
(2012) 12 PAT CK 0013
In the Patna High Court
Case No : CWJC No. 5604 of 2005

Bihar State Bar Council and Another	APPELLANT
Vs	
The New India Assurance Company Ltd. and Others	RESPONDENT

Date of Decision : 06-12-2012

Acts Referred:

Citation : (2013) 3 PLJR 575

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Advocate : Manan Kr. Mishra, Jyoti Shanker Mishra, Rajnish Kumar and Prem Kumar Jha, for the Appellant; Shailendra Kumar for the Company and SC-21 for the State, for the Respondent

Judgement

Ajay Kr. Tripathi, J.—Bihar State Bar Council has filed the present writ application through the Secretary, duly supported by the Advocates' Welfare Fund of the Bar Council of India through its Chairman. The writ is directed against the respondent Insurance Company which goes by the name of the New India Assurance Company Ltd. The writ wants quashing of Annexure-3, which is dated 30.7.2002, by virtue of which the Insurance Company has unilaterally cancelled the policy bearing No. 4754010502569 dated 26.12.1997 without any prior notice/information or making any refund against Group Personal Accident Policy taken by the Bar Council for its members. Petitioners are statutory body duly created under the Advocates Act to safeguard the rights, privilege and interest of advocates on its rolls. They also have an obligation to promote the welfare of the lawyers through various schemes. The Advocates' Welfare Fund has also been created by the Bar Council of India for the State of Bihar, with the object of giving some kind of umbrella or protection to the members of the Bar. Petitioners agreed on an offer made by the Insurance Company to insure members of the Bar Association under what was known as Group Insurance Scheme, on payment of a lump sum amount as premium depending on number of persons who were going to be extended the coverage. The insurance cover or the policy also known as Group Janta Accident Policy was for a period of 10 years and a composite

payment of Rs. 20,70,510/- was made over to the Company as premium. The policy was to begin on 26.12.1997 and was to expire on 25.12.2007. Cover note was issued to the petitioners and the policy came into effect. Some claims made from time to time during the operation of the policy was also entertained and paid by the respondent Company. But all of a sudden on 30th July, 2002 a communication was made by the Company that in light of adverse claim experience on long term Janta Personal Accident Policy, a corporate decision has been taken for cancelling the Policy.

2. The letter dated 30.7.2002 contained in Annexure-3, informing the petitioners of cancellation of the policy is reproduced hereinbelow as the same is the bone of contention in the present writ application:--

We regret to inform you, that in the light of the adverse claim experience on long term Janta Personal Accident Policy, a corporate decision has been taken for cancelling all long term JPA Policy. Since your policy also falls under this criteria of cancellation, laid down by corporate office, therefore, as per the advice of our Regional Office we are cancelling your policy bearing No. 4754010502569 with immediate effect, by exercising our option to terminate the policy as per "termination of agreement" clause 5(i) of the MoU dt. 26.12.1997.

We would also like to inform you that in the light of clause 10(i) of MoU no refund whatsoever will accrue to you.

We would like to assure you that all claims occurred during the currency of the policy i.e. 30.7.2002 and reported to us would be settled as per the terms & conditions of MoU. Please also be informed that Company would not be on risk for any claims occurring after notice of termination dt. 1.8.2002 served on you.

3. Learned senior counsel representing the petitioners submits that action of the respondent company is not only against the cannons of justice but also in breach of the Memorandum of Understanding (MoU) which was reached between the parties. The MoU duly executed by the parties is part and parcel of the writ application, which was in addition to the general terms and conditions of the policy looking at the uniqueness of the policy that which was sold to the petitioners on certain assurances of benefits emerging therefrom. It is the contention of the petitioners that the company approached the petitioners looking at the bulk business which was generated by them and the Bar Council went by the object of welfare which could be achieved by taking the policy. The lump sum payment was made by petitioner No. 1.

4. Any kind of protection to the lawyers was always a welcome step as despite the country being a welfare State nothing tangible as such has been done for the lawyers welfare in so many years.

5. The Bar Council does not dispute that Clause 10 of the Memorandum of Undertaking was tilted in favour of the company but the said clause clearly and categorical states that the policy was valid for 10 years from the date of

assumption of risk but midway through the policy before its expiry the policy cannot be terminated unilaterally. The company which is a Public Limited Company is bound not only by the law but by the ethical standards which it is expected to maintain.

