15.02.2022
Court No.13
Item No.18
sp

WPA 18750 of 2021
Subrata Goswami
Vs.
Insurance Regulatory Development Authority of India & Ors.

(Through Video Conference)

Mr. Pratyush Patwari
... for the petitioner.

Mr. Supriya Dubey,
Ms. Debolina Chakraborty
...for the IRDAI

Despite notice, respondent nos. 2 to 4 are not represented. Affidavit of service filed in Court today is taken on record.

The writ petitioner is aggrieved by order dated January 15, 2021 passed by the Insurance Ombudsman. By the impugned order, the petitioner complained against the respondent no.3, was returned back on the ground that the same cannot be entertained.

The substance of the petitioner's grievance is that at the instance of the 4th respondent, the petitioner agreed to work as an agent of the 3rd respondent. At the further request of the 4th respondent, the petitioner suggested the names of the 5th and 6th respondent and their minor daughter as potential customers. It is submitted that the petitioner was asked to deposit certain sums of money that were used by the 3rd respondent, as premium for certain insurance policies issued in favour of the 5th and 6th respondent and their minor daughter.

The petitioner after some time realized that the sums of money obtained from the petitioner were applied by the 3rd respondent as premiums for the said insurance policies in favour of the 5th and 6th respondent and their minor daughter. This was done without the knowledge or consent of the petitioner or the respondent nos. 5 and 6.

Upon complaints being lodged by the petitioner, the 3rd respondent in admitting refunded a sum of Rs. 68,022/- to the petitioner thereby admitting misconduct.

The petitioner could not obtain refund of the balance sum of about Rs. 7,19,294/- and hence complained of the IRDA. Thereafter the petitioner also lodged a claim with the insurance Ombudsman under the provisions of Insurance Act, 1938 and also filed an application under Sections 13 and 14 of the Insurance Ombudsman Rules of 2017 (IO Rules). The petitioner was neither heard nor any objection of the 3rd respondent communicated to him. The Ombudsman, however, by the impugned order held that the petitioner's complaint was premature since there was no representation to the insurer and that the claim of the petitioner did not fall within Rule 13(1) of the said Rules of 2017 and that the 5th and 6th respondent being assured and/or proposer did not initiate complaint and hence the writ petitioner's grievances cannot be entertained.

This Court notes that the petitioner has produced as many as 5 representations made to the insurance company raising his claim. The same are annexed in the writ petition. The Court also notices that the claim of the petitioner clearly falls under Rule 13(1)(I) of the aforesaid Insurance Rules of 2017. The impugned order is, therefore, ex facie illegal and liable to be and is hereby quashed and set aside.

The matter is remanded back to the Ombudsman to consider afresh and decide the claim of the petitioner against the 3rd respondent strictly in accordance with the applicable rules and law within a period of three months from the date of communication of a copy of this order.

In so far as the IRDA is concerned, this Court notices with anguish the lackadaisical attitude demonstrated in total abdication of responsibility under Section 34 of the aforesaid Act of 1938.

Counsel for the IRDA has submitted that upon receipt of the petitioner's complaint, the same was forwarded to the respondent n o.3 and the response of the insurance company has been communicated to the petitioner.

Counsel for the petitioner denies and submits that his client has received any such communication. The said order is uploaded on the website of the IRDA.

Be that as it may, this Court notices a complete abdication of responsibility by the IRDA in the instant case. The IRDA has not indicated and may not have briefed his counsel as to the steps taken against the 3rd respondent for having obtaining policies and promoting business in the manner indicated in the order hereinabove. It appears prima facie to this Court that the practice adopted by the 3rd respondent, particularly, as indicated hereinabove, are wholly unethical and illegal. The IRDA should have at least commenced some investigation into the affairs of the respondent no.3 in the light of a complaint of the petitioner.

Let a copy of this order be communicated to the Chairman of the IRDA for necessary action.

With the aforesaid observations, the writ petition shall stand disposed of.

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.)