IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2024

CORAM:

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

W.P.No.18062 of 2021
and W.M.P.No.19292 of 2021

SBI Life Insurance Company Limited,
Central processing Centre,
7th Level (D Wing) & 8th Level,
Sea Woods Grand Central,
Tower II, Plot No.R1, Sector 40,
See Woods, Nerua Node,
Thane District,
Navi Mumbai - 400 706. ... Petitioner

Vs.

1. The Insurance Ombudsman,
State of Tamil Nadu & Puducherry,
Jatima Akthi Court,
4th Floor, No.453 (Old 312)
Anna Salai, Teynampet,
Chennai - 600 018.

2. J.Malarselvi ... Respondents

Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the first respondent culminating into the award date 22.04.2021, in Award No.IO/CHN/A/LI/0014/2021-22, insofar as it has allowed the claim of the second respondent.

For Petitioner : Mr.Kuberan
For M/s.Rank Associates
For Respondents
For R2 : Mr.J.Saravanavel

ORDER

This writ petition has been filed challenging the award passed by the first respondent dated 22.04.2021, thereby directed the petitioner to pay a sum of Rs.30 lakhs to the second respondent herein.

2. The petitioner is an insurance company and the second respondent had taken a policy of a unit linked non-participating, pension plan from the petitioner. The value of the units allowed under the policy, after deducting the applicable charges, will be depended on the investment performance of the funds under the plan. After payment of three annual installments of premium, the second respondent discontinued payment of premium and requested to refund the amount. It was not honoured and replied that the second respondent can commute upto 33% of the available fund value and purchase an immediate annuity for the balance amount. Aggrieved by the same, the second respondent lodged complaint before the first respondent. The first respondent passed

an award and directed the petitioner to pay a sum of Rs.30,00,000/- to the second respondent. Hence the petitioner filed the present writ petition.

3. The learned counsel appearing for the petitioner submitted that the first respondent has no jurisdiction to entertain the complaint which was far beyond its pecuniary jurisdiction. The second respondent submitted a proposal form dated 31.12.2015 with initial proposal deposit of Rs.10,00,000/-. Believing the said proposal, the petitioner issued SBI Life Retire Smart Policy for a term of ten years and premium paying term of five years. It contains terms and conditions. Accordingly, in case the policy holder is not satisfied with the terms & conditions, she has the option to return the policy under free look cancellation and cancel the cover within fifteen days on receipt of the policy document. However, the second respondent did not exercise the said option. The renewal premiums under the policy were payable on 31st December of every year during the premium paying term of five years under the policy. The second respondent had paid renewal premiums until the due date 31.12.2017. The next due date was 31.12.2018. There from no premiums were received from the second respondent.

3.1. He further submitted that in accordance with Clause 8.1 of the terms and conditions of the policy document, basic premium in full is required to be paid on due dates, even if no notice or communication is received from their end. However, the petitioner had sent notice of discontinuance dated 04.02.2019. He further submitted that as per the terms and conditions of the policy document clause No.6, the person who has defaulted in remitting the premiums is entitled to exercise one of the following option :-

> *"6.2.1. Opt to revive the policy within two years; or*
>
> *6.2.2. Complete withdrawal/surrender from the policy*
>
> *6.3. The policy holder should choose her option within a period of 30 days from the date of receipt of notice, during this period the life cover would continue.*
>
> *6.6. If the policy holder opt to completely withdraw form the policy or she do not exercise any of the options during notice period the;*
>
> *6.6.1. Your fund value as on that date will be disinvested and credited to Discontinued Policy Fund net of relevant discontinuance charge.*
>
> *6.6.1.2. The fund value of the discontinuance*

> *policy fund as on the first working day of sixth policy year will be paid."*

Therefore, the entire amount would not be payable in lumpsum but the second respondent is entitled to commute permissible portion of the fund and the balance would be necessarily be taken in the form of annuities only.

3.2. He also draw the attention of the Court to Clause No.4.4 of the terms and conditions of the policy document, which reads as follow :-

> *"4.4.4. On surrender/complete withdrawal, the policy holder has to opt from the below mentioned options. These options would be available only after completion of the lock-in period.*
>
> *4.4.4.1. The policy holder can utilize her entire surrender benefit to purchase an immediate annuity, at the then prevailing rate, from the petitioner.*
>
> *4.4.4.2. Alternatively, the policy holder can choose to commute a part of the amount to the extent allowed as per the relevant states prevailing at that time and purchase an immediate annuity, at the then prevailing rate, from the petitioner for the balance amount. Under the current Rules, upto a third of the total amount can be commuted.*

4.4.4.3. Alternatively, the policy holder can purchase a single premium deferred pension product, from the entire policy proceeds.

4.4.4.4. The policy holder cannot utilize her surrender value in any other way."

Accordingly, the lock in period of five year under the policy ended in the year 2020 and the second respondent has requested to purchase an immediate annuity in accordance with the above terms and conditions. Therefore, nothing is payable as on date of request made by the second respondent by the petitioner.

3.3. But the first respondent without considering the above terms and conditions, directed the petitioner to pay a sum of Rs.30,00,000/- to the second respondent. The very product retire smart is a pension plan where under the receipt of entire corpus is not envisaged or intended. The pension plan itself suggests that the complainant will be paid annuities as per the terms and conditions of the policy.

