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05.04.2023
Ct. No. 32
rrc

FMA 880 of 2022
with
IA No. CAN 1 of 2020 (Old No. CAN 1857 of 2020)

(Smt. Rupa Sarkar Vs. Life Insurance Corporation of India & Ors.)

Mr. Avijit Ghoshal
..... For the appellant

Ms. Soma Ray Chaudhuri
..... For the L.I.C.I.

The present appeal has been preferred challenging an order dated 11th July, 2019 passed in a writ petition being W.P. 30643 (W) of 2017.

The writ petitioner/appellant preferred the writ petition stating *inter alia* that her husband, who was a legal practitioner, suddenly expired on 5th January, 2013. Due to sudden loss of the sole bread earner, the family was on the brink of starvation. For securing the future of her son, she purchased a Bima Bachat LIC's Single Premium Money Back Policy (in short, the said policy) investing an amount of Rs.5,05,155/- towards one time premium. The said amount of premium was paid from the savings of her deceased husband. Upon acceptance of the premium amount, a money receipt dated 11th March, 2013 was issued for and on behalf of the Life Insurance Corporation of India (in short, LICI). Subsequent thereto, the respondent no.2 issued a letter dated 15th May, 2014 to the appellant seeking information regarding her mode of payment of premium (Cash or Cheque) and to whom the cash or cheque was handed over. The appellant replied to the said letter on 19th June, 2014 stating *inter alia* that the first premium towards the policy no. 495092771 was paid by her by cash through her agent, namely, Mr. Ranadip Das (Agency Code No. 16985412). As the policy benefits were not being disbursed, she forwarded an *e*-mail on 13th November, 2017 with a request to release the dues. The respondent no.3 thereafter issued a letter dated 28th November, 2017 to the appellant informing that her policy was '*completed fraudulently by withdrawing money from LIC and was under investigation of CBI, final report of which is still awaited'.* As her policy benefits were thus withheld, she was constrained to prefer the writ petition. On 20th December, 2017 an order was passed in the writ petition directing the parties to exchange their affidavits. Thereafter by an order was passed on 6th May, 2019 the respondents were directed to release the first and second survival benefits in favour of the appellant within a period of seven days from the date of communication of the order upon arriving at a *prima facie* finding that there was nothing on record to show that the appellant had committed any fraud. The matter was thereafter mentioned on behalf of the LICI authorities and by an order dated 13th May, 2019, operation of the earlier order was stayed and finally by an order dated 11th July, 2019, the writ petition was dismissed. Aggrieved by the said order, the present appeal has been filed.

Mr. Ghoshal, learned advocate appearing for the appellant submits that in reply to the letter dated 15th May, 2014, the appellant had categorically stated that the premium amount of Rs.5,05,155/- was paid by cash through her agent and upon receipt of the same, the competent authority issued the money receipt dated 11th March, 2013 to the appellant incorporating the policy number. Surprisingly thereafter, a letter was issued on 28th November, 2017 by the respondent no. 3 stating that a fraud had been detected and a complaint lodged to that effect was under investigation of CBI and the appellant's dues were illegally withheld though there was no involvement of the appellant in the alleged dispute. For the fraud committed by any employee/agent of the LICI, the appellant cannot be made to suffer.

He further submits that after completion of investigation, CBI submitted its charge sheet on 31st December, 2014 praying that *'cognizance of the offences may be taken and process be issued against the accused person Sri Debabrata Ray to face the trial'.* Even thereafter the respondents withheld the appellant's benefits in a most illegal and arbitrary manner and such action is most unbecoming of a statutory authority.

He submits that in reply to an application under Section 6 of the Right to Information Act, 2005 submitted by the appellant on 7th December, 2022, the competent authority by a letter dated 3rd January, 2022 had clearly admitted the issuance of the policy no. 495092771 to the appellant.

Drawing our attention to the averments made in the affidavit-in-opposition filed on behalf of LICI, Ms. Ray Chaudhuri, learned advocate appearing for LICI submits that the procedure towards payment of premium by cash was not an authorized procedure and the premium amount of Rs.5,05,155/- was not received by the LICI authorities. According to the appellant the premium amount was paid by cash through her agent but the receipt would reflect that the amount was by cheque. Such apparent contradiction could not be explained by the appellant.

She submits that in the year 2013, a fraud was detected and an approximate amount of Rs. 3.48 crores was debited from the fund of LICI. A complaint to that effect was lodged on 31st December, 2013 and CBI investigation commenced. The appellant's policy along with 274 other policies were involved in the criminal proceeding. LICI had been a victim of a deep rooted conspiracy and fraudulent activities of its employees and agents. As after internal investigation fraud was detected, financial transactions were stopped by marking status as *'purification off'*.

She further submits that the *lis* involves disputed question of facts which cannot be decided in a writ proceeding. The appellant had failed to furnish any explanation as regards the source towards alleged deposit of an amount of Rs.5,05,155/-. In reply to the memo dated 15th May, 2014, the appellant had also not furnished the particulars as sought for by the said letter. In view thereof and for non-disclosure to the source towards alleged payment of the premium, the LICI authorities cannot be compelled to disburse the maturity amount of the policy along with all survival benefits. It is also not a case that LICI had withheld the amount of premium and had been a beneficiary of any erroneous or mistaken act. LICI did not even receive the premium amount of Rs.5,05,155/- from the appellant.

