

# INTER CLASS MOOT COURT COMPETITION

## MOOT PROBLEM

### **PUC POLICY SERVICES LLP V. GOVERNMENT OF KARNATAKA AND OTHERS**

PUC Policy Services LLP (hereinafter called 'the firm') is a registered partnership firm providing servicing and trading in the life insurance policies. The objective of the firm is to assist people in filling application form, claim forms and other servicing matters. But neither of the partners were registered as agents of L.P. Insurance Company (LIC) or with any other insurance company. They were in the business of purchasing lapsed insurance policies above the surrender value and helping the people who could not pay the premium.

Mr. Lokesh took a policy in his name from LIC for an assured sum of Rs. 10,00,000/- (Rupees Ten Lakhs Only). He had also taken a loan from one of the partners of the firm. After paying for 5 years towards premium, he ran into debt because of extreme loss in business. The creditor-partner suggested him to assign the policy to the firm. The firm paid Rs. 2,000/- (Rupees Two Thousand Only) more than the surrender value which the LIC would have given. He assigned the policy to the firm without the consent of his wife who was the nominee.

After a few days of assigning the policy and before registering the same with the LIC, Mr. Lokesh died from a heart attack. The wife claimed the money out of the policy from the LIC. Meanwhile, the news of death of Mr. Lokesh reached the firm. The firm on the next day filed claim form with the LIC.

The contention of the wife before the LIC was that the due amount to the partner-creditor be cut from the insurance claim amount and the rest be paid back to her. The wife had contended that the creditor-partner has been managing the firm and also alleged that the firm is a sham and fraudulent in nature and has been cheating customers by giving loans and purchasing insurance policies for low price.

But the firm took the stand that the policy was assigned in the capacity of the firm and not the individual. Also, the firm has the right to the whole of the policy amount and thereby the debt with creditor-partner made is separate with that of the assigned policy.

Before the LIC had reached any decision, the Government enacted the Insurance (Amendment) Act, 2015. This amendment of section 38 gave discretion to the LIC to accept the assignment or not. The amended provision is as under:

“38. Assignment and transfer of insurance policies-

- (2) An insurer may, accept the transfer or assignment, or decline to act upon any endorsement made under sub-section (1), where it has sufficient reason to believe that such transfer or assignment is not bona fide or is not in the interest of the policyholder or in public interest or is for the purpose of trading of insurance policy.
- (3) The insurer shall, before refusing to act upon the endorsement, record in writing the reasons for such refusal and communicate the same to the policyholder not later than thirty days from the date of the policyholder giving notice of such transfer or assignment.”

The LIC refused to accept the assignment of the policy without giving any reasons to the firm. One Mr. Lankesh who is an employee of LIC and a friend of the creditor said unofficially that the firm was trading LIC policy which is against the public interest/policy.

Aggrieved by the decision of the LIC, the firm filed a writ petition before the High Court of Karnataka contends that (1) the validity of the clause giving discretion to LIC to accept the policy or not as violative of article 19 (1) (g); (2) LIC has abused the discretion given to it and (3) the assignment was voluntary and there was no force on Mr. Lokesh to assign policy when he has taken loan from creditor-partner in individual capacity while making the Government of India, LIC and Wife of Mr. Lokesh as the opposite parties.

Assumptions to be made:

- a. The Government of India, LIC and Wife of Mr. Lokesh are together represented by Advocate Mr. Lavesh and there is only one submission on behalf of the three opposite parties.

Issues to be considered:

1. Whether the amended section 38 violates article 19 (1) (g) of the Constitution?
2. Is the refusal to accept the assignment by LIC justified?
3. Does the firm's trading of LIC policy go against the public interest/policy?

(Disclaimer: This problem is hypothetical and has been framed purely for academic purpose only)