

Delhi Electric Supply Undertaking

Vs

Basanti Devi and Another

Civil Appeal No. 6113 of 1995

(S. Saghir Ahmad, D. P. Wadhwa JJ)

28.09.1999

JUDGMENT

D. P. WADHWA, J.:-

1. On a complaint filed by Basanti Devi, widow of Bhim Singh, under Section 18 of the Consumer Protection Act, 1984 ("the Act" for short) the State Commission by its judgment dated 10-11-1993 directed the Delhi Electric Supply Undertaking (DESU) to pay a sum of Rs 50,000 with interest at the rate of 15% per annum from 17-12-1992 to the complainant till the date of payment. Life Insurance Corporation ("LIC" for short), the insurer was, however, absolved of any liability. By the impugned judgment dated 13-1-1995 by majority (2:1) the National Consumer Disputes Redressal Commission ("the National Commission" for short), on appeal, affirmed the order of the State Commission. DESU is the constituent of the Delhi Municipal Corporation, a body corporate under the Delhi Municipal Corporation Act, 1957. Both the National Commission and the State Commission are constituted under the Consumer Protection Act, 1986.

2. LIC floated a "Salary Savings Scheme" under which Bhim Singh, an employee of DESU took an insurance policy for an amount of Rs 50,000 with LIC. The insurance policy was to commence on 28-1-1992. Bhim Singh had paid Rs 636 as premium for two months to LIC. Premium for the third month was payable by 29-3-1992. The amount of the premium was deducted by DESU from the salary of Bhim Singh and remitted by it to LIC. It appears that the premium for the subsequent months was deducted by DESU from the salary of Bhim Singh but was not remitted to LIC. In the meantime Bhim Singh died on 17-8-1992. Basanti Devi, widow of Bhim Singh informed LIC of the death of her husband and requested for payment of the amount due under the policy. LIC disclaimed any liability for payment under the policy as the instalments of premium after June 1992 were not received by it. LIC, therefore, repudiated the claim of Basanti Devi. LIC said that since default had been committed in payment of premium the policy taken out by Bhim Singh lapsed. This led Basanti Devi to file a complaint before the State Commission against LIC and DESU with the result as aforesaid.

3. Before we consider the rival contentions it would be appropriate to understand the "Salary Savings Scheme" of LIC. During the course of arguments we were given a brochure on the Scheme. It is addressed to the employer telling it the advantages of the scheme. This is how the Scheme has been explained:

"It is a simple, economical plan whereby your employees may obtain life insurance protection for their families and retirement income for themselves under advantageous conditions which might not be available to them otherwise. This it

accomplishes by savings automatically deducted from their pay and remitted to us once a month. This is not a group insurance. Each employee owns his policy individually, is entitled to all its benefits and can continue the policy in the event of any change in employment.

Under this plan, you as an employer give facilities to the representatives of LIC to contact your employees to offer life insurance cover to them. Premium amounts, if an employee agrees to insure under this plan, are to be deducted every month from the employee's salary, in the same manner as the employee's provident fund. All the amounts so collected are paid to the Corporation by one cheque by the employer . This ensures for the employee regular payment, monthly, of his premiums at concessional rates. Deduction of premium from the salary or wages of an employee and its remittance to the Life Insurance Corporation is so beneficial that the recently amended Payment of Wages Act and the Minimum Wages Act make it legally permissible for an employer to do so. On your part, all that the plan involves is a little extra accounting which you will surely consider worthwhile because of the...." The Scheme then lists the advantages both for the employer and the employee. A specimen of the letter addressed by the Branch Manager, LIC to the employer is as under:

"Dear Mr. Employer,

The Salary Savings Scheme of Life Insurance Corporation has proved of considerable value to many organisations and which we believe will be of keen interest to you and your employees.

The general need on the part of the average employee for more adequate protection of his dependants is recognised as well as the desirability of his adequate provision for his own retirement.

The Scheme is very simple. All that we need is the cooperation by your Payroll Department. They have to make the deductions of the premium on the employee policy-holder's authorisation and remit them regularly to LIC along with a reconciliation statement.

