

Damji Valji Shah and Another

Vs

Life Insurance Corporation of India & Others

Civil Appeals Nos. 676 and 677 of 1962

(CJI P. B. Gajendragadkar, M. Hidayatullah, V. Ramaswami – I, M. Hidayatullah JJ)

08.04.1965

JUDGMENT

RAGHUBAR DAYAL, J. –

These appeals, by special leave, are against the decree of the Life Insurance Tribunal, Nagpur, in proceedings on an application by the Life Insurance Corporation of India (hereinafter called the Corporation) under s. 15 of the Life Insurance Corporation Act, 1956 (Act XXXI of 1956), shortly termed as the LIC Act, for ordering the Vishwabharti Insurance Company, Bombay, Damji Valji Shah and Jayantilal Hirjibhai Chawda, appellants in the C.A. 676 of 1962, Ghanshyamdas, appellant in C.A. 677 of 1962, the afore-mentioned individuals being directors of the Vishwabharti Insurance Company, and another director, to pay to the Corporation jointly and severally the sum of Rs. 82,000/- together with interest there at 6% per annum from September 1, 1956, till full payment. The decree ordered the company to pay a further sum, but we are not concerned with that part of the decree as the company has not appealed against it.

The facts of the case briefly are these. The company was a composite insurer, i.e., an insurer who carried on, in addition to life insurance business, other classes of insurance business. The LIC Act came into force on July 1, 1956 and the Corporation was established on September 1, 1956 which was the "appointed day" according to s. 2(1) of that Act. On that day, in view of s. 7, all the assets and liabilities appertaining to the life insurance business (called the controlled business, vide s. 2(3)) of the Company stood transferred to and vested in the Corporation. It was found that certain amounts which had been transferred from the Life Insurance Fund in the books of the company to the General Department had not been transferred in accordance with the provisions of the Insurance Act, 1938 (Act 4 of 1938) which governed the company and should have continued to be included in the assets appertaining to the controlled business of the company. It was therefore that an application under s. 15 of the LIC Act was made by the Corporation to the Tribunal.

We may now state how this amount of Rs. 82,000/- happened to be transferred from the Life Insurance Fund (or the Life Fund) of the company to its General Department. The company had to keep separate accounts of all receipts and payments in respect of each class of insurance business, in view of s. 10(1) of the Insurance Act. It had to maintain a Life Fund in connection with its life insurance business in view of s. 10(2). Sub-s. (2) provided that where an insurer carried on business of life insurance, all receipts due in respect of such business be carried to and would form a separate fund called the Life Insurance Fund and its assets be kept distinct and separate from all other assets of the insurer and deposits made by the insurer in respect of life insurance business. Sub-s. (3) of s. 10 provided that the life insurance fund would be as absolutely the security of the life policy holders as though it belonged to an insurer carrying on no other business than life insurance business and

that it should not be applied directly or indirectly for any purpose other than those of the life insurance business of the insurer. The amount in this fund had to be sufficient to meet the net liabilities in regard to the life insurance policies issued by the company. If it was not so maintained, the company stood the chance of being barred from carrying on life insurance business.

By resolution dated December 18, 1948, Rs. 1,10,000/- were transferred from the General Department to the Life Department as advance to the Life Department Revenue Account for being added to the Life Fund, subject to the condition that the Life Department would not be liable to pay any interest thereon and that no repayment of the loan would be made except out of the valuation surplus of the Life Department. The first actuarial valuation report of the company for the year 1944 - 48, dated July 18, 1949, showed that the net liability of the company was Rs. 6,55,718/- and that the amount in the Life Fund was Rs. 6,57,450/- and therefore the fund showed a surplus of Rs. 1,732/- over the net liabilities. If the sum of Rs. 1,10,000/- had not been transferred to the Life Department Revenue Account prior to December 31, 1948, this valuation report would have shown the net liability exceeding the amount in the life fund by about a lakh of rupees. It is clear that the amount was so transferred in order to avoid the consequences of the net liabilities exceeding the Life Fund.

The Profit & Loss Appropriation Account for the year 1949 shows that Rs. 60,000/- out of this amount of Rs. 1,10,000/- was written off as the company had made profits. Rs. 32,000/- were again similarly transferred to the Life Fund from the General Department with retrospective effect from December 31, 1952 in order to strengthen the position of the Life Fund.

