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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION STAMP NO.6828 OF 2022
IN
WRIT PETITION NO.3485 OF 2022

1. **Charudatt Changdeo Pawar**

2. **Manohar Kisanrao Sonawane**

3. **Prakash Narhar Desale**

...Petitioners

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~ VERSUS ~

1. **Union of India**
Ministry of Law and Justice, Room No 405, A Wing, Shastri Bhavan, New Delhi 110 001.

2. **Life Insurance Corporation of India**
Central Office, Yogakshema Building, Jeevan Bima Marg, P O Box No 19953, Nariman Point, Mumbai 400 021

3. **SPEAKER, HOUSE OF THE PEOPLE** Through the Principal Secretary, Speaker's Office, Lok Sabha, 17, Parliament House, New Delhi 110 001	**...Respondents**

APPEARANCES

FOR THE PETITIONERS	**Mr Pradeep Sancheti**, *Senior Counsel with Mr Pulkit Sharma, Ms Pooja Kane, Ms Pallavi Bali, Mr Saurabh Bachawat, Mr Zaman Ali i/b Zaman Ali*
FOR RESPONDENT NO. 2	**Mr N Venkataraman**, *ASG with Ms Amita Katragadda, Mr Prakhar Pandey, Ms Preksha Malik, Ms Gathi Prakash, Ms Nidhi Asher, Ms Isha Choudhary and Ms Arushi Poddar i/b Cyril Amarchand Mangaldas*

CORAM	**G.S. Patel & Madhav J. Jamdar, JJ.**
DATED:	**11th April 2022**

ORAL JUDGMENT (*Per G S Patel, J.*)

1. We have heard Mr Sancheti, learned Senior Counsel for the Petitioners and Mr Venkataraman, learned ASG for Respondent Nos 1 and 2. The 3rd Respondent is the Speaker of the Lok Sabha.

2. Broadly stated, the challenge in the Writ Petition is to the forthcoming public offering and issuance of shares to the public by the 2nd Respondent, the Life Insurance Corporation of India. The specific prayer after amendment is a challenge to Sections 128 to 146 of the Finance Act 2021. This portion of the Finance Act 2021 sought to amend the Life Insurance Corporation of India Act, 1956 ("**the LIC Act**"). The arguments canvassed before us proceed on two broad footings. *First*, that the Finance Bill that was a pre-cursor to the Finance Act 2021 could never have been passed as a Money Bill under Article 110 of the Constitution of India. *Second*, that the Finance Act, and specifically the amendments introduced by it to the LIC Act are *ultra vires* Article 300-A of the Constitution of India.

3. From the beginning, we made it clear that we were not hearing the matter for final disposal at this stage. We were only considering it for ad-interim relief in terms of amended prayer clauses (d) and (d)(i). These prayers seek to stay the Draft Red Herring Prospectus filed by the LIC for the issuance of shares in a public issue to investors. This is the purport of prayer clauses (d) and (d)(i) of the amended Petition. We allowed Mr Sancheti to address us on why there should be an ad-interim stay. We heard Mr Venkataraman briefly on this aspect of the matter as well.

4. Having considered the rival submissions on this presently limited aspect of the matter, we are not inclined to grant ad-interim relief. Our reasons for declining the reliefs are set out below. We do, however, clarify that since the Petition is kept for final disposal at the admission stage, and we propose to list it as soon as possible once the Court re-opens after the summer recess, any public issue that LIC proceeds with between now and then may possibly be subjected to further orders in this Writ Petition. This is, therefore, not in any sense a final determination of any of the issues. All that we are setting out below, and as briefly as possible so as not to pre-judge later arguments, is that we have not found a sufficiently strong prima facie case for the grant of ad-interim relief.

5. For the purpose of ad-interim relief, the usual three determinants must apply:- (i) a strong *prima facie* case; (ii) balance of convenience; and (iii) irreparable injury. One of the settled principles is to see whether there is a countervailing larger public interest involved. It is not necessary to re-visit the settled law on the subject today.

6. The principal plank of Mr Sancheti's arguments before us has been on Article 300-A. Specifically, the argument is that the impugned Finance Act 2021 operates to deprive not only these three Petitioners but all those in the same class i.e. LIC policyholders of their property and this deprivation is not with the authority of law.

