IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.J.CHELAMESWAR
&
THE HONOURABLE MR. JUSTICE P.R.RAMACHANDRA MENON

TUESDAY, THE 23RD AUGUST 2011 / 1ST BHADRA 1933

WA.No. 1823 of 2010

AGAINST THE JUDGEMENT IN WPC.29137/2009 Dated 27/07/2010
.....

APPELLANT/PETITIONER:

LIFE INSURANCE CORPORATION OF INDIA,
REP.BY THE BR.MANAGER(P&GS),DIVISIONAL OFFICE,
KOTTAYAM,THROUGH THE HANDS OF ITS MANAGER,(LEGAL &
HOUSING PROPERTY FINANCE)SHRI.R.SURENDRAN,AGED 58,
S/O.LATE RAMAN PILLAI,LIC OF INDIA,DIV;OFFICE,
ERNAKULAM-682011.

BY ADV. SRI.VARGHESE C.KURIAKOSE

RESPONDENTS/RESPONDENTS:
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1. THE INSURANCE OMBUDSMAN,OFFICE OF THE
INSURANCE OMBUDSMAN,KOCHI.

2. SHRI.K.P.VARUGHESE,KALLARACKAL HOUSE,
ERICADU,PUTHUPALLY.P.O,KOTTAYAM-686011.

3. THE ADYAPAKA CO-OP.BANK LTD,794,
PUTHUPPALLY,KOTTAYAM,REP.BY ITS SECRETARY-686011.

R1 BY ADV. SRI.SUSHEEL JOSEPH CYRIAC, CGC
R2 BY ADV. SRI.GEORGE SEBASTIAN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 23/08/2011, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APENDIX

APPELLANT'S EXHIBITS:

ANNEXURE-1: TRUE COPY OF QUOTATION ISSUED DATED 06.09.2006.

ANNEXURE-2: TRUE COPY OF COST AND BENEFIT.

ANNEXURE-3: TRUE COPY OF SCHEDULE, SUMMATION SHEET.

ANNEXURE-4: TRUE COPY OF THE SCHEME DETAILS.

ANNEXURE-5: TRUE COPY OF MASTER POLICY DATED 07.11.2006.

ANNEXURE-6: TRUE COPY OF THE PAYMENT MADE UNDER COVERING LETTER DATED 13.11.2006.

3RD RESPONDENT'S EXHIBITS:

ANNEXURE R3(A) : TRUE COPY OF THE PROPOSAL FORM ALONG WITH STAFF DATA AS ON 01.09.79.

ANNEXURE R3(B) : TRUE COPY OF THE RULES OF GROUP GRATUITY CUM LIFE ASSURANCE SHCEME.

ANNEXURE R3(C) : TRUE COPY OF THE COST AND BENEFIT SCHEDULE.

ANNEXURE R3(D) : TRUE COPY OF THE COST AND BENEFIT SCHEDULE.

/TRUE COPY/

PA TO JUDGE

J. CHELAMESWAR, CJ & P.R. RAMACHANDRA MENON, J.

W.A.NO. 1823 OF 2010

Dated this the 23rd day of August, 2010

J U D G M E N T

J. Chelameswar, CJ.

The appellant is LIC of India, which is a statutory Corporation established and incorporated under the the provisions of Section 3 of the Life Insurance Corporation Act, 1956. The sole respondent was an employee of the 'Adhyapaka Co-operative Bank Ltd., (not a party to the proceedings), a Co-operative Society governed by the provisions of the Kerala Co-operative Societies Act. The employees of the said bank (such as the respondent/writ petitioner) are entitled for the benefits arising under the provisions of the Payment of Gratuity Act, 1972. The said Act stipulates the statutory minimum gratuity to be paid for the employees of those organisations to which the Act applies. Further the said Act, under Section 4(5) recognises the liberty of the employer to offer better terms of gratuity over and above what is statutorily fixed under the Act.

2. Section 62 of the Kerala Co-operative Societies Act also stipulates that the employees of the Co-operative Societies are

entitled for payment of gratuity at such rates and subject to such conditions as may be prescribed. In exercise of the said liberty conferred on the Co-operative societies, the above mentioned employer Society secured a "master policy" from the appellant herein for the benefit of its employees. The said policy, (as can be seen from the language of the policy), is to be held by the Co-operative Societies for the benefit of its employees. The relevant clause of Exhibit P1 reads as follows:

> *"2. The Grantees shall hold the Policy and all benefits payable hereunder UPON TRUST for the benefit of the Members and other person or persons entitled to the benefits hereunder in accordance with the Rules."*

It is also not in dispute that the sums assured by the appellant under the above mentioned policy are more beneficial to the employees than the amounts of gratuity payable under the Payment of Gratuity Act.

