

GAHC010009282017



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

**Case No. : WP(C)/7/2017**

PRAKASH HAZARIKA  
S/O- LT. SARAT CH. HAZARIKA, R/O- PURANI KAMARGAON, P.O.-  
KAMARGAON, DIST.- GOLAGHAT.

VERSUS

LIFE INSURANCE CORPORATION OF INDIA LTD. and 3 ORS  
CENTRAL OFFICE, 5TH FLOOR, WEST SIANG, YOGAKSHEMA PB NO.  
19953, JEEVAN BIMA MARG, NARIMAN POINT, MUMBARI- 400021, REP. BY  
ITS CHAIRMAN.

2:ZONAL MANAGER  
EASTERN ZONAL OFFICE  
HINDUSTAN BUILDINGS 4  
CR AVENUE  
KOLKATA- 700072.

3:SR. DIVISIONAL MANAGER  
JORHAT DIVISION OFFICE  
JEEVAN PRAKASH  
RAJBARI  
JORHAT- 785014.

4:BRANCH MANAGER  
LIFE INSURANCE CORPORATION OF INDIA LTD.  
BOKAKHAT BRANCH  
DIST.- GOLAGHAT  
PIN- 785612

**Advocate for the Petitioner : MS. K TALUKDAR, MR.A BHATTACHARJEE,MR.S DEY,MS.B TALUKDAR**

**Advocate for the Respondent : , MR.G J SHARMA(R- 1-4),MR.S NATH(R- 1-4)**

**BEFORE  
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

**ORDER**

**16.09.2024**

1. Heard Mr. A. Bhattacharya, learned counsel for the petitioner. Also heard Mr. S. Nath, learned counsel for the respondent nos.1 to 4.
2. The petitioner has prayed for setting aside the impugned order dated 30.03.2016, by which the order dated 30.03.2015 passed by the Senior Divisional Manager, LICI, terminating the agency of the petitioner was upheld. The petitioner has also prayed for setting aside the order dated 30.03.2015.
3. The petitioner's case is that the petitioner was an agent of the Life Insurance Corporation of India Limited (LICI in short) and due to his sincerity, honesty and hard work, he became a member of the ZM's Club Member of LICI of Bokakhat Branch. While he was working as an agent for the LICI, the Divisional Manager, LICI issued a letter to the respondent no.4 stating that a vigilance case had been initiated due to non-realization of a huge amount of money by 3<sup>rd</sup> party cheques in the Bokakhat Branch office during 2005-2006 onwards. The letter also stated that as per the investigation report submitting by the Investigating Officer, the involvement of the petitioner having Agency Code No. 00310/44F was established, regarding financial irregularities in depositing third party cheques. Accordingly, payment of commission was to be

stopped to the petitioner and to another agent, i.e. Mr. Chandan Duarah.

4. Subsequent to the above, Show-Cause-Notice dated 07.02.2015 was issued to the petitioner, wherein the irregularities committed by the petitioner were spelt out and the petitioner was informed that he was to give a reply to the Show-Cause-Notice within a month, as the petitioner's acts were prejudicial to the interest of the LICI and it's policy holders, which was in breach of Rule 8(4) read with Rule 16(1)(a)&(b) of the LIC of India (Agents) Rules, 1972. The petitioner was also informed that the LICI proposed to impose upon the petitioner, the penalty of termination of agency with recovery of the outstanding amount as on 05.12.2014.

5. The petitioner's counsel submits that though it is admitted by the petitioner that he had committed a mistake, the petitioner should have been given a lesser penalty than termination of the agency. He further submits that even though the petitioner had admitted his mistake, the petitioner's agency could not have been terminated, without any inquiry having been initiated against the petitioner.

6. The petitioner's counsel submits that there was a practice prevalent at the LICI for depositing the 3<sup>rd</sup> party cheques at the Counter of the LICI, Bokakhat Branch. Accordingly, the petitioner deposited the cheques at Counter of the LICI, Bokakhat Branch and the same were accepted without any complaint. However, some of the cheques issued by the petitioner were returned unpaid by the Bank, due to which the petitioner on his own, has repaid a considerable

amount of money to compensate for the same. He also submits that no loss has been caused to the LICI or to the interest of its policy holders by the actions of the petitioner and as such, the petitioner's agency should not have been terminated when the petitioner's acts were not prejudicial to the interest of the LICI or to the interest of its policy holders.

7. The petitioner's counsel further submits that the petitioner has repaid all the amount payable to the LICI and only an amount of Rs.50,000/- is still payable by the petitioner, which can be recovered by the LICI from the commission the petitioner is to receive from the LICI. He further submits that due to the illness of the petitioner's wife, a mistake had occurred which would not occur again. He further submits that the petitioner's wife has expired in the meantime.