7. To appreciate the structure of this argument, it is necessary to see a few provisions of the LIC Act as it stood before the amendment by the Finance Act 2021. Chapter VI of the LIC Act deals with LIC's finance, accounts, and audit. We reproduce Sections 26 to 28A from this Chapter:

"**26. Actuarial valuations.**— The Corporation shall, [every year], cause an investigation to be made by actuaries into the financial conditions of the [life insurance business of the Corporation, including a valuation of the liabilities of the Corporation in respect thereto], and submit the report of the actuaries to the Central Government.

27. Annual report of activities of Corporation.— The Corporation shall, as soon as may be, after the end of each financial year, prepare and submit to the Central Government in such form as may be prescribed a report giving an account of its activities during the previous financial year, and the report shall also give an account of the activities, if any, which are likely to be undertaken by the Corporation in the next financial year.

[**28. Surplus from life insurance business, how to be utilised.**—(*1*) If as a result of any investigation undertaken by the Corporation under section 26, any surplus emerges, —

(*a*) ninety per cent. or more such surplus, as the Central Government may approve, shall be allocated to or reserved for the life insurance policyholders of the Corporation;

(*b*) such percentage of remaining surplus as the Central Government may approve shall be credited to separate account maintained by the Corporation; and

(*c*) the remainder shall be paid as dividend.

(*2*) The funds available in the account maintained by the Corporation under clause (*b*) of sub-section (*1*) shall be utilised for such purpose and in such manner as the Central Government may determine.]

28A. Profits from any business (other than life insurance business) how to be utilised.— If for any financial year

> profits from any business (other than life insurance business) carried on by the Corporation, then, after making provision for reserves and other matters for which provision is necessary or expedient, the balance of such profits shall be paid to the Central Government.

8. We turn immediately to the amendments introduced by the Finance Act. The relevant amendments are found at Exhibit-D from page 96. The Finance Act made several amendments to different statutes. We are concerned with the amendments to the LIC Act and these start at page 97 from Section 128 of the Finance Act, 2021. For our purposes, what is important is the amendment to Section 28 of the LIC Act effected by Section 140 of the Finance Act, 2021. We reproduce Section 140 of the Finance Act 2021 from pages 126 to 127 of the Petition paperbook:

> "**140.** For section 28 of the principal Act, the following section shall be substituted, namely: —
>
> 28. (*1*) If as a result of any investigation undertaken by the Board under section 26, any surplus emerges,—
>
>> (*a*) for every financial year previous to the financial year for which the funds referred to in sub-section (*2*) of section 24 are to be maintained, and for any subsequent financial year for which members may exempt the maintenance of such funds,—
>>
>>> (*I*) ninety per cent., or such higher percentage as the Board may approve, of such surplus shall be allocated to or reserved for the life insurance policyholders of the Corporation; and
>>>
>>> (*II*) such percentage of the remaining surplus as the Board may approve, shall be

allocated to or reserved for members and may either be credited to a separate account maintained by the Corporation or be transferred to such reserve or reserves as the Board may specify;

(*b*) for every financial year other than that referred to in clause (*a*),—

(*i*) in respect of participating policyholders,—

(*I*) ninety per cent., or such higher percentage as the Board may approve, of surplus relating to such policyholders, shall be transferred to the participating policyholders fund, and shall be allocated to or reserved for the life insurance participating policyholders of the Corporation; and

(*II*) such percentage of the remaining surplus as the Board may approve, shall be allocated to or reserved for members and may either be credited to a separate account maintained by the Corporation or be transferred to such reserve or reserves as the Board may specify;

(*ii*) in respect of non-participating policyholders, one hundred per cent. of surplus relating to such policyholders shall be allocated to or reserved for members and may either be credited to a separate account maintained by the Corporation or be transferred to such reserve or reserves as the Board may specify.

(*2*) The remaining surplus referred to in sub-clause (*ii*) of clause (*a*) of sub-section (*1*) or in item (*ii*) of sub-clause

> (*i*) of clause (*b*) of sub-section (*1*), as the case may be, and the surplus referred to in sub-clause (*ii*) of clause (*b*) of sub-section (*1*), and the profits allocated to or reserved for the members under section 28A, shall be utilised for such purposes as the Board may approve, including for the purpose of declaration or payment of dividend, the issue of fully paid-up bonus shares to members and crediting any of the reserves that the Board may create for any purpose.
>
> (*3*) The Corporation shall, with the approval of the Board, publish on its website its surplus distribution policy at least once in five years, or such shorter period not less than three years as the Board may deem fit, and such policy shall specify, among other things, the percentages referred to in sub-section (*1*)."