3. The respondent retired from the service of the above mentioned Society. One of the claims of the respondent upon his retirement is for the payment of the benefits under the above mentioned Insurance policy in lieu of the gratuity payable for the service rendered by the respondent. An amount of Rs. 3,50,000/-

was paid to the respondent by the employer towards the amount of gratuity payable to him. The respondent made a complaint to the Ombudsman established under the Rules made in exercise of the power under Section 114(1) of the Insurance Act, 1938. The substance of the complaint of the respondent was that he was entitled to a higher amount towards the gratuity, under the Insurance Policy referred to above.

4. By the proceedings dated 22.04.2009 of the Insurance Ombudsman at Kochi directed payment of a further amount of Rs.87987/- along with interest at 9% per annum. The relevant portion of the order reads as follows:

> *"In the result, an award is passed and directing to pay the balance amount of Rs. 87,987/- together with interest @ 9 % p.a. from the date of disbursement of Rs. 3,50,000/- till payment and a cost of Rs. 2,000/-."*

The above said direction came to be amended subsequently by the proceedings of the Ombudsman dated 02.06.2009. The relevant portion reads as follows:

> *"In the result, an award is passed and directing to pay the balance amount of Rs. 1,03,090/- together with interest @ 9 % p.a. from the date of disbursement of Rs. 3,50,000/- till payment and a cost of Rs. 2,000/-"*

5. Aggrieved by the said decision of the Ombudsman, the appellant herein preferred W.P.(C) 29137 of 2009 with the prayers as follows:

> *(i) Issue a writ, order or direction in the nature of Mandamus or other appropriate writ, calling for the records relating to Exts. P8 and P9, examine the same and quash the same holding that the same has not been passed on the basis of fair and equitable considerations as contemplated under Rule 14 and Rule 16 of the Redressal of Public Grievances Rules 1998 and specifically on account of the non-consideration of the contention of the petitioner that premium has been fixed and received limiting the maximum benefit at Rs.3,50,000/-*
>
> *(ii) Declare that a provision in the nature of Rule 16 (5) of the rules giving an option to the complainant to accept the award should be deemed to be available to the insurance company also and further declare that absence of such provision is against the fundamental principles of equality enshrined in the Constitution of India and is putting one party to the lis on an advantageous position compared to the other party.*
>
> *(iii) Declare that the 2nd respondent insurance*

> *Ombudsman is not empowered to decide an issue touching payment of Gratuity, which is principally an issue between the employer and the employee, and without a proper adjudication of the said issue between the employer and employee through the procedure established by law, merely for the reason that the petitioner happens to be the insurer who has issued a master policy in favour of the employer in which the 3rd respondent figures as beneficiary.*
> *(iv) Allow the petitioner to recover from the 3rd respondent the full costs incurred for the institution and conduct of the writ petition.*

6. We may also mention at this stage that the respondent herein also filed W.P.(C)No. 27863 of 2009 seeking enforcement of the above mentioned direction of the Ombudsman. We shall deal with the W.A.No. 1823 of 2011 preferred against the judgment in W.P.(C) 29137 of 2009 separately.

7. Both the writ petitions were heard and disposed of together by the common judgment dated 27th July 2010. In substance, the writ petition filed by the appellant herein was dismissed, whereas the writ petition filed by the respondent herein was disposed of with certain directions.

8. The challenge of the appellant to the decision of the

Ombudsman, before the learned Single Judge was on three counts:

> *(i) that there is no privity of contract between the appellant and the respondent employee and the insurance contract is only between the appellant and the employer of the respondent; and therefore the respondent does not, under the contract, have any legally enforceable right against the appellant herein, thereby rendering the decision of the Ombudsman as one without jurisdiction.*
>
> *(ii) In the alternative it is argued, that under the terms of the Insurance contract, the liability of the appellant is limited to an amount of Rs.3,50,000/- and therefore the Ombudsman was not justified in directing payment of additional amounts over and above the above mentioned liability.*
>
> *(iii) Since the dispute is one falling under the Payment of Gratuity Act, the Insurance Ombudsman has no jurisdiction in the matter.*

9. By the judgment under appeal, all the above mentioned submissions were rejected and hence the appeal. Before us only the first two grounds are argued. We shall first examine the nature and scope of the legal authority and jurisdiction of the Insurance Ombudsman.

