

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 21st January, 2015

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W.P.(C) No.585/2015

SHATRUHAN LAL

..... Petitioner

Through: Mr. Anand Mishra and Mr. Amrendra K.
Singh, Advs.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Amit Mahajan, Adv for R-1.
Mr. Kamal Mehta, Adv for R-3.
Mr. Dipak Nag and Ms. Alka Chojar, Advs for R-2
Mr. Sanjay Jain, ASG with Mr.Amit Mahajan,
CGSC and Ms. Shriya Singh, Adv for UOI.

CORAM:-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. This petition under Article 226 of the Constitution, filed as a Public Interest Litigation seeks reliefs of (i) setting aside of the order dated 17th July, 2014 of the respondent No.2 Insurance Regulatory and Development Authority (IRDA); (ii) direction to the respondent No.2 IRDA to frame suitable guidelines 'in the matter'; (iii) issuance of a writ declaring Section 113 of the Insurance Act, 1938 as *ultra vires* the Constitution of India; (iv) issuance of a direction to the respondent No.3 Life Insurance Corporation of India Limited

(LIC) to give guaranteed surrender value to all the policy holders irrespective of duration for which premium is paid; (v) issuance of a direction to the LIC to maintain account of money collected by LIC from lapsation of the policies under Section 113(supra) and to make a provision for return of the said monies to the policy holders or for the use thereof for some other reasonable purpose; (vi) issuance of a direction to the LIC to make effective guidelines for proper advertisement in media of the minimum period for which premium is required to be paid to earn guaranteed surrender value; and, (vii) issuance of a direction to the LIC to refund the premium paid by the policy holders and forfeited by LIC for non-payment of premium for a period of three years.

2. Section 113 of the Insurance Act is as under:

113. Acquisition of surrender values by policy - (1) *A policy of life insurance under which the whole of the benefits become payable either on the occurrence, or at a fixed interval or fixed intervals after the occurrence, of a contingency which is bound to happen, shall, if all premiums have been paid for at least three consecutive years in the case of a policy issued by an insurer, or five years in the case of a policy issued by a provident society defined in Part III, acquire a guaranteed surrender value, to which shall be added the surrender value of any subsisting bonus already attached to the policy, and every such policy issued by insurer shall show the guaranteed surrender value of the policy at the close of each year after the second year of its currency or at the close of each period of three years throughout the currency of the policy:*

Provided that the requirements of this sub-section as to the addition of the surrender value of the bonus attaching to the policy at surrender shall be deemed to have been complied with where the method of calculation of the

guaranteed surrender value of the policy makes provision for the surrender value of the bonus attaching to the policy:

Provided further that the requirements of this sub-section as to the showing of the guaranteed surrender value on a policy shall be deemed to have been complied with where the insurer shows on the policy the guaranteed surrender value of the policy by means of a formula accepted in this behalf by the Authority as satisfying the said requirements: Provided further that the provisions of this sub-section as to the showing of the guaranteed surrender value on a policy shall not take effect until after the expiry of six months from such date as the Authority may, by notification in the official Gazette, appoint in this behalf

(2) Notwithstanding any contract to the contrary, a policy which has acquired a surrender value shall not lapse by reason of the non-payment of further premiums but shall be kept alive to the extent of the paid-up sum insured, and the paid-up sum insured shall for the purposes of this sub-section include in full all subsisting reversionary bonuses that have already attached to the policy, and shall, where the policy is one on which the maximum number of annual premiums payable is fixed and the premiums are of uniform amount, be before the inclusion of such bonuses not less than the amount bearing to the total sum insured by the policy exclusive of bonuses the same proportion as the total period for which premiums have already been paid bears to the maximum period for which premiums were originally payable.

(3) A policy kept alive to the extent of the paid-up sum insured under sub section (2) shall not be entitled by virtue of that sub-section to participate in any profits declared distributable after the conversion of the policy into a paid-up policy.

