IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1960 OF 2014

Anand Prabhakar Nair   Petitioner
versus
Union of India and others   Respondents

Mr.Vibhav Krishna with Mr.Manvendra Kane and Ms.Akshata Kamath i/by M/s.W.S.Kane & Co. for Petitioner.
Mr.Y.R.Mishra with Mr.P.S.Gujar for Respondent no.1.
Mr.B.M.Chatterjee, Senior Advocate with Mrs.Maya Majumdar, Mr.Ranit Basu, Ms.Nikita Lamba i/by Ms.Daya Gupta for Respondent no.2.
Mr.Charles J. De'souza for Respondent no.3.

CORAM : S.C.DHARMADHIKARI AND
REVATI MOHITE-DERE, JJ.

DATE : 11 December 2015

PC :

By this petition under Article 226 of the Constitution of India and as amended, the Petitioner seeks a direction to command Respondent nos.1 and 2 to issue and publish appropriate Notification applying Insurance Regulatory and Development Authority (Treatment and Discontinued Linked Insurance Policies) Regulations, 2010 (`Regulations of 2010') to all the contracts of insurance/Unit Linked Policies (`ULIPs') irrespective of the cut off date i.e. 1 July 2010 for the purpose of ceiling on discontinuance charges in case of surrender/termination of ULIPs.

2. By the amendments to the petition, the alternative relief which is claimed, without prejudice, is that Insurance Regulatory and Development Authority (`IRDA')/Insurance Advisory Committee to the Central Government ought to have brought the decision to the notice of the Parliament so as to give suitable directions to the State and IRDA to make circular dated 10 May 2010 applicable to ULIPs issued even prior to September-2010 and which were in force in September-2010 and to make Regulations of 2010 within the limits applicable to ULIPs issued even prior to August-2010 and which were in force as on 1 July 2010. The Respondent no.3 to this writ petition is a public limited company carrying on insurance business and provides various products and services including ULIPs and insurance policies, either life or general. Under the Insurance Act, 1938 (`Act of 1938), the third Respondent obtained license for carrying on insurance business and the foundation of the petition is that the third Respondent is subject to over all supervision and control of IRDA. Respondent no.2 is IRDA, a body corporate constituted under the Insurance Regulatory and Development Authority Act, 1999 (`Act of 1999').

3. The Petitioner states that life insurance policy is a contract between an insured i.e. an insurance policy holder and the insurer namely the insurance company. The nature of such policy is indicated in the petition and a comparison is drawn

between life insurance policies and life based policies. Then referring to various provisions of the Act of 1938, it is contended that insurance industry requires high degree of regulation and that is why Act of 1999 came to be enacted. The Petitioner projects the objects and purpose of the Act of 1999 only to buttress his case that IRDA in pursuance of the power conferred on it, issued a Circular dated 3 May 2010, a copy of which is at Annexure-B. The mortality cover on ULIPs was increased only as regards ULIPs issued after 1 September 2010. The Petitioner contends that the cut off dates of 1 July 2010 and 1 September 2010 respectively stipulated under the 2010 Regulations and the Circular dated 3 May 2010 are illegal, unjust, arbitrary, discriminatory and unconstitutional. The Petitioner has set out all six policies issued by Respondent no.3 and for which Respondent no.4 acted as an agent. The Petitioner claims that Respondent nos.4 and 5 approached the Petitioner and requested him to subscribe to these policy plans including ULIP plans. Based on the representations made, the Petitioner paid the annual policy premium of Rs.50 lakh each for each policy and from 28 April 2008 to 20 August 2010, the Petitioner subscribed to six ULIPs issued by the Third Respondent to the Petitioner as a beneficiary. However, Respondent no.4 furnished only policy documents of policy nos.1 to 6 and with covering letters in relation to three policies Nos.4, 5 and 6, dated 20 July 2009 and 4 April 2010. The Petitioner states that at the time of payment of premium in the second and third years, for the two policies, Respondent no.5 in consonance with the representations made advised the Petitioner to avail the benefit of reduction in policy premium as given in two policies. Therefore, the reduced insurance premium came to be paid. The details of this nature in relation to all policies are set out in the petition and then the Petitioner realizes that he would be required to pay further premiums of Rs.51 lakhs, Rs.90 lakhs and Rs.1.60 crores respectively for atleast three policies bearing Nos.4 to 6. He did not find himself in a position to pay these further premiums and that is how a letter was addressed by the third Respondent to the Petitioner dated 17 August 2012 and 26 September 2012 recording termination of the policy No.4 due to non payment of premium and letter dated 9 January 2013 giving reinstatement quotation for policy nos.5 and 6. The Petitioner took up the matter with the Chairman of Respondent no.3 and the agent and he found that the Respondent no.3 by its letters dated 17 August 2012 and 30 April 2013 terminated policy nos.4 to 6 due to non payment of policy premiums.

