fIN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.03.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.19652 of 2018

Malavikaa Sundaram Ravi ..Petitioner

Vs.

Life Insurance Corporation of India,
CBO 15, Kodambakkam,
Chennai – 600 024. ...Respondent

Prayer:Writ petition has been filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus calling for the records of the respondent relating to the impugned letter dated 17.04.2018, quash the same as illegal, arbitrary unconstitutional and discriminatory and consequentially direct the first respondent herein to accept the proposal and issue insurance to the petitioner herein.

For Petitioner : Mr.Vikram Veerasamy for
Mr.Avinash Krishnan Ravi

For Respondents : Mr.N.Vijayaraghavan for
M/s.M.B.Gopalan Associates

ORDER

The writ petition has been filed challenging the rejection of a insurance application by the respondent and for a consequential direction to the respondent to accept the proposal and issue insurance to the petitioner herein.

2. It is the case of the petitioner that the petitioner has applied for medical insurance policy for a sum of Rs.50 lakhs with the respondent and a proposal deposit of Rs.69,296/- was made along with the proposal dated 25.12.2017. The petitioner stated that she is earning a sum of Rs.3.5 lakhs per annum by taking tuition classes. The petitioner has also stated that she is suffering from Multiple sclerosis. The respondent made the petitioner to undergo medical tests such as MRI brain and to fill up Opthalmic questionnaire , CNS Questionnaire, Deformity Questionnaire, Epilepsy Questionnaire and the details given thereon revealed that the petitioner was suffering from Multiple sclerosis. Considering the adverse health factors, the proposal/application of the petitioner was declined by the respondent. Pursuant to the said rejection, the respondent refunded the sum of Rs.67,562/- after deducting the cost of Rs.1764/- toward medical tests and evaluation. Challenging the said rejection, the petitioner has filed this writ petition.

3. The learned counsel for the petitioner submitted that Multiple sclerosis is being graded as a rare disease and cost of diagnosis and medicine for treatment of Multiple sclerosis is between Rs.40,000/- and Rs.60,000/- per month. In addition to the monthly expenditure, the periodical check up should also be done. Only in that said backround, the petitioner had applied for medical insurance with the respondent insurance corporation.

4. The learned counsel for the petitioner further submitted that the very purpose of the insurance policy is for unhealthy persons like the petitioner, who suffer with rare disease, so that in future, periodical sums of money will be released, which money could be used by the such person towards their medical expenditure.

5. The learned counsel drew the attention of this Court to the Rights of Persons with Disabilities Act, 2016 to drive the point that Parliament has enacted such law only to help the persons who are suffering from disabilities. Multiple Sclerosis has been classified as a specified disability as per Section 2(z)(c) of the Act read with Schedule I.

Under the said Act, persons with not less than 40% of the specified disability are classified under Section 2(r) of the Act as persons with Benchmark Disability. Therefore, the respondent, falling under the definition of "state" is obliged under Section 3 of the Act to not discriminate against persons with disabilities.

6. The learned counsel for the petitioner submitted that rejection of application of the petitioner solely on the ground that she suffers from Multiple Sclerosis amounts to an offence under Section 89 of the Act. Therefore, the learned counsel submits that rejection by the respondent is totally unjustifiable and against the principles of natural justice.

7. The respondent has filed a detailed counter denying the averments made in the affidavit filed by the petitioner and the respondent has given detailed reasons for rejection of the application of the petitioner.

8. The learned counsel for the respondent submitted that two major criteria for accepting an insurance application are income of the

proposer and the health factors. In the application, the petitioner has stated that she was earning a sum of Rs.3.5 lakhs per year by taking tuition classes. However, in the affidavit, the petitioner has stated that she is a student in law undergoing studies in a law college. That being so, the statement that she was earning a sum of Rs.3.5 lakhs per annum is beyond comprehension, an breaking down the said sum per month works out to Rs.29,000/- per month, which no student in law could envisage earning by taking tuition. The second factor is health fact. The petitioner admittedly suffers from Multiple Sclerosis, for which, she has applied for the insurance coverage of Rs.50 lakhs. Multiple Sclerosis is classified as a rare disease which requires constant medication and periodical test and check ups. Insurance application cannot be accepted with regard to an existing health condition of the proposer which is known beforehand, as health insurance is only for ailments, which the insured suffers after a policy is taken, which ailment was not pre-existing before the issuance of the policy.

