

GUJARAT HIGH COURT

Harivadsn K. Desai

Vs.

Life Insurance Corporation of India

Special Civil Apple. No. 1680 of 1976

(Obul Reddi, C.J. and M.C. Trivedi, J.)

28.01.1977

JUDGMENT

Obul Reddi, C. J.

1. The two questions which arise for determination in this petition filed by the petitioners who are Development Officers in the Life Insurance Corporation are: (1) whether the impugned order dated April 8, 1976 issued by the industry of Finance, Department of Economic Affairs, Government of India, is ultra virus the provisions of Section 11(2) of the Life Insurance Corporation Act, 1956? (hereinafter referred to as 'the Act'; and (2) whether the petitioners have been denied, by reason of the said order and also the Regulations made by the Life Insurance Corporation and published on April 22, 1976 equal opportunities in the matter of employment so as to offend Art. 16 (1) of the Constitution ?

2. The relevant facts necessary for the determination of the two questions raised in this petition are these. The petitioners are all working as Development Officers in the first respondent, Life Insurance Corporation. It is their case that after the "controlled business" came to be transferred to and vested in the Corporation, some of them who were formerly employed by the "controlled business" and some of them who have been recruited after the appointed date are governed by the "Blue Order" issued under Section 11 (2) of the Act. According to them the service conditions which were regulated by the "Blue Order" cannot be varied, altered or modified to their disadvantage after their absorption in the service of the Corporation. It is also their case that the "Blue Order" passed in 1957 by the Central Government was made with a view to secure uniformity in the terms and conditions of service of the Development Officers who had become employees of the Corporation under Section 11(1) of the Act. That power conferred upon the Central Government to issue the "Blue Order" in order to secure uniformity, when once exercised by it under Section 11 (2), cannot be exercised again a second time. In other words, that power once exercised, gets exhausted. The impugned order and the Regulations are also challenged on

Me ground that by the new terms and conditions imposed which vary their service conditions, the Central Government and the Life Insurance Corporation have denied them of equal opportunities in the matter of employment.

3. This petition is resisted by the respondents concluding inter alia that the power vested in the Central Government under Section 11 (1) is an overriding power and the Central Government would be within the limits of the authority of power conferred upon it to pass or revise the previous orders in the interests of the Corporation and the policyholders.

4. We may, therefore, refer to the "Blue Order" and the subsequent Regulations made prior to the passing of the impugned order and the Regulations. The order dated December 30, 1957 of the Ministry of Finance, Department of Economic Affairs, Government of India, has popularly come to be known as the "Blue Order." That order was passed by the Central Government for the purpose of securing uniformity in the scale of pay and the other terms and conditions of service applicable to certain classes of employees of Insurance Companies whose controlled business had been transferred to, and vested in, the Corporation. That order was made in the interests of the Corporation and its policyholders. The designation of the employees referred to as "Field Officers" in the "Blue Order" has been subsequently changed into "Development Officers". In that order the duties of the Field Officer were detailed. Amongst the various duties assigned to him was the one to develop and increase the production of the new life insurance business in the area allotted to him or in which he is allowed to work through the agents placed under his supervision by the Corporation and to guide, supervise and direct the activities of all such agents. The Field Officers were prohibited from engaging themselves in certain other activities, that is to say, from canvassing business, either directly through their own agencies or indirectly through agencies in the names of their near relatives. That order also prescribes the scales of pay and allowances. Apart from basic salary they were entitled to increments. The increments were not granted to them as a matter of routine. They were granted only on an overall appraisal of the work done by the Field Officer during the twelve months preceding the date on which the increment fell due. In appraising the work of the Field Officer, certain factors were to be taken into consideration by the authorities. There was also a provision that in the event of the unsatisfactory performance of the duties by a Field Officer or if he was negligent in his work or guilty of misconduct or was otherwise so incapable of discharging his duties satisfactorily, his remuneration may be reduced or his services terminated, after affording him an opportunity of showing himself against the action proposed to be taken against him. The Field Officer was not entitled to increments unless his work was commensurate with the extra amount to be paid to him. The ratio of expenses incurred on the Field Officer was also proscribed. Thereafter there was a settlement regarding scales of pay and other allowances between the Corporation and the Field Officers or Development Officers. That settlement which was reached on 10 March 1964 was to hold good for a period of five years. Both parties were agreed under the settlement that a regular annual increment in the time scale of pay would ultimately but progressively result in greater efficiency in developing business of Life Insurance for sound and healthy lines, It further agreed

