

National Insurance Co. Ltd.

Vs

Life Insurance Corporation of India

Civil Appeal No. 134 of 1961

(P. B. Gajendragadkar, M. Hidayatullah, J. C. Shah JJ)

04.03.1963

JUDGMENT

HIDAYATULLAH J. -

This appeal arises out of two orders of the Life Insurance Corporation Tribunal, Nagpur, dated December 30, 1959, and May 17, 1960. The National Insurance Co. Ltd. is the appellant and the Life Insurance Corporation of India the respondent.

The Life Insurance Corporation Act, 1956, (31 of 1956) was passed to provide for the nationalisation of life insurance business in India by transferring all such business to a Corporation to be established for the purpose and to provide for regulation and control of the business of that Corporation and for matters connected therewith or incidental thereto. The Life Insurance Corporation is that Corporation. It took over the life insurance business of the National Insurance Co. Ltd., among other companies, and the two broad questions on which the present dispute has arisen are : what part of the business of the appellant Company vests in the Corporation and what are the assets of that business ?

The Life Insurance Corporation Act provided that the Corporation would be established with effect from such date as the Central Government by a notification in the Official Gazette might appoint. September 1, 1956, was notified as that date. The Act defined the expression "appointed day" as the date on which the Corporation was to be established and September 1, 1956, also became the "appointed day" for the purposes of the Act. Section 7(1) of the Act then enjoined that on the appointed day there shall be transferred to and vested in the Corporation all the assets and liabilities appertaining to the "controlled business" of all insurers. Prior to the Act an Ordinance was passed by the President (Ordinance No. 1 of 1956) and a Custodian appointed thereunder had already taken over management of such business of the insurers as was to vest later in the Corporation as the "Controlled business". Under sub-s. (2) of S. 7 the assets of the controlled business included all rights and powers and all property, whether movable or immovable, including in particular cash balances, reserve funds, investments, deposits and all interests and rights in and arising out of such properties as may be in the possession of the insurer and all books of accounts and documents relating to the controlled business of the insurer. Similarly, liabilities were deemed to include all debts, liabilities and obligations of whatever kind then existing and appertaining to the controlled business of the insurer. An Explanation to S. 7 reads :

"Explanation. - The expression "assets appertaining to the controlled business of an insurer" -

(a) in relation to a composite insurer, includes that part of the paid-up capital of the insurer or assets representing such part which has or have been allocated to the controlled business of the insurer in accordance with the rules made in this behalf :

x x x x"##

The expression "Composite insurer" was defined to mean :

"An insurer carrying on in addition to controlled business any other kind of insurance business."

"Controlled business", in so far as relevant to our purpose, was defined as follows :-

"2(3) "controlled business" means -

(i) in the case of any insurer specified in sub-clause (a)(ii) or sub-clause (b) of clause (9) of section 2 of the Insurance Act and carrying on life insurance business -

(a) all his business, if he carries on no other class of insurance business;

(b) all the business appertaining to his life insurance business, if he carries on any other class of insurance business also;

x x x x"##

Explanation. - An insurer is said to carry on no class of insurance business other than life insurance business, if, in addition to life insurance business, he carries on only capital redemption business or annuity certain business or both; and the expression "business appertaining to his life insurance business" in sub-clauses (i) and (ii) shall be construed accordingly;

x x x x"##

The appellant Company was admittedly a composite insurer because it carried on general insurance business in addition to the businesses which fell within the definition of "controlled business". Admittedly also the Company carried on both capital redemption business and annuity certain business which it called compendiously in its books, Capital Obligation Business. On the appointed day the "controlled business" of the Company vested by operation of law in the Corporation together with all assets and liabilities appertaining to that business. The Company contends that on a proper interpretation of the above provisions particularly the explanation to the definition of "controlled business", the Capital Obligation Business of the Company, which included capital redemption business and annuity certain business, did not vest in the Corporation. The Corporation on the other hand claims that this business also vested in the Corporation and hence the dispute which was referred to the Tribunal. The Tribunal decided in favour of the Corporation and the Company has filed this appeal with the special leave of this Court.