The second actuarial valuation report for the period 1949 - 52, dated September 9, 1953, showed that the policy liability amounted to Rs. 15,33,068/- that the Life Fund stood at Rs. 15,35,890/- and that thus the Life Fund exceeded the net liability by Rs. 2,822/-. There was thus a surplus as Rs. 32,000/- had been transferred to strengthen the Life Fund, with retrospective effect in view of the resolution dated August 20, 1953 which reads :

"Resolved that a loan of Rs. 32,000/- (thirty two thousand only) bearing no interest be hereby given to Life Department by General Department with retrospective effect as on 31st December 1952, the repayment of which shall be made only out of the future Valuation Surplus or surpluses of the Life Department or it may be written off from the future profits of the General Department. This will have effect in the accounts of the Company for the year ended 31st December, 1952."

It is to be noted that this resolution itself said that the amount would be repaid only out of the future Valuation Surplus or surpluses of the Life Department or might be written off from the future profits of the General Department.

It was this amount of Rs. 82,000/- (Rs. 50,000/- plus Rs. 32,000/-) which, by a resolution dated January 6, 1956 was transferred to the General Department from the Life Fund. The resolution reads :-

"Resolved that a loan of Rs. 82,000/- (eighty two thousand only) advanced to Life Department Revenue Account by General Department be and is hereby repaid to General Department and the balance of Rs. 60,000/- due to General Department by Life Department Revenue Account be and is hereby kept in reserve for future and hence no adjustment in regard to Rs. 60,000/- will be made for the present."

This resolution was confirmed by the Board of Directors at its meeting dated February 6, 1956.

We may now refer to the changes in law with respect of life insurance business in 1956 and an anticipation of which probably led to the resolution of January 6, 1956. On January 19, 1956, the Life Insurance (Emergency Provisions) Ordinance, 1956 (Ord. No. I of 1956) was promulgated by the President. It came into force from that day which was called them 'appointed day'. Section 3(1) provided that the management of the 'controlled business' of all insurers would vest in the Central Government on and from the appointed day. 'Controlled business', according to cl. (2) of s. 2, meant all the business appertaining to the life insurance business, if the insurer carried on any other class of insurance business also. Clause (b) of sub-s. (3) prohibited the incurring of any expenditure by the insurer without the previous approval of the person specified by the Central Government in that behalf, from the assets appertaining to the controlled business otherwise than for the purpose of making routine payments etc., specified in that clause. Those purposes do not include the repayment of an advance made from the General Department to the Life Fund or to the Life Department Revenue Account. Clause (c) of sub-s. (3) further prohibited the insurer, without the previous approval of the authorised person, to transfer or otherwise dispose of any such assets appertaining to the controlled business or create any charge or hypothecation, lien or other encumbrance thereon. It would therefore appear that possibly the Board of Directors were not right in confirming the resolution of January 6, 1959 after the Ordinance had come into force. However, that is not the point raised in these proceedings.

We have already referred to the coming into force of the LIC Act on July 1, 1956 and of the transfer and vesting in the Corporation of all the assets and the liabilities pertaining to the life insurance business in view of s. 7 of that Act. Section 15 provides that the Corporation may apply for relief to the Tribunal in respect of a transaction which is made by the insurer whose controlled business had been transferred to and vested in the Corporation under the Act at any time within 5 years before January 19, 1956 and by which the composite insurer has transferred any property from his life department to his general department without consideration or for an inadequate consideration and the transfer was not reasonably necessary for the purpose of the controlled business of the insurer or was made with an unreasonable lack of prudence on the part of the insurer regard being had in either case to the circumstances at the time. The Corporation, in such proceedings, had to make all parties to the transaction parties to the application.

Sub-s. (2) of s. 15 empowered the Tribunal to make such order against any of the parties to the application as it thought just having regard to the extent to which those parties were respectively responsible for the transaction or benefited from it and all the circumstances of the case. Section 16 provided for the payment of compensation to the insurer whose controlled business had been transferred to and vested in the Corporation under the Act. Section 17 provided for the constitution of Tribunals which were empowered by sub-s. (4) to regulate their own procedure and decide all matters within their competence. Section 41 provided that no civil Court would have jurisdiction to entertain or adjudicate upon any matter which a Tribunal was empowered to decide or determine under the Act. Section 44 inter alia provided that nothing contained in the Act would apply in relation to any insurer whose business was being voluntarily wound-up or was being wound-up under orders of the Court.