that in the meantime procedures would be worked out mutually as early as possible for settling the new system of working. Then there was another settlement. on November 19, 1971. Under this settlement each Development Officer was required to produce through his organisation a minimum Scheduled first year's premium income of not less than ₹ 25,000 in each appraisal year and insure at least hundred lives in appraisal year. Where a Development Officer could not show the minimum business, a procedure was prescribed for dealing with such cases. A Committee was to take into account all relevant factors namely, area potential, market conditions, agency foreman & other orientating circumstances if any, which might have resulted in the Development Officer not being able to put in the minimum agreed business. That Committee was also to consist of representatives of the Life Insurance Corporation and representatives of the Federation of the employees. There was another order which provided that if the performance of Development Officer for the three consecutive appraisal years is below the minimum peers on both the counts, and if as per the procedure there were no extenuating circumstances, he would be absorbed in the administrative service for such post for which he had the qualification prescribed for such post. We are referring to the Blue Order and the previous settlements between the parties only to show that the norm or standard of work now prescribed for the Development Officer is not something new but is a continuation of what was being done either under the Blue Order or in accordance with the settlements arrived at between the parties.

5. The impugned order, to the extent relevant, may be extracted.

"Whereas the Central Government is satisfied that in the interests of the Corporation and its policyholders a reduction in the remuneration payable and a revision of the other terms and conditions of service applicable to certain classes of employees of insurers whose controlled business has been transferred to, and vested in, the Corporation, are called for : Now, therefore in exercise of the powers conferred by subsection (2) of Section 11 of the Life Insurance Corporation Act, 1956 (31 of 1956) and in supersession of the Life Insurance Corporation Development Officers' (Alter. of Remuneration and other Terms and Conditions of Service) Order, 1957, the Central Government hereby makes the following order, namely

3. Scales of Pay and Allowances : - (a) With effect from 1st April 1976, the scales of basic pay applicable to Development Officers shall be as follows :

Grade I ₹ 250-20-390-25- 415.1B. 25 - 490-30 -640-E B- 30 - 850. Grade II ₹ 175.10 - 195-15- 240.

Provided that there shall be no new appointment in Grade II by recruitment, reversion or otherwise on or after 1st April, 1976.

(b) In addition to the basic pay in the above scales. Development Officers shall be entitled to such allowances as may be allowed to them under the Staff Regulations.

4. Fixation of basic pay in the new scales : - (a) The basic pay admissible to a Development Officer on 1st April, 1976 in the new scale of pay shall be fixed in

accordance with the provisions of the staff Regulations.

(b) Notwithstanding anything contained in subparagraph (a) or in paragraph 3, where the amount of basic pay, personal pay, dearness allowances, all other allowances, and non profit sharing or exgratia bonus, paid to a Development Officer for the period of 12 months for which his performance was appraised under the rules of the Corporation immediately prior to the 1st April 1976, as also the expenses payable or reimbursed to him or incurred by the Corporation on him in respect of travelling, residential telephone, insurance premium and taxes on motor vehicle for the said period, was not more than 35 per cent of the eligible premium in that period, he may be given the benefit of the appropriate new scale with effect from the 1st April, 1973.

