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இலங்கை மனித உரிமைகள் ஆணைக்குழு
HUMAN RIGHTS COMMISSION OF SRI LANKA

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எனது இல. }
My No.

ඔබේ අංකය
உமது இல. }
Your No.

දිනය
திகதி }
Date

9th March 2021

Mr. K.G.P. Fernando
04, Saranankara Terrace
Saranankara Road
Dehiwala.

Complainant/s

Application No: HRC/1004/14

Vs.

Chairperson
Sri Lanka Insurance Corporation
21, Vauxhall Street
Colombo 02.

Respondent/s

The Complaint

According to the Complaint, in January 2009, Complainant successfully negotiated Insurance policy No: G/010/SHE/17116 with the state Corporation; Lanka Mineral Sands Ltd., on behalf of the Respondent. When the Insurance Policy was then renewed for the year 2010/2011, the same procedure was repeated and he was duly paid his Commission.

Subsequently, however, Complainant learned that the Commission paid to him for the year 2010/2011 was being recovered by the Respondent. Though he had asked the reason for doing so in writing on numerous occasions, no reason had been afforded to him. Eventually, by letter dated 07.01.2014, Chief Executive Officer (General Insurance) informed Complainant that the action to recover the Commission paid to him for 2010/2011 was as a result of Public Finance Circular PF 437, dated 18.09.2009, which provided that "all Institutes coming under the Public Sector" should obtain insurance policies only from either the National Insurance Trust Fund or the Sri Lanka Insurance Corporation, and that "services of insurance agents need not be obtained for this purpose.

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14, ஆர்.ஏ.த. மெல் மாவத்தை, கொழும்பு - 04.
14, R. A. De Mel Mawatha, Colombo - 04.

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தவிசாளர்
Chairperson

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செயலாளர்
Secretary

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However, it is Complainant's contention that Commissioner for Insurance policies obtained by public sector institutes continued to be paid to the relevant agents even after 2010. As such he contends that he has been singled out in being denied Commission under Public Finance Circular PF 437.

Respondent's representation to the Commission

The Commission solicited a report from the Respondent on 30.04.2014, which the Commission received dated 16.05.2014 (marked R1). According to this report, the relevant Corporation, Lanka Mineral Sands Ltd., solicited a quotation for the year 2010/2011 from the Respondent directly, dated 07.12.2009. Further, citing Public Finance Circular PF 437, the Respondent stated that the policy was renewed for 2010/2011 directly with Lanka Mineral Sands Ltd., without the need for Complainant's representation.

An inquiry was first summoned in 21.08.2015 (marked IQR-1), attended by the Respondent, where they requested an opportunity to tender written submissions. The Commission received said written submissions (undated; marked R2) under the hand of one Mahen Peiris, Attorney-at-Law, Assistant General Manager (Legal). Respondent concedes, in R2, that the Complainant did represent the Respondent in obtaining an insurance cover for Lanka Mineral Sands Ltd., relevant to the period 02.02.2009 to 01.02.2010. However, the Respondent notes that after that insurance policy was obtained through Complainant for the year 2009, the Respondent became a "company fully owned by the state" and the Treasury Secretary issued Circular PF 47 on 18.09.2009, which required all public institutions to obtain policies from either the Respondent or the National Insurance Trust Fund, and that, in so obtaining, services of insurance agents would not be needed. The Respondent claims in R2, that after this Circular was adopted, Lanka Mineral Sands Ltd. approached the Respondent directly for quotations and the Complainant had no role to play in this transaction. While the Respondent concedes that the Complainant was paid the Commission relevant to the 2010/2011 coverage, this was only a result, according to the Respondent, of a technical error in the computer system. The Respondent submits that a decision was made to recover the commission paid to the Complainant in error; however, there is no indication that this decision was communicated to the Complainant. The respondent also attaches a letter dated 15.02.2011 from Lanka Mineral Sands Ltd., which confirms that "it does not obtain the services of any Insurance Agent" in compliance with the abovementioned Circular.

Based on PF 47, the Respondent argues that the Complainant is not entitled in Law to a Commission for the year 2010/2011. The Respondent interprets that Circular as "specifically preclude[ing] State-institutions from obtaining the services of an Insurance Agent. "in terms of the Complainant's claim that other insurance agents had been paid commission in respect of insurance covers obtained by State institutions, the Respondent cites domestic case law to the effect that the Constitution only guarantees equal protection of the law and not equal violation of the law, and that "even assuming that on the strength of those violations the

(same).” The Respondent does not explicitly deny that other Insurance Agents had been paid Commission for insurance policies obtained by State Institutions.

Inquiry was called again on 08.12.2017 (marked IQR-2), which was not attended by the Respondent, and no reasons for their absence were provided to the Commission. The Complainant, attending the inquiry, informed the Commission, inter alia, that the general practice with regards to Commission fees is that, every year when a policy is renewed, the relevant agent for that policy is paid the Commission again; that agency is terminated on grounds of poor performance etc., or upon the request of an existing client. However, no such procedures were followed in the case of the Complainants agency in relation to policy No. G/010/SHE/17116.