(4) Sub-section (2) and sub-section (3) shall not apply -

(a) where the paid-up sum insured by a policy being a policy issued by an insurer, is less than one hundred rupees inclusive of any attached bonus or takes the form of an annuity of less than twenty-five rupees, or where the paid-up sum insured by a policy, being a policy issued by a provident society as defined in Part III, is less than fifty rupees inclusive of any attached bonus or take the form of an annuity of less than twenty-five rupees, or

(b) where the parties after the default has occurred in the payment of the premium agree in writing to some other arrangement, or

(c) to policies in which the surrender value is automatically applied under the terms of the contract to maintaining the policy in force after its lapse through non-payment of premium.

3. The petitioner claims to have learnt through the medium of the Right to Information Act, 2005 that the respondent No.3 LIC, till December, 2012, has forfeited 9,18,89,953 policies by virtue of Section 113(supra).

4. It is the case of the petitioner that the respondent No.3 LIC is however not maintaining the account of the amount forfeited under the aforesaid policies, as is evident from the reply to another query under the RTI Act.

5. The petitioner, prior to filing this petition had filed WP(C) No.6613/2013 which was disposed of vide order dated 24th October, 2013 with a direction to the respondent IRDA to pass a speaking order on the representation on the subject matter by the petitioner. The petitioner, upon IRDA not taking such a decision filed an application being CM.No.10138/2014 in the said writ petition. The said application came up before this Court on 13th August, 2014 when it was informed that IRDA has passed an order on the representation of the petitioner. Accordingly the application was disposed of with a liberty to the petitioner to, if aggrieved from the said order of the IRDA, avail of remedies theragainst.

6. IRDA vide order dated 17th July, 2014 has disposed of the representation of the petitioner as under:

“This has reference to your letter dated 10.5.2013 and the order dated 24.10.2013 of the Hon’ble High Court of Delhi, directing the Authority to dispose off the application dated 10th May, 2013 forwarded by you.

In response to your letter dated 10.5.2013 this is to inform you that the concept of Insurance is a process of sharing of loss amongst a pool of identical lives of the community at large. In a nutshell, it may be portrayed as a concept of ‘one for all and all for one’. The business of life insurance which is essentially long term in nature works on the principle of large numbers and averages among the group, which runs for protecting the interests of the parties to the contract. The premiums and obligations/benefits under an insurance policy are based on actuarial calculations with proven mathematical assumptions and are determined accordingly. Further, the premiums paid by an individual may not be sufficient to meet the expenses and the possible death claim payable and hence have to be met from the pool of premiums collected from the entire group.

In this context the provisions of Section 113 of the Insurance Act, 1938 are to be regarded as the provisions of non-forfeiture (and not forfeiture) mandating the insurers to refund the underlying surrender value in the event of receipt of premiums continuously for three years as stipulated. To this end the provision is beneficial to the policyholder as it guarantees payment of Surrender value.

Further we would also like to inform the reason why the above provision exists and the underlying insurance principle. If the surrenders in the early years of policy are made easy or attractive, an individual would prefer to surrender the policy in case he faces economic exigencies. The healthier lives are more likely to surrender

their policies than the unhealthy ones, distorting the expected averages of the experience of the pool of policyholders which could lead to adverse selection which may disturb/destabilize the mortality and other actuarial assumptions based on which the premiums and benefits of a policy are arrived, thereby leading to non-viability of continuation of insurer cover by the Life Insurer. Hence your suggestion to repeal the rules mentioned in your letter of policy acquiring guaranteed surrender value after payment of 3 years premium and Section 113 of the Insurance Act, 1938 cannot be considered.

Notwithstanding the above – the IRDA, considering customer interests as well as Actuarial principles (that govern life insurance business to ensure viability of the same, brought about Non-Linked Insurance Product Regulations 2013 mandating prospectively that the policy shall acquire guaranteed surrender value if at least two years premium is paid in policies with less than 10 years premium paying term.”