5. Re fixation of basic pay and allowances of a Development Officer on appraisal of his performance:- (a) the Corporation shall re-fix the basic pay of each Development Officer on an appraisal of his business performance during such period of 12 months as may be specified in the Staff Regulations in that behalf so that the basic pay, dearness allowance, all other allowances, and profit sharing or ex-gratia bonus which may become payable to him in the succeeding period of 12 months as also the expenses payable or reimbursable to him or may be incurred by the Corporation on him in respect of travelling, residential telephone, insurance premium and taxes on motor vehicles for such succeeding period of 12 months, shall not exceed 20 per cent of the eligible premium in the period of 12 months for which his business performance is so appraised; and if, notwithstanding such re-fixation his continuance in service is likely to be uneconomical to the Corporation, terminate his service; and such re-fixation and termination shall be regulated by the appropriate provision of the Staff Regulations;

Provided that a period of not more than three years from the 1st April, 1976, the Corporation may subject to the provisions of the Staff Regulations, provide for such re-fixation so as not to exceed thirty five per cent of the eligible premium in such a manner as to ensure that the stipulation of twenty per cent is achieved in every case within the period of three years;

(h) Where the basic pay of a Development Officer is reduced or increased as a result of re-fixation in pursuance of subparagraph(a) or otherwise, he shall only be entitled to such allowances and other benefits as are appropriate under the Staff Regulations to the basic pay so re-fixed.

(c) If there is any reduction in the basic pay of a Development Officer or if he is not allowed any increment or his services are terminated in pursuance of the provisions of the Staff Regulations, it shall not be a penalty under the aforesaid Regulations.

By this order the basic pay admissible to a Development Officer with effect from April 1, 1976 in revised scale of pay was directed to be fixed in accordance with the provisions of the Staff Regulations. The Staff Regulations were issued by the Corporation under Section 49 of the Act with the previous approval of the Central Government. The basic pay and other allowances admissible from time to time to an employee belonging to Class II (Development others) is regulated in accordance with the provisions contained in

Schedule III of the Regulations. Schedule III provides for "annual remuneration" and re-fixation of basic pay. The "maximum permissible remuneration" means, in relation to Development Officer falling under any entry in column (2) of the Table, the percentage of eligible premium of the preceding year as specified in column (3) thereof which shall constitute the limit in his case as to gross yearly salary set forth in clause 2 in respect of the succeeding year specified in column (1) of the table. The provision relating to re-fixation of basic pay is the main grievance of the petitioners in this petition and this provision reads

"(1) With effect from the date this Schedule comes into force, the monthly basic pay of every Development Officer shall be re-fixed on his first appraisal date and on every succeeding appraisal dates so that the gross yearly salary payable to him in each succeeding year shall not exceed the annual remuneration of the preceding year or the maximum permissible remuneration. Provided that a Development Officer may be allowed one grade increment in his basic pay on and from the relevant appraisal date if the annual remuneration in the preceding year was equal to or less than twenty per cent of the eligible premium in that year; subject however, to the provisions of clause 3 as regards removal of efficiency bar;"

There is a further provision that

"Where the monthly basic pay of a Development Officer is re-fixed under subclause (1), he shall only be allowed such allowance and other benefits as are appropriate to that basic pay under the rules of the Corporation and the gross yearly salary shall be ascertained accordingly."

The interests of the employees are also safe. guarded in this way that

"Where re-fixation in accordance with subclause (1) is likely to result in any reduction in total remuneration, the Development Officer concerned shall be given an opportunity to submit his representation in writing as to why his remuneration should not be so reduced."

The question of terminating the services of a Development Officer arises only where he fails to bring in eligible premium equal to five times his annual remuneration in three consecutive preceding years necessitating reduction in his basic pay on each of the three relevant appraisal dates. The appointing authority is empowered to terminate the services only after giving him an opportunity to show cause against the proposed termination of his service.

