Supreme Court of India
Hindustan Ideal Insurance Co. Ltd vs Life Insurance Corporation Of ... on 12 April, 1962
Equivalent citations: 1963 AIR 1083, 1963 SCR Supl. (2) 56
Author: A Sarkar
Bench: Sarkar, A.K.

PETITIONER:
HINDUSTAN IDEAL INSURANCE CO. LTD.

Vs.

RESPONDENT:
LIFE INSURANCE CORPORATION OF INDIA

DATE OF JUDGMENT:
12/04/1962

BENCH:
SARKAR, A.K.
BENCH:
SARKAR, A.K.
SUBBARAO, K.
MUDHOLKAR, J.R.

CITATION:
1963 AIR 1083 1963 SCR Supl. (2) 56

ACT:
Insurance--"Person making the reference"--Meaning of--No period prescribed for moving the Corporation--Effect--Life insurance Corporation Act, 1956 (31 of 1956), ss. 16(2) 48 (2) (f)--Life Insurance Corporation Rules, 1956, r. 12 Sub-rr. (i), (ii), (iii).

HEADNOTE:
The Life Insurance business of the insurer. The Andhra insurance Company Ltd., vested in the Life Insurance Corporation of India and it became entitled in compensation under s. 16 of the Life Insurance Corporation Act. The Corporation made and offer of it and claimed various deductions. The
57
insurer raised certain disputes and on August 6, 1957, made an application to the tribunal constituted on May 25, 1937 for re-assessment of the compensation and also for extension of time for making the application by three months from the date of its constitution. On September 21, 1937, the insurer filed another statement giving details of its claim. In answer to the claim the Corporation filed its written statement. The tribunal held that the claim for

compensation was time-barred under r. 12 of the Rules framed under the Act and dismissed the application. It also held that under s. 16(2) of the Act the insurer had no right to move directly the tribunal regarding the amount of compensation, but could move corporation for making a reference of the dispute to the tribunal and that it did not show any cause for extending time to make the reference to the tribunal. Against the judgment of the tribunal, the insurer obtained special leave to add and thereafter amalgamated with Hindustan Ideal Insurance Company Ltd. which was substituted as appellant in place of the insurer.

Held, (Per Subba Rao and Mudholkar, JJ.) That while sub-s. '(1) of s. 48 confers a power on the Central Government, sub-s. (2) of s. 16 imposes a duly upon it and thercfore, it is obligatory upon the Central Government to prescribe the period within which the insurer is to move the Corporation for referring the claim to the Tribunal. When the law requires aperiod to be prescribed for doing a thing, that period should be clearly specified with specific reference to the particular purpose. The specific purpose referred to in Sub.s. (2) of s. 16 is, to have the matter referred to the tribunal for decision. "Making of the refer. ence is thus in the hands of the corporation and not in these of insurer who can only move the corporation for making the reference. Time has to be prescribed for enabling the insurer to move the Corporation. Prescribing time for making a reference is not prescribing time for moving the corporation to make the reference. Prescribing time by implication would not be compliance with the provisions of Sub-s. (2) of 16.

West Durby Union v. Metropolitan Life Assurance Co. [1897] A. C. 647, referred to.

While framing r. 12 the Rule making authority lost sight of the fact that Sub-s. (2) of s. 16 contemplates a reference not by the insurer but by the corporation. The pro. ceeding taken before the tribunal were therefore misconceived. No question of limitation arises because the period within
58
which an insurer must move the corporation to make a reference has not yet been prescribed as required by Sub-s.(2) of s. 16. It would be open to the appellant to move the corporation under s. 16(2) after such period is prescribed. It was urged by the insurer that the claim cannot treated as barred by time and this was a fit case for extension of time under the proviso to r. 12.

Held, As r. 12, read by itself does not show clearly whether it applies to the corporation or it applies to an insurer or a chief agent or a special agent, it is permissible to look into the proviso for ascertaining the scope of the main provisions of that rule. Reading it along with the proviso would not violate any well accepted rule of construction.

