12.04.2022
Court No.13
Item No.82
AP

WPA 13482 of 2021

HDFC ERGO General Insurance Company Limited and Anr.
Vs.
The Insurance Ombudsman, Kolkata and Anr.

(Through Video Conference)

Mr. Siddhartha Banerjee
Ms. Soni Ojha
Mr. Sudipta Nayan Ghosh
Mr. Soumajit Majumder
Ms. S.B. Chatterjee

... For the Petitioners.

Mr. Bikram Banerjee
Mr. Sutirtha Nayek

... For the Respondent No.2.

The petitioners challenge an order dated 17th June, 2021, passed by the Insurance Ombudsman, Kolkata, on the complaint of one Pabitra Kumar Gayen, being the Respondent No.2. The Ombudsman found that the repudiation of claim lodged by the respondent No.2 under a health insurance policy issued by the writ petitioner No.1, was prima facie unjustified. The insurance company/petitioner No.1, was accordingly directed to honour the claim. The complaint was disposed of in favour of the respondent No.2.

Mr. Banerjee, learned counsel appearing for the insurance company, assailed the award of the Ombudsman before this Court on the principal ground that there is flagrant violation of natural justice. It is submitted that after hearing the parties, the Ombudsman went on to obtain an independent medical

opinion rendered by a medical expert unknown to the parties, based on which he had found that the tumor of respondent No.2 may have been cancerous.

It is submitted by Mr. Banerjee, that his client did not get an opportunity to deal with the said opinion, since he was not furnished with a copy of the same.

It is next argued, that the complaint filed by the Respondent No. 2 before the Insurance Ombudsman is bad in law and violative of the statutory rules, since the said complaint does not specify the 'nature and extent of loss' claimed to have been suffered by the complainants, in terms of Rule 14 (2) of the Insurance Ombudsman Rules of 2017, framed under the Insurance Regulatory Development Authority Act, 1999. The award passed by the Ombudsman is also alleged to be bad in law, as it is vague, and does not quantify the exact compensation payable by the petitioner, as per Rule 17 (3) of the said Rules of 2017.

The third ground for challenge is that the award was rendered beyond the period of three months, within which it is required to be so dealt with, in terms of Rule 17(4) of the Insurance Ombudsman Rules of 2017.

This Court has carefully considered the arguments of the petitioners. It is now well-settled, that the proceedings before the Insurance Ombudsman are summary in nature. Strict rules of evidence, and the provisions of the Civil Procedure Code, 1908, have no

manner of application in such proceedings. It is indeed true, however, that the principles of natural justice have been ingrained into, and must be read as inherent to such proceedings, by reason of the Rules of 2017. The reference to such rules, particularly Rule 15 outlining the requirement of the Insurance Ombudsman to act 'fairly and equitably' is made thereof.

Rule 15 (3) is set out hereinbelow.

> "**15**. Insurance Ombudsman to act fairly and equitably. —
>
> **(3)** The Ombudsman may obtain the opinion of professional experts, if the disposal of a case warrants it."

A plain reading of the said rules would indicate that sub-Rule 3 does not oblige the Ombudsman to circulate the expert opinions obtained by him if he is not satisfied with the evidence before him at the time of disposal of the complaint. Since the rule does not mandate the same, and given the fact that the proceeding is summary in nature, the insurer cannot claim entitlement of the opinion obtained by the Ombudsman under Rule 15 (3).

This Court is also of the view, that the petitioner in the facts of the case, may have waived any entitlement to such opinion. The petitioner while rejecting the claim is expected to have consulted experts. Such opinion has not been produced before the Ombudsman. The petitioners could have easily presented any other opinion to support such repudiation

and rejection before Ombudsman, during the course of the hearing conducted by the latter. Admittedly, no such opinion was produced before the Ombudsman.

This Court is also of the view, that the writ petitioners, in the facts of the case may have waived any entitlement to the opinion relied upon by the Ombudsman by not having produced any other opinion in their defense, in the first place. The petitioners have therefore admitted to no prejudice if an independent opinion is relied upon by the Ombudsman even if not served on them.

The Ombudsman has taken a view on the facts of the case

It is well-settled, that in proceedings such as in the instant case, a substantial compliance of essence of the principles of natural justice is sufficient. In the facts of the case, this Court does not see any serious infractions of natural justice.