6. Before we take up the question where they the employees have been denied equal opportunities in regard to employment under Article 16 (1) of the Constitution, we may examine whether the Central Government had exhausted its power to issue the impugned order after it made the Blue Order. Section 11 deals with transfer of service of existing employees of insurers to the Corporation. Subsection (2) deals with the powers of the Central Government when the controlled business is transferred to, and vested in, the Corporation. Section 11 (1) provided continuity of service to the employees of the controlled business after the formation of the Corporation on the same terms and conditions as those which prevailed on August 31, 194. The

Legislature vested in the Central Government certain powers under Section 11 (2).

7. It is for the reason that the Blue Order was issued by the Government immediately after the controlled business was taken over by the Corporation, that Mr. C. T. Darn contended that the Government, after it had exercised the power, had no jurisdiction or authority to issue the present impugned order. According to him the object or the legislative intent of Section 11 (2) is only to bring about uniformity in the scales of remuneration and other terms and conditions of services applicable to employees of the former insurance Companies and that having been accomplished by the Central Government by issuing the Blue Order, there is nothing further that remains to be done under Section 11 (2) by the Central Government. Section 11 (2) is in these terms: "

Where the Central Government is satisfied that for the purpose of securing uniformity in the scales of remuneration and the other terms and conditions of service applicable to employees of insurers whose controlled business has been transferred to, and vested in the Corporation, it is necessary so to do, or that, in the interests of the Corporation and its policyholders, a reduction in the remuneration payable, or a revision of the other terms and conditions of service applicable, to employees or any class of them is called for, the Central Government may, notwithstanding anything contained in subsection (1), or in the Industrial Disputes Act, 1947, or in any other law for the time being in force, or in any award, settlement or agreement for the time being in force, alter (whether by way of reduction or otherwise) the remuneration and the other terms and conditions of service to such extent and in such manner as it thinks fit; and if the alteration is not acceptable to any employee, the Corporation may terminate his employment by giving him compensation equivalent to three months' remuneration unless the contract of service with such employee provides for a shorter notice of termination.

Explanation.-The compensation payable to an employee under this subsection shall be in addition to, and shall not affect, any pension, gratuity, provident fund money or any other benefit to which the employee may be entitled under his contract of service."

Section 11 (2) is an overriding provision. The Central Government is given power to alter the remuneration and the other terms and conditions of service to be such extent and in such manner as it thinks fit. The power of the Central Government to vary those conditions of service of the employees in the matter of reduction of remuneration payable, or a revision of the other terms and conditions of service is not restricted and the only limitation on the exercise of that power being that the Government in the first place must be satisfied that for the exercise of that power for the purposes referred therein, it is necessary to do so in the interests of the corporation and its policyholders. In other words, the interests of the policyholders of the Corporation should be the guiding factors for the Government, when it proposes to revise the terms and conditions of service, applicable to the employees. The non-obstante clause would further make it clear that the order made under subsection (2) of Section 11 overrides anything contained in subsection (1) of Section 11, or in the Industrial Disputes Act 1947, or in any other law for the time being in

force, or in any award, settlement or agreement for the time being in force. The Blue Order cannot possibly visualise for all times the interests of the policyholders or the Corporation or fix under that order unalterable terms and conditions of service of the employees. Fixation of remuneration and other terms and conditions of service depends upon several factors -the business turnover of the Corporation, its profits or loss, the efficiency or otherwise of the employees and the relations between the management and the employees. No order for all times to come can possibly be made by the Central Government which could take into consideration the exigencies in future and the manifold problems the Corporation may have to face in promoting its business. It is for that reason that the Central Government has been empowered under Section 11 to issue appropriate orders as and when occasion demands which would serve the best interests of the Corporation and its policyholders. All that has to be seen by the Court in a case like this is, who, there by issuing the impugned order, the Central Government has borne in mind the best interests of the corporation and its policy-holders.