Held (per Sarkar, J.), that the insurer had no right to move the tribunal directly and the proceedings commenced by it

before the tribunal were therefore wholly misconceived and no relief could be granted by the tribunal to the insurer. As the insurer had no right to move the tribunal, no question of extending time for it to do so really arose. If the application for extension of time to move the tribunal is treated as competent under the proviso of r. 12 of the rules, then also, the appellant is not entitled to any relief, for there is no justification on the merits to interfere with the tribunal's order refusing to extend time. The proceedings being incompetent, an enquiry as to whether it had been started out of time would be wholly irrelevant and it is therefore unneces. sary to express any opinion on the correct interpretation of r. 12 of the Rules. The proceeding being incompetent from the beginning it is not possible for this Court to grant any relief and, therefore, the appeal must fail in any case.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 82 of 1960. Appeal by special leave from judgment and order dated February 17, 1958, of the Court of Life Insurance Tribunal, Nagpur, in case No. 16/ XVIA of 1957.

B. K. B. Naidu, for the appellant.

S. T. Desai, S. J. Banaji and V. L. Hathi, for the respondent, 1962. April 12. The following Judgments were delivered. The Judgment of Subba Rao and Mudholkar, JJ ; was delivered by Mudholkar, J.

SARKAR J.-The Andhra Insurance Company Ltd., hereafter called the insurer, carried on life insurance and other insurance business. On September 1, 1956, the life insurance business of the insurer became vested in the Life Insurance Corporation of India under the provisions of the Life Insurance Corporation Act, 1956. The insurer thereupon became entitled to compensation from the Life Insurance Corporation under s. 16 of the Act.

On February 19, 1957, the Corporation having determined the amount of the compensation and obtained the Central Government's approval made an offer of it to the insurer as provided in s. 16. By the letter making the offer, the Corporation claimed various deductions. The insurer raised certain disputes. It is not necessary for the purpose of this appeal to refer to these disputes.

On August 6, 1957, the insurer made an application to the Tribunal which had been constituted on May 25, 1957 for an order for re-assessment of the compensation payable to it. In that application it also made a prayer that the Tribunal might, if necessary, extend the time for making the application by three months from the date of its constitution. On September 21, 1957, the insurer filed in the Tribunal another statement giving the details of its claim. The Corporation in its turn filed its written statement in answer to the claim of the insurer.

The Tribunal by its judgment dated February 17, 1958 held that under s. 16 of the Act an Insurer bad no right to approach the Tribunal directly for deciding any dispute with the Corporation regarding the amount of the compensation but had to move the Corporation to make a reference of the dispute to the Tribunal and this, the present insurer had not done. It also held that the insurer had not shown any cause why the time to make the reference to the Tribunal should be extended. It further held that the claim for compensation was by time. In the result, the Tribunal dismissed the insurer's application.

The insurer obtained special leave 'from this Court to appeal against the judgment of the Tribunal and under that leave has presented this appeal. After the leave was granted, the insurer amalgamated with another company called the Hindustan Ideal insurance Company Ltd. and the latter company was substituted as the appellant in the place of the insurer.

Now s. 16 of the Act is in these terms S. 16 (1) "Where the controlled business of an insurer has been transferred to and vested in the Corporation under this Act, compensation shall be given by the Corporation to that insurer in accordance with the principles contained in the First Schedule.

(2) The amount of the compensation to be given in accordance with the aforesaid principles shall be determined by the Corporation in the first insurance, and if the amount so determined is approved by the Central Government it shall be offered to the insurer in full satisfaction of the compensation payable to him under this Act, and if, on the other hand, the amount so offered is not acceptable to the insurer he may within such time as may be prescribed for the purpose have the matter reference to the Tribunal for decision."

It is obvious from the terms of sub-sec. (2) of s. 16, and it is indeed not seriously in dispute, that the Tribunal can be, moved by an insurer only through the Corporation. An insurer has no right under the section to approach the Tribunal directly. The procedure contemplated is that an insurer has to move the Corporation and the Corporation has thereupon to refer the dispute raised by the insurer to the Tribunal. This inevitably follows from the words in section, namely, "he may..... have the matter referred to the Tribunal for decision." The section no doubt does not mention the Corporation but it is clear from the Act as whole that the reference contemplated was through the Corporation. The insurer had to move some authority to make the reference and the only authority under the Act could be the Corporation. On this part of the case I am in agreement with the view expressed in the judgment of my brother Mudholkar.

