

**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION**

Writ Petition (Civil) No 366 of 2022

Thomas Franco Rajendra Dev and Others

Petitioners

Versus

Union of India and Others

Respondents

W I T H

Special Leave Petition (Civil) No 8609 of 2022
&
Special Leave Petition (Civil) No 8846 of 2022

ORDER

- 1 This batch of three cases consists of a petition under Article 32 of the Constitution and two Special Leave Petitions arising from a final judgment of the Madras High Court and an ad - interim order of the High Court of Judicature at Bombay.

- 2 The petition under Article 32 raises a challenge to the constitutional validity of the provisions of Sections 130, 131, 134 and 140 of the Finance Act 2021 and certain provisions of the Life Insurance Corporation Act 1956. By the provisions of Finance Act 2021, an amendment was brought about to the provisions of the Life Insurance Act 1956.
- 3 On 13 February 2022, a draft Red Herring Prospectus¹ was filed with SEBI for the Initial Public Offering² of LIC. Consequential steps were taken. On 26 April 2022, the RHP was made available on SEBI's website, indicating a price band of Rs 902 to 949 per equity share with a discount of Rs 60 for policy holders. On 27 April 2022, a price band advertisement was published. The Government announced that LIC's IPO will be opened on 2 May 2022 for 'anchor investors' and from 4 May 2022 to 9 May 2022 for the general public. The window for bidding for anchor investors was opened on 2 May 2022. The window for bidding by other investors opened on 4 May 2022. The IPO has been closed for bidding on 9 May 2022. The offer price for the IPO is to be finalized on 12 May 2022. This would be followed by the allotment to investors whose bids have been accepted. The monies which have been received from the investors are being held in ASBA³ accounts. The monies

1 "RHP"

2 "IPO"

3 "Application Supported by Blocked Amount"

would be released on 13 May 2022 to unsuccessful investors. The equity shares would be credited to the demat account of successful bidders on 16 May 2022. From 17 May 2022, the shares of LIC will be traded on the stock exchanges where they would be listed.

- 4 In support of the challenge, two primary submissions have been urged by Ms Indira Jaising, senior counsel appearing on behalf of the petitioners in the petition under Article 32 of the Constitution. Firstly, it has been urged that the process which led up to the enactment of the amendment to the Life Insurance Corporation Act through Parliament was on the basis that it was a Money Bill. On this aspect, it has been submitted that the constitutional issue relating to the passage of Money Bills has been referred to a larger Bench in ***Roger Mathew vs. South Indian Bank Limited and Others***⁴. The second submission which has been urged is on the merits of the challenge. The submission is that as a result of the amendment to Section 28 of the Life Insurance Corporation Act 1956, the character of LIC which is in the nature of a mutual benefit society is sought to be converted to a joint stock company. This, according to the submission, amounts to an expropriation of the surplus from participating policy holders and its distribution to the share holders to whom shares would be allotted as a result of the IPO.

4 (2020) 6 SCC 1

- 5 Ms Jaising submitted that hitherto, 95% of the surplus typically went to participating share holders while 5% was retained by the Central Government. This entitlement of the participating share holders, it has been urged, would be altered as a result of the amendment which has been brought about by the Finance Act 2021 to the provisions of the Life Insurance Corporation Act 1956 and would violate the provisions of Article 300A of the Constitution.
- 6 Ms Jaising has submitted that though the IPO has closed on 9 May 2022, an interim order is necessary in order to obviate further complications. Senior counsel submitted that the Court may either direct that the monies which have been placed in the ASBA accounts should be retained in those accounts during the pendency of these proceedings or, alternately, if the Court is not inclined to grant this relief, the rights of investors should be made subject to the outcome of the proceedings which are pending before this Court.
- 7 Mr Shyam Divan, senior counsel has appeared on behalf of the petitioner in the Special Leave Petition arising out of the judgment of the Madras High Court. Ms Anitha Shenoy, senior counsel appears in the Special Leave Petition arising from the order of the Bombay High Court declining ad - interim relief.

- 8 Mr N Venkataraman, Additional Solicitor General appearing on behalf of the Union of India and LIC has opposed the grant of interim relief. Adverting to the relevant dates having a bearing on whether the balance of convenience and irreparable harm would weigh in favour of or against the grant of interim relief, the ASG submitted that the Bill which eventually resulted in the Finance Act 2021 was passed on 28 March 2021, nearly 15 months ago. That apart, it has been submitted that the petition under Article 32 of the Constitution has been instituted before this Court on 9 May 2022, which is the date on which the LIC IPO was closed. As regards the Special Leave Petition arising from the judgment of the Madras High Court, it has been submitted that though the High Court dismissed the petition on 21 March 2022, the Special Leave Petition before this Court was instituted only on 2 May 2022. Similarly, it has been submitted that though the Bombay High Court declined ad - interim relief on 11 April 2022, a praecipe for urgent circulation was declined on 2 May 2022 at which stage this Court has been moved. The delay, it is urged, would militate against the grant of relief.
- 9 The issues which have been raised in the proceedings would merit further consideration, particularly having regard to the parameters for the passage of a Money Bill which is pending consideration before a larger Bench in view of the reference in **Roger Mathew** (*supra*).

