

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment delivered on: 12.12.2018

+ **W.P.(C) 9364/2015**

SAKSHI MISHRA MINOR

..... Petitioner

versus

LIFE INSURANCE CORPORATION OF
INDIA

..... Respondent

Advocates who appeared in this case:

For the Petitioner	: Mr Rahul Kumar Singh, Advocate with : Ms Meenu Singh, Mr Kartik Arora.
For the Respondent	: Mr Vishwendra Verma and Ms Shivali : and Mr Pranav, Advocates for LIC.

CORAM

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner is a minor and has filed the present petition through her mother. The petitioner is, essentially, aggrieved by the action of respondent (hereafter 'LIC') in not waiving the premium payable on account of the death of the proposer, the petitioner's late father. The petitioner also seeks refund of a sum of ₹31,148/- collected by LIC as premium/late fee for the period after the demise of her father.

2. The petitioner was born on 21.10.2002. She was barely few months old when her father late Sh Awdesb Kumar Mishra purchased an insurance policy for the petitioner (policy no. 327847951 – hereafter ‘the said policy’). The annual premium payable for the said policy was ₹7787.00. The date of commencement of the said policy was 28.04.2003 and it would vest after a period of eight years, that is, on 28.04.2021. The said policy would mature eight years thereafter, that is, on 28.04.2029. The said policy was for a sum of ₹1 lakh, which would be payable to the petitioner after maturity.

3. The petitioner’s father (who was the proposer) continued to pay the annual premium regularly till the year 2008. It is stated that the petitioner’s father was diagnosed with a cancerous brain tumor in the year 2008 and expired on 19.04.2010, after a protracted illness.

4. The petitioner’s father did not pay the insurance premium during the period when he was ailing. Thus, the annual premium for the said policy was not paid for the year 2008 and 2009. Consequently, the said policy lapsed.

5. After the demise of the petitioner’s father, the LIC’s branch office (Mandala Branch) sent a letter dated 13.12.2010 to the petitioner’s mother, *inter alia*, advising her to contact the branch office for appointment of the petitioner’s legal guardian since her father had expired. The petitioner’s mother was further advised to deposit the outstanding premium for revival of the said policy. The said letter is set out below:-

“Sir,
Sub: Policy No.37284951
Km. Divyani Mishra (RA)
Late Awdhesh Kr. Mishra (LP)

In respect of the above policy, after the death of late Sri Awdhesh Kumar Mishra proposer, necessary documents have been received to get premium waiver benefit. According to the status report on the date of death the policy was in a lapse position. Hence under the policy premium waiver benefit cannot be given.

Since the proposer is dead, therefore, please contact the Branch Office for appointment of legal guardian.

AND

In order to take the benefit under the said policy you are requested to deposit the outstanding premium amount for revival of the said policy.

We are sending back the death certificate, policy bond and form No.380 with this letter.

Thanks

Yours truly,
Sd/- illegible.

For Sr Branch Manager.

End: As above
Mandala Branch (MPr)”

6. Thereafter, the petitioner’s mother was called upon to pay a sum of ₹37,798/- including late fee of ₹6650/-. In compliance with the aforesaid demand, the petitioner’s mother paid a sum of ₹37,800/- to LIC by an account payee cheque dated 31.03.2012.

7. The petitioner states that thereafter the petitioner's mother sent another letter to LIC requesting that the name of the proposer be changed from the petitioner's father to her. The petitioner's mother also requested for recording the change of the petitioner's name from Divyani to Sakshi. It was explained that the proposal was made to LIC when the petitioner was only four months old and after the petitioner joined school, her name was changed to Sakshi.

8. It is stated that the petitioner's mother did not receive any response to the said request and under compulsion deposited a further sum of ₹7787/- in the month of April, 2013.

9. The principal issue that falls for consideration of this Court is whether the petitioner is entitled to waiver of the insurance premium for the period after the demise of her father.

10. The learned counsel appearing for the petitioner had contended that in terms of the special provisions of the said policy, the petitioner was entitled to waiver of the insurance premium on the demise of the proposer (the petitioner's late father).

11. The learned counsel for the respondent contested the present petition, essentially, on two grounds. First, he submitted that this Court does not have the jurisdiction to entertain the present petition as the controversy related to a contractual matter and, according to him, this Court has no jurisdiction to entertain such dispute. He relied on the decision of the Division Bench of the Karnataka High Court in ***Indian Epilepsy Association Bangalore Chapter v. Union of India and Ors:***

W.P. (C) No. 32804/1996 decided on **21.11.2000** in support of his contention

12. Second, he submitted that the policy issued earlier had lapsed and a fresh policy had been issued. He emphatically contended that the earlier policy was not revived and, therefore, the petitioner's claim for waiver of premium after the demise of her father was not sustainable.

Reasons and Conclusion

13. The contention that this Court cannot exercise jurisdiction in any matter relating to contract between the parties is unmerited. Ordinarily, a Court would not exercise its jurisdiction under Article 226 of the Constitution of India in contractual disputes, however, it is erroneous to contend that the Court lacks jurisdiction to do so. It is well settled that a remedy under Article 226 would be available against any State action which is arbitrary, unreasonable or falls foul of the constitution of India. In ***Karnataka State Forest Industries Corporation v. Indian Rocks : (2009) 1 SCC 150*** the Supreme Court had observed as under:-

“Although ordinarily a superior court in exercise of its writ jurisdiction would not enforce the terms of a contract qua contract, it is trite that when an action of the State is arbitrary or discriminatory and, thus, violative of Article 14 of the Constitution of India, a writ petition would be maintainable. (See ***ABL International Ltd . v . Export Credit Guarantee Corpn. of India Ltd.*** MANU/SC/1080/2003 : (2004)3SCC553 .”

14. The reliance placed by the petitioner on the decision of the Karnataka High Court in *Indian Epilepsy Association Bangalore Chapter v. Union of India & Ors.* (supra) is misplaced. The said decision was rendered in a public interest litigation where the petitioner had sought a writ of mandamus to direct the respondents to extend mediclaim insurance to persons suffering from epilepsy. In that context, the Court had observed that the matter of insurance is a contract between two parties and it is not desirable for Court to direct the State or any other authority to enter into a contract against their interest. In this case, the petitioner is seeking to challenge the actions of LIC as arbitrary and unreasonable. The petitioner seeks to enforce a legal right and the corresponding legal obligation on the part of LIC.

15. The petitioner has founded her case on the special provisions relating to waiver of premium – “Premium Waiver Benefit” clause as included as a part of the said policy. The relevant clause is set out below:-

“I. Premium Waiver Benefit

Notwithstanding anything mentioned to the contrary in consideration of the payment of an additional installment premium (which additional premium is included in the schedule of the policy), and on condition that there shall be duly paid to the corporation additional premium in every installment till the vesting date or the death of the proposer whichever occurs earlier. It is hereby declared and agreed as follows:

(a) The payment of the premiums falling due after the death of the proposer and before the vesting date shall be waived.

(b) The premium waiver benefit as stated in (a) has been granted on the basis of the proposers age, personal statement, declaration and connected documents and in case it is found that any undue or incorrect statement is contained therein or any material information is withheld, all claims to the benefits shall be seized and determined.

(c) The premium waiver benefit described in (a) shall operate and event of the death of the proposer by his own hands whether sane or in sane.

(d) The additions premium shall not be taken into accounts in arriving at the amount to be refunded in the event of death or with the or within the Life assured before the date of commencement of risk and in calculating the surrender value of the policy.

(e) The revival of the policy at any time after six months from the due date of first unpaid premium but not later than the expiry of a period of five years from the due date of the said unpaid premium or before the vesting date whichever is earlier shall be subject to the requirements mentioned herein below in addition to the clause "Revival of Discontinued Policies".

Evidence of health and habits of the proposer (including a medical report on his life at his own expense from the Corporation's appointed Medical Examiner, whenever required by the Corporation) to the satisfaction of the Corporation and of evidence to show that there has been no adverse change in Personal or Family History or occupation of the said purpose."

16. At the outset, it is relevant to observe that sub-clauses (a) to (e), as quoted above, are sub-clauses of the Clause captioned as “Premium Waiver Benefit”.

17. The LIC’s stand that a lapsed policy cannot be revived after the demise of the proposer, is not merited.

18. Sub-clause (e) as quoted above expressly provides that a policy could be revived any time after six months from the due date of the first unpaid premium but not later than the expiry of a period of five years from the due date of the said unpaid premium. In the present case, there is no dispute that the petitioner’s late father had paid the premium due till April, 2007. He had not paid the premiums due in April, 2008 and April, 2009. Thus, in terms of sub-clause (e), the petitioner was entitled for revival of the said policy on payment of the unpaid premiums for the said period.

19. It is also clear that in terms of sub-clause (a), that the premiums falling due after the death of the proposer and before the vesting date are liable to be waived. The petitioner’s father (who was a proposer of the policy) had expired on 19.04.2010 and thus premium falling due after the death were liable to be waived.

20. According to LIC, the policy could not be revived even on payment of the unpaid premium after the demise of the proposer. This contention is unmerited and runs contrary to the plain language of the Premium Waiver Benefit clause as quoted above. Sub-clause (e) of that clause, which expressly provides for revival of the policy on

payment of unpaid premiums, is a part of the same clause which provides for waiver of premiums after the death of the proposer. Thus, LIC's contention also runs contrary to the rationale of including the Premium Waiver Benefit clause in the policy.

21. The learned counsel appearing for LIC had contended that a new policy had been issued with the petitioner's mother as the proposer, therefore, the question of waiver of future premiums on account of death of the proposer did not arise. The said contention is contrary to the averments made in the counter affidavit filed on behalf of LIC (captioned as 'written statement of the respondent to the petition filed by the petitioner'). The averments made in the said counter affidavit clearly indicate that the said policy was revived. However, it is also stated that the same was revived with new terms and conditions on the statements made by the mother of the petitioner.

22. This is precisely the grievance of the petitioner. The policy was required to be revived on the terms as existing, which clearly provided that premiums after the demise of the proposer were to be waived. It is not open for LIC to avoid its obligation of waiving the premium payable after the demise of the petitioner's father on account of her mother now acting as her guardian. It is clear from LIC's letter dated 13.12.2010 that the petitioner's mother was called upon to contact the branch office for appointment of a legal guardian. It is clearly not the intention of the petitioner's mother to purchase a new policy.

23. In view of the above, the petition is allowed. LIC is directed to ensure that the said policy (policy no. 327847951) continues to be in force. LIC will also refund any excess premium collected from the petitioner for the period after the demise of the petitioner's father.

24. The petition is disposed of in the aforesaid terms.

DECEMBER 12, 2018

pkv

VIBHU BAKHRU, J