9. Now, the argument here is that under Section 28 of the LIC Act every policyholder held 'property' in the surplus from the life insurance business. This, in Mr Sancheti's formulation is the inevitable result of the phrasing of Section 28(1)(a) when ninety percent or more of such surplus as approved by the Central Government is "*allocated to or reserved for life insurance policyholders*". To paraphrase his submissions as accurately as we believe is possible, he says that an allocation or reservation immediately gives every policyholder an estate in the surplus of the corporation. The fact that this is limited to ninety percent (or such other amount as determined by the Central Government) makes no difference. For the purposes of Article 300-A what is relevant is that every single existing policyholder from the Life Insurance Corporation has a direct, enforceable and realizable interest in the surplus. That surplus is, therefore, the "property of" every policyholder and of all policyholders as a class.

10. In direct contrast, he says what the Finance Act 2021 seeks to do is to introduce a new class of claimants to the surplus. In his words, earlier the cake was entirely that of policyholders. It is now to be carved up or distributed between policyholders and shareholders. Therein lies the deprivation of property violative of Article 300-A of the Constitution of India. This, in our understanding, is Mr Sancheti's formulation of the challenge under Article 300-A in its simplest and clearest terms. Mr Sancheti accepts that policyholders are not entirely ousted from a share in the surplus under the Finance Act 2021. That is not his case. On a careful reading of amended Section 28(i) there is now a two-level segregation between stakeholders. First, policyholders are segregated from shareholders. Next, within the class of policyholders, there is a further division between what are called "participating policyholders" and "non-participating policyholders". The problem, Mr Sancheti argues, is not with the amended Section 28(1)(a) at all because that only speaks of one particular financial year. The deprivation happens in subsequent financial years as contemplated by Section 28(1)(b) which speaks of every financial year other than that covered by clause (a). This is where there is distinction between participating and non-participating shareholders. There was no such conceptualization of participating and non-participating shareholders under the unamended Act. There was also no question of any shareholder being a participant in the surplus assets or funds of LIC or a contributory properly so-called because the only shareholder of LIC prior to the amendment was the Central Government itself to the stipulated extent. There was no other shareholder at all.

11. It is for this reason that Mr Sancheti says that what was the property of LIC policyholders now goes to shareholders. Even if there is not a wholesale deprivation of property, there is certainly a substantial deprivation of that property. Mr Sancheti also invites our attention to paragraph 4 on page 27 of the Draft Red Herring Prospectus. This section speaks of the segregation of the single consolidated life fund of the corporation into two separate funds of a participating policyholders fund and a non-participating policyholders fund. The explanation then says *inter alia*—

> "Whilst prior to the segregation of the Life Fund, surplus as assessed by the Appointed Actuary for the Life Fund was distributed amongst our Corporation's policyholders and Shareholder in the ratio of 95:5, post segregation of the Life Fund, 100% of the surplus generated out of the non-participating business is available for distribution to all of the Shareholder(s) of the Corporation and the surplus from the participating business shall be distributed amongst our policyholders and Shareholder in the ratio of 95:5, which ratio is being modified as 90:10, in a phased manner. For details, see "— *The changes in our Corporation's surplus distribution policy may reduce the attractiveness of our participating products, which could have an adverse effect on our business, financial condition, results of operations and cash flows*" on page 37."

12. We are not at this stage concerned with the actual financial results or the numbers but the policy behind it for the purposes of this argument. In Mr Sancheti's construct, the policyholders and the future shareholders are all controlled by LIC (or the Central Government) at least for the purposes of declaration of dividends, surplus, bonus, or payouts of any kind. What is being done is that while the funds remain under the control of or with LIC, that which would have been exclusively available to policyholders is now being shrunk in size and made available only to participating policyholders to a certain extent, non-participating policyholders to another extent and then there is the introduction, never done before, of other individuals, viz., private shareholders. The property of policyholders is thus being separated and taken away although all of it may yet remain with LIC as a separate entity, the majority shareholding of which will still be with the Central Government.

13. In support of these submissions, Mr Sancheti invited our attention to a number of decisions which we will note below. The first is that of a five-Judge Bench of the Supreme Court in *KT Plantation Pvt Ltd and Anr v State of Karnataka*.[1] He relied on this to explain and lay out the concepts of eminent domain, public purpose and support the submission that in exercise of police powers of the State or eminent domain there can be no deprivation of property without justifiable compensation. A person whose property is sought to be taken away is entitled to two things: (i) compensation and (ii) a judicially reviewable statement of the reasons why that particular compensation has been awarded and the method of computing that compensation. This very shortly stated is the submission of Mr Sancheti based on *KT Plantation*. At this stage, it may not be appropriate to look at the decision in greater detail since we will have to re-visit it at a later stage.