- 10 On the aspect of interim relief, the submission which has been urged on behalf of the Union of India and LIC is that:
- (i) Section 28 of the Life Insurance Act 1956 as originally enacted did not confer any contractual right on participating policy holders to appropriate 95% of the surplus and the distribution of surplus was at all material times dependent on a notification of the Central Government;
 - (ii) No statutory guarantee has been issued to the participating share holders on the distribution of a particular quantum of surplus; and
 - (iii) The amendment which has been provided by the Finance Act 2021 envisages the allotment of shares to share holders of Life Insurance Corporation.
- 11 On the issue whether any case has been made for the grant of interim relief, the Court must be guided by well settled parameters, namely, (i) the existence of a *prima facie* case; (ii) the balance of convenience; and (iii) the irreparable harm and injury.
- 12 On the first aspect, we are inclined to issue notice since a constitutional issue pertaining to the passage of Money Bills has been raised. On the construction of Section 28, the submission which has been made on behalf of the

petitioners would warrant further deliberation. The Court has been apprised of the fact that as many as 73 lakh applicants, both from within India and beyond have subscribed to the IPO. The IPO has been over subscribed six times even in the category which has been specially reserved for policy holders.

- 13 Apart from the above considerations, it is necessary to note that (i) the dilution of the share holding of LIC as a result of the Offer for Sale is to the extent of 3.5%; (ii) 22.13 crore equity shares of a face value of Rs 10 each are being offered at a premium of INR 939; (iii) the expected receipts into the Consolidated Fund of India are estimated to be INR 20,500 crores; (iv) the IPO opened for anchor investors on 2 May 2022 and for members of the general public on 4 May 2022 and closed on 9 May 2022; and (v) the IPO has been over subscribed by 2.95 times by the general public, that is, net of anchor investors. The position has been tabulated in the note which has been submitted by the Additional Solicitor General:

Qualified Institutional Buyers, including Foreign Institutional Investors	2.83 times
Non-Institutional Investors	2.91 times
Retail individual investors	1.99 times

Employees of LIC	4.40 times
Policyholders of LIC	6.12 times

- 14 Having regard to the above facts which have been drawn to the notice of the Court, we are of the considered view that no case for the grant of interim relief has been made out. We, therefore, decline interim relief.
- 15 Notice shall issue on the petition under Article 32 of the Constitution as well as on the Special Leave Petition which arises from the final judgment of the Madras High Court.
- 16 The counter affidavit shall be filed within eight weeks. The rejoinder affidavit, if any, shall be filed within a period of four weeks thereafter.
- 17 Counsel for the contesting parties are requested to formulate brief notes of submissions to facilitate the disposal of the proceedings.
- 18 The present proceedings shall be tagged with the pending reference before a larger Bench in **Roger Mathew** (*supra*).
- 19 SLP(C) No 8846 of 2022 which arises from the ad - interim order of the Bombay High Court shall stand dismissed. However, since the main issue is now pending before this Court, both in the proceedings under Article 32 as

well as in the companion Special Leave Petition arising from final judgment of the Madras High Court, Writ Petition No 3485 of 2022, which is pending before the High Court of Judicature at Bombay, shall stand transferred to this Court and be tagged with the companion matter.

.....J.
[Dr Dhananjaya Y Chandrachud]

.....J.
[Surya Kant]

.....J.
[Pamidighantam Sri Narasimha]

New Delhi;
May 12, 2022
CKB

ITEM NO.20

COURT NO.4

SECTION X

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition (Civil) No.366/2022

THOMAS FRANCO RAJENDRA DEV & ORS.

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(With I.R. and IA No.73588/2022-STAY APPLICATION)

WITH S.L.P.(C) No.8609/2022 (XII)

(With IA No.69990/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.70356/2022-INTERVENTION/IMPLEADMENT and IA No.69986/2022-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

S.L.P.(C) No.8846/2022 (IX)

(With I.R. and IA No.71797/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.71796/2022-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 12-05-2022 These petitions were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA

For Petitioner(s) Ms. Indira Jaising, Sr. Adv.
Mr. Anand Grover, Adv.
Mr. Paras Nath Singh, Adv.

	Mr. Prasanna S., AOR Ms. Swati Arya, Adv. Mr. Yuvraj Singh Rathore, Adv.
SLP(C) 8609/2022	Mr. Shyam Divan, Sr. Adv. Mr. Abishek Jebaraj, AOR Ms. Nupur Raut, Adv. Ms. A. Reyna Shruti, Adv.
SLP(C) 8846/2022	Ms. Anitha Shenoy, Sr. Adv. Ms. Srishti Agnihotri, AOR Ms. Sanjana Grace Thomas, Adv. Ms. Ayushma Awasthi, Adv.
For Respondent(s)	Mr. N. Venkataraman, ASG Ms. Amita Katragadda, Adv. Ms. Jyoti Dastidar, Adv. Mr. Prakhar Pandey, Adv. Ms. Sukanya Singh, Adv. Ms. Kamakshi Puri, Adv. M/s. Cyril Amarchand Mangaldas

**UPON hearing the counsel the Court made the following
O R D E R**

- 1 In terms of the signed order, notice shall issue on the petition under Article 32 of the Constitution as well as on the Special Leave Petition which arises from the final judgment of the Madras High Court.
- 2 The counter affidavit shall be filed within eight weeks. The rejoinder affidavit, if any, shall be filed within a period of four weeks thereafter.
- 3 Counsel for the contesting parties are requested to formulate brief notes of submissions to facilitate the disposal of the proceedings.

- 4 The present proceedings shall be tagged with the pending reference before a larger Bench in ***Roger Mathew*** (*supra*).
- 5 SLP(C) No 8846 of 2022 which arises from the ad - interim order of the Bombay High Court shall stand dismissed. However, since the main issue is now pending before this Court, both in the proceedings under Article 32 as well as in the companion Special Leave Petition arising from final judgment of the Madras High Court, Writ Petition No 3485 of 2022, which is pending before the High Court of Judicature at Bombay, shall stand transferred to this Court and be tagged with the companion matter.

(CHETAN KUMAR)
A.R. -cum-P.S.

(SAROJ KUMARI GAUR)
Court Master

(Signed order is placed on the file)