IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

TUESDAY, THE 15TH DAY OF DECEMBER 2020 / 24TH AGRAHAYANA, 1942

WP(C).No.30134 OF 2015(N)

PETITIONER :

TATA AIA LIFE INSURANCE CO. LTD.,
AGED 36 YEARS,
14TH FLOOR, TOWER A, PENINSULA BUSINESS PARKSB MARG,
LOWER PAREL, MUMBAI 400 013,
REPRESENTED BY MR. P.B. GANAPATHY,
MANAGER LEGAL

BY ADVS.
SRI.K.J.SAJI ISAAC
SRI. JITHIN SAJI ISSAC
DR.ELIZABETH VARKEY

RESPONDENTS :

1 **KUNHAMMAD KUNIYIL,**
MOOTHALATHIL TAZHA KUNIYIL HOUSE,
PO ARUR PURAMERI, VATAKARA – 673 507

2 **THE INSURANCE OMBUDSMAN,**
2NDFLOOR, PULINAT BUILDING,
OPP COCHIN SHIPYARD, M.G. ROAD,
ERNAKULAM, KOCHI – 682 015

R1 BY ADVS. SRI.K.RAKESH ROSHAN
SMT.THUSHARA.V

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15.12.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING :

JUDGMENT

Dated this the 15th day of December 2020

One of the Premier Insurance Companies in the country is before this Court challenging an order issued by the Insurance Ombudsman, Kochi, directing payment of a sum of Rs.75,000/- to one of its former customers, as ex-gratia payment.

2. The Insurance Company contends that the direction to make an ex-gratia payment to the 1st respondent is perverse and illegal, especially since the Insurance Ombudsman itself had found that the premium paid by the first respondent was forfeited in accordance with the terms and conditions of the policy of insurance.

3. According to Adv.Saji Isaac, the learned counsel appearing for the petitioner, the first respondent had taken a policy in July, 2010 and had paid Rs.1,00,000/- as its premium. However, on failure to remit the subsequent instalment of premium, the policy lapsed and as per the terms, the premium paid was liable to be forfeited by the company, which was

accordingly done. Much later, the first respondent moved the Insurance Ombudsman by filing a complaint under Rule 12(1)(b) read with Rule 13 of the Redressal of Public Grievance Rules, 1998 (for short,'the Rules') claiming recovery of the premium paid.

4. On the basis of the application preferred by the first respondent after hearing the petitioner as well as the first respondent, the 1st respondent found that the forfeiture of the premium was justified. However, taking note of the precarious situation of the first respondent, the Insurance Ombudsman deemed it fit to invoke his power under Rule 18 of the Rules and directed the petitioner herein to pay an amount of Rs.75,000/- as ex-gratia payment to the first respondent.

5. The learned counsel for the respondent Sri.Rakesh Roshan submits that the Insurance Ombudsman has exercised a discretion vested upon him to order ex-gratia payment to the first respondent in view of the facts that were noted by him. The discretion was exercised on specific reasons mentioned, which is evident from the order itself. The learned counsel referred my attention to the following reasons mentioned by the Insurance Ombudsman in Ext.P2 which reads is as follows :-

> *"However, the complainant has suffered a financial loss and has to be made good at least in part to render justice. As the complainant belongs to lower strata of society, less educated and working in Gulf country as a worker, he deserves some sympathetic consideration.*
>
> *In the result, an Award is passed directing the respondent insurer to pay Rs.75,000/- (Rupees Seventy five thousand only) as ex-gratia under Rule-18 of the Redressal of Public Grievances Rules, 1998 and intimate the compliance to the office of the undersigned."*

6. It is seen that the Rules confer a power upon the Insurance Ombudsman to order ex-gratia payment. A discretion is conferred upon the said authority. If the discretion is exercised within the bounds of law and reasonably, it is not for this Court to exercise its jurisdiction under Article 226 of the Constitution of India, even if this Court has a different view of the matter. A reading of the above extracted portion in Ext.P2, to which my attention was drawn to by the learned counsel for the first respondent, I am of the opinion that the exercise of discretion vested under Rule 18 by the Insurance Ombudsman cannot be found fault with. There is no scope, in the facts of the present case, to interfere under Article 226 of the Constitution

of India. Accordingly, I decline to exercise my jurisdiction under Article 226 of the Constitution of India to interfere with Ext.P2. This writ petition is therefore dismissed.

Needless to say that the direction of compliance mentioned in Ext.P2 shall be adhered to and complied with as expeditiously as possible.

Sd/-

BECHU KURIAN THOMAS, JUDGE

RKM

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1	**TRUE COPY OF THE RELEVANT PAGES OF THE POLICY**
EXHIBIT P2	**TRUE COPY OF THE AWARD DT. 4/2/15 OF THE INSURANCE OMBUDSMAN**