

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

Reserved on: 14.07.2020

Date of decision: July 27, 2020

+ **W.P.(C) 6304/2019**

PAVAN SACHDEVA Petitioner

Through: Petitioner in person.

versus

OFFICE OF THE INSURANCE OMBUDSMAN AND ANR.

..... Respondents

Through: Mr.Sushant Thakur, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

1. This petition has been filed by the petitioner *inter alia* challenging the order dated 21.02.2019 passed by the respondent no. 1 whereby the complaint of the petitioner against the rejection of his claim under the “Cigna TTK Health Insurance Family Policy” (hereinafter referred to as the “Policy”) taken by him was rejected and the decision of the respondent no. 2 was upheld.

2. It is the case of the petitioner that the petitioner had obtained the abovementioned Policy from the respondent no. 2 on 14.08.2017. On 16.09.2017, while undertaking his morning walk, the petitioner felt mild pain and visited Fortis Escort Hospital. On 23.09.2017, after an Angiography, the petitioner was advised to undergo a bypass surgery, which was duly carried out on the petitioner. The petitioner lodged a claim against the abovementioned Policy with the respondent no. 2,

however, the respondent no. 2 denied the same with the following remarks:-

"Note: The policy since 14/8/2017. The liability cannot be ascertained at this juncture, as the patient has history of Sarcoidosis since 1997; which is preexisting to the policy inception with CignaTTK which is non-disclosure of material facts; hence cashless denied."

3. The petitioner protested against the said rejection and the respondent no. 2 deputed an officer to visit the petitioner to record his statement. In the statement so recorded, the petitioner clarified that the petitioner had Sarcoidosis in 1982 and was advised to take steroids, which he took for a period of three months in 1982 and was perfectly fine thereafter. This fact was also recorded in the Discharge Summary of the petitioner issued by the hospital.

4. The respondent no. 2, however, by an e-mail dated 21.10.2017, again rejected the claim of the petitioner and terminated the Policy alleging "non-disclosure of material fact".

5. The petitioner protested against the same with the Grievance Management Cell of the respondent no. 2, however, by an e-mail dated 22.11.2017, the same was again rejected relying upon Clause VIII.1 of the Policy.

6. The petitioner feeling aggrieved of the said rejection filed a complaint with the respondent no. 1, which has been rejected by way of the Impugned Order observing as under:-

"4. I heard both the sides the complainant as well as the Insurance Company. During the hearing, the complainant reiterated that he had been hospitalized in Fortis Escorts Hospital from 23.09.2017 to 01.10.2017 for treatment of coronary angiography and bypass surgery was done. He submitted claim documents for Rs.600309/- only, and his claim was rejected and policy was terminated by the company due to non disclosure of Sarcoidosis disease at the inception of insurance policy. The Insurance Company reiterated that the insured complainant did not disclose the previous history of Sarcoidosis of the patient at the inception of the Insurance Policy, hence they terminated the said policy and rejected the claim. The Discharge Summary dated 01.10.2017 confirms that the insured patient had Sarcoidosis since 1982. During the Pre-Medical Examination, the insured did not reveal his previous medical history of Sarcoidosis at the inception of the said insurance policy, hence the said claim is not payable as per the terms and conditions of the policy. It is a clear case of non-disclosure. As per the Supreme Court judgment in the case of Satwant Kaur Sandhu vs. New India Assurance (2009) 8 SCC 316, the Hon'ble Supreme Court emphasised that insurance is a contract of utmost good faith on the part of the insured, when an information on a specific aspect is asked for in the proposal form. An insured is under solemn obligation to make a true and full disclosure of the information on the subject, which is within his knowledge. The Insurance Company is not liable to pay any expenses in case of non-disclosure of material fact at the time of taking the policy. The claim was denied due to non-disclosure of material information as per policy condition.

I see no reason to interfere with the decision of the Insurance Company.

The complainant confirmed that he is not interested for reinstatement of the policy."

