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WP-4044-2012

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE
HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE

WRIT PETITION No. 4044 of 2012

ANITA SHRIVASTAVA

Versus

LIFE INSURANCE CORPORATION OF INDIA AND OTHERS

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Appearance:

Shri D.P. Singh - Advocate for the petitioner.

Shri Sunil Kumar Jain - Advocate for the respondent.
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RESERVED ON : 25/06/2025

DELIVERED ON : 2/7/2025

ORDER

The present petition under Article 226/227 of the Constitution of India has been preferred by the petitioner against the order dated 28.03.2009 passed by respondent No.3, whereby agency of the petitioner without forfeiture of renewal commission has been terminated.

2. The petitioner is further aggrieved by the order dated 01.08.2011 passed by respondent No.2/Zonal Manager, whereby the order passed by respondent No.3 terminating the agency of the petitioner without forfeiture of renewal commission has been upheld.

3. Short facts of the case are that the petitioner was appointed as LIC Agent bearing Code No.4494-355 in the year 1994 and since the, she was running the said agency for last 16 years. On 15.01.2009, as show cause notice was issued with the following allegations:



01. यहकि, शाखा के सहायक शाखा प्रबन्धक श्री एन0के0किसपोट्टा द्वारा लिखित में शिकायत की है कि आपसे नव-व्यवसाय चर्चा एवं कार्यालयीन सूचना जैसे प्रतियोगिता इत्यादि की जानकारी देने हेतु दूरभाष पर सम्पर्क किया गया तो आपने दूरभाष पर हमेशा यह कहा कि " मुझे फोन लगाकर बीमा सम्बन्धी बात मत करना एवं अगली बार से फोन मत करना" श्री किसपोट्टा द्वारा आपके एन0एफ0एल0 विजयपुर स्थित निवास पर सम्पर्क करने पर आपने उनके साथ दुर्व्यवहार किया एवं घर से चले जाने को कहा गया जो कि अभिकर्ता द्वारा प्रदर्शित अभद्रतापूर्ण व्यवहार अनुचित एवं एजेन्ट्स रेग्यूलेशन के विरुद्ध है।

02. निगम द्वारा वित्त प्रेषित वाहन एम0पी0 08 जे-9133 स्कूटर के तहत सम्पन्न अनुबन्ध पत्र के नियम 4(एच) के अनुसार भौतिक सत्यापन हेतु जब आपसे सम्पर्क किया एवं पत्र भेजे गये तब भी आपने वाहन का भौतिक सत्यापन नहीं कराया एवं प्रतिउत्तर में दिनांक 23/10/2008 को असंवैधानिक /असंसदीय भाषा का प्रयोग करते हुये लिखा " सर्कस के तो क्या किसी भी श्रेणी के ड्रायरवर के लिये यह कतई सम्भव नहीं है कि भूतल के अतिरिक्त अन्य उच्च तल पर स्थित शाखा कार्यालय में सत्यापन हेतु वाहन को प्रस्तुत कर सकें क्या चार पहिया वाहन को उच्च तल पर स्थित शाखा कार्यालय में सत्यापन हेतु प्रस्तुत करना सम्भव है।" जबकि आपको स्वीकृत वाहन चार पहिया नहीं दो पहिया वाहन है। इसके अतिरिक्त शाखा को वाहन के बीमा सम्बन्धी दस्तावेज में भी आपने किसी अन्य वाहन जिसका पंजीकरण क्रमांक एम0पी0 08जी 3133 दर्शाया गया है को प्रस्तुत किया गया है।



03. आप एन0एफ0एल0 विजयपुर की निवासी हैं एवं शाखा प्रबन्धक को प्राप्त विभिन्न मौखिक शिकायतों के अनुसार आप अन्य अभिकर्ताओं के नव-व्यवसाय सम्बन्धी कार्य में व्यवधान उत्पन्न करती हैं।

04. आप मण्डल प्रबन्धक क्लब सदस्य हैं एवं आपने विभिन्न पत्राचारों में आपने शाखा प्रबन्धक सहायक शाखा प्रबन्धक, प्रबन्धक (विक्रय) इत्यादि उच्च अधिकारियों को प्रेषित पत्राचार में अभद्र एवं असंवेदीय वाक्यों का प्रयोग किया है।

