IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2024

CORAM:

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

W.P.Nos.17866 and 19747 of 2021
and
W.M.P.Nos.19073 and 21027 of 2021

W.P.No.17866 of 2021:-

M/s. Reliance Nippon Life Insurance Company Limited,
Having its Registered Office at
'H' Block, 1st Floor,
Dhirubhai Ambani Knowledge City,
Navi Mumbai, Maharashtra – 400 710. ...Petitioner

-Vs-

1. The Insurance Ombudsman,
State of Tamil Nadu & Puducherry,
Office of the Insurance Ombudsman,
Fatima Akhtar Court,
4th Floor, 453 (old 312), Anna Salai,
Teynampet, Chennai – 600 018.

2. Usha Shankaran ...Respondents

W.P.No.19747 of 2021:-

Usha Sankaran ...Petitioner

-Vs-

1. The Insurance Ombudsman,
Office of the Insurance Ombudsman,

Fatima Akhtar Court,
4th Floor, 453 (old 312), Anna Salai,
Teynampet, Chennai – 600 018.

2. Insurance Regulatory and Development Authority of India,
Sy.No.115/1, Financial District,
Nanakramguda,
Gachibowli, Hyderabad – 500 032.

3. Reliance Nippon Life Insurance Company Limited,
'H' Block, 1st Floor,
Dhirubhai Ambani Knowledge City,
Navi Mumbai, Maharashtra – 400 710. ...Respondents

Prayer in W.P.No.17866 of 2021: Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records and proceedings which culminated into an Award dated 01.03.2021 in Award No.IO/CHN/A/LI/0134/2020-2021 passed by the 1st respondent and quash the same.

Prayer in W.P.No.19747 of 2021: Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Mandamus, directing the second respondent to take necessary action against the third respondent to direct them to comply with the award passed by the 1st respondent in Award No.I0/CHN/A/L1/0134/2010-2021, dated 01.03.2021 to pay a sum of Rs.10,18,000/- to the petitioner failing which cancel the registration of the 3rd respondent under the Insurance Act, 1938 along with the applicable interest with immediate effect.

In W.P.No.17866 of 2021

For Petitioner : Ms.M.Sandhiya
for M/s.Rank Associates

For R2 : Mr.M.Sricharan Rangarajan
Senior Counsel
for Mr.K.Gowtham Kumar

In W.P.No.19747 of 2021

For Petitioner : Mr.Sricharan Rangarajan
Senior Counsel
for Mr.K.Gowtham Kumar

For R3 : Mr.M.Santhiya
for M/s.Rank Associates

COMMON ORDER

W.P.No.17866 of 2021 has been filed challenging the award passed by the first respondent dated 01.03.2021, thereby directed the petitioner to pay a sum of Rs.10,18,000/- to the second respondent.

2. W.P.No.19747 of 2021 has been filed for direction directing the second respondent to take necessary action against the third respondent to direct them to comply with the award passed by the 1st respondent in Award No.I0/CHN/A/L1/0134/2010-2021, dated 01.03.2021 to pay a sum of Rs.10,18,000/- to the petitioner failing which cancel the registration of the 3rd

respondent under the Insurance Act, 1938 along with the applicable interest with immediate effect.

W.P.No.17866 of 2021:-

3. The petitioner is the Insurer of the second respondent in pension policy bearing No:51819764 under the 'Reliance Smart Pension Plan-Limited'. The Premium of Rs.2,00,000/- per annum was payable for 10 years out of 15 years term of the policy. While being so, the second respondent approached the petitioner for surrender, after paying 6 annual premium installments and she was informed that on surrender of policy she has only two options to receive the surrender proceeds as follows:-

“ Option A: Convert 100% of the vesting amount towards purchase of a deferred annuity.

Option B: Withdraw up to 33.33% as lumpsum amount and utilize the balance of vesting amount for purchase of an immediate annuity.”

4. The policy bond was delivered to the second respondent in a prescribed time frame. If there was any discrepancy in the policy, she should have availed the free look option of cancelling the policy within 15 days from

the date of receipt of the policy bond. While being so, the second respondent alleged that she was led to believe that she could withdraw the entire amount due to her, in case she withdraws from the policy after payment of premium for six years. She also cited her need for the full proceeds to meet medical expenses. It was further alleged that the petitioner's decision is fleecing of her valuable savings and preventing her from using her money to the fullest during her lifetime, which is the violation of human rights. Therefore, the claim made by the second respondent was rejected. Aggrieved by the same, the second respondent filed a complaint before the first respondent.