7. The petitioner, who appears in person, submits that Clause VIII.1 of the Policy conditions has to be read reasonably. The petitioner had suffered from Sarcoidosis in 1982 and was completely cured within three months with no instance of reoccurrence. He submits that the non-disclosure of the same cannot be equated with “non-disclosure of any material particulars” or “any material information”. He places reliance on the following judgments:-

- “1) Hari Om Agarwal vs. Oriental Insurance Co. Ltd. MANU/DE/8618/2007 (para 22-23)*
- 2) Life Insurance Corporation of India vs. The Insurance Ombudsman & Ors. MANU/TN/3713/2009 (para 11-12)*
- 3) G.Muthupackiam vs. The Zonal Manager, Chennai & Ors. – MANU/TN/1533/2012 (para 10-11)*
- 4) Union of India vs. Sohanlal Sampatlal reported in MANU/SC/0025/1970 (para 6)*
- 5) Shanti Devi vs. Office of Insurance Ombudsman & Ors. MANU/UP/1488//2007 (para 7)*
- 6) Ratan Lal & Anr. vs. Metropolitan Insurance Co. Ltd. - MANU/BH/0116/1959 (para 5)*
- 7) Krapa Vidyavathi vs. Life Insurance Corporation of India, Machilipatnam- MANU/AP/0993/2011 (para 25)*
- 8) Suresh, P.V. vs. Insurance Ombudsman & Anr. - MANU/KE/0185//2012 (para 9)*
- 9) M.Manimekalai vs. The Insurance Ombudsman & Ors. MANU/TN/3022/2015 (para 8 to 10)*
- 10) Smt. Santosh Kanwar W/o Late Shri Kailash Chandra Dashora vs. Life Insurance Corporation of India through the Sr. Divisional Manager (para 24 to 26)*

11) Syed Yakoob vs. K.S. Radhakrishnan & Ors. - MANU/SC/0184//1963 (para 7)

12) Rahul Agarwal vs. National Insurance Co. Ltd. - MANU/RH/1301/2018 (para 37)

8. On the other hand, the learned counsel for the respondent no. 2 submits that the present petition is not maintainable as the petitioner has an alternate remedy in form of a complaint under the Consumer Protection Act, 1986 or a Civil Suit. He further submits that the fact of the petitioner having suffered from Sarcoidosis was a material fact, which should have been disclosed by the petitioner in the Proposal Form. It was not for the petitioner to decide whether a particular fact is material to be disclosed for the Policy or not; such decision has to be left to the insurance company. As far as the insured/applicant is concerned, he/she must disclose all information, especially in relation to the medical condition, while taking up any insurance Policy. He further submits that disclosure of such information was material as is evident from the fact that the petitioner disclosed the same at the time of taking admission in the hospital, which occurred only one month after the insurance Policy was taken. The petitioner therefore, very well knew the importance of such disclosure and intentionally withheld the same from the respondent no. 2.

9. I have considered the submissions made by the petitioner and by the learned counsel for the respondent no. 2. Clause VIII.1 and VIII.2 of the Policy document are reproduced hereinunder:-

"VIII. GENERAL TERMS AND CONDITIONS

VIII.1. Duty of Disclosure

The Policy shall be null and void and no benefit shall be payable in the event of untrue or incorrect statements, misrepresentation, mis-description or non-disclosure of any material particulars in the proposal form, personal statement, declaration, claim form declaration, medical history on the claim form and connected documents, or any material information having been withheld by You or any one acting on Your behalf, under this Policy. You further understand and agree that We may at Our sole discretion cancel the Policy and the premium paid shall be forfeited to Us.

VIII.2. Material Change

Material information to be disclosed includes every matter that You are aware of, or could reasonably be expected to know, that relates to questions in the Proposal Form and which is relevant to Us in order to accept the risk of Insurance and if so on what terms. You must exercise the same duty to disclose those matters to Us before the Renewal, extension, variation, endorsement or reinstatement of the contract."

10. While it is correct that non-disclosure of any material particular or material information can entitle the respondent no. 2 to invalidate the Policy and forfeit the premium, however, the said Clause has to be read in a reasonable manner. In the present case, the petitioner has asserted that he suffered Sarcoidosis in 1982, which is almost 35 years before the insurance Policy was taken by the petitioner. The petitioner has also asserted that this was treated by him taking steroids only for a period of three months and he has not suffered any symptoms thereof thereafter. This fact has not been denied by the respondent no. 2. No dispute has

been raised by the respondent no.2 on the fact that the petitioner was completely fine and did not suffer any symptoms from any ailment at the time of taking the Policy or for a reasonable period prior thereto. Therefore, in these facts, it has to be considered whether non-disclosure of this ailment can amount to concealment of material particulars or information from the respondent no. 2.