7. Thereafter this petition has been filed.
8. We have as such at the outset inquired from the counsel for the petitioner as to on what ground the order aforesaid of the IRDA, an expert body in the field of insurance established under Section 3 of the Insurance Regulatory and Development Authority Act, 1999 with duty/function *inter alia* of protection of interest of policy holders concerning *inter alia* surrender value of policy and terms and conditions of contract of insurance, control and regulation of rates, advantages, regulating investment of funds by insurance companies (see Section 14(2) (b), (i) and (k) of the IRDA Act), can be interfered with.

9. The counsel for the petitioner states that he is not pressing the relief of setting aside of the said order dated 17th July, 2014.

10. Though, upon the petitioner not impugning the order dated 17th July, 2014, the entire substratum of the petition disappears but we have still inquired from the counsel for the petitioner as to on what ground the vires of Section 113(supra) is challenged.

11. The counsel for the petitioner states that the vires are challenged because the respondent No.3 LIC, without making the policy holders aware of the condition that upon non-payment of premium for three years by them the policy shall be forfeited, has been forfeiting the policies.

12. To say the least, the same does not constitute a ground for declaring the aforesaid provision as *ultra vires* the Constitution of India. The Supreme Court in ***State of Andhra Pradesh Vs. McDowell & Co.*** (1996) 3 SCC 709 opined that constitutional validity of an enactment can be challenged only on two grounds viz lack of legislative competence and violation of any of the fundamental rights guaranteed in Part III of the Constitution or of any other constitutional provision. It was further held that there is no third ground on the basis of which a law made by the competent legislature can be invalidated. It was further held that the Parliament composed of the representatives of the

people, is supposed to know and be aware of the needs of the people and what is good and bad for them and the Court cannot sit in judgment over their wisdom. Similarly, in *Dalmia Cement (Bharat) Ltd. Vs. Union of India* (1996) 10 SCC 104 it was held that the Court is not well equipped to adjudge crudities and inequities emerging from economic legislation; the legislature is empowered to experiment on economic legislation in its attempt to remove inequalities in income or status or to provide facilities and opportunities to improve economic status or provide social and economic justice to the society and that the Court does not supplant the feel and experiment of the expert by its own views. Much earlier in *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar* AIR 1958 SCC 538 also the same view was echoed and it was *inter alia* held that the legislature is free to recognize degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest.

13. We may notice that there is no basis for the petitioner to also contend that the respondent No.3 LIC does not make the policy holders aware of the condition of forfeiture of policy on non-payment of premium for three consecutive years. Infact this question was considered in the order dated 24th October, 2013 supra in the earlier writ petition being WP(C) No. 6613/2013

filed by the petitioner where it was noticed that the proposal form specifically requires the policy holders to affirm that he has fully understood the terms and conditions. It cannot also be lost sight of that Section 113 (supra) is law of the land and of which no ignorance can be pleaded. Supreme Court, in ***State of Maharashtra Vs. Mayer Hans George*** AIR 1965 SC 722 held that in most of the Indian Statutes, there is provision for the same to come into force on the date of publication thereof in the Official Gazette. (We may notice that the same is the position in the Insurance Act). It was further held that it stands to reason that publication in the Official Gazette is the ordinary method of bringing legislation to the notice of the persons concerned. The argument therefore, that the said legislation was not effective because it was not properly published in the sense of having been brought to the actual notice of person concerned, was rejected. Similarly, in ***Pankaj Jain Agencies Vs. UOI*** (1994) 5 SCC 198 reiterated in ***Orissa State (Prevention and Control of Pollution) Board Vs. Orient Paper Mills*** (2003) 10 SCC 421, the argument, that notwithstanding publication in Official Gazette, owing to failure to make the law known, the law did not acquire elements of operativeness and enforceability, was rejected.

14. Else, the body of experts being IRDA having opined that the provision impugned contained in Section 113 is essential to the business of insurance and the petitioner having failed to show that the said opinion is wrong, we do not find any ground to interfere.

The petition is accordingly dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

CHIEF JUSTICE

JANUARY 21, 2015
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