The Corporation, by its application under s. 15, contended that the transfer of Rs. 82,000/- from the Life Fund to the General Department under the resolution of January 6, 1956, was illegal, being contrary to and in contravention of the insurance Act and as such was inoperative, bad in law and not binding on the petitioner. It was further contended that the said transfer was without

consideration and was not reasonably necessary for the purpose of the controlled business of the company and/or was made with unreasonable lack of prudence on the part of the company, regard being had to the circumstances at the time. It was therefore that it prayed inter alia for a decree against the respondents for a sum of Rs. 82,000/- with interest. It impleaded the company as respondent No. 9, the appellants in C.A. 676 of 1962 as respondents Nos. 1 and 4 and the appellant in C.A. No. 677 of 1962 as respondent No. 2. Ghanshyamdas and Damji Valji were also parties to the resolution dated February 7, 1956. Other directors who were parties to the resolution of January 6 were also impleaded.

The aforesaid three directors, the appellants before us, contested the claim of the Corporation and justified the transfer of Rs. 82,000/- to the General Department from the Life Fund on the ground that the amount had been lent by the General Department to the Life Department and had been paid back to the General Department by transfer from the Life Fund when the Life Fund showed surplus, according to the report of the Actuary dated July 25, 1955. It was also contended before the Tribunal that the petition could not be proceeded with without the leave of the Bombay High Court in view of s. 446 of the Indian Companies Act and that the petition was also not maintainable by reason of s. 44 of the LIC Act. Several other grounds were also taken before the Tribunal. We are not now concerned with them.

The Tribunal held that the amounts of Rs. 1,10,000/- and Rs. 32,000/- were not advanced to the Life Department as loans and that the transfer of Rs. 82,000/- was not out of the valuation surplus and that therefore the transfer of this amount could not be said to be for consideration and necessary or reasonably necessary for the purpose of the controlled business of the company or even a prudent transaction having regard to the interest of the life policy holders. It held that no leave of the Bombay High Court was necessary for proceeding with the petition and that the petition was maintainable and that s. 44 of the LIC Act did not bar the applicability of the provisions of the Act to the respondent company. It therefore decreed the suit and ordered the company and the directors, respondents 1 to 4, to pay to the Corporation jointly and severally a sum of Rs. 82,000/- together with interest thereon at 6 per cent per annum from September 1, 1956 till full payment. It is against this decree that C.A. 676 of 1962 has been filed, by special leave, by Damji Valji Shah and Jayantilal Hirjibhai Chawda and C.A. 677 of 1962 by Ghanshyamdas. This judgment will govern both these appeals.

The points raised by learned counsel for the appellants are : (i) The Tribunal had no jurisdiction to proceed with the proceedings on the petition presented by the Corporation without the leave of the High Court in view of s. 446 of the Companies Act, 1956, the company having been ordered to be wound-up by the High Court on November 9, 1956, (ii) In view of s. 44(a) of the LIC Act none of the provisions of the Act applied to the company and therefore the Tribunal could not proceed on the application of the Corporation subsequent to the company being wound-up. (iii) The transfer of Rs. 82,000/- from the Life Fund to the General Department of the company was for consideration and was necessary for the life insurance business.

The fourth point sought to be urged was that the provisions of s. 15(1)(f) of the LIC Act were ultra vires as they contravened the provisions of Arts. 14 and 19 of the Constitution. This contention was not raised before the Tribunal during the arguments and was therefore considered by it to have been abandoned. We did not therefore allow it to be raised before us.

Sub-s. (1) of s. 446 of the Companies Act provides that when a winding-up order has been made or the Official Liquidator has been appointed as Provisional Liquidator, no suit or other legal

proceeding shall be commenced or, if pending at the date of the winding-up order, shall be proceeded with against the company except by leave of the Court and subject to such terms as the Court may impose. Sub-s. (2) provides, inter alia, that the Court which is winding-up the company shall, notwithstanding anything contained in any law for the time being in force, have jurisdiction to entertain or dispose of any suit or proceeding and any claim made by or against the company. Sub-s. (3) provides that any suit or proceeding by or against the company which is pending in any Court other than that in which the winding-up is proceeding may, notwithstanding anything contained in any other law for the time being in force, be transferred to and disposed of by that Court. The question is whether these provisions would affect the proceedings of the Tribunal.