Your employee will, I am confident, appreciate the benefits of your Salary Savings Scheme. It will be a practical demonstration of your personal interest in the welfare of those who help to make your company successful. Moreover, it is in tune with the present social trend.

May I discuss the matter with you with a view to working out details Is?

Yours very truly,

sd/-

(Branch Manager)"

The employer in response has to reply as per the specimen in the brochure, relevant paras of which we quote:

"Dear Sir,

Re: Salary Savings Scheme.

PA Code No....

In order to make the benefits of your Salary Savings Scheme available to our employees, we agree to make the payroll deductions authorised in writing by our employees, in amounts sufficient to pay the premiums included under your Salary Savings Scheme.

2. * * *

3. It is also understood that no form of individual premium due notice or receipt will be issued by you.

4. It is also understood that the employee policy-holders shall have the right to discontinue participation in the Scheme at any time. If an employee exercises this right or if he is terminated, we will notify you in writing at the office where the remittance is forwarded and thereafter will not be responsible for collecting his premiums.

5. * * *

6. * * *

7. In all transactions made by us pertaining to this Scheme and any policies issued by you thereunder, we shall act as the agent of our employees and not as your agent for any purpose.

Yours truly

sd/-

Signature of employer"

Thereafter an acceptance letter is issued by the Branch Manager. Enclosure to this letter shows that it is for the employer to deduct premium from the salary of the employee and to remit the same to LIC. Responsibility for collection of the premium by deducting from the salary of the employee and making over the same to LIC is of the employer. Some of the clauses in the enclosure we quote:

"(a) The employer will receive list-of premiums to be deducted called as demand invoice in duplicate each month on the specified date.

(b) One copy of the invoice is to be returned along with the remittance. The second copy is to be retained by the employer for his record.

(c) It is necessary to inform LIC when an employee leaves the service or is transferred from one department to another.

(d) Reconciliation statement in a specified form to be supplied by LIC will accompany the statement.

(e) The Corporation will make changes in the invoice based on the information received from the employer regarding transfer in, transfer out and exits.

(f) Deductions made in each month will have to be remitted to us within a week from the date of making deductions along with a copy of invoice and a reconciliation statement. Make your cheque payable to the Life Insurance Corporation of India and send it along with the copy of invoice with reconciliation statement drawn in the form suggested in (rl) above to the appropriate Branch Office. While checking out statement if you find that an item cannot be paid, rule through the item on the original statement and note the reason for non-payment against the item in the remark column. If you find that an addition is to be made, make the addition at the end of the statement giving policy number, name, amount and the reason for addition. If the employee is transferred from one department to another, the names of the departments concerned and code number must be stated.

(g) In order to bring the invoices up to date, it is desirable that the employer informs us of all the changes in the staff immediately as soon as they occur. The employer need not wait to incorporate those in the invoice. The changes communicated to us through invoice are received date (sic) and the names of employees continue to appear in the wrong invoice in the meanwhile."

4. After the Scheme is thus accepted as applicable to the employees a letter is addressed by the employer to each of the employee informing him of the Scheme and telling him as under:

"Realising that an adequate savings and protection scheme will mean so much to you and your family we have arranged for the benefits of the Salary Savings Scheme of the Life Insurance Corporation of India for all employees who desire its privilege. The premium will be automatically deducted from your salary once a month and remitted to the Life Insurance Corporation." It is, thus, the sole responsibility of DESU to collect premium from all the employees and remit the same by means of one cheque. A reconciliation statement is also to be sent in the form prescribed by LIC. No individual premium notice is to be sent by LIC to any employee and no receipt is to be given to him for the premium received. It is DESU which is to inform LIC of all the changes in the staff as soon as they occur, so also the fact when any employee leaves the service of DESU. An employee is kept ignorant of the happenings between LIC and DESU except he is made aware of deduction of premium from his salary every month.