10. The Government of India framed rules known as Ombudsman for Insurance-The Redressal of Public Grievances Rules, 1998 (hereinafter referred to as Rules), in exercise of power conferred on the Government of India by Section 114(1) of the Insurance Act, 1938. Under Rule 3* of the said rules, it is stated that the object of the Rules is to resolve all complaints relating to settlement of claims on the part of the insurance Companies in a cost effective, efficient and impartial manner. Under Rule 5, a Governing Body of the insurance Council is established. The Insurance Council is defined under Rule 4 (f), as follows:

> *"Insurance Council will consist of Life Insurance Corporation of India, General Insurance Corporation of India and its four subsidiaries and other insurance Companies which will be permitted to do insurance business in future."*

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* *"3. The objects of these Rules are to resolve all complaints relating to settlement of claim on the part of insurance companies in cost-effective, efficient and impartial manner.*

Under Rule 6, the Governing body of the Insurance Council is authorised to appoint one or more persons as Ombudsman for the purpose of the Rules. Rule 12 deals with the powers of the Ombudsman. Rule 13 prescribes the procedure by which a complaint is to be made to and received by the Ombudsman. Rule 12 reads as follows:

> *"Power of Ombudsman : (1) The Ombudsman may receive and consider :-*
> *(a) Complaints under Rule 13;*
> *(b) any partial or total repudiation of claims by an insurer;*
> *© any dispute in regard to premium paid payable in terms of the policy*
> *(d) any dispute on the legal construction of the policies in so far as such disputes relate to claims*
> *(e) delay in settlement of claims*
> *(f) non-issue of any insurance document to customers after receipt of premium.*
>
> *(2) The Ombudsman shall act as counsellor and mediator in matters which are within his terms of reference and, if requested to do so in writing by mutual agreement by the insured person and insurance company.*
>
> *(3) The Ombudsman's decision whether the complaint is fit and proper for being considered by it or not shall be final.*

11. It can be seen from the above that under Rule 12, the Ombudsman is conferred with the jurisdiction to receive and consider the complaints falling under various categories enumerated under clauses (b) to (f) of sub-rule (1) of Rule 12. Apart from that, the sub rule (2) also recognises the possibility of the Ombudsman acting as a counsellor and mediator, if requested to do so in writing by mutual agreement by the insured person and insurance company with regard to the mutually agreed terms of reference. The case on hand is clearly a case falling under sub- rule (1) of Rule 12, but not under sub rule (2). It can be seen from the language of Rule 12(1) that the scope of jurisdiction of the Ombudsman is very wide, which includes the authority to adjudicate the true and proper construction of the insurance policies which are the subject matter of dispute between the parties.

12. The first submission made by the appellant is that there is no privity of contract between the appellant and the respondents herein, vis-a-vis, the insurance contract and therefore, the Insurance Ombudsman is without jurisdiction to receive and consider the complaint made by the respondent. In

our opinion, the question whether there is a privity of contract between the parties herein is irrelevant for the following reasons: Rule 12 of the Rules authorises the Ombudsman to receive complaints under Rule 13 of the Rules. Rule 13(1)* of the Rules stipulates that "any person, who has grievance against the insurer", may make a complaint in writing to the Ombudsman.

13. The respondent being a beneficiary of the insurance contract, is certainly a person, who can have a grievance against the insurer with regard to the rights and obligations emanating from the insurance contract. We have already noticed that the disputed insurance contract is one entered between the appellant on the one part and the Co-operative Bank on the other part for the benefit of the employees of the Co-operative Bank. Therefore, in our opinion, the employees, who are the beneficiaries, are certainly persons interested in the due and proper performance of the obligations incurred by the appellant herein. The failure on the

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* *"13. **Manner in which complaint is to be made**.- (1) Any person **who has a grievance against an insurer**, may himself or through his legal heirs make a complaint in writing to the Ombudsman within whose jurisdiction the branch or office of the insurer complaint against is located."*

part of the appellant herein to properly discharge the legal obligations arising out of such a contract certainly results in a grievance to the beneficiaries and they become “person who has a grievance” within the meaning of expression occurring under Rule 13. Therefore, in our opinion, the Ombudsman rightly entertained a complaint made by the respondent and adjudicated the same. The submission of the learned counsel for the appellant that the impugned decision of the Ombudsman is without jurisdiction is, therefore rejected.