Inquiry was called again on 28.12.2017 (marked IQP – 3), which was attended by the Complainant and an Attorney-at-Law claiming to represent the Respondent. An interrogatory was provided to said Attorney containing six questions, with instructions to tender writing responses on the allotted time, the same interrogatory was posted to the Respondent via registered post with a letter from the Commission dated 25.01.2018. Responses were received on 12.02.2018 (marked R3). It is noted that the responses contained therein are extremely uncooperative to the Commission’s intention to duly resolve the dispute. However, they mention that the Complainant’s agency was never terminated, merely temporarily suspended.

Inquiry was called again on 02.03.2018 (marked IQR -4), which was unattended again by the Respondent. The complainant attended the same and produced a document confirming that he had received a commission for a policy with another state institution he had assisted. Commission that they failed to attend the inquiry as the summons was addressed to the Chairperson and not the Chief Legal Officer.

Observations

Respondent claims his decision to recover the Commission paid to the Complainant for the year 2010/2011 in relation to the relevant insurance cover was based on Public Finance Circular PF437. Paragraph 8 of the said Circular states that “Provisions of this Circular will be effective from 15.09.2009.” It is observed that the insurance proposal between Lanka Mineral Sands Ltd. and the Complainant as the agent of the Respondent was executed on 23.01.2009. It is also observed that the insurance policy came to operation on 02.02.2009 which is prior to the date which the Public Finance Circular PF 437 became effective.

Even though the Respondent wishes to characterize the cover for the year 2010/2011 as a new transaction with no involvement from the complainant, a perusal of the relevant document clearly indicates that the same policy number assigned in 2009 when the Complainant was the undisputed agent had continued in place even beyond 2011. This implies a continuity in the insurance cover obtained through the assistance of the

Complainant, even if he had been excluded from his commission after the first annual renewal.

The Complainant has demonstrated that despite the Respondent's claim that the agency status of agents of state institutions had been revoked as an effect of PF 437, he himself continues to be paid commission for other policies procured by him on behalf of the Respondent from state institutions.

Legitimate Expectation of the Complainant

A perusal of the Finance Circular PF 437 clearly indicates that there is no express provision which nullifies or invalidates a pre-existing principal-agent relationships. Sharvananda J. in the case of the Attorney-General of Ceylon and W.M. Fernando, Honorary Secretary. Galle Gymkhana Club 1979 (1) NLR 39 adopted the principle that no statute or order is to be construed as having a retrospective operation unless such a construction appears very clearly or by necessary and distinct implication in the Act.

Power of the Human Rights Commission to Grant Relief

In *Dayaratne Vs. Minister of Health and Indigenous Medicine* (1999) I SLR 393 Amarasinghe J. held that "destroying of a legitimate expectation is a ground for judicial review which amounted to a violation of equal protection guaranteed by Article 12 of the Constitution."

Furthermore, it was held in *Sirimal and others Vs. Board of Director of the Co-operative Wholesale Establishment (CWE) and others* 2003(2) SLR 23, where the optional age of retirement of employees at CWE, which was 55 years of age with a right to seek extensions up to 60 years of age, was changed by way of a circular to make retirement compulsory at 55 years, that

"the petitioners had a legitimate expectation of receiving extensions up to 60 years (except where medical or disciplinary grounds were present)".

Furthermore, the Supreme Court held that the petitioner were entitled to seek relief for violation of fundamental rights even if there were other remedies to pursue, namely applications to the Labour Tribunal Arbitration in terms of the CWE Act in the aforesaid case. Therefore, in terms of paragraph 15 and 16 it is observed that the Commission has the power to grant relief with regards to the issue of the Complainant.

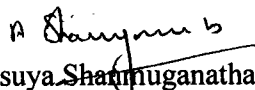
Conclusion

In view of the above circumstances, it is hereby concluded that the Respondent **has violated** the Fundamental Rights of the Complainant guaranteed under Article 12(1) of the Constitution.

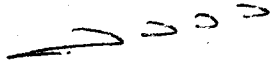
Recommendation

The Commission owed to the petitioner under insurance policy No. G/010/SHE17116 to be paid by the Respondent effective from date of suspension of the agency of the Complainant.

As per Section 15(7) of the HRCSL Act, the Respondent should report to the HRCSL on the action taken to implement Recommendation within the month of the date of this Recommendation.


Anusuya Shanmuganathan
Commissioner
Human Rights Commission of Sri Lanka.

Ms. Anusuya Shanmuganathan
Commissioner
Human Rights Commissioner of Sri Lanka


M.H. Nimal Karunasiri
Commissioner
Human Rights Commission of Sri Lanka.

Dr. M.H. Nimal Karunasiri
Commissioner
Human Rights Commission of Sri Lanka