In the present case however the insurer had directly moved the Tribunal. This it had no right to do. The proceedings commenced by it were therefore wholly misconceived. That being so, the insurer could not have obtained any relief from the Tribunal nor could the Tribunal have granted it any relief. In this appeal, therefore, it is not possible for the Court either to grant any relief to the insurer or its successor-in-interest, the appellant. The proceeding being incompetent from the beginning, the appellant cannot ask for anything in it.

It would have been noticed that the insurer had asked the Tribunal to extend the time to enable it to make the application to the Tribunal. As it had no right to move the Tribunal, no question of

extending any time to do so really arose.

Now r. 12 of the Rule framed under the Act provides for the time within which a reference may be made to the Tribunal in respect of the determination of compensation payable under the Act." The time prescribed for the present case was three months from the date on which the compensation was offered to the insurer. Within these three months the insurer bad done nothing. This rule, however, contains a proviso which is in these terms :

> "Provided that any such reference may be admitted by the Tribunal after the period of limitation prescribed thereunder this rule, if the person making the reference satisfies the Tribunal that he bad sufficient cause for not making the reference within the said period.

If it is contended that the insurer was entitled to move the Tribunal directly under this proviso and had in fact done so, then, I think, it must be held that the Tribunal was right in its view that no cause had been shown by the insurer why time should be extended. Therefore if the application so far as it asked for extension of time is treated as a competent one under this proviso, then also on the merits, the appellant is not entitled to any relief, for there is no justification to interfere with the order that the Tribunal made in this behalf The appeal must in any case fail.

I do not feel called upon to go into any question of limitation in the present case. The proceeding being incompetent, an inquiry as to whether it had been started of time would be wholly irrelevant. L therefore, think it unnecessary to express any opinion on the interpretation of r. 12 of the Rules made under the Act.

The result is that the appeal is dismissed. As to costs, I think that as the Corporation itself had not before the Tribunal contended that the proceeding was incompetent nor had raised an.* such point in its statement of case in this appeal it is not entitled to any.

MUDHOLKAR, J.-The Andhra Insurance Co... Ltd., (hereinafter called the Company) was a composite insurance company, that is, doing business in life insurance, fire insurance and general insurance. By virtue of the Provisions of s. 7(1) of the Life Insurance Corporation Act, 1956 (31 of 1956) (hereinafter called the Act) all its assets and liabilities pertaining to the life insurance business stood transferred and vested in the Life Insurance Corporation on September 1, 1956. Under s. 16(1) of the Act the Company was entitled to receive Compensation from the Corporation determined in accordance with the principles contained in First Schedule to the Act. On February 14, 1957, the Corporation wrote to the Company stating, among other things, that the amount of compensation payable to it under s. 16(1) of the Act as determined by the Corporation and approved by the Central Government comes to Rs. 6,14,636. The Corporation made an offer of this amount to the Company in full satisfaction of the compensation payable to it. The Corporation further stated in its letter that the part of the paid up capital of the Company and assets representing such part which have been allocated to the life business of the Company in accordance with s. 18 of the Life Insurance Corporation Rules, 1956 (hereinafter called the Rules) amounts to Rs. 3,76,117/- and that as the aforesaid assests have not been transferred to the corporation the said amount of Rs. 3,76,117/- will

be set off against and deducted from the amount of compensation payable to the Company. Certain correspondence then ensued between the Company and the Corporation and it would appear from it that while the Company accepted the computation of the amount of compensation made by the Corporation there was disagreement between the parties over the valuation of the assets of the Company which stood transferred to the Corporation. The Company objected to the deductions of Rs. 3,76,117/. Eventually on August 6, 1957 the Company preferred a petition of appeal before the Life Insurance Tribunal, Nagpur, constituted by the Central Government under s. 17(1) of the Act. On September 21, 1957 the Company lodged its statement of claim before the Tribunal. The Corporation resisted the claim out forward by the Company on various grounds. the Tribunal framed 27 issues but it gave its findings only on the first three issues and dismissed the claim. We may mention that we are not concerned with any of the issues except No. 3 because it is on the basis of its finding thereon that it dismissed the claim of the Company. That issue is whether the claim of the Company is barred by time.

