IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos.140, 1069, 1072, 1074, 1530, 2930, 2933, 4369, 4371, 4372, 4376, 4377, 4926, 4932, 4936, 4939, 4941 of 2022
and
W.M.P.Nos.152, 1132, 1135, 1136, 3072, 3075, 4488, 4490, 4491, 4495, 4496, 5075, 5078, 5079, 5082, 5083 of 2022

Life Insurance Corporation of India
Rep. by its Senior Divisional Manager,
Divisional Office- I,
153-Anna Salai, Chennai – 600 002. ... Petitioner

Vs

1. The Insurance Ombudsman,
Office of the Insurance Ombudsman,
(Tamil Nadu & Puducherry)
IV Floor, Fathima Akthar Court,
453, Anna Salai, Teynampet,
Chennai – 600 018.

2. N.S.Vasudevan ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari after calling for the records relating to the Award No.IO/CHN/A/LI/0071/2021-22, dated 25.08.2021 passed by the first respondent and quash the same.

For Petitioner : Mr.C.K.Chandrasekkar
For Respondents
For R1 : Mr.M.B.Raghavan
For M/s.M.B.Gopalan Associates
For R2 : Mr.K.Manikandan

COMMON ORDER

All the writ petitions, except the writ petition in W.P.No.1530 of 2022, have been filed by the Life Insurance Corporation of India challenging the award passed by the Insurance Ombudsman on various dates, thereby directing the petitioner to return the premiums collected from the second respondent along with interest at the rate specified in Rule No.17(7) of the Insurance Ombudsman Rules, 2017, from the respective dates of receipt of the premium.

2. The writ petition in W.P.No.1530 of 2022 has been filed for direction directing the Life Insurance Corporation of India to comply the award passed by the Insurance Ombudsman by an order dated 30.07.2021, thereby directing the Life Insurance Corporation of India to return the premiums collected from the petitioner along with interest at the rate specified in Rule No.17(7) of the Insurance Ombudsman Rules, 2017, from the date of receipt of the premium.

3. The second respondent in all the writ petitions had taken Jeevan Saral Policies with the petitioner, viz., Life Insurance Corporation of India, covered under various policy numbers, which commenced from various dates, for a term of twelve years. The amount offered as maturity benefits is much less than the total premium paid under the policy and sought for payment for the death sum assured. Therefore, the second respondent preferred complaints before the first respondent viz., the Insurance Ombudsman, under Rule 13(1)(d)&(i) of the Insurance Ombudsman Rules, 2017 r/w Section 24 of the Insurance Regulatory and Development Authority Act, 1999. The first respondent considered the claim made by the second respondent and directed the petitioner to return the premium collected under the policies along with interest in Rule No.17(7) of the Insurance Ombudsman Rules, 2017, from the respective dates of receipt of the premium. Aggrieved by the same, the petitioner filed the present Writ Petitions.

4. The learned counsel for the petitioner submitted that the office of the first respondent is under the control of the Council for Insurance Ombudsman, which has been constituted under the Insurance Ombudsman Rules, 2017. The first respondent had applied incorrect

application of law by making a presumption that refund of premium will take this case to Section 45(4) of the Act and not under Section 45(2) of the Act, which is the basis of the fact that the premiums were refunded by the Company which is a mandatory requirement under Section 45(4) of the Act.

5. The learned counsel for the second respondent vehemently contended that the Writ Petition itself is not maintainable, since the award passed by the first respondent cannot be challenged by the insurer. He also relied upon the Notification dated 11.11.1998 thereby issued the Redressal of Public Grievances Rules, 1998. The object of the said Rules is to resolve all complaints relating to settlement of claim on the part of insurance companies in cost effective, efficient and impartial manner. Accordingly, where the complaint is not settled by agreement under Rule 15, the Ombudsman shall pass an award which he thinks fair in the facts and circumstances of a claim. Accordingly, the insurer shall comply with the award within 15 days of the receipt of the acceptance letter under Sub-rule (5) and it shall intimate the compliance to the Ombudsman. Further, as per the Insurance Ombudsman Rules, the award passed by the Insurance Ombudsman shall be binding on the insurers. Therefore, the

award passed by the first respondent cannot be challenged by way of this Writ Petition.