6. There is provision for termination of the agreement but then there are certain do's and don'ts which is required to be done before effecting termination of the agreement. The terms and conditions of termination as contained in clause 5 of MoU is reproduced hereinbelow:

TERMINATION OF AGREEMENT:--

(i) The company may at any time, by notice in writing terminate this policy, provided that the company shall in that case return to the insured the then last paid premium less a pro rata part thereof for the portion of the current insurance period which shall have expired, such notice shall be deemed sufficiently be given through registered post, if posted and addressed to the insured at the address "last registered in the company's book" and shall be deemed to have been received by the insured in accordance with law.

(emphasis mine).

(ii) The policy may be cancelled at any time by the insured, by a notice in writing under registered A/D. Such notice shall be deemed to be effective from the date of despatch of the same by the insured. Provided, no claim has arisen under the within mentioned policy prior to despatch of such notice by the insured to the company. The insured would be entitled to the return of "premium less premium at company's short period rates for the period policy has been in force.

7. Stand of the learned senior counsel for the petitioners is that there was an obligation upon the Insurance Company to give a registered notice in writing. They are also supposed to return certain amount on pro rata basis but none of these things have been done which makes vulnerable. Annexure-3 has been communicated to the petitioners by the respondent company without any preceding steps having been taken in terms of Clauses 5(i) and (ii). If this is not breach from which they cannot derive benefit, then what better case for interfering with Annexure-3 could be made out. It is contended that respondents cannot be permitted to take advantage of their own illegal act and a breach committed by them in gross omission of their own undertaking on their part.

8. The counter affidavit filed on behalf of the respondent company talks about their right to terminate the agreement as per Clause 5 of the MoU. They have exercised their power according to them in terms of the said provision. But whether their act of unilateral termination of the agreement satisfies the requirement is not established from the material or averments in the counter affidavit. They have tried to explain the wisdom behind the issuance of Annexure-3 by saying that they did honour the claim from time to time but the Head Office on review of the working of such policy did not find it lucrative

enough. In the financial interest of the company a policy decision was taken in good faith and the communication contained in Annexure-3 was the natural corollary.

9. No doubt the right between the parties was the outcome of contract entered between them but if the terms and conditions have been reduced in unambiguous terms then the respondents were required to adhere to the same to say the least. In addition to that, if the company had approached the Bar Council to extend the benefit of insurance cover on a lump sum payment made to them then I suppose they had done their home work before embarking upon and selling such a policy to the Bar Council. If during the subsistence of the policy the company felt that it was not a paying proposition then they could have very well decided not to keep such policy in place for the future. But once an agreement was entered specifying the period for which the insurance cover was to subsist, it was unfair on the part of the Insurance Company to unilaterally terminate it before the expiry of the policy in the year 2007 i.e. almost five years before the period would have got over.

10. The present contract cannot be treated to be between two individuals who have liberty to breach or play with the law. On one side is a statutory body which has the objective of welfare of the lawyers in mind and it is their hard earned money which was paid as premium for the policy and on the other end is a Public Limited Company. Any policy decision taken by them ought to have been prospective in nature and not retrospective. In addition they have tried to take advantage of their own wrong i.e. committing breach of the MoU.

11. Despite indulgence shown to the respondents they failed to produce any clear and cogent evidence to establish whether any of the pre-conditions envisaged in Clause 5 was carried out. No such material was produced and therefore this Court has difficulty in accepting their stand that the pre-condition of the clause was satisfied. Before issuance of Annexure-3 no other communication has been brought on record.

12. In totality therefore, petitioners have made out a case for a mandamus upon the respondents to honour the policy till it subsisted. In the alternative, if they are not in a position to do so since the life of the policy came to an end on 25.12.2007, they have an obligation to refund money to the petitioners on a pro rata in terms of Clause 5(i) for unilaterally terminating the policy in clear breach of Memorandum of Understanding. The pro rata refund has to be made over to the petitioners as part and parcel of their obligation emerging from Clause 5(i) of the MoU within a period of three months from the date of production of a copy of the order. Writ application is allowed in terms of the direction as above.