5. We have also been shown a circular titled "Salary Savings Scheme Endorsement", which is as under:

"This policy having been issued under the Corporation's Salary Savings Scheme, it is hereby: declared that the instalment premium shall be payable at the rate shown in the schedule of the policy so long only as the life assured continues to be an employee of his present employer, whose name is stated in proposal and premiums are collected by the said employer out of the salary of the employee and remitted to

the Corporation without any charge. In the event of the life assured leaving the employment of the said employer or the premium ceasing to be so collected and / or remitted to the Corporation, the life assured must intimate the fact to the Corporation and in the event of the Salary Savings Scheme being withdrawn from the said employer, the Corporation shall intimate the fact to the life assured and all premiums falling due on and after the date of his leaving employment of the said employer, or cessation of collection of the premiums and remittance thereof in the manner aforesaid, or withdrawal of the Salary Savings Scheme as the case may be, shall stand increased by the imposition of the additional charges for the monthly payment that has been waived under the Salary Savings Scheme at 5% of the premium exclusive of any premium charged for double accident benefits or extended permanent disability benefits and any other extra premiums charged.

During the period in which premium is remitted to the Corporation through the employer, the instalment premium will be deemed to fall due on the 20th day of each month instead of the due date within mentioned."

6. The endorsement shows that the premium deducted by DESU from the salaries of the employees and remitted to LIC is without any charge. When the employee leaves the employment of the said employer or his premium is ceased to be collected and/or remitted to LIC this fact is to be intimated by the employee to LTC. When the Scheme (Salary Savings Scheme) is withdrawn it is LIC which intimates that fact to the employee whose life has been insured. Then premium is payable with an extra charge. This endorsement is in conflict with the terms of the Scheme as spelled out in the brochure. Considering the conditions as to -how premium is to be deducted from the salaries of the employees and remitted to LIC by DESU by one cheque for all the employees with the reconciliation statement it is not possible for any employee to know if the amount of the premium deducted from his salary has been remitted or not. An employee is not being given any separate premium notice nor is he given any receipt for the premium received. If a condition is now placed on the employee that it is he who is to intimate LIC if there is no remittance of the premium deducted by DESU it will be too onerous a condition to be of any validity. Considering the Scheme such a condition cannot be imposed on an employee. It is impracticable. A purposive interpretation has to be given to the endorsement and it has to be held that since payment of premium after deducting from the salary of the employees is between DESU and LIC, it will not be for the employee to intimate LIC about non-remittance of the premium.

7. In *Harshad J. Shah v. LIC of India* (1997 5 SCC 64) this Court referred to Halsbury's Laws of England, Vol. 25, p. 254, para 460, which is as under: (SCC pp. 7374, para 6)

"16. Under the law governing contracts of insurance the premium may be paid by the assured to the insurers or to an insurance agent acting on behalf of the insurers and if the agent has authority to receive it the payment binds the insurers. The authority need not be an express authority; it may be implied from the circumstances."

In this case premium was collected by the agent, who was not authorised to do so and did not deposit the same in turn with LIC within the prescribed period. On 9-8-1987 the insured met with a fatal accident and he died the same day. On the following day, i.e., 10-8-1987, the amount of the premium was deposited by the agent with LIC. The claim was repudiated by LIC on the ground that the policy had lapsed on account of non-payment of the premium. The matter having come in appeal from the order of the National Commission this Court upheld the contention of LIC that the agent

was not authorised to collect the premium on behalf of LIC as the letter of his appointment as well as Regulation 8(4) of the Life Insurance Corporation of India (Agents) Regulations, 1972 expressly prohibited the agent from collecting the premium on behalf of LIC. When it was submitted that LIC was liable on the basis of the doctrine of apparent authority of the agent to collect premium and reliance was placed on Section 237 of the Contract Act this Court said that in the complaint that was filed no such case was set up that LIC, by its conduct, had induced the policy-holders, including the insured, to believe that the agent was authorised to receive the premium on behalf of LIC and further that there was no material on the record to support such a submission. In these circumstances this Court found itself unable to uphold the claim of the appellant, the complainant.