5. After considering the facts and circumstances of the case and submissions made by both the parties, the first respondent concludes that there is no merit in the complaint and there is no scope for the first respondent to intervene in the matter of surrender of policy, by an award dated 27.07.2020. Thereafter, the second respondent out of fund value of Rs.14,77,075.61/- had taken 1/3rd of surrender value, ie., amount of Rs.4,59,076/- and agreed to invest remaining 2/3rd amount of Rs.10,18,000/- as one time premium for annuity plan of the petitioner named 'Reliance Nippon Life Immediate Annuity Plan' and submitted a proposal form dated 04.09.2020 and had chosen option of 'Life

Annuity with Return of Purchase Price of Death. It is being an annuity plan resulting from surrender of existing policy, it cannot be cancelled. Accordingly, the policy was delivered to the second respondent on 07.10.2020.

6. The second respondent lodged a complaint on 09.10.2020 for cancellation within the free-look period, thereby attempted to exploit a loophole in the system and get entire proceeds by cancelling the new policy. Therefore, the request made by the second respondent was declined by the communication dated 13.10.2020 by the petitioner. Therefore, the second respondent filed a complaint before the first respondent alleging that she had taken disputed policy by utilizing 2/3rd of the surrender value of her previous policy. The first respondent passed an award dated 01.03.2021, thereby directed the petitioner to cancel the said policy and refund the premium of Rs.10,18,000/- to the second respondent.

7. The learned counsel for the petitioner would submit that the disputed policy under 'Reliance Nippon Life Immediate Annuity Plan' arises out of proceeds and previous policy under the 'Reliance Smart Pension Plan-Limited'. As per the first policy, the policy holder pays the premium and builds a certain

corpus, where under second policy, the company pays the policy holder out of the corpus accumulated under the first policy. Hence, both the policies, for all practical purpose are treated as a contract and sub-contract and the subsequent policy cannot be cancelled in free look period. The second respondent attempted to exploit the loophole in the policy documents, which amongst other options also mentions cancellation of policy in free look period. The product is not designed to be cancelled in free look period, after the principle policy has matured or surrendered and proceeds from the said policy are used for paying annuity under the new policy. As per the policy and guidelines for Pension Products, Clause VI says atleast 2/3rd of proceeds/corpus accumulated under the Pension scheme has to be compulsory reinvested in annuity product. Therefore, the cancellation of the policy in free look period is contrary to the guidelines.

8. Per contra, the second respondent filed a counter and the learned Senior Counsel appearing for the second respondent submitted that the writ petition is not maintainable in law and facts. As per the Insurance Ombudsman Rules, 2017 (herein after called “Rules”) the petitioner cannot maintain the writ petition under Article 226 of Constitution of India. The award passed by the first respondent shall be binding on the Insurer as per the Rule 17(8) of the Insurance Ombudsman Rules, 2017.

9. Further, a perusal of records revealed that old policy bearing No.51819764 purchased by the second respondent was surrendered and 1/3rd of fund value being surrender value i.e.4,59,076/- was withdrawn by the second respondent. Insofar as 2/3rd of the said amount of Rs.10,18,000/- was utilized for purchase of new policy of "Life Annuity with return of Purchase Price" by the second respondent. Therefore, the petitioner opted to cancel as per the terms of the policy within the time stipulated. However, the petitioner deliberately changed the policy to 'Annuity for Life" without the knowledge of the second respondent. At the later point of time, it came to the knowledge of the second respondent when the policy document was received by her on 07.10.2020.

10. In this regard, the High Court of Calcutta in the case of ***Life Insurance Corporation of India -vs- The Insurance Ombudsman*** (Order dated 22.03.2017 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.

11. 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*** (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 second respondent. Once the nominees of the deceased 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.

12. Therefore, this Court finds no infirmity or illegality in the Award passed by the first respondent in Award No.IO/CHN/A/LI/0134/2020-2021 dated 01.03.2021. Accordingly, W.P.No.17866 of 2021 is dismissed.

13. In view of the order passed in W.P.No.17866 of 2021, W.P.No.19747 of 2021 is allowed. The third respondent in W.P.No.19747 of 2021 is directed to comply with the Award passed by the first respondent dated 01.03.2021 with applicable interest, forthwith. Consequently, connected Miscellaneous petitions are closed. There shall be no order as to costs.

22.04.2024

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

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G.K.ILANTHIRAIYAN. J,

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W.P.Nos.17866 and 19747 of 2021

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