9. The learned counsel for the respondent fairly admitted that health and death cannot be predicted and even a healthy person can

develop complications in a matter of few days. The main criteria at the time of making an application is that the proposer should be of good health or with general health complications, which a normal person of average age is prone to suffer. When the health condition of the person is admittedly in a very wealthy state, the very purpose of insurance get defeated. Hence, the learned counsel submits that there is no error on the part of the respondent is rejecting the application of the petitioner.

10. Heard both sides and perused the materials available on record.

11. It is the admitted case of the petitioner that at the time of applying for medical insurance policy with the respondent, the petitioner was suffering Multiple Sclerosis for which she was taking treatment. The main ground on which the petitioner canvasses her plea is that health insurance is for persons, who are suffering health issues and to take care of their medical expenses only for which such huge sums are being paid as premium and, therefore, the respondent cannot reject her proposal, moreso, when the said health issue is defined to be a disability

under the Disabilities Act and, therefore, the respondent, falling within the meaning of "State" is bound to follow the Act.

12. It is to be pointed out insurance is a contract, which is entered into between the insurer and the insured upon fulfilment of the contractual obligations. In the present case, the respondent, as the insurer, had, on the basis of the proposal submitted by the petitioner, had subjected the petitioner to rigorous medical check ups, including MRI Brain and also had taken the answers of the petitioner to questionnaire of different nature, which revealed that the petitioner was suffering from Multiple Sclerosis. It is therefore clear that the petitioner was suffering an illness even before the policy could be issued. Contract is mutual between the parties and one party cannot force the other party to enter into a contract. The law on contract is settled as it is mutual and satisfying the conditions by the insured would result in coverage by the insurer. Thus, a contract is based on a reciprocal promise and reciprocal promises by the parties are condition precedents for a valid contract.

13. The issue on hand pertains to health insurance. Admittedly,

the petitioner, at the time of submitting application along with proposal for insurance, had paid a sum of Rs.69,296/- as premium for the purpose of insurance for a sum of Rs.50 Lakhs. The petitioner claims that the disease suffered by her is a disability, as defined under the Disabilities Act and, therefore, the respondent is bound to accept the proposal and issue the policy and keep on covering the medical expenses, which the petitioner may incur.

14. Such a stand taken by the petitioner is wholly untenable, as health insurance is premised on the basis that the insurance would cover a person, who is of normal health and who, in the course of continuance of the policy, falls ill necessitating incurring of expenditure, which would stand covered by the insured under the terms of the policy. This clear mandate is to the effect that the illness of the person, who is covered under the insurance should not be an illness, which the person was suffering when the policy is sought for from the insurer. Therefore, pre-existing illness would not be covered under the terms of the policy. Further, undisclosed pre-existing illness also cannot be sought to be covered by the insurer even if it is not within the knowledge of the

insurer when the policy was issued. Illness, which the person contracts during the course of the policy, which is post-policy, alone would stand covered under the medical insurance.

15. To put it more mildly, if the stand of the petitioner is to be accepted that medical insurance is for persons, who are suffering illness, which is to be covered by the insurer, then the petitioner, by paying a sum of Rs.69,296/- towards premium for a year, seeks a repayment of the medical expenditure in lakhs for the illness, which was existing before the policy was accepted. If the said contention is to be accepted and acceded to by this Court, then all the persons, who are terminally ill would very well take a policy, thereby the hands of the insurance company would be tied by forcing it to pay the amounts towards the medical expenditure of such individuals. The scope and purpose of medical insurance is not for persons, who have pre-existing disease to claim medical insurance, but for persons, who are normal, but who want to safeguard their monetary interests in the event of an unforeseen circumstance, where they contract an illness, which requires shelling out of a large sum of money towards treatment, which, in case of a medical

policy in subsistence, would be covered by the insurer, so that the person would feel at ease in taking treatment.

