OD – 7

WPO/1682/2023

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

KRISHNA KUMAR SINGHANIA

-Versus-

OFFICE OF THE INSURANCE
OMBUDSMAN AND ORS.

BEFORE :
THE HON'BLE JUSTICE SABYASACHI BHATTACHARYYA
Date : 14th December, 2023

Appearance :
Mr. Om Narayan Rai, Adv.
Mr. Surajit Dasgupta, Adv.
Mr. Rajesh Upadhyay, Adv.
...for the petitioner.

Mr. Ramendra Agarwal, Adv.
...for the respondent.

.

The Court : Affidavit of service filed in Court today be kept on record.

The petitioner contends that the petitioner had a dispute with the respondent no.3-insurer. The matter went up to the Ombudsman who decided the issues vide order dated May 11, 2022. The petitioner contends that the petitioner received the principal amount pursuant to such order in the month of June,

2022. However, the petitioner was under the impression that interest component of the same would come later.

The said component having not reached the petitioner, the petitioner made due enquiry. Upon applying for a certified copy of the order of the Ombudsman, the same was received by the petitioner in the month of November, 2022 wherefrom the petitioner came to know that the Ombudsman had recorded that the complainant i.e. the petitioner did not raise any objection to non-payment of interest. It is sought to be argued that the said recording is factually erroneous since the petitioner never conceded to non-payment of interest.

Accordingly, in the month of January, 2023 the petitioner took out an application before the Ombudsman asking for modification of its order dated May 11, 2022 to the extent that interest be granted and the observation that the petitioner did not take any objection to non-payment of interest be deleted. The said application having been kept pending inordinately, the present writ petition has been preferred.

Learned counsel appearing for the insurer contends that admittedly the order was passed on May 11, 2022 by the Ombudsman. Pursuant thereto, the entire awarded sum was paid to the petitioner by the insurer as long back as in the month of June, 2022. However, the petitioner sat tight over the matter. It is argued that if the petitioner had any issue with non-payment of interest, the petitioner could have written to the respondent no.3/insurer and/or taken the point before the Ombudsman much earlier, which was never done by the petitioner. Thus, the wait for preferring this writ petition so long after the order was passed is itself mala fide and the writ petition ought to be dismissed.

Learned counsel further submits that the tenor of the order reflected in the Ombudsman's findings clearly shows that the same was in the nature of a settlement between the parties and cannot be re-opened at this stage.

It is also pointed out that the petitioner has failed to substantiate before this Court as to what occurred in the month of November, 2022 for the petitioner to suddenly wake up and take out an application before the Ombudsman.

A perusal of the order of the Ombudsman indicates that the same cannot be termed as a consent order or an order by settlement between the parties. It was observed that the insurer, in pursuance of the "customer centric approach of the company", as an exception, was ready to cancel the policy-in-question from the inception of the policy and refund the premium paid to the life assured under the policy towards full and final settlement of dues.

Thus, it was an unilateral act of the respondent no.3 to resolve the issue. Accepting such contention of the insurer, the Ombudsman went on to direct the principal to be paid. It is noteworthy that in the same breath the insurer also recorded that the complainant/present writ petitioner demanded for interest, but the representative of the insurer clearly declined the request for payment of any interest, showing thereby that the petitioner had actually objected to non-payment of interest.

However, in a subsequent sentence, the Ombudsman observed that thereafter the complainant did not raise any objection and agreed to accept the offer made by the insurer, on which premise the order was passed.

Since the petitioner claims to have obtained the certified copy only in the month of November, 2023, it cannot be said beyond all reasonable doubt at this stage that the petitioner was aware of the details of the order all along.

In any event, it is the settled position of law that if any dispute arises regarding the factual happening which transpired before a particular court or forum, it is the same Court/forum and not a superior forum which is required to be approached by the disputing party for rectification of such erroneous factual recording.

Complying with such principle of law, the petitioner has rightly approached the Ombudsman. A pre-judging of the issues involved in the application would be beyond the scope of the present writ petition.

In any event, it was the duty of the Ombudsman to decide the application of the petitioner whichever way the Ombudsman feels justified in accordance with law.

Accordingly, WPO/1682/2023 is allowed, thereby directing the Ombudsman, that is, the respondent no.1 to consider and dispose of the petitioner’s representation dated January 21, 2023 annexed at page 159 of the writ petition upon giving an opportunity of hearing to the petitioner as well as to the respondent no.3/insurer in accordance with law at the earliest, positively within February 29, 2024.

It is made clear that this Court has not entered into the merits of the respective contentions of the parties and it will be open to the Ombudsman to decide the question independently in accordance with law.

Since no affidavits have been called for in the writ petition, it is deemed that none of the allegations made in the writ petition are admitted by any of the respondents.

(SABYASACHI BHATTACHARYYA, J.)

A/s.