4. It is in these circumstances that the Petitioner from paragraphs 4.46 of the petition refers to the regulations and submits that these brought about the discontinuance. These are on the subject of discontinuance of insurance cover. That is how a representation was made on 31 March 2014 and which was replied on 15 April 2014 by the third Respondent.

5. The whole writ petition is based on the termination which is effected by the third Respondent and by which the Petitioner is aggrieved. That is how he seeks a direction to the third Respondent or alternatively a direction to Respondent nos.1 and 2 to direct Respondent no.3 to pay him the sum detailed in paragraph no.4.49 of the petition, Annexure-P to the petition paper book.

6. We do not see in these circumstances as to how the Petitioner can urge failure of the IRDA to comply with the statutory duties, functions and powers under the Act of 1938 read with the provisions of Act of 1999. If the Petitioner proceeds on the undisputed legal position that a contract of insurance between the insured and the insurer is based on certain terms and such terms if unilaterally altered or the contract is breached or there is repudiation by the insurer, which is not in terms of the contract, then, the remedy is to seek such relief as is permissible including damages and compensation.

7. In the garb of this essential complaint, we do not see how the role of IRDA would come into play in this case. In the event the Petitioner finds that the stand of the insurer is based on these regulations, then the issue can be raised during the course of such legal proceedings as may be instituted against the insurance company under general law. While proving the

case and pressing for relief in terms of damages/compensation, the Petitioner can point out that even if the circulars, regulations and statutory provisions are in the field, they would not govern the terms and conditions or the cover of insurance granted by Respondent no.3. No such case can be presumed in the present petition. We do not find that the Petitioner can proceed against the statutory authorities and on the general submissions canvassed across the bar and the letters from page 32 onwards in the writ petition. We do not think that these contentions are required to be considered in the peculiar factual scenario. As and when a situation arises to consider the applicability of the Regulations, the Court would consider them. We do not find that this is a proper case in which all such issues can be gone into. We do not think that in the facts of the present case, any reliance can be placed on the principle laid down in **D.S.Nakara and others Vs. Union of India**[1]. There the Supreme Court concluded that all beneficiaries before it formed one class. In that class, no discrimination was permissible. The choice of cut off date and for granting pension which is a benefit derived by the employee,therefore, was not sustained. It was held that the pension is not a bounty but can be claimed as a matter of right for the service rendered by the employee to the State. We do not see as to how the principle from this citation can be applied. More so, when in the affidavit-in-reply all allegations are denied by the Respondent no.3.

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8. We are not considering maintainability of the petition and it is a settled principle that even a private body discharging a public function or performing a public duty can be brought before a Court exercising jurisdiction under Article 226 of the Constitution of India. We do not find that in the present case there is any necessity of scrutinizing the rival contentions with regard to the statutory powers and the ambit and scope of regulations. Once we find that the writ petition essentially raises contractual disputes and highlights the facts in that regard, then in our limited jurisdiction, we cannot grant any relief. We clarify that while we dispose of this petition, all remedies under general law are available to the Petitioner and they can be availed of irrespective of disposal of this petition. All contentions of the Petitioner based on the terms and conditions of the policy/s and its interpretation are kept open for being raised and decided in appropriate proceedings.

9. The petition stands dismissed with no order as to costs.

(S.C.DHARMADHIKARI, J.)

(REVATI MOHITE-DERE, J.)

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