It does not appear from the written statement of the Corporation that it had raised a plea of limitation. All the same the Tribunal in its order has said that as the Company did not lodge a claim before it within three months of February 14, 1957, which was the date on which compensation was offered by the Corporation to the Company it was barred by r. 12 of the Rules framed under the Act. The Tribunal further observed that the Company. had to move the Corporation under s. 16(2) of the Act to make a reference to the Tribunal, it failed to do so and that it did not show any cause whatsoever for its failure to do so,. but instead submitted its claim direct to the Tribunal on August 12, 1957. No question, therefore, excusing delay under the proviso to r. 12 arose.

Aggrieved by the decision of the Tribunal the Company moved this Court under Art. 136 of the Constitution for grant of special leave to appeal. Leave was granted by this Court on August 18, 1958. Subsequent to the grant of leave by this Court the Company in pursuance of its scheme sanctioned by the High Court of Andhra Pradesh was amalgamated with the Hindustan Ideal Insurance Co., Ltd. By reason of this the letter has now been substituted as appellant under the orders of this Court dated April 14, 1959. On behalf of the appellant Mr. B.K.B. Naidu contended that since the Tribunal itself wag not appointed before the expiry of the period of three months provided in r. 12, the claim made by the Company cannot be treated, as barred by time because in his submission limitation would not commence to run till the date on which the Tribunal was constituted. Alternatively he contended that this was a fit case in which, under the proviso to r. 12, time should have been extended.

On behalf of the Corporation Mr. S. T. Desai contended that under sub-s.2 of s. 16 it was not open to ,in insurer like the Company to prefer a claim directly before the Tribunal and that all that the law entitled the Company to do was to move the Corporation to make a reference, that this had to be done within three months and that thereupon the Corporation had to make a reference to the Tribunal within the period of three months prescribed by r. 12. Since this procedure was not adopted the proceedings before the Tribunal were incompetent.

Sub-section 2 of s. 16 reads thus :

> "The amount of the compensation to be given in accordance with the aforesaid principles shall be determined by the Corporation in first instance, and if the amount so determined is approved by the Central Government it shall be offered to the insurer in full satisfaction of the compensation payable to him under this Act, and if, on the other hand, the amount so offered is not acceptable to the insurer he may within such time as may be prescribed for the purpose have the matter referred to the Tribunal for decisions"

A plain reading of this provision shows that the reference had to be made not by the insurer but by someone else. Though that someone is not expressly specified in sub-s. 2, the context shows that that someone would be none other than the Corporation. The Central Government has not at any rate specifically prescribed the period within which the insurer has to move the Corporation for referring its claim to the Tribunal for decision.

According to this provision the insurer is entitled to have the matter referred to the Tribunal for decision "within such time as may be prescribed for the purpose." "Prescribed" means prescribed by Rules. It would, therefore,, follow that the Central Government has to make a rule prescribing the period within which the insurer must move the Corporation for making the reference. Mr. Desai, however, contends that that is not provision means. A- cording to him the provision has to be read along with s. 4812)(f of the Act. Section 48 is the provision which confers power on the Central Government to make rules. Clause (f) of sub.s. 2 enable it to prescribe the time within which any matter which may be referred to the Tribunal for a decision under the Act may be so referred. Therefore, according to learned counsel, it is the period of limitation for this purpose which the Central Government has to prescribe and not the period within which the insurer must move the Tribunal. He, however, says that the insurer has to move the Corporation before the expiry of the. period within which the Corporation is to make a reference to the Tribunal.

