In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side

Present :-

The Hon'ble Justice Moushumi Bhattacharya.

W.P.A 17996 of 2022

Subrata Goswami

vs.

The Insurance Ombudsman & Ors.

For the petitioner	:	Mr. Pratyush Patwari, Adv
Last Heard on	:	07.11.2022.
Delivered on	:	11.11.2022.

Moushumi Bhattacharya, J.

1. The petitioner is aggrieved by an Award dated 24th May, 2022 passed by the Insurance Ombudsman in a case between the petitioner (complainant) and the respondent PNB MetLife India Ins. Co. Ltd. By the said impugned Award the petitioner's complaint against the respondent in relation to a policy issued by the respondent, was dismissed. The petitioner claims

cancellation of the impugned Award and for refund of the premium amount of Rs. 43,000/- along with interest.

2. The contentions of the petitioner, through learned counsel appearing on his behalf is that the Insurance Ombudsman failed to take into account the applicable Rules and Regulations under The Insurance Act, 1938 as well as the Insurance Ombudsman Rules, 2017. Counsel also relies on The Insurance Regulatory and Development Authority of India (Protection of Policyholders' Interests) Regulations, 2017 to assail the impugned Award and the findings contained therein. Counsel submits that the PNB MetLife Super Life Saver Plan (Policy) was issued on 20th September, 2019 naming the petitioner as the policy-holder and the proforma respondent as the insured. It is submitted that the petitioner thereafter submitted a Free Look cancellation request with the respondent no. 2 on 11th October, 2019 for cancellation of the Policy and for refund of premium. The petitioner also addressed a letter dated 7th November, 2019 to the respondent no. 2 and raised grievance against issuance of the said Policy.

3. The respondent no. 2, PNB MetLife has not appeared in the hearing of this writ petition right from the very beginning. Counsel appearing for the petitioner was directed to serve the respondent no. 2 as well as other respondents and three affidavits of service pursuant to such direction are on record. None of the respondents have appeared before the Court despite such

repeated service. This fact is recorded in the order passed by the Court on 13th September, 2022.

4. Upon perusal of the impugned Award dated 24th May, 2022 passed by the Insurance Ombudsman, it appears that the sole reason for dismissing the complaint filed by the petitioner was that the complaint was not lodged within the free look period of the Policy. Regulation 10 of the Insurance Regulatory and Development Authority of India (Protection of Policyholders' Interests) Regulation, 2017, provides for free look cancellation of Life Insurance Policies. Regulations 10(1)(i) states that the policyholder has a free look period of 15 days from the date of receipt of the policy documents and period of 30 days in case of electronic policies and policies obtained through distance mode, to review the terms and conditions of the policy. The clause further provides that whether the policy-holder has option to return the policy to the insurer for cancellation whenever he disagrees to any of those terms or conditions, stating the reasons for his objection. The policy-holder shall then be entitled to refund of the premium paid subject to certain deductions.

5. The question is whether the petitioner returned the policy to the respondent no. 2 within the period of 15 days provided under Regulation 10(1)(i). The petitioner received the policy documents on 26th September, 2019 (also recorded in the impugned Award) and submitted the free look

cancellation request to the respondent no. 2 on 11th October, 2019. Under section 12(1) of the Limitation Act, 1963, the day from which the period of limitation for any suit, appeal or application is to be reckoned, shall be excluded for computing the period of limitation. Hence, the date on which the petitioner received the policy documents, i.e. 26th September, 2019, should be excluded from the computation of the period of 15 days for the free look cancellation option provided under the IRDA Regulations, 2017. If 29th September, 2019 is excluded, then the petitioner falls within the 15 days window for return of the Policy under Regulation 10(1)(i) of the 2017 Regulations.

6. The impugned Award shows that the only reason given for rejecting petitioner's complaint is that the petitioner did not lodge any complaint within the free look period of the Policy and could not produce any documentary evidence in support of the said allegation.

7. Section 45(2) of The Insurance Act, 1938 does not assist the petitioner since under that provision, a policy of life insurance may be called in question at any time within three years from the date of issuance of the policy or the times mentioned in 45(2) on the ground of fraud where "fraud" has been defined as certain acts committed by the insured or by his agent under Explanation-1 to section 45(2). Since the petitioner has alleged certain acts on the part of the insurer/respondent no. 2 in the present case

including mis-selling of the policy, section 45(2) has no application to the facts of the case.

8. Upon due consideration of the 2017 Regulations, the Limitation Act and The Insurance Act, 1938, this Court is of the view that cancellation of the Policy by the petitioner was within the free look period. The Insurance Ombudsman should have taken note of the relevant factual and legal aspects of the matter including the fact that Regulation 10(1)(iii) casts an obligation on the insurer to process the free look cancellation request and refund the premium within 15 days from receipt of the request. Further, Rule 13 (1)(b) of The Insurance Ombudsman Rules 2017 provides that the Ombudsman shall receive and consider complaints including of alleged deficiency in performance of an insurer on any partial or total repudiation of claims by the life insurer, general insurer or the health insurer.

9. This Court is inclined to accept the position of a recent decision of the Supreme Court in *Union of India vs. M/s. Willowood Chemicals Pvt. Ltd.; Civil Appeal Nos. 2995-2996 of 2022* where the Supreme Court held that the High Court exercising power under Article 226 of the Constitution has the power to give consequential relief by ordering payment of money. The Delhi High Court in *Pavan Sachdeva vs. Office of the Insurance Ombudsman; WP(C) 6304/2019* rejected the issue of maintainability of the writ petition on the ground of alternative remedy.

10. In view of the relevant provisions discussed, taken together with the admitted facts of the matter, this Court is of the view that the petitioner is entitled to relief. WPA 17996 0f 2022 is accordingly allowed by quashing the impugned Award of the Insurance Ombudsman dated 24th May, 2022. The respondent no. 2 being PNB MetLife India Insurance Company is accordingly directed to refund the premium amount of Rs. 43,000/- to the petitioner within a period of four weeks from date. Interest on the said amount at 4.5% p.a. shall be calculated from 11th October, 2019 until the date of payment of the amount to the petitioner. It is also made clear that a proportionate amount from the total sum shall be deducted by the respondent no. 2 taking into account the life risk coverage enjoyed by the life assured from the date of issuance of the Policy till 11th October, 2019 when the request for free look cancellation was submitted by the petitioner.

11. The writ petition is disposed of accordingly.

Urgent photostat certified copies of this judgment, if applied for, be supplied to the respective parties upon fulfillment of requisite formalities.

(**Moushumi Bhattacharya, J.**)