1 (2011) 9 SCC 1.

14. The next decision relied on by Mr Sancheti is *Life Insurance Corporation of India v Crown Life Insurance Co.*[2] In particular, Mr Sancheti drew our attention to paragraphs 1 and 4 to 7. His emphasis was on the observations of the Supreme Court regarding the distribution of surplus by the LIC. Unlike other companies, LIC is not obligated to distribute dividends unless there is first a surplus and this has been determined. Once there is a surplus, an entitlement to surplus arises under statute i.e. unamended Section 1 of the LIC Act. If this entitlement is being taken away, then it translates, in Mr Sancheti's submission, to nothing more than the deprivation of property i.e. an enforceable right in that surplus.

15. The next decision along similar lines is that of the Supreme Court in *Madan Mohan Pathak and Anr v Union of India and Ors*[3] where again the concepts of property, deprivation and compensation were discussed in paragraphs 11 and 18 to 21.

16. We pause for a moment to consider very briefly and for the purposes simply of ad-interim relief, these submissions. We are not entirely satisfied that persons like the Petitioners (we are not in this case limiting our findings to these three particular individuals, because that would be an unfair reading of the Petition) can be said to have an enforceable estate in the surplus of the LIC fund. This is a matter that will require much deeper consideration. In other words, we do not see how this class of persons can say that the surplus or any part of the LIC fund is their "property" within the meaning of Article 300-A of the Constitution of India. It may be one

2 (1965) 3 SCR 474.

3 (1978) 2 SCC 50.

thing to say that a person has an entitlement to receive a dividend or a bonus or some form of payment. That might conceptually be very different from saying that the person has an in specie interest in the fund itself. It is possible perhaps to draw an analogy that when a person is given a cheque or a negotiable instrument, he, as the holder, has the right to receive the funds but he cannot be said to have property in the bank account on which the cheque is drawn. There are many aspects to this that will have to be considered because of the structure of Section 28(1) of the unamended Act and specifically the use of the words "allocated" and "reserved". Conceivably, the argument would mean that by process of exclusion none other than the policyholders would be entitled to a distribution of bonus or dividend or some form of payment out of the surplus fund. Whether this would translate to *ownership* of any part of the fund is a subtle but very real distinction that we may have to yet make and which will require a closer scrutiny at a later stage.

17. Mr Sancheti then proceeded to address us briefly with the assistance of some authorities on what is meant by public purpose for the purposes of such amendments. This again is an argument that we will have to consider at a later stage and we are not expressing any view at present.

18. The third argument was based on Article 110 of the Constitution. Here Mr Sancheti's submission was that the Finance Bill could never have been passed as a Money Bill. Now, this aspect of the challenge is one that we felt would be improper for us to consider at this stage simply because the challenge under Article 110 was precisely the subject matter of a Division Bench judgment of the Madras High Court in *L Ponnammal v Union of India and Ors*.[4] From the beginning, we pointed out to Mr Sancheti the inherent difficulties of what he was attempting. We agreed that a decision of the Madras High Court Division Bench may not be binding on us but we made it clear that it would certainly be persuasive and we would give it very high regard on the principle of comity of the courts and judgments. Under no circumstances, we pointed out, would we be persuaded to sit in appeal over those findings. Mindful of this situation, Mr Sancheti's attempt was to show us that his challenge under Article 110 would survive simply because there were aspects to it that were not considered by the Madras High Court Division Bench and were not even canvassed before that Bench. For instance, it was said before that Division Bench that there was no challenge to the decision of the Speaker of Lok Sabha in allowing the Bill as a Money Bill. In fact, before the Madras High Court Division Bench, the petitioner declined to amend his Petition to introduce such a challenge. Here, Mr Sancheti points out that the Speaker's decision is in challenge. But we find that decision somewhat circular since the challenge to the Speaker's decision returns us only to an interpretation of Article 110.

19. Necessarily, our attention is drawn to the decisions of the Supreme Court regarding Money Bills in *KS Puttaswamy (Retd.) and Anr v Union of India and Anr (Puttaswamy-1, Aadhar–5j)*.[5] There the question of whether the UIDAI Act could have been passed as a Money Bill arose. There were differences in view between the

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4 Writ Petition No 4150 of 2022, delivered on 21st March 2022.