8. We were also referred to another decision of this Court in *State of Orissa v. Divisional Manager, LIC* (1996 8 SCC 655) Facts of the case have not been set out but what we can discern from the judgment is that a complaint was filed before the State Commission claiming damages against LIC. The State Commission awarded the damages and appeal was filed by LIC before the National Commission where the National Commission directed that the State of Orissa be impleaded as a party respondent. National Commission thereafter awarded damages against the State of Orissa in the sum of rupees one lakh. This Court accepted the plea of the State of Orissa that it was not liable under the Act as it was not rendering any service for which it could be made liable. This Court referred to the definition of "services" as contained in Section 2(1)(0) of the Act and held that it was not in dispute that the claimant was a government servant and was bound by the service conditions and that the State was rendering him services free of charge and as such government servants have been excluded from the purview of the Act to claim any damages against the State under the Act, the appeal of the State of Orissa was, therefore, allowed.

9. LIC is a body corporate constituted under the Life Insurance Corporation Act, 1956. It has framed regulations under Section 49 of the Act called the Life Insurance Corporation of India (Agents) Regulations, 1972. In view of the amendment by the Life Insurance Corporation (Amendment) Act, 19X1 these regulations are now known as rules under the authority of the Central Government. Under clause (b) of Regulation 3 "agent" means a person who has been appointed under Regulation 4. The procedure for appointment and qualifications of the agents have been given in Regulations 4.md 5 An agent may be appointed for the purpose of soliciting or procuring life insurance business for LIC. A person cannot be appointed as an agent unless he possesses a valid licence issued under Section 42 of the Insurance Act, 1938. Section 42 talks of licensing of insurance agent. Under this section the Controller or an officer authorised by him in that behalf is authorised to issue a licence to an individual to act as an insurance agent for the purpose of soliciting or procuring insurance business. We are not concerned here with the qualifications or disqualification of an insurance agent or other provisions regulating his employment under the Insurance Act. LIC (Agents) Regulations prescribe the service conditions and functions of the insurance agents. Under Regulation 8 every agent shall solicit or procure new life insurance business which shall not be less than the minimum prescribed in the regulations and shall endeavour to conserve the business already secured.

10. In *Harshad J. Shah* case this Court was concerned with an insurance agent appointed under Section 42 of the Insurance Act and his appointment under the regulations for the purpose of soliciting or procuring life insurance business for LIC and the regulations and his conditions of service did not authorise him to collect premium on behalf of LIC.

11. In the present case we are not concerned with the insurance agent. It is not the case of LIC that DESU could be permitted as an insurance agent within the meaning of the Insurance Act and the

regulations. DESU is not procuring or soliciting any business for LIC. DESU is certainly not an insurance agent within the meaning of the aforesaid Insurance Act and the regulations but DESU is certainly an agent as defined in Section 82 of the Contract Act. The mode of collection of premium has been indicated in the Scheme itself and the employer has been assigned the role of collecting premium and remitting the same to LIC. As far as the employee as such is concerned, the employer will be an agent of LIC. It is a matter of common knowledge that insurance companies employ agents. When there is no insurance agent as defined in the regulations and the Insurance Act, the general principles of the law of agency as contained in the Contract Act are to be applied.

12. Agent in Section 182 means a person employed to do any act for another, or to represent another in dealings with third persons and the person for whom such act is done, or who is so represented, is called the principal. Under Section 185 no consideration is necessary to create an agency. As far as Bhim Singh is concerned, there was no obligation cast on him to pay premium direct to LIC. Under the agreement between LIC and DESU premium was payable to DESU who was to deduct every month from the salary of Bhim Singh and to transmit the same to LIC. DESU had, therefore, implied authority to collect premium from Bhim Singh on behalf of LIC. There was, thus, valid payment of premium by Bhim Singh. The authority of DESU to collect premium on behalf of LIC is implied. In any case, DESU had ostensible authority to collect premium from Bhim Singh on behalf of LIC. So far as Bhim Singh is concerned DESU was an agent of LIC to collect premium on its behalf.