8. Mr. S. Nath, learned counsel for the LICI, on the other hand submits that no inquiry was initiated against the petitioner, inasmuch as, the petitioner had admitted to his wrong doing, pursuant to the Show-Cause-Notice issued to him. He submits that as the petitioner admitted to the wrong doing in his reply dated 06.03.2015 to the Show-Cause-Notice dated 07.02.2015, the termination of the petitioner's agency vide the impugned order dated 30.03.2015 by the respondent no.3, was in terms of Clause 16(1), (a) & (b) of the Life Insurance Corporation of India (Agents) Regulations, 1972 (hereinafter referred to as the "1972 Regulations"). Further, recovery of Rs.55,162/- was outstanding against the petitioner as on 12.03.2015 which was payable by the petitioner. He accordingly submits that as there is no infirmity with the impugned order of termination of the agency of the petitioner, the writ petition should be

dismissed.

9. I have heard the learned counsels for the parties.

10. The Show-Cause-Notice dated 07.02.2015 and the petitioner's reply dated 06.03.2015 are produced hereinbelow, as follows :

**"SHOW CAUSE NOTICE"**

*You, Sri Prakash Hazarika were appointed as an Agent of LICI at Bokakhat Branch Office under Jorhat Divisional Office on 13/01/1997 and allotted agency code No. 0021044F.*

*AND WHEREAS, You, Sri Prakash Hazarika, agency code No. 0021044F, during the period from March 2006 to December 2007, in collusion with other officials of Bokakhat Branch, arranged to deposit over the cash counter 13 (thirteen) cheques (as detailed below) totaling to Rs.557945.00 (Rupees Five Lakh Fifty Seven Thousand Nine Hundred Forty Five) only, drawn from your savings bank account number 7229010007043 maintained with Assam Gramin Vikash Bank (on congieration), Rajabari Branch and savings bank account number 0025010107600 maintained with United Bank of India, Bokakhat Branch, in lieu of cash tendered by various policy holders. The cheques were not honoured by the banks.*

Sl.	Trans No.	Dt. Of Trans	Policy No.	Date of Lodgment	Cheque No.	Bank Details	Cheque Amount
1.	26827	27/12/2007	442379623	26/12/2007	131810	United Bank of India	88658.00
2.	26158	06/01/2006	442379500	07/01/2006	948491	Assam Gramin Vikash Bank Rajaabri Branch	20000.00
3.	26816	17/01/2006	442379650 442379656	18/01/2006	948492	Assam Gramin Vikash Bank Rajaabri Branch	21500.00
4.	28161	30/01/2006	442379573	31/01/2006	948493	Assam Gramin Vikash Bank Rajaabri Branch	103400.00
5.	28525	31/01/2006	442379651	01/02/2006	948494	Assam Gramin Vikash Bank Rajaabri Branch	11450.00

6..	37168	31/03/2006	442834287	02/04/2006	948498	Assam Gramin Vikash Bank Rajaabri Branch	14000.00
7.	37165  371663716 7	31/03/2006	4428342754428 3374244283415 9	02/04/2006	948497	Assam Gramin Vikash Bank Rajaabri Branch	15610.00
8.	371693717 037171371 72	31/03/2006	4428341564428 3415544283404 8442834161	02/04/2006	948495	Assam Gramin Vikash Bank Rajaabri Branch	6640.00
9.	37164	31/03/2006	442382469	02/04/2006	948495	Assam Gramin Vikash Bank Rajaabri Branch	
10.	37396	31/03/2006	(year end Block)	04/04/2006	948499	Assam Gramin Vikash Bank Rajaabri Branch	10000.00
11	6283	20/06/2006	442835433	21/06/2006	948500	Assam Gramin Vikash Bank Rajaabri Branch	61427.00
12	19458	31/10/2006	442837401	01/11/2006	1162192	Assam Gramin Vikash Bank Rajaabri Branch	100000.00
13	12533	29/08/2006	442836280	30/08/2006	1162191	Assam Gramin Vikash Bank Rajaabri Branch	89740.00

Total = Rs. 557,945.00/-

AND WHEREAS, AN AMOUNT OF Rs. 480694.00 out of Rs.557945.00 was recovered as on 05/12/2014.

AND WHEREAS, you have witnessed in surrender application form of policy number 441586900, Life assured Sri Dwijen Kumar Saikia in which the signature of life assured is not tallied with signature in the proposal form of the policy;

AND WHEREAS, the surrender value of Rs.76004.00 (of policy no 441586900, Life assured Sri Dwijen Kumar Saikia was deposited on 19/07/2010 in the cash counter of Bokakhat Branch office into two parts Rs. 50000.00 deposited against renewal premium of policy no 443549785, (Life assured Smti. Bijaya Saikia) and Rs. 26004.00 deposited against BOC no 001740 in your name and subsequently the BOC no 001740 was refunded to you vide cheque no 908358 dated 21/07/2010 which was en-cashed by you on 21/07/2010;

AND WHEREAS, a total amount of Rs.103255.00 (Rs.557945.00 - Rs. 480694.00 +Rs.26004.00) remains outstanding against you as on 05/12/2014.