5 (2019) 1 SCC 1.

majority and the dissenting minority. Puttaswamy-1 was considered by the Supreme Court itself in the later decision of *Rojer Mathew v South Indian Bank Ltd and Ors*[6] (also a decision of a five-Judge Bench of the Supreme Court). Now, the *Rojer Mathew* decision itself received one judgment for the majority and two separate and partly-dissenting judgments of the Hon'ble Dr Justice Chandrachud and Hon'ble Mr Justice Deepak Gupta. Part of the discussion in both was on the correct interpretation regarding Article 110 in *Puttaswamy-1*.

20. The complexity of this argument does not, in our view, lend itself to a sufficiently strong prima facie case for ad-interim relief.

21. After all, Mr Venkataraman's assertion on behalf of Respondent Nos 1 and 2 that the amendment to the LIC Act is not really a corporate re-structuring but must necessarily be a Money Bill because it affects inflows and potential outflows from the Consolidated Fund of India, will have to be considered. It is not merely a question of the Central Government saying that it wants to augment its coffers as Mr Sancheti would have it. This will be a mixed question addressing both the public purpose and the question of whether this is properly so called a Money Bill because of the entanglement of the Consolidated Fund of India. The use of the word "only" in Article 110 will undoubtedly fall for interpretation too. It is Mr Sancheti's submission that this word governs and controls the whole of Article 110. It is not possible, he submits, to slide in as a Money Bill amendments or statutes that incidentally

6 (2020) 6 SCC 1.

deal with the Consolidated Fund of India. The requirement under Article 110 is that the Bill must deal only with the matters specified therein. The breadth of sub-clause (f) and particularly (g) has to be read in context and as a matter of legislative pragmatism because otherwise no Bill would entirely be passed as a Money Bill. The analogy that Mr Sancheti draws in this aspect is that clause (g) is similar to usual standard form prayers that we find in petitions "for further and other reliefs as the nature and circumstances of the case may require". No Petition can get relief only on that ground with the principal grounds not being allowed. Yet, this is precisely what the Finance Act 2021 seeks to do. This formulation is contested by Mr Venkataraman who points out that the settled law is that there is, first of all, a deeming provision in Article 110. Second, sub-clause (i), though it uses the word "only", also uses the words "all or any". This means, in his submission, that any of the sub-clauses can be invoked for the purposes of a Money Bill.

22. Mr Venkataraman's submission on the question of 'property' for the Article 300-A challenge runs like this. *First*, there is no binding contract that the Petitioners (or that the class that they may be said to represent) have with any assurance to property rights. The sum assured does not become part of the surplus though it is the part of the LIC fund. If there is no contractual right and every contract of insurance is a contract of utmost good faith, then it must be clearly stated as a matter of contractual right that a policyholder has a divisible, enforceable and realizable right in the property of the surplus fund. *Second*, the Finance Act 2021 now draws a distinction between participating and non-participating policyholders. The participating ones are those who will pay a higher premium and, in consideration will be entitled to certain monetary benefits drawn to a defined percentage from the surplus. But Sections 24 and 28 also do not give policyholders any statutory right in the surplus. Thus, if there is neither a contractual nor a statutory right, in Mr Venkataraman's submission, the entire edifice of the argument under Article 300-A must necessarily fail. This, he submits, was precisely what happened before the Madras High Court and there is neither scope nor reason to allow this argument to be reopened before this Court.

23. Mr Venkataraman also advanced an argument on delay and laches. There are authorities on both sides. For the purposes of ad-interim relief, we made it clear to Mr Sancheti at the stage of hearing that we were not going to hold against him on delay and laches. There are, after all, *vires* challenges to be considered. Whether these can be defeated simply by invoking delay is a matter best left for another day. Speaking for ourselves, we have some reservations about whether an over-strict or overly rigid reading of the law on delay and laches would be appropriate when the court has challenges before it such as these.

24. For these reasons, we decline ad-interim relief. All contentions are, however, kept open.

25. Mr Sancheti requests leave to introduce a compilation of the policies to meet the argument regarding contractual rights. Leave granted.

26. Should the Respondents wish to file an Affidavit in Reply, this should be done by 9th June 2022. Rejoinder, if any, to be filed by 16th June 2022.

27. List the Petition peremptorily for hearing and final disposal at the stage of admission on 21st June 2022 at 2:30 pm.

(Madhav J. Jamdar, J) **(G. S. Patel, J)**