We cannot accept the contention. On the plain language of sub-s. 2 of S. 16 it is obligatory upon the 'Central Government to prescribe the period within which the insurer is to move the Corporation 'for referring its claim to the Tribunal. No doubt, cl. (f) does not refer to the prescription of time for such a purpose. But the provisions of sub.s. 1 of s. 48 are wide enough to enable the Central Government to prescribe the time for this purpose. Under that subsection the Central Government is empowered to make rules to carry out the purposes of the Act. One of the purpose of the Act is to prescribe the time within which an insurer has to move the Corporation for making a reference. While sub-s. 1 of s. 48 confers a power on the Central Government, sub-s. 2 of s. 16 imposes a duty upon it and, therefore, it is obligatory upon the Central Government to make a rule in this behalf by exercising the power under s. 48 (1). Mr. Desai then contends that the rule actually framed by the Central Government that is, r. 12 must be deemed to be sufficient for his purpose. That rule is in following terms :

> "Reference to Tribunal.-The time within which a reference may be made to the Tribunal in respect of the determination of compensation payable-under the Act, shall be as follows, namely :-

(i) in the case of an insurer to whom com- pensation is payable under Part A or Part B or Part C of the First Schedule to the Act, within three months from the date on which the compensation determined by the Corporation is offered to the insurer

(ii) in the case of an insurer to whom com- pensation is payable under Part B of the First Schedule to the Act, within six months from the date on which the compensation determined by the Corporation is offered to the insurer

(iii) in the case of compensation payable to a Chief agent or special agent under the proviso to section 36 of the Act, within three months from the date on which the compensation determined by the Corporation is offered to the chief agent or special agent, as the case may be :

Provided that any such reference may be admitted by the Tribunal after the period of limitation prescribed therefor under this rule, if the person making the reference satisfies the Tribunal that he had sufficient cause for not making the reference within the said period."

According to Mr. Desai, under sub-r. (1) of this Rule the Corporation has to make a reference to the Tribunal within three months. It would, therefore, according to him, follow that the insurer must move the Corporation before the expiry of that period and that, therefore, by framing this rule the Central Government has not only carried out the requirements of ol. (f) of sub-s. 2 of s. 48 but also of sub-s. 2 of s.

16. It is difficult to appreciate this argument for two reasons. The first one is that when the law requires a period to be prescribed for doing a thing, that period should be clearly specified w ith specific reference to the particular purpose. The specific purpose referred to in sub-s. 2 of s. 16 is "to have the matter referred to the Tribunal for decision." Making of the reference is thus in the hands of the Corporation and not the insurer who can only move the Corporation for making the, reference. Time is required to be prescribed for doing this act by the insurer. Prescribing time for making a reference is not prescribing time for Moving the Corporation to make the reference. It may be that when the latter period is prescribed it would be possible to sty that before the expiry of that period the insurer must move the Corporation. But prescribing time by implication would not be compliance with the provisions of sub-s. 2 of s. 16. For, when a period is prescribed for doing an act the person who has to do that act is entitled to do it even on the last day. If the construction of learned counsel is accepted it would mean that the insurer would be within time under r. 12 if he moves the Corporation on the date on which the period of three months expires. If he does that how would it be possible for the Corporation to make a reference to the Tribunal also on the same day ?

The second reason for not accepting the construction placed by learned counsel is that the proviso to r. 12 empowers the Tribunal to admit a reference after the period of limitation prescribed therefor if the "person making the reference" satisfies the Tribunal that he had sufficient clause for not making the reference within the prescribed period. The proviso thus indicates that the reference to the Tribunal contemplated by r. 12 is to be made by the insurer and not by the Corporation. This

appears to be so from the language of the proviso itself. No doubt r. 12, considered without the proviso, may well be construed as applying to reference to be made by the Corporation. But considering the rule along with the proviso it would appear that the rule was meant to govern a reference by someone' else and not the Corporation. That someone could be either the insurer or a chief agent or special agent who also is entitled to compensation under the proviso to s. 36.

Learned counsel then advanced a rather novel argument. The argument is this. While the opening words of r. 12 may apply to the Corporation as to an insurer, a chief agent or a special agent sub-rr. (i), (ii) and (iii) thereof apply only to the Corporation, whereas the proviso applies only to an insurer or a chief agent or special agent as the case may be. If the provision, that is, the whole or r. 12 is read thus, the contention proceeds, there would be no lacuna in the rules, and the proviso to r. 12 would not be rendered redundant.