11. In *Mithoolal Nayak v. Life Insurance Corporation of India*, AIR 1962 SC 814, in relation to Section 45 of the Insurance Act, 1938, it was held that for the application of Section 45 of the said Act, three conditions must be satisfied:-

- (a) the statement must be on a material matter or must suppress facts which it was material to disclose;
- (b) the suppression must be fraudulently made by the Policy-holder; and
- (c) the Policy-holder must have known at the time of making the statement that it was false or that it suppressed facts which it was material to disclose.

12. In *Life Insurance Corporation of India and Ors. v. Asha Goel and Anr.*, (2001) 2 SCC 160, the Supreme Court, while reiterating the test laid down in *Mithoolal Nayak* (supra), held that on a fair reading of Section 45 of the Insurance Act, 1938 it is clear that it is restrictive in nature; mere inaccuracy or falsity in respect of some recitals or items in the proposal is not sufficient; the burden of proof is on the insurer to establish these circumstances and unless the insurer is able to do so there

is no question of the Policy being avoided on ground of misstatement of facts; repudiation of a Policy should be done with extreme care and caution and not in a mechanical and routine manner.

13. In ***P.C. Chacko & Anr. v. Chairman, Life Insurance Corporation of India & Ors.***, (2008)1 SCC 321, the Supreme Court, again in relation to Section 45 of the Insurance Act, 1938, further held that misstatement by itself was not material for repudiation of the Policy unless the same is material in nature; a proposal can be repudiated if a fraudulent act is discovered.

14. The Supreme Court in ***Satwant Kaur Sandhu v. New India Assurance Company Ltd.***, (2009) 8 SCC 316, held that a mediclaim Policy is a contract of insurance falling in the category of contract *uberrimae fidei*, meaning a contract of utmost good faith on the part of the assured. Thus, when an information on a specific aspect is asked for in the Proposal Form, an assured is under a solemn obligation to make a true and full disclosure of the information on the subject which is within his knowledge. It is not for the proposer to determine whether the information sought for is material for the purpose of the Policy or not. The obligation to disclose extends only to facts which are known to the applicant and not to what he ought to have known. The term “material fact” is one which would influence the judgment of a prudent insurer in fixing the premium or determining whether he would like to accept the risk. Any fact which goes to the root of the contract of insurance and has a bearing on the risk involved would be “material”. It is “essential” and “relevant” information in the context of guiding the insurer to decide

whether to undertake the risk or not. If a proposer has knowledge of such fact, he is obliged to disclose it, particularly while answering questions in the Proposal Form. Needless to emphasize that any inaccurate answer will entitle the insurer to repudiate its liability because there is clear presumption that any information sought for in the Proposal Form is material for the purpose of entering into a contract of insurance.

15. In ***Reliance Life Insurance Company Ltd. & Anr. v. Rekhaben Nareshbhai Rathod***, (2019) 6 SCC 175, upon an exhaustive analysis of the precedents, it was observed as under:-

“16. The fundamental principle is that insurance is governed by the doctrine of uberrima fidei. This postulates that there must be complete good faith on the part of the insured. This principle has been formulated in MacGillivray on Insurance Law succinctly, thus:

“[Subject to certain qualifications considered below], the assured must disclose to the insurer all facts material to an insurer's appraisal of the risk which are known or deemed to be known by the assured but neither known or deemed to be known by the insurer. Breach of this duty by the assured entitles the insurer to avoid the contract of insurance so long as he can show that the non-disclosure induced the making of the contract on the relevant terms...”

The relationship between an insurer and the insured is recognized as one where mutual obligations of trust and good faith are paramount.