13. In the brochure which we have referred to above, there is no communication from LIC to the employee that DESU is not its agent. Here agent does not mean insurance agent whose appointment is under the statute. When in para 7 of the letter addressed by the employer to LIC it is mentioned that the employer shall act as an agent of the employees and not agent of LIC for any purpose, it is not referring to statutory agent being the insurance agent. Insurance agent is of LIC who appoints it and not of the employee in the present case. In the Annexure to the letter from LIC to the employer all responsibility is cast on DESU to collect the premium from all the employees under the Scheme and to remit the same to LIC. Under the Scheme, there is no role of the insurance agent. He does not bring any business for LIC. Scheme is introduced by LIC itself.

14. We do not think the decision of this Court in *Harshad J. Shah v. LIC of India* has any application in the present case before us. Formation of the contract of insurance is between LIC and the employee of DESU. Scheme c has been introduced by LIC purely on business considerations and not for any particular benefit of insurance conferred on the employee working in an organisation. Though in the pro forma letter written by DESU to LIC it is mentioned that DESU would be an agent of its employee and not that of LIC but this understanding between LIC and DESU was not communicated or made known to the employee. As far as the employee is concerned he is told c that premium will be deducted from his salary every month and remitted by DESU to LIC under an agreement between LIC and DESU. For the employee of DESU, therefore, DESU had implied authority as an agent of LIC to collect premium on its behalf and then pay to LIC. There is nothing on the record to show that Bhim Singh was ever made aware of the fact that DESU was not acting as an agent of LIC. Rather in the nature of the Scheme, the employee was made to believe that it is the duty of the employer though gratuitously cast on him by LIC to collect premium by deducting from the salary of each employee covered under the Scheme every month and to remit the same to LIC by means of one consolidated cheque. Now it could be said that DESU would not be liable as an agent of its principal, i.e., LIC and also it was rendering service of collecting the premium and remitting the same to LIC free of any cost to the employee. As to what is the arrangement between LIC and DESU the employee is not concerned. In these circumstances DESU cannot perhaps be

held liable under the Act. But then the question arises if the widow of Bhim Singh can be left high and dry in this legal rigmarole when it is clear that as far as Bhim Singh was concerned he did pay the premium and it was the fault of the agent of LIC, i.e., DESU in not remitting the premium in time. In these circumstances LIC was wrongly discharged of its liability under the insurance policy taken out by Bhim Singh. Now LIC is not aggrieved of the orders passed by the State Commission and the National Commission and when DESU had been held liable to pay an amount equivalent to the insurance policy of Bhim Singh, Basanti Devi also felt satisfied and did not pursue her remedy against LIC. All the three, i.e., DESU, LIC and Basanti Devi are before us and we have heard learned counsel for LIC as to why LIC was not liable under the policy of insurance. Proceedings have arisen under the Act, which was enacted to provide protection to the interests of the consumers and under Section 3 provisions of the Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. In these circumstances we do not think we should deprive Basanti Devi of her right, which admittedly she has, holding on the one hand DESU is not liable and on the other hand her not challenging the order of the State Commission discharging LIC.

15. Under Article 142 of the Constitution of India this Court in exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it. In *Supreme Court Bar Assn. v. Union of India* (1998 4 SCC 409) this Court was considering the scope of Article 142. The question before it was whether the Supreme Court can, while dealing with contempt proceedings, exercise power under Article 129 of the Constitution or under Article 129 read with Article 142 of the Constitution or under Article 142 of the Constitution to debar a practicing lawyer from carrying on his profession as a lawyer for any period whatsoever. This Court explained its powers under Article 142 as under: (SCC pp. L1 31-32, para 47)