All that Mr. Desai could say in support of his contention that sub-rr. (i), (ii) and (iii) of r. 12 must be construed to apply to the Corporation alone is that such a construction would avoid a lacuna in the rules. But what is the lacuna ? We have already pointed out that the lacuna is in not prescribing the time within which an insurer must move the Corporation for making a reference. That lacuna will not be removed even if we accept the construction pressed by learned counsel. That apart, upon the language of the sub-rules, they cannot be construed as applying to the Corporation alone.

"earned counsel then contended that if we construe the proviso in such a way as to make the substantive provisions of r. 12 applicable to an insurer or a chief agent and not to the Corporation we would be limiting the scope of the main enacting provision and that is not permissible. There is no doubt that where the main provision is clear its effect cannot be cut down by the proviso. But where it is not clear the proviso, which cannot be presumed to be a surplusage, can properly be looked into the ascertain the meaning and scope of the main provision. By 'looking at the proviso for this purpose the rule of Constiuction referred to by learned counsel will not be infringed.' In the West Derby Union v. Metropolitn Life Assurance Co.. (1) Lord Watson observed :

"..... I perfectly admit that there may be and are any oases which the terms of ail intelligible proviso may throw considerable (1) (1897) A.C. 641, 652.

light on the ambiguous import of the statutory words." In the same case Lord Herschell admitted that a proviso may be a useful guide in the selection of one or other of two possible constructions of words in the enactment or to show the scope of the latter in a doubtful case. Here we find that r. 12 read by itself does not show clearly whether it appeals to the Corporation special agent. It is therefore, permissible to look into the proviso for ascertaining the scope of the main provisions of r.'12. As we have stated earlier the proviso cannot, upon its proper construction apply to the Corporation. When, therefore, we read r. 12 as a whole, that is, along with the proviso we would not be violating any well-accepted rule of construction though by so reading it we came to the conclusion that r. 12 applies only to an insurer or a chief agent or a special agent but not to the Corporation. We may further point out that the proviso would be rendered useless if we are to hold that r. 12 deals with a reference made by the Corporation only. The reason why we say that it will be rendered useless is this, Supposing an insurer moves the Corporation beyond three months for

making a reference, would the Corporation be bound to make the reference ? Upon the terms of sub-s. 2 of s. 16 the Corporation would only be bound to make a reference if is moved by the insurer within the prescribed period. If that is so, then no occasion would arise for enabling the insurer to move the Tribunal for condoning the delay. According to Mr. Desai, however, the Corporation could be compelled by mandamus to make the reference. The short answer to that is that there being no duty upon the Corporation to make a reference after the expiry or the period prescribed by r. 12 no mandamus can issue to it.

Another reason for not accepting the contention of learned counsel is that the proviso speak of the person making the reference satisfying the Tribunal that he has sufficient cause for not making the reference, within the same period. If the insurer is not the person making the reference, how can be be said to be permitted to satisfy the Tribunal about the sufficiency of the cause for condoning the delay in making the reference ? Mr. Desai, however, suggest that we should read the words "if the person making the reference satisfies the Tribunal ... etc." as if they read "if the person at whose instance the reference is made satisfies the Tribunal ... etc.""That would be rewriting the provision which we cannot do.

It seems to us that while framing r. 12 the rule making authority lost sight of fact that subs. 2 of s. 16 contemplates a reference not by the insurer but by the Corporation. Learned counsel urged that we should not place an interpretation upon the rule which will leave a serious lacuna in the working of the act. We-appreciate his conten- tion but there is no escape from the result. The proceedings before the Tribunal were misconceived because the only way in which they could be initiated was by a reference by the Corporation and there was no such reference. No question of limitation arises because the period within which an insurer Must move the Corporation to make a reference has not yet been prescribed as required by sub-s. 2 of s. 16. It will be open to the Appellant to move the Corporation under s. 16(2) after such period is prescribed.

In the result we quash all the proceedings before the Tribunal but in the particular circumstances make no order as to costs.

Appeal Dismissed.