If two views are possible, the Writ Court cannot substitute its own views or the petitioners' views and impose any of them, on the authority concerned, especially when the authority has been specially empowered to deal with issues relating to special Rules and/or statutes.

On the second argument raised by the Insurance Company, that the complaint of the respondent No.2 as well as the award, does not specify any particular

amount payable by the petitioner No.1, it appears to this Court, that the Respondent No. 2's claim that was originally lodged to the insurance company contained the entire expenditure incurred by the respondent No.2 before the hospital in question.

Counsel for the respondent No.2 also submits that the full assured sum becomes automatically payable to his client, irrespective of any formal quantified numbers being claimed. The absence of a quantified figure being claimed against the petitioners before the Ombudsman, therefore, in the opinion of this Court, cannot be deemed as any serious infraction of the rules in question.

On the third argument raised by the writ petitioners, it appears to this Court that the argument has been raised for the first time in the writ petition. The nature of the relief afforded to, and ensured under the Insurance Ombudsman Rules, appears to aim towards a comprehensive relief and effective remedy to the claimant. The said Rules were brought into existence for the speedy and effective disposal of the grievances of insured customers. The summary proceedings provided therein, were meant for the specific purpose of ensuring quick relief to beneficiaries under the insurance policies.

In case of such beneficial legislation, adhering to a strict and literal interpretation, would lead to frustration of its object and purpose, and effectively

render it infructuous. The Supreme Court in **K.H. Nazar v. Mathew K. Jacob** reported in **(2020) 14 SCC 126,** has held as follows:

> " 11. *Provisions of a beneficial legislation have to be construed with a purpose-oriented approach. [Kerala Fishermen's Welfare Fund Board v. Fancy Food, (1995) 4 SCC 341] The Act should receive a liberal construction to promote its objects. [Bombay Anand Bhavan Restaurant v. ESI Corpn., (2009) 9 SCC 61 : (2009) 2 SCC (L&S) 573 and Union of India v. Prabhakaran Vijaya Kumar, (2008) 9 SCC 527 : (2008) 3 SCC (Cri) 813] Also, literal construction of the provisions of a beneficial legislation has to be avoided. It is the court's duty to discern the intention of the legislature in making the law. Once such an intention is ascertained, the statute should receive a purposeful or functional interpretation [Bharat Singh v. New Delhi Tuberculosis Centre, (1986) 2 SCC 614 : 1986 SCC (L&S) 335] ."*
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> (emphasis supplied)

This Court is of the view that a partial deviation and/or exceeding of time in delivery of award, would not be fatal to the proceedings before the Ombudsman. In substance, this Court is of the view that the time stipulation under the Insurance Ombudsman rules cannot be interpreted very strictly, and must be given a rather liberal and purposive interpretation.

The delay that has occurred beyond the period of three months is not so serious, to vitiate the proceedings as a whole.

Reference in this regard is also to be made to paragraph 12 of the decision of a Division Bench of this Court in the case of ***Life Insurance Corporation of India Vs. Insurance Ombudsman*** reported in ***2017 SCC OnLine Cal 13172***. Paragraph 12 of the said decision is set out hereinbelow:

> **"12.** *In view of the in-built mechanism provided under the said Rules, the scope of judicial review under Article 226 of Constitution of India, in the considered opinion of this Court, is very limited and unless the findings and conclusions arrived at by the Ombudsman are patently unfair and palpably perverse and suffer from jurisdictional infirmities and violation of the principles of natural justice, the awards passed by the Ombudsman are not amenable to the jurisdiction of this Court under Article 226 of the Constitution of India. In the writ petition there is also no averment supported with cogent and convincing material alleging fraud. The proviso to Rule 16(2) provides that the Ombudsman shall not award any compensation in excess of which is necessary to cover the loss suffered by the complainants. In the instant case the awards are not in conflict with the said proviso inasmuch as by the awards the orders towards repudiation of the nominees' claim by LICI have been set aside*."

It would follow from the aforesaid paragraph that interference with an award of an Ombudsman, under the discretionary jurisdiction of a Writ Court under Article 226 of the Constitution of India, is limited to very limited and specific grounds. A Writ Court is not a Court of appeal in respect of an award of the Ombudsman.

In the facts and circumstances of the present case, this Court does not see any serious infirmity, violation of natural justice or prejudice caused therefrom to the petitioners, that would invalidate the award of the Insurance Ombudsman.

For the reasons stated hereinabove, the writ petition is dismissed.

There shall be no order as to costs.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)