In this connection, reference may be made to s. 41 of the LIC Act which provides that no civil Court shall have jurisdiction to entertain or adjudicate upon any matter which a Tribunal is empowered to decide or determine under that Act. It is not disputed that the Tribunal had jurisdiction to entertain the application of the Corporation and adjudicate on the matters raised thereby. The Tribunal is given the exclusive jurisdiction over this matter.

It is in view of the exclusive jurisdiction which sub-s. (2) of s. 446 of the Companies Act confers on the company Court to entertain or dispose of any suit or proceeding by or against a company or any claim made by or against it that the restriction referred to in sub-s. (1) has been imposed on the commencement of the proceedings or proceeding with such proceedings against a company after a winding-up order has been made. In view of s. 41 of the LIC Act the company Court has no jurisdiction to entertain and adjudicate upon any matter which the Tribunal is empowered to decide or determine under that Act. It is not disputed that the Tribunal has jurisdiction under the Act to entertain and decide matters raised in the petition filed by the Corporation under s. 15 of the LIC Act. It must follow that the consequential provisions of sub-s. (1) of s. 446 of the Companies Act will not operate on the proceedings which be pending before the Tribunal or which may be sought to be commenced before it.

Further, the provisions of the special Act i.e., the LIC Act, will over-ride the provisions of the general Act, viz., the Companies Act which is an Act relating to companies in general.

It is however contended for the appellants that in view of s. 44(a) of the LIC Act, s. 41 will not apply to the company whose business was being wound-up under orders of Court and that therefore the provisions of s. 446 of the Companies Act will affect the proceedings before the Tribunal. The contention is not sound. The question of the applicability of the Act to a particular insurer is to be considered in relation to facts existing when the Act came into force. In view of s. 44 of the LIC Act it will not apply to an insurer whose business is being wound-up under orders of Court at the time when that Act came into force in 1956 or on the 'appointed day', i.e., September 1, 1956, when the assets and liabilities pertaining to the controlled business of the company stood transferred and vested in the Corporation. The company was not being wound-up under orders of the Court on July 1, 1956 when the Act came into force or on the appointed day mentioned earlier. The Act did apply to the company. It cannot cease to apply merely because subsequently the company was ordered to be wound-up.

The word 'insurer' is defined in cl. (6) of s. 2 of the LIC Act and means an insurer as defined in the Insurance Act who carries on life insurance business in India and includes the Government and a provident society as defined in s. 65 of the Insurance Act. On November 9, 1959, when the company was ordered to be wound-up it was not an 'insurer' within the meaning of the definition as the company did not carry on life insurance business in India on that date. Its life insurance business

had been taken over by the Corporation on the appointed day and it ceased to carry on that business thereafter. It follows therefore that the company was not an insurer on November 9, 1959, and cannot take advantage of the provisions of cl. (a) of s. 44 of the LIC Act.

We are therefore of opinion that the Tribunal had jurisdiction to continue the proceedings after November 9, 1959 when the company was ordered to be wound-up and that the provisions of s. 446, Companies Act, or s. 44(a). LIC Act, do not in any way affect its jurisdiction to continue the proceedings.