14. The second submission of the appellant that the decision of the Ombudsman is not in conformity with the legal obligations of the appellant arising out of the disputed insurance contract on a true and proper construction of the terms of the contract. In other words, the appellant calls upon this Court to act as an Appellate Court against the decision of the Insurance Ombudsman, a statutory authority, in whom the jurisdiction of adjudicating the disputes arising out of a contract vests. The Ombudsman, as already noticed, is invested with a wide jurisdiction including the authority to settle the legal construction of the insurance contracts. In exercise of such a jurisdiction when

the Ombudsman places certain constructions of the terms of the disputed contract, this Court in exercise of the jurisdiction under Article 226 of the Constitution will not sit in judgment regarding the correctness of the interpretation placed on the Ombudsman as if it were an Appellate Court. Paragraph 5 of the judgment reported in S***hama Prashant Raje v. Ganpatrao and others*** [(2000)7 SCC 522)] reads as follows:

> *".....Undoubtedly, in a proceeding under Aritcles 226 and 227 of the Constitution the High Court cannot sit in appeal over the findings recorded by a competent tribunal. The jurisdiction of the High Court, therefore, is supervisory and not appellate. Consequently Article 226 is not intended to enable the High Court to convert itself into a court of appeal and examine for itself the correctness of the decision impugned and decide what is the proper view to be taken or order to be made....."*

Assuming for the sake of argument that the interpretation placed by the Ombudsman on the terms of the insurance contract is erroneous even then this Court will not interfere with the same, if the error is within the jurisdiction of the Ombudsman. It is also a well settled principle of law that this Court in exercise of the

jurisdiction under Article 226 of the Constitution will not normally adjudicate rights and obligations arising out of a contract. Paragraph 6 of the judgment reported in National Highways Authority of India v. Ganga Enterprises and another [(2003) 7 SCC 410] reads as follows:

> *".....It is settled law that disputes relating to contracts cannot be agitated under Article 226 of the Constitution of India. It has been so held in the cases of Kerala SEB v. Kurien E. Kalathil [(2006)6 SCC 293], State of U.P. v. Bridge & Roof Co. (India) Ltd. [(1996)6 SCC 22) and Bareilly Development Authority v. Ajai Pal Singh [(1989)2 SCC 116). This is settled law. The dispute in this case was regarding the terms of offer. They were thus contractual disputes in respect of which a writ court was not the proper forum....".*

Paragraph 10 of the judgment reported in Kerala State Electricity Board and another v. Kurien E. Kalathil and others [(2006)6 SCC 293] as follows:

> *".....The interpretation and implementation of a clause in a contract cannot be the subject-matter of a writ petition. Whether the contract envisages actual payment or not is a question of construction of contract. If a term of a contract is violated, ordinarily the remedy is not the writ petition under Article 226....".*

15. The learned counsel for the appellant Sri.C.Varghese Kuriakose, however, placed reliance upon a decision of a Division Bench of this Court reported in ***Nedupuzha Service Co-operative Bank Lgtd. v. Rugmini*** (2011(3) KLT 134) in support of his submission that this Court would adjudicate the rights and obligations arising out of an insurance contract. It is not very clear from the abovementioned judgment whether it was a case arising out of an adjudication made by the Insurance Ombudsman, nor is it laid down as a proposition of law that this Court in exercise of the jurisdiction under Article 226 of the Constitution of India would examine and adjudicate the rights and obligations arising out of a contract. It can also be seen from the judgment that the Life Insurance Corporation is not a party to the case. The dispute appears to be between the employer and the employees regarding the rights of the employees to receive certain amounts accrued under a group insurance policy secured by the employer for the benefit of the employees. On the facts of the said case, admittedly, the employer sought to pay an amount which is less than the amount accrued in the insurance policy. In the circumstances, the matter came up for consideration before this

Court. In our opinion, the said judgment cannot be held to be an authority for the proposition that this Court would examine and adjudicate the rights and obligations arising out of an insurance contract. Therefore, the second submission of the appellant is also liable to be rejected.

We see no merit in the appeal. The appeal is, therefore dismissed.

J.CHELAMESWAR,
CHIEF JUSTICE

P.R.RAMACHANDRA MENON,
JUDGE

lk/vgs