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25. Regulation 2(d) specifically defines the expression “proposal form” as a form which is filled by a proposer for insurance to furnish all material

information required by the insurer in respect of a risk. The purpose of the disclosure is to enable the insurer to decide whether to accept or decline to undertake a risk. The disclosures are also intended to enable the insurer, in the event that the risk is accepted, to determine the rates, terms and conditions on which a cover is to be granted. The Explanation defines the expression “material” to mean and include “all important essential and relevant information” for underwriting the risk to be covered by the insurer. Regulation 4(3) stipulates that while filling up the proposal, the proposer is to be guided by the provisions of Section 45. Where a proposal form is not used, the insurer under Regulation 4(4) is to record the information, confirming it within a stipulated period with the proposer and ought to incorporate the information in the cover note or policy. In respect of information which is not so recorded, the onus of proof lies on the insurer who claims that there was a suppression of material information or that the insured provided misleading or false information on any matter that was material to the grant of the cover.

26. *The expression “material” in the context of an insurance policy can be defined as any contingency or event that may have an impact upon the risk appetite or willingness of the insurer to provide insurance cover. In MacGillivray on Insurance Law [12th Edn., Sweet and Maxwell (2012). See p. 493 for cases relied upon.] it is observed thus:*

“The opinion of the particular assured as to the materiality of a fact will not as a rule be considered, because it follows from the accepted test of materiality that the question is whether a prudent insurer would have considered that any particular circumstance was a material fact and not whether the assured believed it so...”

27. Materiality from the insured's perspective is a relevant factor in determining whether the insurance company should be able to cancel the policy arising out of the fault of the insured. Whether a question concealed is or is it not material is a question of fact. As this Court held in Satwant Kaur [Satwant Kaur Sandhu v. New India Assurance Co. Ltd., (2009) 8 SCC 316 : (2009) 3 SCC (Civ) 366] : (SCC p. 323, para 22)

“22. ... Any fact which goes to the root of the contract of insurance and has a bearing on the risk involved would be “material”.”

28. Materiality of a fact also depends on the surrounding circumstances and the nature of information sought by the insurer. It covers a failure to disclose vital information which the insurer requires in order to determine firstly, whether or not to assume the risk of insurance, and secondly, if it does accept the risk, upon what terms it should do so. The insurer is better equipped to determine the limits of risk-taking as it deals with the exercise of assessments on a day-to-day basis. In a contract of insurance, any fact which would influence the mind of a prudent insurer in deciding whether to accept or not accept the risk is a material fact. If the proposer has knowledge of such fact, she or he is obliged to disclose it particularly while answering questions in the proposal form. An inaccurate answer will entitle the insurer to repudiate because there is a presumption that information sought in the proposal form is material for the purpose of entering into a contract of insurance.

29. Contracts of insurance are governed by the principle of utmost good faith. The duty of mutual fair dealing requires all parties to a contract to be fair and open with each other to create and maintain trust between them. In a contract of insurance, the insured can be expected to have information of which she/he has knowledge. This justifies a duty of good faith,

leading to a positive duty of disclosure. The duty of disclosure in insurance contracts was established in a King's Bench decision in *Carter v. Boehm* [*Carter v. Boehm*, (1766) 3 Burr 1905 : 97 ER 1162] , where Lord Mansfield held thus: (ER p. 1164)

“Insurance is a contract upon speculation. The special facts, upon which the contingent chance is to be computed, lie most commonly in the knowledge of the insured only; the underwriter trusts to his representation, and proceeds upon confidence that he does not keep back any circumstance in his knowledge, to mislead the underwriter into a belief that the circumstance does not exist, and to induce him to estimate the risque, as if it did not exist.”

30. It is standard practice for the insurer to set out in the application a series of specific questions regarding the applicant's health history and other matters relevant to insurability. The object of the proposal form is to gather information about a potential client, allowing the insurer to get all information which is material to the insurer to know in order to assess the risk and fix the premium for each potential client. Proposal forms are a significant part of the disclosure procedure and warrant accuracy of statements. Utmost care must be exercised in filling the proposal form. In a proposal form the applicant declares that she/he warrants truth. The contractual duty so imposed is such that any suppression, untruth or inaccuracy in the statement in the proposal form will be considered as a breach of the duty of good faith and will render the policy voidable by the insurer. The system of adequate disclosure helps buyers and sellers of insurance policies to meet at a common point and narrow down the gap of information asymmetries. This allows the

parties to serve their interests better and understand the true extent of the contractual agreement.