16. Further, even according to the petitioner, she is a law student pursuing her course in law in the college. That being the admitted case, by means of taking tution, the petitioner claims to earn a sum of Rs.3.5 Lakhs per annum. It is the stand of the respondent that the petitioner is bound to spell out the means by which she earns and there should be necessary documents to prove that such an amount is earned as income so that the insured would be in a position to honour the premium. However, in the case on hand, there is no material to show the income of the insured, barring the claim of the petitioner that she is earning a sum of Rs.3.5 Lakhs by taking tution. Though the proof of income cannot be the basis for the respondent to reject the proposal of the petitioner, but the pre-existing illness can definitely be the basis to reject the proposal of the petitioner.

17. In the realm of contract of insurance, it is discretionary on the part of the insurer either to accept a proposal or to reject as it is for the

proposer to either accept to take a policy or reject taking a policy. A proposer cannot impose upon the insurer to issue the proposer with a policy, as contract of insurance is a reciprocal promise, which has to be honoured by both. However, in the case on hand, the petitioner, being a person, already suffering from a disease, which she wants to specifically cover, the petitioner cannot impose upon the respondent to issue the policy and cover the said illness.

18. In fact, the petitioner does not claim that she is not insistent on the respondent not covering the pre-existing illness and issuing the policy for any other illness which she may suffer. In fact, the petitioner wants to have the specific illness covered. It is the case of the respondent that the illness suffered by the petitioner may lead to further health complications, which may lead to other disease and knowing the above, the respondent cannot be forced to cover the petitioner. The said stand of the respondent is not only fair and reasonable, but it is within the bounds of contract and, therefore, the said rejection cannot be said to be bad.

19. Insurance is a contract between two consenting parties on accepted parameters and when one of the contracting parties is not accepting a particular parameter and is not inclined to enter into a contract, this Court cannot force the said party to enter into a contract, merely because, in the present case, the petitioner, as one of the contracting parties, wants to have her health covered by the respondent, who is the other contracting party, in respect of an illness with which she is suffering.

20. This Court cannot issue any direction as sought for by the petitioner, as it would be nothing but an act of meddling with the contract which one of party is not inclined to enter into. In case the respondent had rejected the contract only on the ground of earning of the petitioner, which according to the respondent, has not been proved, this Court could have come to the rescue of the petitioner, as the respondent cannot rest their case on proof of income; rather, it is for the insured to honour the premium, failure of which would absolve the insurer of its liability to honour the terms of the contract. But in the present case, the main ground of rejection of the proposal of the petitioner is on the

ground of a pre-existing illness, which the petitioner wants to cover specifically and when the respondent is not inclined to cover the said illness, as the medical ailment of the petitioner is pre-existing, this Court cannot issue any direction to the respondent to cover the petitioner, as any such order would be setting a wrong precedent and would open a Pandora's Box and the sustenance of the insurance companies would be put to a big question mark.

21. Further, the stand of the petitioner that the medical ailment suffered by the petitioner is a disability as defined under the Disabilities Act and, therefore, the respondent is bound to accept the proposal and issue policy, is nothing but a misconceived and a novel idea of the petitioner, being a student in law, to appeal to the sympathies of this Court. The Disabilities Act in no way would be attracted to the case on hand, as the right as is envisaged under the said Act cannot be imported into the Law of Contracts, where the contract is on mutually agreed terms. The Disabilities Act has been enacted for a solely different purpose and the purpose for which it is sought to be utilised by the petitioner only shows the legal acumen, which the petitioner had

obtained in the course of pursuing the legal profession, for her personal advantage, which cannot be allowed by this Court. Though the Court can extend its sympathies to the petitioner, however, it cannot go beyond the legal framework to give the petitioner any benefit by issuing any affirmative direction to the respondent.

22. For the reasons aforesaid, the rejection of the proposal of the petitioner by the respondent, is not only justified based on the facts of the case, but also is on the basis of the law of contracts and contractual obligation being discretionary, the act of the respondent is wholly justified and the same does not warrant any interference at the hands of this Court. Accordingly, the writ petition fails and the same is dismissed. However, there shall be no order as to costs.

14.03.2023

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NCC: Yes / No
Index : Yes / No
Speaking Order : Yes / No

To
Life Insurance Corporation of India,
CBO 15, Kodambakkam,
Chennai – 600 024.

M.DHANDAPANI,J.

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