6. Heard the learned counsel appearing on either side and perused the material placed before this Court.

7. Insofar as the preliminary objections raised by the second respondent regarding the maintainability of the Writ Petition is concerned, the learned counsel appearing for the petitioner submitted that under the Rules, no alternative remedy provides as against the order passed by the first respondent. Therefore, except to approach this Court under Article 226 of the Constitution of India, the petitioner has no other alternative remedy to challenge the order passed by the first respondent.

8. The High Court of Calcutta in the case of ***Life Insurance Corporation of India Vs. The Insurance Ombudsman*** by an order dated ***22.03.2017*** made in ***W.P.No.2299 (W) of 2016*** held that in order to approach a writ court, an Insurance Company has to have a cause of action. A cause of action will arise if any right of the Insurance Company stands violated. An award passed by an Insurance Ombudsman cannot be

construed to violate any right of the Insurance Company. Therefore, they cannot approach a writ Court as a party aggrieved by the award of the Insurance Ombudsman. The Insurance Ombudsman is appointed by the Insurance Companies. The Rules laid down are that the Insurance Ombudsman is set out to decide on the complaint relating to the insurance lodged with the highest of the complainant. Therefore, the Writ Petition itself is not maintainable to challenge the award passed by the Ombudsman.

9. The above said order passed by the learned Single Judge of the High Court of Calcutta was also confirmed by the Division Bench of the High Court of Calcutta in ***Life Insurance Corporation of India Vs. The Insurance Ombudsman*** by an Order dated ***15.09.2017*** in ***M.A.T 645 of 2017 & CAN 6245 of 2017*** and it was held that if the complainant accepts the decision, which has been done in the instant case, the insurer has to comply with the award of the Ombudsman as stipulated by Rule 16(6) of the Rules. The binding character of the recommendation or as the case may be, of an award of the Ombudsman arises only when the complainant has accepted the decision. Further, there has been a fundamental fallacy in the approach of the petitioner to the

recommendation of the award of the first respondent. Once the claimant has unequivocally accepted the award, the petitioner ought to have treated the said award of the Ombudsman as a binding edict and any attempt on their part to wriggle out of the same, would be derogatory to the scheme framed by themselves and would tantamount to procrastination of the statutory mandate. Therefore, the Writ Petition itself is not maintainable and it is liable to be dismissed.

10. That apart, the second respondent, on a perusal of the documents submitted by the claimant as well as the contentions raised by the petitioner, has rightly allowed the claim petitions and directed the petitioner to return the premium along with interest. Hence, this Court finds no infirmity or illegality in the order passed by the first respondent and the present writ petitions are devoid of merits and liable to be dismissed. The petitioner is directed to comply the award passed by the first respondent in all the writ petitions within a period of six weeks from the date of receipt of a copy of this Order.

11. In view of the above order passed in W.P.No.2930 of 2022, the respondents 1 & 2 in W.P.No.1530 of 2022 are directed to comply the

order passed by the third respondent viz., the Insurance Ombudsman, within a period of six weeks from the date of receipt of a copy of this Order.

12. Accordingly, the Writ Petitions in W.P.Nos.140, 1069, 1072, 1074, 2930, 2933, 4369, 4371, 4372, 4376, 4377, 4926, 4932, 4936, 4939, 4941 of 2022 are dismissed and the Writ Petition in W.P.No.1530 of 2022 is allowed. Consequently, connected miscellaneous petitions are closed. There shall be no orders as to costs.

29.04.2024

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No
rts

To

1. The Insurance Ombudsman,
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   (Tamil Nadu & Puducherry)
   IV Floor, Fathima Akthar Court,
   453, Anna Salai, Teynampet,
   Chennai – 600 018.

G.K.ILANTHIRAIYAN. J,

rts

W.P.Nos.140, 1069, 1072, 1530, 1074, 2930, 2933, 4369, 4371, 4372, 4376, 4377, 4926, 4932, 4936, 4939, 4941 of 2022

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