"47. The plenary powers of this Court under Article 142 of the Constitution are inherent in the Court and are complementary to those powers which are specifically conferred on the Court by various statutes though are not limited by those statutes. These powers also exist independent of the statutes with a view to do complete justice between the parties. These powers are of very wide amplitude and are in the nature of supplementary powers. This power exists as a separate and independent basis of jurisdiction apart from the statutes. It stands upon the foundation and the basis for its exercise may be put on a different and perhaps even wider footing, to prevent injustice in the process of litigation and to do complete justice between the parties. This plenary jurisdiction is, thus, the residual source of power which this Court may draw upon as necessary whenever it is just and equitable to do so and in particular to ensure the observance of the due process of law, to do complete justice between the parties, while administering justice according to law. There is no doubt that it is an indispensable adjunct to all other powers and is free from the restraint of jurisdiction and operates as a valuable weapon in the hands of the Court to prevent 'clogging or obstruction of the stream of justice. It, however, needs to be remembered that the powers conferred on the Court by Article 142 being curative in nature cannot be construed as powers which authorise the Court to ignore the substantive rights of a litigant while dealing with a cause pending before it. This power cannot be used to 'supplant' substantive law applicable to the case or cause under consideration of the Court. Article 142, even with the width of its amplitude, cannot be used to build a new edifice where none existed earlier, by ignoring express statutory provisions dealing with a subject and thereby to achieve something indirectly which cannot be

achieved directly. Punishing a contemner advocate, while dealing with a contempt of court case by suspending his licence to practice, a power otherwise statutorily available only to the Bar Council of India, on the ground that the contemner is also an advocate, is, therefore, not permissible in exercise of the jurisdiction under Article 142. The construction of Article 142 must be functionally informed by the salutary purposes of the article, viz., to do complete justice between the parties. It cannot be otherwise. As already noticed in a case of contempt of court, the contemner and the court cannot be said to be litigating parties."

16. In the present case all the parties are before us which have been heard. The order which we propose to make is in tune with the principles laid down by this Court in Supreme Court Bar Assn. case³ and in order to do complete justice between the parties without ignoring the substantive rights of any of the parties conferred upon it by any law.

17. In our approach we can also draw strength from the provisions of Rule 33 of Order 41 of the Code of Civil Procedure which is as under:

"33. Power of Court of Appeal.-The appellate court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the court notwithstanding that the appeal is a part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees:

Provided that the appellate court shall not make any order under Section 35-A, in pursuance of any objection on which the court from whose decree the appeal is preferred has omitted or refused to make such order."

18. This provision was explained by this Court in Mahant Dhangir v: Madan Mohan (1987 Supp SCC 528) in the following words: (SCC pp. 534-35, para 15) "The sweep of the power under Rule 33 is wide enough to determine any question not only between the appellant and respondent, but also between respondent and co-respondents. The appellate court could pass any decree or order which ought to have been passed in the circumstances of the case. The appellate court could also pass such other decree or order as the case may require. The words 'as the case may require' used in Rule 33 of Order 41 have been put in wide terms to enable the appellate court to pass any order or decree to meet the ends of justice. What then should be the constraint? We do not find many. We are not giving any liberal interpretation. The rule itself is liberal enough. The only constraint that we could see, may be these: That the parties before the lower court should be there before the appellate court,. The question raised must properly arise out of the judgement of the lower court. If these two requirements are there, the appellate court could consider any objection against any part of the judgment or decree of the lower court. It may be urged by any party to the appeal. It is true that the power of the appellate court under Rule 33 is discretionary. Bur it is a proper exercise of judicial discretion to determine all questions urged in order to render complete justice between the parties. The court should not refuse to exercise that discretion on mere technicalities."

19. Conditions as laid in provision Of order 41 Rule 33 are satisfied in 'he present case. When

circumstances exist which necessitate the exercise of discretion conferred by Rule 33, the court cannot be found wanting when it comes to exercise its powers.

20. We, therefore, direct that LIC shall pay to Basanti Devi insurance amount of Rs 50,000 with interest at the rate of 15% per annum from 17-12-1992 till payment, thus substituting the Life Insurance Corporation of India for the Delhi Electric Supply Undertaking, as ordered by the State Commission and upheld by the National Commission.

21. For the suffering which Basanti Devi had to undergo for the default committed by DESU in not remitting the premium to LIC we would direct that DESU will pay cost of these proceedings, which we quantify at Rs 25,000.

22. The appeal stands disposed of accordingly.