We now come to the third point raised for the appellants. We agree with the Tribunal that the amounts of Rs. 1,10,000/- and Rs. 32,000/- were not lent to the Life Department as such by the General Department. No question of lending money by one department of the company to the other can be ordinarily contemplated. The assets of the company really constitute one entity, even though the company maintains separate accounts with respect to its various insurance business. It carried on other types of insurance business also. We have already shown how the provisions of the Insurance Act require the company to keep a separate account for the life insurance business and to have a separate fund known as the Life Insurance Fund and to which were to be credited all receipts due in respect of the life business and the amount deposited by the insurer in respect of life insurance business. Such a deposit is to be made in view of s. 7(1) of the Insurance Act. This requires the insurer to deposit and keep deposited with the Reserve Bank of India for and on behalf of the Central Government either in cash or in approved securities or partly in cash and partly in approved securities the sums specified in the various clauses in regard to the different types of life insurance businesses. Clause (a) requires a deposit of Rs. 20,000/- where the business done or to be done is life insurance only. Clause (e) requires a deposit of Rs. 3,00,000/- where the business done or to be done is life insurance and any one of the three classes mentioned in clauses (b) to (d). Clause (e) further provides that out of the deposit of Rs. 3,00,000/-, Rs. 2,00,000/- shall be the deposit for life insurance business. Section 7 lays down a statutory amount which the insurer has to deposit. It does not however restrict the insurer to deposit a larger amount in respect of life insurance business. Section 8(1) places certain restrictions about the use to be made of the deposits under s. 7. Section 8(2) however deals with any deposit and provides that where a deposit is made in respect of life insurance business, the deposit made in respect thereof shall not be available for the discharge of any liability of the insurer other than liabilities arising out of policies of life insurance issued by the insurer. This means that when an insurer puts certain money in the funds pertaining to the life insurance business and especially to a life insurance fund, such an amount can be used only for the discharge of liabilities of the insurer arising out of life insurance policies issued by him.

The amounts of Rs. 1,10,000/- and Rs. 32,000/- would thus amount to deposits made by the company in respect of life insurance business in order to augment the life fund. This can be done either to bring the funds to an amount exceeding the expected net liabilities on the policies or merely to augment that fund. It makes no difference to the company how it distributed its funds so long as its statutory liabilities were satisfied.

The very conduct of the company with respect of these amounts belies the alleged nature of the transfers of these amounts to the Life Department. The sum of Rs. 60,000/- out of Rs. 1,10,000/- was written off in 1949. A loan of such an amount is not usually written off. No special reason is assigned for writing off the loan. The resolution about the transfer of Rs. 32,000/- itself speaks of the possibility of the amount being written off. A lender does not think it this way at time the advances a loan. It is clear that the amount was really being transferred to the Life Fund through the Life Department Revenue Account as otherwise the Life Fund on the actuarial valuation would have

stood at a figure much below the amount of the net liabilities on the policies as calculated in Form H, Schedule Four to the Insurance Act, which is a Form giving summary and valuation of the policies of the company as at the date of the valuation. Form I is for the valuation balance-sheet of the company at the corresponding date and requires in one column the net liability under business as shown in the summary and valuation of policies and in the other column the balance of life insurance fund as shown in the balance sheet, and also provides for noting the eventual position about the Life Fund being in surplus or in deficiency as compared to the net liability. When the amount was not lent as a loan, no question of its repayment as such could have arisen in 1956. Of course, whenever the Life Fund showed an actuarial valuation surplus that surplus or part of it could be transferred to the General Department according to the desire of the management.

The amount of Rs. 82,000/- was not transferred as a result of the actuarial valuation as contemplated by the various resolutions which authorised the transfer of the amount from the General Department to the Life Department Revenue Account. It was definitely provided in those resolutions that no repayment of the amount would be made except out of valuation surpluses of the Life Department.

The expression 'valuation surplus' has a technical meaning under the Act.

Section 13(1) of the Insurance Act provides that every insurer carrying on life insurance business shall, in respect of the life insurance business transacted in India, cause once at least in every three years an investigation to be made by an actuary into the financial condition of the life insurance business carried on by him, including the valuation of his liabilities in respect thereto. An abstract of the report of the actuary is to be made in accordance with the regulations contained in Part I of the Fourth Schedule and in conformity with the requirements of Part II of that Schedule. Section 13(2) provides that the provisions of sub-s. (1) regarding the making of an abstract shall apply whenever at any other time an investigation into the financial condition of the insurer is made with a view to the distribution of profits or an investigation is made of which the results are made public. The abstract is to be certified on behalf of the insurer to the effect that full and effective particulars of every policy under which there is a liability either actual or contingent have been furnished to the actuary for the purpose of investigation.