Mr. G.S. Pathak argues that the words "only" and "accordingly" in the said explanation must receive their proper meaning. According to him the word "only" indicates that the capital redemption business and the annuity certain business or both vest as part of the controlled business if and only if no other kind of insurance business is carried on by the insurer. According to Mr. Pathak the force

of the word "only" is that where an insurer carries on life business and capital redemption business and or annuity certain business but no other kind of business, then the controlled business can be said to include in addition to life business the capital redemption business or annuity certain business or both; but where an insurer carries on life business and general business like fire or marine insurance etc., the capital redemption business or the annuity certain business, or both, (as the case may be) cannot be included in the controlled business. He further contends that the expression "business appertaining to his life insurance business" in sub-clauses (i) and (ii) of the definition of "controlled business" must also be given this meaning. In our opinion this argument cannot be accepted.

The definition of "controlled business" contemplates two kinds of insurers - (i) insurers who carry on life business only, and (ii) insurers who carry on composite business, that is to say certain other business which does not ex facie come within controlled business. Under sub-clause (a) of s. 2(3)(i) controlled business covers the entire life business of an insurer if he carries on no other class of insurance business and under sub-clause (b) all the business appertaining to his life insurance business is included if he is a composite insurer. The controlled business in either case is intended to embrace all the business concerning life insurance. In the first case it means the whole of the business of the insurer and in the second case the part which comes within the life business but no other. The explanation, that is annexed to the definition, then shows what comes within life business and the explanation is designed to serve the purposes of (a) and (b) to sub-clause (i) of the definition. The explanation first seeks to explain who can be said to carry on "no class of insurance business other than life insurance business" and says that such would be an insurer who in addition to life business carries on only capital redemption business or annuity certain business or both. The word "only" shows that with the life business go the two named businesses but no other. An insurer who carries on life business and in addition only the one or the other of the two named businesses or both is to be regarded still as one carrying on no business other than life insurance business. The explanation next says that the expression "business appertaining to his life insurance business" which occurs in (b) should be construed "accordingly". The word "accordingly" clearly means "in a similar manner".

We are concerned here with a composite insurer and sub-clause (b) says that the "controlled business" in such a case would include all business which appertains to life insurance business but no other business and the explanation says that the expression "business appertaining to life insurance business" should be construed as in the first part of the explanation. This means that included in the life insurance business of a composite insurer are those businesses which go with the life business in the first part of the explanation, that is to say, capital redemption business and annuity certain business or both. Both the grammar and the sense of the matter lead to the same result. Indeed the argument of the learned counsel to be valid must shift the word "only" from the place it occupies to the end of the first part of the explanation so as to control the entire sentence and not only a part of it. This cannot be done. In our opinion, the capital redemption business and the annuity certain business must be included in the expression "controlled business" even in the case of a composite insurer like the appellant Company. The first part of the contention of the Company therefore fails.

The dispute with regard to the assets of the Capital Obligation Business (which term includes both the capital redemption business and the annuity certain business) arises in the following circumstances. The Company maintained a fund called the "Capital Obligation Fund" which amounted to Rs. 12,80,882-8-9 on August 31, 1956. On the establishment of the Corporation the Company made over to the Corporation all the policies relating to this Fund and the liability relating

to these policies as they stood on December 31, 1955, was Rs. 12,88,727. The Company was, therefore, asked to hand over either cash or investments of an equal value.

On the eve of the transfer of assets, the Company made changes in its investments relative to the life business and general business. These investments included approved investments under s. 27-A of the Insurance Act and others. What the Company did was to transfer certain unapproved investments at their book value to its Capital Obligation Business and made them over to the Corporation. The Corporation declined to receive them. It asked the Company to give stocks and shares of the appropriate market value or allow the Corporation to select stocks and shares from the investments. The Company contended that the Corporation was not entitled to "pick and choose" from the various investments. The Company had already transferred all the gift-edged investments from the life and the Capital Obligation Fund to the general business leaving investments (which were not approved) of the book value sufficient to cover Rs. 12,87,000 odd which represented the Capital Obligation Business. These investments were rated at half their book value by the Corporation.

The Tribunal reversed the entries in respect of the investments relating to sundry funds. It is contended that the Tribunal reversed only a few of the book entries which had been made on the eve of vesting but not all and did not restore the status quo existing on December 31, 1955. It is also contended that the Corporation should not be allowed to pick and choose from the investments. The point about "picking and choosing" and that about reversing the entries lose all force in view of the fact that before the Tribunal the Company conceded that the Corporation may pick any investments of the value of Rs. 12,80,890 which represented the Capital Obligation Businesses. In view of this concession the points now sought to be pressed cannot arise. There is no force in this appeal. It fails and is dismissed with costs.

Appeal dismissed.

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