3.4. He also contended that the writ petition is very much maintainable challenging the award of the ombudsman. In support of his contention, he relied upon the judgment of the Hon'ble Bombay High Court judgment reported in ***2022 SCC OnLine Bom 1673*** in the case of ***Aditya Birla Sun Life Insurance Co. Ltd. Vs. Insurance Ombudsman Goa and anr.,*** which held that the functions which are discharged by the Ombudsman are akin to the function as discharged by a Tribunal in adjudicating the dispute. The word tribunal as used in Article 227 of the Constitution of India is required to be given a liberal interpretation to include all statutory authorities who are vested with quasi judicial power even though they may not have been labeled as tribunal. Therefore, the Ombudsman was hence clearly a tribunal. Therefore, it may not be an acceptable proposition that merely because Sub-rule 8 of Rule 17 provided that an award shall be binding on the insurer, the insurer would be precluded from assailing the award by invoking the jurisdiction of this Court under Article 227 of the Constitution of India, being a remedy as guaranteed by the Constitution of India. Further held in respect of the pecuniary jurisdiction of the Ombudsman that it has no jurisdiction to entertain the complaint beyond the claim of Rs.30 lakhs.

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

5. Considering the facts and circumstances, the following points are arose in this writ petition for consideration :-

(i) Whether the writ petition is maintainable challenging the award passed by the first respondent?

(ii) Whether the first respondent has got jurisdiction to entertain the claim made more than 30 days.

(iii) Whether the second respondent is entitled for any amount under the claim made before the first respondent

6. On perusal of the counter filed by the second respondent and on the submission made by the learned counsel appearing for the second respondent revealed that the first respondent is appointed in terms of the Insurance Ombudsman Rules, 2017 (hereinafter referred to as "the Rules"). The rule 2 of the Rules states that the object of the Rules is to resolve all complaints of all personal lines of insurance, group insurance policies, policies issued to sole proprietorship and micro

enterprises on the part of insurance companies and their agents and intermediaries in a cost effective and impartial manner.

7. Rule 17(8) of the Rules says that the award of the Insurance Ombudsman shall be binding on the insurance company or insurance brokers as the case may be. Whereas in case, the complainant is not satisfied with the award of an Insurance Ombudsman, he can exercise right to take recourse to the normal process of law. Therefore, the petitioner is estopped from challenging the award passed by the first respondent. Further, the petitioner cannot be a person aggrieved by the award passed by the first respondent discharging powers under the Rules. The first respondent is appointed by the insurance company including the petitioner and the Rules laid down that the Insurance Ombudsman is required to decide on the complaint relating to an insurance lodged at the behest of a complainant.

8. That apart, in order to file writ petition there must be 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 petitioner. Further Rules does not envisage or recognize that the insurer would be a party aggrieved by an award passed by the first respondent under the Rules. 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. Insofar as the jurisdiction of the first respondent is concerned, the proviso to Rule 17 (3) states that the Ombudsman shall

not award any compensation in excess of the loss suffered by the complainant as a direct consequence of the cause of action or not award compensation exceeding Rs.30 lakhs, including relevant expenses if any. Therefore, the first respondent is empowered to award any compensation up to the loss suffered by the complainant. The linking conjunction viz., or between the Sub Clause (i) and the Sub Clause (ii) of the proviso to Rule 17(3) implies that the first respondent has power to award compensation upto the loss suffered by the complainant or not exceeding Rs.30 lakhs including relevant expenses, if any.

11. Accordingly, the first respondent shall not award compensation exceeding Rs.30 lakhs and it never restricts the first respondent to entertain the complaint seeking compensation more than Rs.30 lakhs. In the case on hand, the claim of the second respondent as the terms of the policy comes to the tune of Rs.34,05,148.99. But the first respondent has restricted and granted compensation of Rs.30 lakhs. Therefore, the first respondent has got jurisdiction to entertain the complaint seeking compensation even more than Rs.30 lakhs. But the first respondent has jurisdiction to pass award not exceeding a sum of

Rs.30 lakhs. Hence the contention of the petitioner that the first respondent ought not to have entertained the complaint which was beyond the pecuniary limit is without any jurisdiction or legal basis. Therefore, the judgment relied upon by the learned counsel appearing for the petitioner is not applicable to the case on hand.

12. In fact, now the jurisdiction of the first respondent in respect of pecuniary jurisdiction has been increased to Rs.50 lakhs, as per the Insurance companies amendment Rules, with effect from 09.11.2023. Further, if the policy holder opts to completely withdraw from the policy or does not exercise any of the options during the notice period and if the premium is discontinued during the first five policy years then the fund value as on that date will be disinvested and credited to the discontinued policy fund net of the relevant discontinuance charge and the fund value of the discontinuance policy fund as on the first working day of the sixth policy year will be paid. Therefore, the contention raised by the petitioner is contrary to the terms of the policy. As per the terms of the Clause No.6 of the policy, the second respondent is entitled for the amount credited to the discontinued policy fund and when the same is

admitted by the petitioner, the petitioner ought to have paid the said amount. Therefore, Clause No.4.4 of the terms and conditions of the policy referred to surrender of the policy is totally inapplicable to the second respondent, since the second respondent did not surrender the policy. Hence the Clause pertains to discontinuance of premiums along will be applicable to the second respondent as such, the first respondent awarded compensation in favour of the second respondent.

13. In view of the above discussions, this Court finds no infirmity or illegality in the order passed by the first respondent and writ petition is devoid of merits and liable to be dismissed. Accordingly, the Writ Petition stands dismissed. Consequently, connected miscellaneous petitions are also closed. There shall be no order as to cost.

18.04.2024

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

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To

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G.K.ILANTHIRAIYAN. J,

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