Section 15 requires the submission of the aforesaid abstract to the Controller within the specified period. Part II of the Fourth Schedule requires that every extract prepared in accordance with the requirements of that part of the Schedule will have the statement of a consolidated revenue account in Form G, a summary and valuation in Form H, a valuation balance sheet in Form I and a statement in Form DDD as set forth in Part II of the third Schedule annexed to it. The valuation balance sheet in Form I requires the noting of a surplus, if any, of the balance of the life insurance fund as compared to the net liability in the business as shown in the summary and valuation of policies. It is the surplus noted in this Form I which is really the valuation surplus. It was out of such surplus that the company resolved that the advance of Rs. 1,10,000/- and Rs. 32,000/- could be paid to the General Department by the Life Department. No such actuarial valuation was made by the actuary prior to the transfer of Rs. 82,000/- to the General Fund by the resolution dated January 6, 1956.

Reliance in this connection is placed on behalf of the appellants on the letter of the actuary dated July 25, 1955. The accuracy states :

"On the above basis, the valuation shows a policy liability of Rs. 20,20,421. The Life Insurance Fund is Rs. 21,32,455. Thus there is a surplus of Rs. 1,12,033. The surplus includes Rs. 53,300 being the amount of appreciation on investments taken into

account by you in the past two years.

Thus the net working surplus is Rs. 58,733/-.

The cost of Bonus at the rate of Rs. 10/- per thousand is approximately Rs. 48,000/-.

Thus the surplus is sufficient to enable to bonus declaration at the above rate even after excluding the appreciation amount or setting it apart as an additional reserve for future use.

Conclusion : The result is satisfactory. Continuing the same method of working as you have followed, the statutory valuation as on 31-12-55 will surely enable you to declare a higher bonus."

Firstly, it does not appear that the actuary had really conducted an investigation and submitted the valuation report as required by s. 13, of the Insurance Act. There is nothing on the record to show that any abstract in Form I, Fourth Schedule, was prepared and submitted to the Controller. Further, the letter shows that the net working surplus was only Rs. 58,733/- as the ostensible surplus of Rs. 1,12,033/- included Rs. 53,300/- by which certain investments of the company had appreciated in that period. When the net working surplus was much less than Rs. 82,000/- which were transferred from the Life Department to the General Department, the transfer of Rs. 82,000/- cannot be said to have been in accordance with the terms on which the alleged loan was made to the Life Department from the General Department. When the Life Department had not Rs. 82,000/- with itself, there could not have been any necessity to pay that amount to the General Department. In fact, the alleged loan could be paid only when there would have been a valuation surplus in the accounts of the Life Department but this does not mean that the Life Department was bound to pay back the amount the moment it had any valuation surplus. Its liability to pay the alleged loan could arise only when there was a valuation surplus. Its paying the amount actually would depend upon the circumstances prevailing at the time.

In the circumstances, we cannot resist the conclusion that the Directors passed a resolution for the transfer of this amount on January 6, 1956 in anticipation of some law depriving the company of its life insurance business. It may be that it was a close secret that an Ordinance would be issued on January 19. But all the same, possibly, persons in the insurance world could have had an inkling of the trend of events.

The content of the resolution passed on January 6, indicates that the directors had no clear idea at the times as to how much the Life Department, according to them, owed to the General Department. The resolution speaks not only of the transfer of Rs. 82,000/- to the General Department but also refers to the balance of Rs. 60,000/- due to the General Department by the Life Department Revenue Account. The amount had been written off in 1950 and could not have thereafter been considered to be a loan advanced to the Life Department Revenue Account from the General Department. It seems that the resolution was passed in some hurry and the Directors could not definitely decide as to how any further amount upto Rs. 60,000/- could be taken back to the General Department from the Life Department Revenue Account. Any way, such a resolution of the Directors indicates that any entries with respect to the alleged loans were made for the purpose of accounting and the necessities of the business. Money in the Life Fund had to be augmented in 1948 and 1952 in order to make the Life Fund exceed the net liabilities of the company on account of the life insurance policies.

We are therefore of opinion that the Tribunal took a correct view about the nature of the transfer of Rs. 1,10,000/- in 1948 and Rs. 32,000/- in 1952 to the Life Insurance Fund and rightly held that the transfer of Rs. 82,000/- to the General Department by resolution dated January 6, 1956, was not in accordance with the provisions of the Insurance Act and that consequently that amount continued to form part of the assets of the life insurance business of the company upto September 1, 1956 and that as such vested in the Corporation which could recover it from the company and the directors responsible for the transfer of the amount to the General Department.

The appeals therefore fail and are dismissed with costs, one hearing fee.

Appeals dismissed.

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