05. निगम के मण्डल प्रबन्धक क्लब सदस्य होने के नाते आपको प्रदान किये गये लैटरपैड का दुरुपयोग करते हुये आपने निगम के एक बीमाधारक श्री गुरुविशाल सिन्हा के विरुद्ध उनके नियोजक को शिकायती पत्र प्रेषित कर लिखा है कि श्री सिन्हा मानसिक रूप से असंतुलित हैं एवं उन्हें मानसिक इलाज की आवश्यकता है।

अतः संबंधित अभिलेखों, दस्तावेजों का अध्ययन कर मैं अन्तिम रूप से इस निष्कर्ष पर पहुँचा हूँ कि आपने अपने उपर्युक्त कृत्य से भारतीय जीवन बीमा निगम (अभिकर्ता) विनियम, 1972 के नियम 16 (1बी) के प्रावधानों का उल्लंघन किया है एवं अच्छे आचरण के प्रतिकूल कार्य किया है। आपके इस दुराशय एवं दुर्भावनापूर्ण कार्य से आपने भारतीय जीवन बीमा निगम की छति को क्षति पहुँचायी है।

तथापि, इसके पूर्व कि मैं आगे की कार्यवाही प्रारम्भ करूँ, आपको एतद् द्वारा निर्देश दिया जाता है कि इस कारण बताओ नोटिस की प्राप्ति से दस दिनों के अन्दर आप लिखित में कारण



बतायें कि उक्त आचरण की गंभीरता को देखते हुये आपका
अभिकरण भारतीय जीवन बीमा निगम (अभिकर्ता) विनियम
1972 के नियम 16(1बी) के अन्तर्गत क्यों न समाप्त किया जाये

4. The petitioner replied to the said show cause notice vide her reply dated 12.02.2009 and denied the allegations levelled against her. After filing the reply, vide order dated 28.03.2009, the respondent No.3 exercising the powers under Regulation 16(1)(b) of the Life Insurance Corporation of India (Agents) Regulations, 1972 had passed the order dated 28.03.2009 terminating the agency of the petitioner without forfeiture of renewal commission. Aggrieved by the aforesaid order, an appeal was preferred before respondent No.2, the Zonal Manager, LIC, which was dismissed vide order dated 01.08.2011. Hence, the present petition.

5. Learned counsel for the petitioner has vehemently argued that in view of the promulgation of the Insurance Laws (Amendment) Ordinance, 2014 *inter alia* amending section 42 of the Insurance Act, 1938, relating to appointment of Insurance Agents, certain guidelines have been issued in exercise of the powers u/s 42 of the Insurance Act, 1938 read with section 14(2)(a) & (c) of IRDA Act, 1999, which were issued on 16/03/2015, wherein clause XI dealt with the manner of holding enquiry before/after suspension of appointment of the Insurance agent and in Sub-clause (1) it is specifically provided that the appointment of an Insurance agent shall not be cancelled unless an enquiry is conducted in accordance with the procedure provided in this clause, but detailing the impugned orders no procedure as prescribed appears to have been followed and no opportunity of hearing was



granted to the petitioner and behind her back the impugned orders herein were passed.

6. It was further argued that apart from not following the principles of natural justice in not granting opportunity of hearing, the order impugned herein are non-speaking orders and non-reasoned orders, so also with regard to imputation of the allegations levelled against the petitioner, she applied for obtaining certain documents under Right to Information Act, 2005 but the same were not provided to her. To bolster his submissions learned Counsel placed reliance on the decision of Hon'ble Supreme Court in the matter of ChairmanCum-Managing Director, Coal India Limited and others Vs. Ananta Saha and others reported in (2011) 5 SCC 142, in the matter Mahesh Kumar Prajapati Vs. Zonal Manager, Life insurance Corporation reported in 2018(1) MPLJ 232.

7. *Per contra*, learned counsel for the respondent while supporting impugned orders herein has opposed the prayer so made by counsel for the petitioner and had prayed for dismissal of the present petition.

8. Heard counsel for the parties and perused the record.

9. Admittedly, on 15.01.2009, as show cause notice was issued against the petitioner with certain allegations as aforesaid, which was replied by her on 12.02.2009. After receiving reply from the petitioner, the authority proceeded to decide the matter and while finding the reply not to be satisfactory, held the allegations levelled against the petitioner to be proved. No further enquiry was conducted and no reasonable opportunity of hearing was granted to the petitioner, so as to enable her to defend herself and make



submissions in support of her reply.