8. Mr. Daru, however, sought to place reliance on what the then Finance Minister said when he moved the amendment to Section 11(2) which is now in the present form. According to him the fact that the then Finance Minister had chosen to omit or delete the words "from time to time" should make it obvious that it was not the intention of the Ministry of Finance of the Central Government that the power conferred upon the Central Government under Section 11 (2) should be exercised by the Central Government a second time. We are unable to find any force in this contention. The words "from time to time" which were there in the Draft Bill are of no material consequence. Those words were redundant. While construing a statutory provision, it is not permissible to traverse beyond the language of the provision unless the legislative intent cannot be gathered from the clear and definite language of the provision. It is true that often Courts do look into the debate in the Legislature and also the marginal notes to ascertain the scope of a particular provision of the statute. But that is only in exceptional cases. The language of Section 11(2) is very clear. There is nothing to indicate or suggest even remotely that the powers vested in the Central Government under Section 11 (2) get exhausted when once the Central Government exercises that power. Section 14 of the General Clauses Act, 1897, further supports our view. Section 14 lays down that where, by any Central Act or Regulation made after the commencement of the Act, any power is conferred, then unless a different intention appears, that power may be exercised from time to time as occasion requires. We are unable to gather any different intention from Section 11(2) so as to inject the Government from exercising their power after the issuance of the Blue Order; in other words, after they once exercised that power.

9. Explaining the scope of Section 11(2) of the Act, Gajendragadkar J., as he then was, in *Life Insurance Corporation v. Sunil Int:tar^l*, observed :

"It was thought that for a proper functioning of the Corporation it was essential to confer

upon the Central Government an overriding power to change the terms and conditions of employees who were wholly or mainly employed by the insurers prior to the appointed day. Having conferred such wide power on the Central Government, Section 11(2) further provides that if the alteration made by the Central Government in the terms and conditions of his service is not acceptable to any employee, the Corporation may terminate his employment by giving him compensation equivalent to three months' remuneration unless the contract of service with such employee provides for a shorter notice of termination. It is thus clear that in regard to cases which fall under Section 11 (2) if as a result of the alteration made by the Central Government any employee does not want to work with the Corporation, he is given the option to leave its employment on payment of compensation provided by the last part of S. 11(2). The employees of the insurers whose controlled business has been taken over, become the employees of the Corporation, then their terms and conditions of service continue until they are altered by the Central Government, and if the alteration made by the Central Government is not acceptable to them, they are entitled to leave the employment of the Corporation on payment of compensation as provided by Section 11(2)."

The argument of the learned counsel for the petitioners that the terms imposed in Schedule III cause great hardship or impose onerous duties upon the petitioners is not a ground for holding either that the Central Government has no power under Section 11 (S; to make the order or that the order made is ultra vires Article 16 (1) of the constitution.

10. In support of his argument that the impugned order and the Regulations deny equal

¹ AIR 1964 S C 847

opportunity in the matter of employment under Article 16 (1), the learned counsel, Mr. Daru, invited our attention to paragraph 47 of his petition. According to the petitioners they are posted in every corner of the country including major cities and smallest villages and towns. The business to be procured measured in terms of the scheduled premium income always depends upon several factors including business potentiality of the place, skill of the Development Officer, saving capacity of the people in the area, famine, floods, draughts, political upheavals etc. According to the learned counsel the basic scale of pay cannot be reduced on the basis of the performance of the Development Officer; in other words, it is his case that the scale of pay need not correspond to or be commensurate with the outturn of work by a Development Officer. The impugned order was issued by the Government after careful consideration of the service conditions of the Development and also the business outturn shown by them, the profits and the losses incurred by the corporation. The Government appointed a Committee headed by a Member of the Parliament and an expert to go into the causes contributing to the high level of expenses of administration, and to recommend remedial measures to reduce the ratio between the expenses and premium income. The expenses happened to be more than the premium income. No business organization, not even a Government undertaking, can afford to sustain losses. The insurance business has not been nationalized by the Government to stiffer losses or incur