31. The finding of a material misrepresentation or concealment in insurance has a significant effect upon both the insured and the insurer in the event of a dispute. The fact it would influence the decision of a prudent insurer in deciding as to whether or not to accept a risk is a material fact. As this Court held in Satwant Kaur [Satwant Kaur Sandhu v. New India Assurance Co. Ltd., (2009) 8 SCC 316 : (2009) 3 SCC (Civ) 366] “there is a clear presumption that any information sought for in the proposal form is material for the purpose of entering into a contract of insurance”. Each representation or statement may be material to the risk. The insurance company may still offer insurance protection on altered terms.”

16. This court in ***Hari Om Agarwal v. Oriental Insurance Co. Ltd.***, MANU/DE/8618/2007, while dealing with an exemption Clause in a Mediclaim Policy, held as under:-

“21. The bone of contention, or the point of dispute is the precise meaning of “complications arising from pre-existing disease will be considered part of that pre-existing condition.” This stipulation itself occurs in an exclusion clause. There is some authority that an exclusion clause, in the context of a contract of insurance, which is an assurance whose main purpose has to be given prominence, should be construed strictly (Ref. Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan and Ors. ; B.V. Nagaraju v. Oriental Insurance Co. Ltd.). The primacy given to the main purpose, notwithstanding that contracting parties agreed to certain exclusions, is founded on the principle of interpretation that if contracting parties

seek to achieve a certain purpose by entering into an agreement, the existence of exclusion clauses should be strictly interpreted and if it tends to defeat the main purpose, should be read down by the Court; if that is not possible, the court should altogether ignore it (Ref Halsbury, LC in Glynn v. Margeston and Co. 1893 AC 351).

22. If the rule indicated in the preceding paragraph were kept in mind, it would be apparent that the object of the insurance policy is to cater to medical expenses incurred by the insured. That is the “main purpose” of the contract of insurance. The object of the exclusion clause is to except the liability of the insurer. In a sense this is at variance with the object of the Policy. Nevertheless, it is a part of the contract; the court should firstly seek to harmonise the all the clauses, and attempt to give effect to it. If one proceeds on this premise, the concept of “pre-existing condition” has to be understood. Clause 4.1 defines it as any injury which existed prior to the effective date of the insurance; and any sickness or its symptoms which existed prior to the effective date of the insurance, whether or not the insured had knowledge that the symptoms were relating to the sickness. It is apparent that even if there were known diseases or conditions, which were disclosed and for which there was a likelihood of complications arising in the future, the insurer sought to distance itself from the liability. There is no dispute here that diabetes was a condition at the time of submission of proposal; so was hypertension. In a sense these were “old ailments”; the petitioner was advised to undergo ECG, which he did. The insurer accepted the proposal and issued the cover. One may ask, what then was the cover for. It is not an accident cover policy, or a life policy. Now, it is universally known that hypertension and diabetes can lead to a host of ailments, such as stroke, cardiac disease, renal failure, liver complications, etc,

depending upon varied factors. That implies that there is probability of such ailments; equally they can arise in non-diabetics or those without hypertension. Unless the insurer spelt out with sufficient clarity, the purport of its clauses, or charged a higher premia, at the time of accepting the proposal, the insured would assume and perhaps, reasonably that later, unforeseen ailments would be covered. Thus, it would be apparent that giving a textual effect to Clause 4.1 would in most such cases render the mediclaim cover meaningless; the policy would be reduced to a contract with no content, in the event of the happening of the contingency. Therefore, I am of the opinion that Clause 4.1 cannot be allowed to override the insurer's primary liability; the "main purpose" rule would have to be pressed into service. This finding is reinforced in this case, as the insurer renewed the Policy, in 2006, after the petitioner underwent the CABG procedure."

17. From the above, it is apparent that the contract of insurance is one of *uberrimae fidei*, meaning a contract of utmost good faith on the part of the assured. Concealment or misstatement regarding any material information by the assured would entitle the insurer to repudiate the contract and the claim made thereunder. While judging whether any information is 'material' or not, one has to look from the eyes of the insurer and not the insured. The Proposal Form is the most important document in such determination as it contains what the insurer considers 'material' for determining whether or not it wants to enter into the contract with the insured and if so, if it wants to charge any additional premium. However, at the same time, all information under the sun cannot be termed as 'material' so as to allow the insurer to repudiate the contract and deny the claim at any time. To do so would defeat the very

purpose of insurance contracts and vest the insurer with unbridled powers. Therefore, the term ‘material particulars’ has to be interpreted in a reasonable and fair manner.

