

GAHC010059362024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/1679/2024

PARESH KUMAR CHUTIA @ PORESH KUMAR CHUTIA @ PORESH CHUTIA
S/O LATE KAMAL KANTA CHUTIA @ KAMAL CHUTIA,
RESIDENT OF VILLAGE SONAPUR NAMGHAR ROAD, DULIAJAN PO AND
PS DULIAJAN, DIST DIBRUGARH, ASSAM 786602

VERSUS

THE INSURANCE OMBUDSMAN AND ANR
(STATES OF ASSAM, MEGHALAYA, MANIPUR MIZORAM, ARUNACHAL
PRADESH, NAGALAND AND TRIPURA) JEEVAN NIVESH, 5TH FLOOR,
NEAR PAN BAZAR, OVER BRIDGE, S.S ROAD, GUWAHATI 01

2:THE KOTAK MAHINDRA LIFE INSURANCE COMPANY
REPRESENTED BY THE BRANCH MANAGER
KOTAK MAHINDRA LIFE INSURANCE COMPANY CITY TOWER
H.S ROAD
DIBRUGARH
ASSAM 786001

BEFORE
HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

Advocates for the petitioners : Md. S. Alom

Advocates for the respondents : Mr. S. Das

Dates of hearing & Judgment : 18.07.2024

JUDGMENT & ORDER

1. Heard Md. S. Alom, learned counsel for the petitioner. Also heard Mr. S. Das, learned counsel for the respondent No.2.
2. By filing this writ petition under Article 226/227 of the Constitution of India, the petitioner is assailing the Award dated 28.02.2024 passed by the Insurance Ombudsman, Guwahati in Complaint Ref. Case No.GUW-L-026-2324-0388, whereby the prayer of the petitioner for allowing him to surrender his insurance policy vide No.03111820 was rejected.
3. The relevant facts of the case are as follows-

The petitioner who is at present aged about 68 years had been working as a Grade-IV employee and he purchased a life insurance policy being policy No.03111820 from the respondent No.2/insurance company with the expectation that the monthly annuity(income) out of the policy would be a great support for his old age and on his death, the nominee will receive the entire purchase value of the policy @Rs.19,70,500/- as an asset. Accordingly, after opening the policy w.e.f. 31.08.2016, the petitioner has been receiving the monthly annuity @Rs.10,788/-. However, since the month of May, 2023, he has been suffering from heart disease for which he is required to undergo implantation of permanent pacemaker which will cost a handsome amount. Faced with such circumstances, the petitioner approached the respondent No.2/insurance company with a prayer to surrender his policy by considering his case as an exceptional case. However, the respondent insurance company on 27.09.2023 rejected the said claim of the petitioner. Accordingly, the petitioner approached before the Insurance Ombudsman, Guwahati and the said

Ombudsman by Judgement and Award dated 28.02.2024 rejected the claim of the petitioner. As such, the present writ petition has been filed.

4. Md. S. Alom, learned counsel for the petitioner submits that the order of the Ombudsman is erroneous, inasmuch as, the learned Ombudsman could have exercised power under Rule 15 of the Insurance Ombudsman Rules, 2017 by obtaining opinion of professional experts before disposing the case. He further submits that since the petitioner has been receiving and will continue to receive the monthly annuity till his death and on his death, his wife will receive the entire purchase price of Rs.19,70,500/- and ultimately the respondent insurance company has to release or pay the entire purchase price of Rs.19,70,500/- on the very next moment of death of the petitioner, in such circumstances, if the insurance company allows the petitioner to surrender the policy as an exceptional and special case and release the purchase price of Rs.19,70,500/- to the petitioner for his medical treatment purpose, no loss or prejudice whatsoever shall occur to the respondent No.2/insurance company.

5. Mr. S. Das, learned counsel for the respondent No.2, on the other hand, submits that the writ petition is not maintainable and that the petitioner has other efficacious remedy available under law against his alleged grievance raised in the instant petition. He further submits that the Award dated 28.02.2024 is not binding on the petitioner, which is manifested from Rule 17(8) of the Insurance Ombudsman Rules, 2017, which clearly states that the Award of Insurance Ombudsman is binding only on the insurer. He accordingly submits that this Rule explicitly limits the binding nature of the Award to the insurer, providing the petitioner with an option to accept or reject it and as such, the remedy, if any, according to him is somewhere else and not under Article 226 of

the Constitution of India. He further submits that the scope of judicial review under Article 226 of the Constitution of India is limited to ensuring that the decision making process is fair, reasonable and in accordance with law and the same does not extend to re-evaluating the merits of the Award passed by the Insurance Ombudsman. He further submits that unless there is a manifest error in the process followed by the Ombudsman, procedural irregularity or a violation of the principles of natural justice, this Court under Article 226 of the Constitution of India should not interfere with the Award.