10. Even otherwise, the order dated 01.08.2011 passed by the Appellate Authority/Zonal Manager, LIC is a non-speaking and non-reasoned order, which is against the settled principle of law that an authority who is in making an order in exercise of its *quasi-judicial* function, must record reasons in support of the order it makes. Every *quasi-judicial* order must be supported by reasons. The rule requiring reasons in support of a *quasi-judicial* order is as basic as following the principles of natural justice and the rule must be observed in its proper spirit and since the Zonal Manager being a quasi-judicial authority was required to pass a reasoned and a speaking order. Reference be had to the matter of the Apex Court in the matter of Siemens Engineering and Manufacturing Co. of India Ltd. vs. Union of India reported in AIR 1976 SC 1785.

11. The Hon'ble Supreme Court in the case of M/s Kranti Associates Pvt. Ltd. and Another Vs. Masood Ahmed, reported in 2010 9 SCC 496 also has held as under:-

47. Summarizing the above discussion, this Court holds:

"a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

b. A quasi-judicial authority must record reasons in support of its conclusions.

c. Insistence on recording of reasons is meant to



serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.

f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

g. Reasons facilitate the process of judicial review by superior Courts.

h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.

i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one



common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

j. Insistence on reason is a requirement for both judicial accountability and transparency.

k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).

n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision



making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

12. Further, the Competent Authority and the Appellate Court while deciding the complaint and the Appeal also ignored this aspect that the procedure to be adopted while terminating the agency as laid down in the guidelines for appointment of Insurance Agents called as “Guidelines on Appointment of Insurance Agent, 2015”, issued by invoking the provisions of section 42 of the Insurance Act, 1938 read with section 14(2)(a) & (c) of IRDA Act, 1999, was not followed and no enquiry as contemplated under clause XI therein was conducted. Clause XI of the guidelines are reproduced below:

“XI. Manner of holding enquiry before/after suspension of appointment of the insurance Agent:



1. The appointment of an insurance 12 agent shall not be cancelled unless an enquiry has been conducted in accordance with the procedure specified in this clause.

2. For the purpose of holding an enquiry under this clause, the insurer may appoint an Officer as an Enquiry Officer within 15 days of the issue of the suspension order.

3. The Enquiry Officer shall issue a show cause notice to the insurance agent at the registered address of the insurance agent calling for all information/data as deemed necessary to conduct the enquiry and grant the insurance agent a time of 21 days from date of receipt of the show cause notice, for submission of his/her reply and such information/data called for;

4. The insurance Agent may, within 21 days from the date of receipt of such notice, furnish to the enquiry officer a reply to the Show cause notice together with copies of documentary or other evidence relied on by him or sought by the Enquiry Officer;

5. The Enquiry Officer shall give a reasonable opportunity of hearing to the insurance agent to enable him to make submissions in support of his/her reply;

6. The insurance agent may either appear in person or through any person duly authorised by him to present his case, provided however that the prior approval of the Insurer



is obtained for the appearance of the 'Authorised Person';

7. If it is considered necessary, the Enquiry Officer may require the Insurer to present its case through one of its officers;

8. If it is considered necessary, the 13 Enquiry Officer may call for feedback/information from any other related entity during the course of enquiry;

9. If it is considered necessary, the Enquiry Officer may call for additional papers from the insurance agent;

10. The Enquiry Officer shall make all necessary efforts to complete the proceeding at the earliest but in no case beyond 45 days of the commencement of the enquiry:

Provided that in case the enquiry cannot be completed within the prescribed time limit of 45 days as mentioned in (10) above; the enquiry officer may seek additional time from the Insurer stating the reason thereof;

11. The Enquiry Officer shall, after taking into account all relevant facts and submissions made by the insurance agent, shall furnish a report making his/her recommendations to the Designated Official. The Designated Official shall pass a final order in writing with reasons. The order of designated official shall be signed and dated and communicated to the agent.

13. Thus, in the obtaining facts and circumstances of the case and in



the light of decisions cited above by the counsel for the petitioner, this Court finds that the present petition deserves to be and is hereby allowed and the impugned orders herein are hereby quashed. Apart from the above this Court also finds the show cause notice dated 19/10/2012 issued by the competent authority to be more of a punitive nature rather than a show cause case, accordingly it is also **quashed**. The matter is relegated to the Competent Authority to issue a fresh show cause notice to the petitioner and after affording her reasonable opportunity and following the procedure as envisaged under Clause XI, adjudicate the matter a fresh and thereafter pass a reasoned and speaking order. Resultantly, her agency is hereby restored.

14. With the aforesaid observations and directions, the present petition is **allowed** and **disposed of**.

(MILIND RAMESH PHADKE)
JUDGE

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