18. In the present case, the Proposal Form of the respondent no.2, sought *inter alia* the following information from the applicant:-

“4. MEDICAL AND LIFESTYLE INFORMATION:

*Please answer the below mentioned questions in Yes (Y) / No (N).
If the answer to any of the questions is Yes, please ✓ against the relevant Insured Person*

Insured 1 Insured 2 Insured 3 Insured 4 Insured 5

1 Have you or any of the persons proposed for insurance, ever suffered from or taken treatment, or hospitalized for or have been recommended to take investigations/ medication / surgery or undergone a surgery for a medical condition?

YES NO

2 Any illness/disease/injury/disability suffered from in the past 48 months other than for childbirth, flu or for minor injuries that have completely healed.

YES NO

3 Are you currently in good health and not undergoing any treatment or medication for any illness/medical condition (physical or mental).

YES NO

19. In the ‘Medical Examination Report Form’, the following information was sought:

“4. Have you ever suffered from or taken treatment, or been hospitalized for or have been recommended to take investigations/medication/surgery or undergone a surgery for any of the following medical conditions?”

A) Cardiovascular system/Circulatory system:

High or Low Blood Pressure ☐ Chest Pain/Angine ☐

Heart Disease ☐ Palpitations ☐ Any Other ☐

1. Hypertension history: If yes please provide below details

a. Duration:

b. Medications (Name and dosage):

2. Any other ailment?

B) Endocrine Glands & Exocrine Gland:

Diabetes ☐ Thyroid disorder ☐

Pituitary disorder ☐ Any other ☐

1. Diabetes or Pre-diabetes condition: if yes please provide below details:

a. Type 1 or Type 2:

b. Duration:

c. Medications (Oral/Insulin):

d. Name and Dosage of Medications:

2. Any other ailment?

C) Nervous System:

Stroke/TIA ☐ Epilepsy ☐ Paralysis ☐

Psychiatric/psychological ☐ Any other ☐

Please Give Details:

D) *Musculoskeletal System:*

Arthritis/Joint Disorder ☐ Backache/Spinal Disorder ☐
Gout/Rheumatic fever ☐ Bone/Muscle Disorder ☐ Any
Other ☐

Please Give Details:

E) *Respiratory system:*

Tuberculosis ☐ Asthma ☐ Chronic Bronchitis/COAD ☐
Pneumonia/Any lung infection ☐ Any other ☐

Please Give Details:

F) *Renal/Urinary system:*

Renal failure ☐ Dialysis ☐ Stone ☐ Any
Infections ☐ Prostate Disorder ☐ Any other ☐

Please Give Details:

G) *Gastro Intestinal System:*

Liver Disorder ☐ Ulcers ☐ Gall Stones ☐ Any other ☐

Please Give Details:

H) *Female Genital and Reproductive system:*

Fibroid/Fibroadenoma ☐ Cyst/PCOD/Polyp ☐
Pelvic infections/Bleeding disorders ☐ Menstrual/Hormonal
Disorders ☐ Any other ☐

Please Give Details:

I) *Any disorder/disease of the following:*

Ear ☐ Nose ☐ Throat ☐ Eye ☐ Skin ☐

Please Give Details:

J) *Any History of the follow:*

Tumor/abnormal Growth ☐ *Cancer* ☐ *HIV/AIDS* ☐ *Any STD* ☐ *Any other* ☐

Please Give Details:

K) *Any other illness/disease/injury in the past 48 months other than for childbirth, flu or for minor injuries that have completely healed:*

5. *Please detail any treatment taken by the insured in the past or being taken at the present:*

a) *Name of the medication(s):*

b) *Dosage and Frequency:*

c) *Date of starting medication(s):*

6. *Do you or any of the persons proposed for Insurance, Chew Tobacco/Smoke/consume gutka – YES ☐ NO ☐*

If yes please specify duration and quantity”:

20. A reading of the above Clauses would show that the emphasis of the respondent no.2 was on the information regarding illness/disease/injury/disability suffered in the last 48 months. The Clauses further required information regarding specific ailments like Blood Pressure, Diabetes, Epilepsy, Arthritis, etc. There is no mention of Sarcoidosis in the Form. Clause 4(1) inquiring whether the assured had ‘ever suffered from or taken treatment, or been hospitalized for or have been recommended to take investigations/medication/surgery or undergone a surgery for a medical condition’ has to be read in harmony with the other Clauses of the Proposal Form and the ‘Medical Examination Report Form’; it has to be read in a reasonable manner.