AND WHEREAS you, by you aforesaid acts, have acted in a manner prejudicial to the interest of the Corporation and its policy holders, failed to maintain absolute integrity in discharging the functions as an Agent and committed breach of Rule 8(4) read with Rule 16(1) (a) & (b) of the LIC of India (Agents) Rules, 1972.

NOW, therefore for good and sufficient reasons, the undersigned in exercise of the powers vested in him vide Schedule I of LIC of India (Agents) Rules, 1972 proposes to impose upon you, Sri Prakash Hazarika, Agency Code No. 0021044F, the penalty of 'Termination of Agency' in terms of Rule 16(1) (a), (b) of the LICI (Agents) Rules, 1972 with recovery of Rs.1,03,255.00 (Rupees One Lakh Three Thousand Two Hundred Fifty Five) only lying outstanding as on 05/12/2014.

HOWEVER, before proceeding further in the matter, the undersigned directs you to show cause in writing, within a period of one month of receipt of this Notice, as to why the proposed action should not be taken against you. In case your reply is not received within the period stipulated above or the reply received is not found satisfactory, further proceedings shall ensue, without reference to you as per the provision of LIC of India (Agents) Rules, 1972.

Dated at Jorhat this 7th day of Feb' 2015.

Sd/-Illegible

Sr. Divisional Manager  
(Disciplinary Authority)"

---

"To The Sr. Divisional Manager,  
LIC of India  
Divisional Office  
Jorhat  
Sub:- Show Causes Notice

Dated. 06.03.2015

Dear Sir,

In reply to your show cause notice. Sir, I want to state that the cheque dishonoured amount Rs. 557945.00 of which amount I have invested from my pocket to procure LICI business.

Sir I witness the surrender application form of Pol. No. 441586900 of D.K. Saikia as I know him since long and I did not verify his signature.

Sir, the amount of Rs.50,000.00 out of Rs. 76,004.00 deposited against new proposal of Pol. No. 443549785 only. It is not deposited against renewal Premium. The balance amount Rs. 26004.00, when I deposited wrongly put my name instead of proposer name at cash counter instead of D.K. Saikia and I refunded the amount to him.

Sir, at present amount Rs. 50,000.00 is lying outstanding which will be re- funded within

*short time. (deduction continue)*

*Sir, I am working as a ZM club agent for last 19 years without any complain against me for any policy holder co. agent or the staff of Bokakhat Branch.*

*Sir, My wife died on 11/05/2013 due to serious illness. She was bedridden for a long time. At present I am living with my minor daughter and son wholly dependent upon my Agency earning in a rented home at Bokakhat.*

*Sir, I therefore, most humbly & respectfully request you to kindly consider 1st time and continue my Agency without imposing any action against me.*

*Sir, I am assuring you that such type of incident will not happen in future which I will take extreme care.*

*Thanking You*

*Your faithfully*

*Mr. Prakash Hazarika*

*ZM Club, Agent Code 210/44F"*

11. As can be seen from the reply dated 06.03.2015, the petitioner has admitted to the fact that he has used the money collected from policy holders for investing in his LICI business. He has also wrongly put his name with regard to an amount of Rs.26004.00 instead of the policy holder Mr. D.K. Saikia. Further, Rs.50,000/- is still lying outstanding against the petitioner, which the petitioner has undertaken to repay within a short time. The petitioner has also admitted that he had committed a mistake and promised that such incidents would not happen in the future again.

12. The petitioner in paragraph-9 of the writ petition has admitted that he has repaid all the amount payable to the LICI and that only an amount of Rs.50,000/- was to be recovered from him, which could be recovered from the commission payable to him by the LICI. He has also stated that he did not have

any malafide intention in defrauding the money of either the policy holders or the LICI, but the circumstances and situation at that time was such that he was in need of huge money for the treatment of his wife, although his wife expired on 20.05.2013 at GNRC hospital.

13. The admission by the petitioner with regard to the use of policy holders money for his own private business purposes is clear in the petitioner's averments made in the writ petition and his reply to the Show-Cause-Notice. As there is an admission made by the petitioner with regard to his actions which are not expected of an LICI agent and the same not being in the interest of the Corporation or the policy holders, this Court is of the view that there is no infirmity in the impugned order passed by the respondents. When the petitioner, in his reply to the Show-Cause-Notice and the writ petition has admitted to his mistake, there is no requirement of having a further inquiry in terms of Regulation 16 of the 1972 Regulations, which is reproduced hereinbelow, as follows :

*"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 policyholders;*
- (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) it is 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, on 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 91) 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."*

14. In view of the above reasons, this Court does not find any ground to interfere with the impugned orders. The writ is accordingly dismissed.

**JUDGE**

**Comparing Assistant**