring to several judgments, it was held that the proportionality test is applied by the Court as a primary reviewing authority in cases where there is a violation of Articles 19 and 21. The proportionality test can also be applied by the Court in reviewing a decision where the challenge to administrative action is on the ground that it was discriminatory and therefore violative of Article 14. It was clarified that the principles of Wednesbury have to be followed when an administrative action is challenged as being arbitrary and therefore violative of Article 14 of the Constitution of India. In such a case, the Court would be doing a secondary review.

29. *While exercising primary review, the Court is entitled to ask the State to justify the policy and whether there was an imminent need for restricting the fundamental rights of the claimants. In secondary review, the Court shows deference to the decision of the executive.*

30. *Proportionality involves “balancing test” and “necessity test”. Whereas the balancing test permits scrutiny of excessive and onerous penalties or infringement of rights or interests and a manifest imbalance of relevant considerations, the necessity test requires infringement of human rights to be through the least restrictive alternatives.*

31. *An administrative decision can be said to be proportionate if:*

(a) The objective with which a decision is made to curtail fundamental rights is important;

(b) The measures taken to achieve the objective have a rational connection with the objective; and

(c) The means that impair the rights of individuals are no more than necessary."

15. In the backdrop of the above, if this Court now takes note of the impugned order dated 25.03.2015, it would be seen that the respondent authorities, more particularly the Appellant Authority did not take into consideration the question of proportionality of punishment, even though this Court in its order dated 16.10.2014 passed in WP(C) No.3422/2010 and also in the order dated 04.02.2015 in WP(C) No.492/2015 had specifically directed the Appellate Authority to look into the same.

16. This Court further finds it relevant to observe that in the impugned order, the respondent authorities failed to consider what constitutes reasonable enquiry required to be made by the LIC Agent in terms with Regulation 8 (2). The respondent authorities had also failed to consider in the proper perspective as to whether the petitioner committed fraud or was fraud played upon the petitioner which led to the petitioner believe on the certificate and submit the proposal. The respondents also had failed to take into consideration that the act of the petitioner was a solitary act which resulted in the issuance of the policy and same was duly certified by the respondent No.3. The respondents further failed to consider that no loss had accrued upon the respondent Corporation as the policy was not honoured on account of making false declaration. These aspects are required to be taken while considering the balancing test and the necessity test which however was not done.

17. Under such circumstances, it is the opinion of this Court that the impugned order dated 25.03.2015 not only is contrary to the direction passed by this Court in its orders dated 16.10.2014 and 04.02.2015 but also does not take into consideration the balancing test and the necessity test as observed by the Supreme Court in the aforementioned judgment.

18. Consequently, the impugned order dated 25.03.2015 is set aside and quashed. The Appellate Authority is directed to reconsider the question of punishment on the basis of the observation made herein above, and more so, taking into account the observation of the

Supreme Court in the case of *Kerala State Beverages (M and M) Corporation Ltd.* (supra). The same be done within a period of 3 (three) months from the date of a certified copy of the instant order is served upon the respondent No.1.

19. With the above observations and directions, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant