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

WRIT PETITION NO.2359 OF 2017

The Senior Divisional Manager,
Life Insurance Corporation of India … Petitioner
Vs.
Office of the Insurance Ombudsman and Anr. … Respondents

Mr. R.K. Cheulkar for the Petitioner.

CORAM : A.S.OKA AND
M.S. SANKLECHA, JJ.

DATE : 3rd APRIL 2019.

P.C. :

1 By this petition under Article 226 of the Constitution of India, the petitioner – Life Insurance Corporation of India (LIC) which is a Public Sector undertaking has taken an exception to the award made by the Ombudsman appointed under the Redressal of Public Grievances Rules, 1998 (for short "the said Rules") framed in exercise of powers under sub-section (1) of section 114 of the Insurance Act, 1938. The second respondent is the insured. He took a policy from the petitioner under Jeevan Saral Plan for a death sum assured of Rs.1,00,000/- in December 2004 for a term of 11 years. Accordingly, a policy document was issued to him in which the Maturity Sum Assured (for short "MSA") was mentioned as Rs.52,844/-. The second respondent paid the yearly premium at the

rate of Rs.4804/- for a period of 11 years. The policy matured on 28th December 2015 when the second respondent received discharge form for maturity claim for the total amount of Rs.20,534/-, wherein MSA was mentioned as only Rs.15,796/-. He approached the petitioner requesting for releasing payment of MSA of Rs.54,844/- mentioned in the policy document. Ultimately, he filed a complaint to the Ombudsman by taking recourse to Rule 13 of the said Rules of 1998. The Ombudsman made an award in accordance with sub-rule (1) of Rule 16 of the said Rules of 1998. The Ombudsman considered the case made out by the petitioner that there was a typographical error in the policy document while mentioning MSA. The Ombudsman also considered the contention of the respondent that as per the conditions in the plan, the correct MSA ought to have been Rs.15,796/-.

2 The Ombudsman passed an award which is impugned in this petition directing the petitioner to refund the premium paid under the policy with royalty addition to the second respondent.

3 The submission of the learned counsel appearing for the petitioner is that MSA mentioned in the policy document was due to an inadvertent error. His submission is that the second respondent must be aware of the conditions under Jeevan Saral Plan. He submitted that as per the plan, Death Sum Assured (for short “DSA”) was 250 times the premium paid and MSA depends on the calculation dependent on the age of the life assured and the premium paying term. He pointed out similar policies issued in the year 2008 where MSA is correctly mentioned. His

submission is that when there is a clear inadvertent mistake while issuing the policy, the Ombudsman cannot pass an order contrary to the plan conditions. He invited our attention to a decision of the District Consumer Disputes Redressal Forum, Kolkata Unit – II (Central) in the case of *Animesh Ganguli vs. LICI*. He also invited our attention to a judgment of the learned Single Judge of the Kerala High Court dated 17th November 2015 in WP(C) No.25481 of 2015 in the case of *Life Insurance Corporation of India vs. A. Thresiamma and Anr*. He submitted that the Kerala High Court held that the Ombudsman has no power to grant any relief de hors the conditions in the contract of insurance. He would, therefore, submit that Ombudsman has exercised the jurisdiction which is not vested in him.

4 Lastly, without prejudice to aforesaid contentions, he submitted that if this Court is not inclined to entertain the petition on merits, it may be clarified that this order will not operate as a precedent.

5 We have considered the submissions. The following undisputed facts emerge from the record:

A] While issuing the policy, the Maturity Sum Assured (MSA) was mentioned as Rs.52,844/-. The policy was issued in December 2004;

B] The second respondent paid the premium for 11 years at the rate of Rs.4804/- per year;

C] The policy matured on 28th December 2015 and;

D] The fact that there was a mistake in the policy issued in December 2004 was for the first time informed by the

petitioner to the second respondent vide letter dated 5th December 2015.

6 The Ombudsman in the impugned award has observed that the policy document is the basis of the contract and therefore, 11 years after the policy was issued, at the time of date of maturity, the petitioner cannot change the material terms of the contract without consent of the second respondent.

7 It is not the case made out by the petitioner that any time before the policy was issued and after the policy was issued, any document was supplied to the second respondent indicating to the second respondent that the MSA mentioned in the policy document was wrong and in fact, MSA ought to have been Rs.15,796/-. The Ombudsman also noted that the so called typographical error while mentioning MSA in the policy document was brought to the notice of the second respondent after lapse of 11 years from the date of issue of policy. Another important observation made by the Ombudsman in the impugned award is that as a layman, it was not possible for the second respondent to know detailed calculation of MSA and that MSA mentioned in the policy document was wrong. It is in the light of the aforesaid admitted factual position and findings that by the impugned order, the Ombudsman directed the petitioner to refund the entire amount received by way of premium under the policy together with royalty addition (which is approximately Rs.4730/-) to the second respondent.

8 At this stage, we may make a useful reference to the provisions of the said Rules of 1998. Rule 12 deals with the power of Ombudsman which reads thus :-

> "12. 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;
>
> (c) any dispute in regard to premium paid or 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."

9 Sub-rule (1) of Rule 13 reads thus :-

> "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."

10 On conjoint reading of Rules 12 and 13, apart from considering the grievances which are listed in clauses (b) to (f) of sub-rule (1) of Rule 12, in view of clause (a) of Rule 12, a grievance made against the insurer in the form of complaint has to be received and

considered by the Ombudsman. Under sub-rule (2) of Rule 14, the Ombudsman is required to dispose of the complaint fairly and equitably and sub-rule (1) of Rule 16 provides that where the complaint is not settled by an agreement under Rule 15, the Ombudsman shall pass an award which he thinks fair in the facts and circumstances of a claim.

11 After finding that the so called mistake while mentioning MSA in the policy was communicated to the second respondent after lapse of 11 years virtually at the time of maturity of the policy and after finding that there is no way in which the second respondent could have known about the mistake in MSA, the Ombudsman has taken a just and equitable view of the matter and has compensated the second respondent – insured. Without the knowledge of the alleged mistake in MSA mentioned in the policy, in a bonafide manner, the insured – second respondent continued to pay the amount of yearly premium in the sum of Rs.4804/- for a period of 11 years.

12 Writ jurisdiction under Article 226 of the Constitution of India is equitable and discretionary. Even Ombudsman exercised discretionary and equitable jurisdiction. We may note here that in the said Rules of 1998 and in particular Rule 3, it is specifically mentioned that the object of the Rules is to resolve all complaints relating to settlement of claim on the part of insurance companies in cost efficient and impartial manner. The view taken by the Ombudsman is equitable view in the light of the admitted facts of the case.

13 As regards the decision of Kerala High Court, it was found by the High Court that the Ombudsman had passed an order by ignoring the conditions in the contract of policy. As far as the decision of the District Consumer Disputes Redressal Forum is concerned, firstly, the said decision does not bind this Court and secondly, the decision is rendered in the facts of the case before the Consumer Forum.

14 Considering the nature of the impugned order and findings recorded by us above, this is not a fit case where the petitioner can be allowed to invoke writ jurisdiction under Article 226 of the Constitution of India. As regards the last request made by the petitioner, we must record that firstly we have a serious doubt about the power of a High Court to record that the decision rendered by it will not be treated as a precedent. Secondly, on admitted facts, we have found that the view taken by the first respondent is fair and equitable and is consistent with the object of establishing the office of the Insurance Ombudsman. It is in the light of the facts of the case that we have declined to allow the petitioner to invoke remedy under Article 226 of the Constitution of India. Accordingly, the petition is rejected.

(M.S. SANKLECHA, J.) (A.S.OKA, J.)