OD-10

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

APOT/120/2019
IA NO: GA/1/2019(Old No:GA/2369/2019),
GA/2/2019(Old No:GA/2462/2019)

GOLDEN TRUST FINANCIAL SERVICES AND ANR
VS
UNION OF INDIA AND ORS

BEFORE:
The Hon'ble JUSTICE RAJASEKHAR MANTHA
And
The Hon'ble JUSTICE SUPRATIM BHATTACHARYA
Date : 27th July, 2023.

Appearance:
Mr. Arnab Chakraborty, Adv.
Mr. Pragya Bhoumik, Adv.
Mr. Sukalyan Chakraborty, Adv.
Mr. Prasenjit Saha, Adv.
..for the appellants.

The Court:

GA/1/2019

1. Sufficient grounds are available to explain the delay in filing the instant appeal. The delay of 144 days is condoned. G.A. 1 is allowed and disposed of.

APOT No/120/2019

2. The appeal is directed against a judgment and order dated 18th March, 2019 passed by the Learned Single Bench, by which three writ petitions were dismissed.

3. The facts of the case are that some time in the year 1995, a Group Janata Personal Accident (G.J.P.A) Insurance Policy was issued by the respondent New India Assurance Company Limited in favour and benefit of the employees, agents and their friends of the writ petitioner firm namely, M/S. Golden Trust Financial Services.
4. Thereafter, in the year 1998, a Memorandum of Understanding (M.O.U.) was entered into by and between the Insurance Company and the firm.
5. The M.O.U. was however terminated soon thereafter. The writ petitioner challenged the same and filed WP No.1144 of 1999. By an order dated 6th July, 1999, passed by a Learned Single Bench, the cancellation of M.O.U. was stayed. The friends of the employees were removed from the coverage of the insurance policy. The Insurance Company was restrained from collecting premium from such friends. The coverage already granted however continued and remained.
6. By an order dated 1st August, 2002, the Insurance Company invoked condition no.5 of the Insurance policy, and terminated and cancelled it. It was communicated that in terms of the said condition no.5 of the policy, cancellation would take effect upon return to the insured of the last paid premium less pro-rata part thereof. No sums were ever returned by the Insurance Company.
7. The policies themselves expired by efflux of time in the year 2018.
8. The said order dated 1st August, 2002 came to be challenged by the other writ petitions. There were two categories of challenge. The first

and third writ petitions were filed by the partnership firm and the second was filed by an individual employee field worker from whom the premium was collected by the insurance company.

9. Affidavits were exchanged in the Court below.

10. The learned Single Judge by detailed and well reasoned judgment held that the partnership firm could not maintain the writ petition since there was no personal right infringed. The firm was not insured.

11. The Court however went on to hold that in the peculiar facts of the instant case, there was no public element whatsoever in a private contract of insurance. The contract was not entered into by the respondent in exercise of any statutory power. It was also found that the contract of insurance in question, was not under Article 299 of the Constitution of India or powers akin thereto.

12. The Single Bench found that while it is true that a State action even under area of private contract is required to be fair and just, the New India Assurance Company acted strictly in terms of private contractual term between the parties. The contract of insurance had no public element whatsoever.

13. A number of decisions of the Supreme Court have been considered and dealt with by the Single Bench and appropriately so.

14. For the reasons already recorded by the Learned Court below and those found by us, this Court is not inclined to interfere with the views of the Single Bench. Indeed there is no public element whatsoever in

the insurance contracts in question. As to whether a partnership firm could maintain the writ petition in the facts is seriously questionable.

15. It has been contended by the respondent insurance company which has found support with the Single Bench that the cancellation of M.O.U. and the cancellation of the insurance contract by the impugned order has happened as a consequence of a policy decision of the Central Government. Such policy decision, inter alia, brought into force the Insurance Regulatory Development Authority albeit prospectively.

16. The Single Judge has found and this Court agrees that the cancellation of the insurance policy upon a policy change of the Central Government cannot usually be questioned under Article 226 of the Constitution.

17. The aforesaid discussions, have even otherwise been rendered rather academic since the term of the original policy has expired in the year 2018. A detrimental effect or civil consequence to a citizen stands however on a different footing.

18. In view of the civil consequences on the persons who have already lodged claims i.e., under the aforesaid Group Janata Personal Accident (G.J.P.A) Insurance Policy upto 18th March 2019 (the date of the impugned order) it is directed by this Court that each of such claim shall be entertained and decided by New India Insurance Company on its individual merits and the impugned judgment and

the observations of this Court shall not stand in the way of such consideration.

19. A.P.O.T No. 120 of 2019 stands disposed of.

20. In view of the above, all interim applications shall stand disposed of.

(RAJASEKHAR MANTHA, J.)

(SUPRATIM BHATTACHARYA, J.)

D.Ghosh