losses. It is nationalized in the interests of the policy holders as several of the insurers were collecting premiums which could not be termed reasonable. If the Development Officers failed to show the minimum business required from them, then the whole purpose of nationalization would be defeated. The Corporation does not exist for the sake of its employees. It exists for the policy holders out of whose premiums they are paid. As adverted to, it is because of the fact that the expenditure was on the higher side and the premium income was not balancing, that the committee had to examine after taking into account and consideration the representations of several interests including the employees. The Committee was constrained to observe its report, extracts of which are quoted in the reply affidavit " _

that the performance of Development Officers has been extremely disappointing from the point of view of the main function for which their cadre was created; viz., to develop new business. We regret to say that our examination of the results of their work has convinced us that their achievements have been extremely unsatisfactory and totally incommensurate with the generous terms and conditions and facilities given to them and the various incentiveschemes that the Corporation devises to induce the Development Officers to increase their efforts."

The Committee examined the cost ratio of Development Officers and made its recommendations. Though the cost ratio was fixed at 15 per cent, in the Regulations the Corporation has raised it to 30 per cent. We are unable to understand how fixing a minimum outturn of work by a Development Officer whose main function is to insure or develop insurance business can be said to be denial of equal opportunity in employment. It is their duty to develop business to see that as many people as possible insure their lives in order to submit to the Life Insurance Corporation. A perusal of the report of the Committee would also show that Development Officers are given certain facilities which are denied to the administrative staff of the Corporation.

11. Mr. Data, however, attempted to show that if one Development Officer were to work in a tribal or backward area, he may not be able to show the minimum expected from him of the same business as that of a Development Officer who may be posted in an urban or a more prosperous area. This is hardly a ground for suggesting that posting of Development Officers to certain regions which are backward or inhabited by tribal is a denial of equal opportunity in the matter of employment so as to attract the vice of Article 16 (1) of the constitution. It should be remembered that Development Officers are liable to be Transferred from one area to another area. No one is posted in any area permanently until he retires. These are transferable posts. What is required of a Development Officer is to develop and promote business not in terms of rupees but in terms of persons he insures. The minimum is prescribed in the Regulations as an incentive to 'show better results. We do not think that any Corporation or any Government undertaking can be expected to pay its employee" without the employees putting forth their best in accordance with the duties assigned to them. A perusal of the various terms and conditions referred to in Schedule I[] would make it absolutely clear that the more business a

Development Officer shows. the more would be his remuneration. Any incentive offered to the employees in service cannot be said to offend their fundamental rights under Article 16 (1) of the Constitution.

12. Article 16 (1) gives effect to the equality clause in Article 14 and prohibits discrimination in the matter of employment. I article 16 is only an instance of the concept of equality mentioned in Article 14. We do not find how opportunity in the matter of employment. whether it be in the matter of pay, in the matter of constitution or promotions or other bone fide is denied to these petitioners. It is not as if any one, two or more of them are picked up for discrimination and any pre. f f6erecoa is shown to them. A complaint is made by Mr. Darn that the country has not been divided into several zones and minimum business fixed having regard to the peculiar circumstances of each zone. It is for the Central Government to determine whether the whole country should be treated as one zone for the purpose of the Order and the Rogue. Cations or whether the country should be divide into several zones. In issuing the order and also the Regulations, the Central Government has borne in mind the recon. mentations of the Committee which examined the service conditions of the employees, of the Development Officers via-a-vis the business out-turn and the interests of the Corporation sad the policyholders. Therefore, it is a policy erasion taken by the Government that in lot*r to subserve the interests of the Corporation" sail its policyholders it is necessary that conditions of service of the Development officer_s s should be revised so as to see that the out turn shown by them is commensurate with the payments made to them.

13. For the reasons recorded. we are unable to find any substance in this petition and it is accordingly dismissed. Rule dis. charged. No costs, Interim relief vacated.
Rule Discharged.