Ms. Ray Chaudhuri submits that there had been a fraud involving an amount of Rs.3.48 crores and issuance of any order towards disbursement of maturity benefits pertaining to the appellant's policy would open up flood-gate.

In reply, Mr. Ghoshal submits that the appellant had not suppressed any material fact. She invested the hard earned money of her deceased husband for purchasing the said policy and for the illegalities perpetrated by the LICI employees and agents, she cannot be deprived of the benefits of the said policy.

In course of hearing, attention of this Court had been drawn to a report submitted by the Regional Manager (Legal), Eastern Zonal Office, Kolkata wherein it has, *inter alia,* been stated as follows:-

> *"BOC No. 18125 for Rs.5,05,155/- was appropriated towards premium against the subject Policy No. 495092771 (without receiving any consideration amount form the purported policyholder), while BOC No. 18142 for Rs.994845/- was notionally refunded, with such notional refund being merged with two more BOCs (BOC 18161 for Rs.15,00,000/- and BOC No. 16312 for Rs.24,281/-, both fraudulently generated by Shri D. Ray debiting LIC Account) resulting in issuance of a combined fraudulent refund cheque (No. 38899 dated 13.03.2013) for Rs.25,19,126/- which was utilised to generate a fresh BOC for Rs.25,19,126/-, this amount being subsequently appropriated towards premium against two new policies (Policy Nos. 495094356 and 495094579) in the name of Debabrata Roy, the delinquent employee, and four new policies (No. 495094350, 495094490, 495094577 and 495094578) on the life of Smt. Susmita Roy, wife of Shri Debabrata Roy, since dismissed."*

Heard the learned advocates appearing for the respective parties and considered the materials on record.

It is explicit from the report submitted by the Regional Manager (Legal), Eastern Zonal Office, Kolkata and the charge sheet that the BOCs were fraudulently generated by one Sri Debabrata Ray and adjusted for payment of 14 policies of Sri. Ray and the remaining fraudulent amount was adjusted against 275 other policies. The appellant is admittedly not involved in such scam and the LICI authorities cannot withhold the benefits of the policy on the pretext of such criminal proceeding.

By the order impugned in the present appeal, the learned Court dismissed the writ petition observing, *inter alia,* that '*it is difficult to accept the case of the respondents of how this money was converted at the instance of Debabrata Roy and his associates as alleged at paragraph 4 sub-para (5) of the affidavit in opposition. But that does not remove the smell or suspicion of inequitable conduct on the part of the writ petitioner. Admittedly, the payment of a single premium of Rs.5,05,155/- has given rise to this claim. The petitioner is not in a position to explain how she got this amount and no statement from any bank have been disclosed to show that such sum was obtained by the petitioner from any bank even from her husband's source*'.

The writ petition was ultimately dismissed on a purported ground that the appellant had failed to disclose the particulars which alone could have removed the taint of inequitable conduct from the writ petitioner's hand. In the said order it was also observed that the dismissal of the writ petition shall not prevent the writ petition from filing afresh with documentation to show how she had paid single premium for the policy and which source she had obtained it.

From a perusal of the order impugned it appears that the learned Court had dismissed the appellant's petition on the basis of a '*smell or suspicion of inequitable conduct on the part of the writ petitioner*'.

Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof. By the letter dated 15th May, 2014, the appellant was asked to furnish information regarding mode of her payment (cash or cheque) and to whom single premium was handed over. To such query the appellant clearly disclosed that the first premium of the policy was paid by cash to Mr. Ranadip Das. In the premium receipt, it was incorporated that the amount was received by cheque. Under the statutory provisions an agent has the authority to collect money form the policy holder and to immediately deposit the same in the policy account. Such amount even if paid by cheque was acknowledged by the LICI authorities and money receipt to that effect was issued. The LICI authorities had not initiated any proceeding against the appellant's agent. The policy document had also not been cancelled. LICI accepted the policy proposal form. They did not ever ask the policy holder to clarify any ambiguity. The appellant from the very inception had not suppressed any material fact. She is not in any manner involved in the criminal proceedings initiated by the LICI authorities. After acknowledging payment of premium, they cannot turn back and ask the appellant to disclose the source of the premium amount and deny the benefits on such ground.

The argument of Ms. Ray Chaudhuri that the conferment of the benefits to the appellant would open a floodgate is also not acceptable to this Court. The same appears to be an argument of desperation. Only because, there is a possibility of floodgate litigation, the valuable right of a citizen cannot be permitted to be taken away, more so when an instrumentality of the State must conduct itself with high probity and candour and cannot act arbitrarily and unreasonably.

For the reasons discussed above, it would be iniquitous to withhold the benefits pertaining to the policy in question.

Accordingly, the order impugned in the appeal is set aside and the LICI authorities being the respondent nos. 1, 2 and 3 are directed to disburse the maturity amount along with the survival benefits together with loyalty addition, if any pertaining to the Bima Bachat LIC's Single Premium Money Back Policy no. 495092771, in favour of the appellant within a period of four weeks from the date of communication of this order.

With the above observations and directions, the appeal and the connected application are disposed of.

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

(Raja Basu Chowdhury, J.) **(Tapabrata Chakraborty, J.)**