When so read, it cannot mean and include all ailments ever suffered by an assured as such interpretation would make it totally absurd and unworkable. A person cannot reasonably be expected to remember all ailments/treatments/investigation/medication etc. undertaken in his life and failure to mention them cannot be held to be a ground for the insurer to repudiate the contract at its discretion. Once read reasonably, this Clause can only mean any major ailment suffered by the assured reasonably prior to filling up the Proposal Form. Of course, for the ailments that have been specifically mentioned in the 'Medical Examination Report Form', the period may lose significance and details may need to be mentioned irrespective of when it was suffered by the applicant.

21. Coming back to the facts of the present case, the petitioner had suffered with Sarcoidosis in 1982 and it is stated that he was cured of it within three months. It is not the case of the respondent no.2 that he continued to suffer with it even thereafter. The insurance Policy was acquired by the petitioner in 2017, that is 35 years after suffering from the said disease. It cannot, therefore, be held that disclosure of such disease would be a 'material information' and the non-disclosure thereof would make the Policy null and void under Clause VIII.1 of the terms and conditions of the Policy or under the general principles applicable to the insurance contracts.

22. It is also contended by the petitioner and not disputed by the respondent no.2 that prior to the issuance of the Policy, the petitioner was made to undergo a medical examination by the doctors of the respondent

no.2. This again would be an important factor in determining whether the repudiation of the Policy by the respondent no.2 was reasonable. It is not the case of the respondent no.2 that in such medical examination, the petitioner was inquired if he had ever suffered from Sarcoidosis and he still concealed this information. In fact, this shows that even the team of doctors, on examining the petitioner and looking into his health, did not consider it important or material to ask him about this disease.

23. The fact that the petitioner suffered from cardio incident within a month of taking the Policy can be just a coincidence and cannot be held to be sufficient to annul the Policy. Similarly, the petitioner's disclosure of him having suffered from Sarcoidosis in 1982 to the doctors at the time of his admission to the hospital, may also be because the doctors at the hospital may have put this specific query to him. Anyway, it cannot be inferred from this that the petitioner was aware that the disclosure of this information in the Proposal Form was 'material'.

24. In view of the above discussion, it must be held that the repudiation of the Policy by the respondent no.2 and the consequent rejection of the claim of the petitioner thereunder, was unreasonable and could not have been sustained.

25. As far as the objection of the learned counsel for the respondents on the maintainability of this petition due to availability of alternate remedy, the same is also rejected. In **Asha Goel and ors.** (supra), the Supreme Court, specifically in relation to a Writ challenging the repudiation of an insurance claim, has held as under:-

“10. Article 226 of the Constitution confers extraordinary jurisdiction on the High Court to issue high prerogative writs for enforcement of the Fundamental Rights or for any other purpose. It is wide and expansive. The Constitution does not place any fetter on exercise of the extraordinary jurisdiction. It is left to the discretion of the High Court. Therefore, it cannot be laid down as a general proposition of law that in no case the High Court can entertain a writ petition under Article 226 of the Constitution to enforce a claim under a life insurance policy. It is neither possible nor proper to enumerate exhaustively the circumstances in which such a claim can or cannot be enforced by filing a writ petition. The determination of the question depends on consideration of several factors, like, whether a writ petitioner is merely attempting to enforce his/her contractual rights or the case raises important questions of law and constitutional issues; the nature of the dispute raised; the nature of inquiry necessary for determination of the dispute etc. The matter is to be considered in the facts and circumstances of each case. While the jurisdiction of the High Court to entertain a writ petition under Article 226 of the Constitution cannot be denied altogether, Courts must bear in mind the self-imposed restriction consistently followed by High Courts all these years after the constitutional power came into existence in not entertaining writ petitions filed for enforcement of purely contractual rights and obligations which involve disputed questions of facts. The Courts have consistently taken the view that in a case where for determination of the dispute raised, it is necessary to inquire into facts for determination of