6. Heard the parties at length and perused the materials available on record.

7. It appears that the petitioner has purchased a life insurance policy amounting to Rs.19,70,500/- from the respondent No.2 vide policy No.03111820 on 29.07.2016. Under the terms and conditions of the aforesaid policy annuity options to the effect of life time income with cash back amongst others is provided. Clause 6 of the aforesaid policy provides that the policy can in no circumstances be surrendered and it does not require any surrender value at any stage.

8. It further appears that due to medical reasons, the petitioner requested the respondent insurance company by e-mail dated 06.09.2023 to cancel the said policy and to refund the amount to enable him to meet the medical treatment expenses for himself. However, the insurance company in view of the specific bar in the policy for surrender, refused to entertain the said request of the petitioner. Accordingly, an application was filed before the Insurance Ombudsman, Guwahati, which was rejected by the said Ombudsman by order dated 28.02.2024. The said order of the Insurance Ombudsman is put to

challenge before this Court. Relevant portion of the said Award of the Insurance Ombudsman is reproduced hereunder for ready reference-

“Observation and conclusions:

The Complainant has procured Lifetime Income Plan Policy of the Respondent Insurer with Annuity Option as Lifetime Income with Cash-back upon Purchase Price of Rs.1970500. The Policy commenced on 29.07.16 and thereafter the Complainant has received monthly annuity of Rs.10788 w.e.f. 31.08.16 till date. The total amount thus received amounted to Rs.971000 and the Complainant has regularly submitted Existence Certificate.

The respondent Insurer referred to Condition 6 of the Policy relating to Surrender which states "The Policy can in no circumstances be surrendered and it does not acquire any surrender value at any stage". Moreover the Policy had been in force since past nearly 8 years and annuity benefits were been paid while no objections were raised by the Complainant. As per the Policy conditions the Complainant shall receive life long annuity and his nominee shall get the Purchase Price on death of the Complainant/Policyholder. Hence the application of the Complainant could not be entertained.

This Forum observes that there is no provision in the Policy Terms and Conditions for Surrender as asked for by the Complainant. Further that he has not raised any objections during Free Look Period and continued to receive benefits under the Policy for 8 years thereafter. Hence no relief can be granted.”

9. A bare reading of the aforesaid Award indicates that in view of the specific bar contained in Clause 6 of the subject policy relating to surrender, the request of the petitioner for surrendering the said policy was not entertained by the Insurance Ombudsman. That being so, this Court is of the opinion that there is no infirmity in the said order of the Insurance Ombudsman.

10. The two decisions of the Apex Court, i.e., **(1) Union of India and Ors. Vs. Tania Construction Private Limited**, reported in **(2011) 5 SCC 697** and **(2) Life Insurance Corpn. of India and ors., Vs. Asha Goel (Smt)**

and Anr. reported in **(2001) 2 SCC 160**, cited by the learned counsel for the petitioner, relates to the issue of maintainability of the writ petition. Since this Court has not gone into the issue of maintainability, the aforesaid decisions are not relevant at this stage.

11. It is a settled law that this Court under Article 226 of the Constitution of India cannot rewrite the terms and conditions of the policy. As noted above, there is a specific bar for surrender of the policy in Clause 6 of the subject insurance policy and as such, the prayer of the petitioner for surrendering the said policy is rightly rejected by the Insurance Ombudsman. Therefore, the Award dated 28.02.2024 passed by the Insurance Ombudsman, Guwahati in Complaint Ref. No.GUW-L-026-2324-0388 warrants no interference from this Court.

12. Hence, the writ petition fails.

13. However, it is made clear that the respondent No.2/insurance company is at liberty to reconsider the request of the petitioner for surrendering the subject insurance policy by treating it as a special case in the peculiar facts and circumstances of the case with a humanitarian approach.

14. With the aforesaid observations the writ petition stands disposed of.

JUDGE

Comparing Assistant