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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 23148 of 2022

Asish Kumar Mukhopadhyay & Anr.
Vs.
The Assistant Secretary/Deputy Secretary/
Secretary of Insurance Ombudsman & Ors.

Ms. Kakali Samajpaty,
Ms. Sangita Jangra,
Mr. Subhranil Roy
...for the petitioners

Mr. Rajesh Singh,
Mr. Aniruddha Singh
...for the respondent no. 3

Mr. Shourjyo Mukherjee,
Mr. Vishwarup Acharyya
...for the respondent nos. 4 to 6

Learned counsel appearing for the petitioners points out that the petitioners having approached the Insurance Ombudsman with the allegation that an employee of the Insurance Company mis-sold insurance policies to the petitioners, the Ombudsman, despite having observed that the overall circumstances indicate some sort of mis-selling, bypassed the issue by directing the Insurance Company to convert the total amount of premium paid against the policies, which was sought to be cancelled by the petitioners, and issue a single premium policy as offered by the Insurance Company. It is contended that the petitioners also have voice recordings of the Manager of the respondent-insurance company, being the respondent no. 5 herein, as well as respondent no. 6, an employee of the insurance company, which were not allowed to be produced before the Ombudsman.

Learned counsel appearing for the respondent-insurance company submits that the Ombudsman, in ultimate analysis, observed that there is no documentary evidence provided by the complainant to prove mis-selling. Moreover, it was recorded that the forum finds no reason to intervene in the matter and mis-selling could not be proved.

That apart, it is submitted that a favourable alternative was given to the petitioners, inasmuch as the total amount of premium paid by the petitioners was directed to be converted to a single premium policy as offered by the Insurance Company with the total amount paid plus total amount of renewal premium paid, if any, under policies to be taken into account. However, the petitioners themselves are also to be blamed, since the policies were issued as long back in the year 2018, whereas the request for cancellation was made after taking advantage of the same for two years, only in the year 2021.

It is further contended by the Insurance Company that the petitioners over-shot the free look-in period of about 15 days given after the issuance of the policy and made their request long after the issuance of the.

Not only that, the petitioners had started paying premium and took advantage of the insurance coverage for two years. That apart, it is sought to be argued that there are certain tax benefits to be obtained by the policy-holders, which was taken advantage of by the petitioners for two years, during which they sat tight over the matter.

Hence, it is submitted that the writ court ought not to enter into the fact-finding enquiry which would be required to decide the dispute on merits.

A bare perusal of the impugned award shows that the Ombudsman arrived at contradictory findings. It is implicitly contradictory that the Ombudsman, in the same breath, observed that though there is no documentary evidence provided by the complainant to prove mis-selling, and also that the overall circumstances indicate that some sort of mis-selling was done by the agent.

However, thereafter, the Ombudsman again proceeded to observe that it found no reason to intervene in the matter and mis-selling could not be proved.

That apart, the Ombudsman also observed that the mis-selling was done by the agent, for which the company could not be blamed. However, there is nothing on record to distinguish between the capacities of the respondent no. 6 as an agent of the Insurance Company and an employee of the same.

Be that as it may, in the absence of detailed consideration on such issues, and since the Ombudsman did not give any opportunity to the petitioners to produce their voice recordings along with relevant backup data and device, the matter is required to be re-heard on merits by the Ombudsman.

Accordingly, without going into the merits of the matter at this stage, W.P.A. No. 23148 of 2022 is allowed, thereby setting aside the impugned awards and directing the Ombudsman to rehear the matter, upon giving fresh opportunity to the parties to produce further evidence, including voice recordings, if any available, and to decide the issues afresh in accordance with law.

It is made clear that the Ombudsman shall adjudicate on all issues raised by the parties, including whether the respondent no. 6 sold the disputed policies to the petitioners and whether the respondent no. 6 acted in the capacity of merely an agent or an employee of the Insurance Company as well as whether there was any liability of mis-selling on the part of the Insurance Company.

Upon deciding all issues, without being unnecessarily influenced by any of the observations made herein, the Ombudsman shall pass a final reasoned order in both matters, concerning both the petitioners.

The entire exercise, it is expected, shall be concluded within three months from the date of communication of this order to the Ombudsman.

The petitioners shall communicate this order to the Ombudsman, who shall act on a server copy of this order without insisting upon prior production of a certified copy thereof, for the purpose of compliance.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)