which it may become necessary to record oral evidence a proceeding under Article 226 of the Constitution is not the appropriate forum. The position is also well settled that if the contract entered between the parties provide an alternate forum for resolution of disputes arising from the contract, then the parties should approach the forum agreed by them and the High Court in writ jurisdiction should not permit them to bypass the agreed forum of dispute resolution....”

11. The position that emerges from the discussions in the decided cases is that ordinarily the High Court should not entertain a writ petition filed under Article 226 of the Constitution for mere enforcement of a claim under a contract of insurance. Where an insurer has repudiated the claim, in case such a writ petition is filed the High Court has to consider the facts and circumstances of the case, the nature of the dispute raised and the nature of the inquiry necessary to be made for determination of the questions raised and other relevant factors before taking a decision whether it should entertain the writ petition or reject it as not maintainable. It has also to be kept in mind that in case an insured or nominee of the deceased insured is refused relief merely on the ground that the claim relates to contractual rights and obligations and he/she is driven to a long drawn litigation in the civil court, it will cause serious prejudice to the claimant/other beneficiaries of the policy. The pros and cons of the matter in the context of the fact situation of the case should be carefully weighed and appropriate decision should be taken. In a case where claim by an insured or a nominee is repudiated raising a serious dispute and the Court finds the dispute to be a bona

fide one which requires oral and documentary evidence for its determination then the appropriate remedy is a civil suit and not a writ petition under Article 226 of the Constitution. Similarly, where a plea of fraud is pleaded by the insurer and on examination is found prima facie to have merit and oral and documentary evidence may become necessary for determination of the issue raised then a writ petition is not an appropriate remedy.”

(Emphasis supplied)

26. Applying the above test to the facts of the present case, it must be held that the present Writ Petition is maintainable. There are no disputed questions of fact involved in the present petition. Further, what is challenged before this court is the order passed by the Insurance Ombudsman appointed under Rule 7 of the Insurance Ombudsman Rules, 2017 (hereinafter referred to as ‘Rules’). The object of the Rules is to resolve all complaints of insurance in a cost effective and impartial manner. The Insurance Ombudsman can, under Rule 16 of the Rules, make recommendations on a fair settlement, and failing a settlement, under Rule 17, pass an Award adjudicating such complaint, as has been done in the present case. The Ombudsman, in such adjudication has to keep in mind the relevant considerations required for such adjudication. Where the Writ Court finds that the Award has been passed by the Ombudsman by ignoring relevant considerations or on irrelevant considerations, it would be entitled to entertain such petition and issue a Writ of Certiorari quashing such Award.

27. In the present case, the Ombudsman has clearly failed to apply the correct test to the dispute before it. The impugned order records that “the Discharge Summary dated 01.10.2017 confirms that the insured patient had Sarcoidosis since 1982”. The Discharge Summary in fact, records “Past Medical History” as under:-

“Sarcoidosis 1982 took steroids for 3 months”

28. The above remark in the Discharge Summary cannot be read to mean that the petitioner continued to suffer from Sarcoidosis as has been interpreted by the Ombudsman. The impugned order has therefore, proceeded on an incorrect basis and cannot be sustained.

29. There is no dispute on the quantum of the claim of the petitioner. The petitioner has claimed Rs. 6,06,859/- towards medical reimbursement. Such claim is stated to have been made on 01.10.2017. There is no dispute on this date as well.

30. Accordingly, the respondent no. 2 is directed to pay to the petitioner, within a period of four weeks from the date of the judgment, a sum of Rs. 6,06,859/- (Rupees six lakhs six thousand eight hundred and fifty nine only) along with simple interest at the rate of 9% per annum with effect from 01.10.2017 till the date of payment. The respondent no.2 shall also pay cost quantified as Rs. 25,000/- (Rupees twenty five thousand only) to the petitioner.

31. The petition is allowed in the above terms.

NAVIN CHAWLA, J

JULY 27, 2020

