**(2015) 06 NCDRC CK 0052**

**In the National Consumer Disputes Redressal Commission**

**Case No :** 1626 of 2008

BRAJA KISHORE SAHOO APPELLANT

Vs

LIC OF INDIA RESPONDENT

**Date of Decision :** 24-06-2015

**Acts Referred:**

<a href=3998>Constitution of India</a>, <a href=3998-226>Article 226</a> - Power of High Courts to Issue certain writs

**Citation :** 2015 3 CPJ 224

**Hon'ble Judges :** K.S. Chaudhari

**Advocate :** D.D. SINGH, U.C. MITTAL

# Judgement

1. This revision petition has been filed by the petitioner against the order dated 28.1.2008 passed by the Orissa State Consumer Disputes Redressal Commission, Cuttack (in short, ''the State Commission'') in C.D. Appeal No. 1380 of 2003 - Braja Kishore SahooVs. Sr. Branch Manager, LIC of India by which, while dismissing appeal, order of District Forum dismissing complaint was upheld.

3. Brief facts of the case are that Petitioner/Complainant obtained insurance policy from OP/respondent for a period of 20 years in 1981with half yearly premium of Rs.93/- and last premium was payable in June, 2001. Complainant pledged policy with Vijaya Bank against a loan taken by complainant and assignment was made in favour of bank to collect policy amount. Complainant paid premium till June, 2001 and in August, 2001, enquired from OP about maturity value and he was told that he would get a letter after December, 2001. From February, 2002 to 8.5.2002 he enquired from OP many times, but was assured to get reply shortly. OP by letter dated 15.5.2002 intimated to the complainant that out of maturity amount of Rs. 20,160/-, a sum of Rs.12,462/- has been deducted on different heads and sum of Rs.7,698/- has been given to the banker. OP has made illegal deduction. Alleging deficiency on the part of OP, complainant filed complaint before District Forum. OP resisted complaint and submitted that complaint is not maintainable as due discharge has been made by assignee bank. It was further submitted that complainant was to pay enhanced

 

premium of Rs.320.50 from 28.12.1986 till 28.12.2001 which has been deducted along with interest. It has also been mentioned that as per terms and conditions of policy, complainant did not make written request to OP for conversion of policy and prayed for dismissal of complaint. Learned District Forum after hearing both parties dismissed complaint. Appeal filed by complainant was dismissed by learned State Commission vide impugned order against which, this revision petition has been filed.

3. Heard learned Counsel for the parties and perused record.

4. Learned Counsel for the petitioner submitted that inspite of no request for conversion of policy, OP committed error in enhancing premium and deducting premium with interest and learned District Forum committed error in dismissing complaint and learned State Commission further committed error in dismissing appeal; hence, revision petition be allowed and impugned order be set aside and complaint be allowed. On the other hand, learned Counsel for the respondent submitted that as per terms and conditions of the policy, premium was rightly enhanced after 5 years and as payment has been received as full and final settlement complaint was not maintainable and order passed by learned State Commission is in accordance with law; hence, revision petition be dismissed.

5. It is admitted case of the parties that complainant obtained insurance policy of Rs.10,000/- from OP which was to commence from 28.1.1981 for a period of 20 years and half yearly premium of Rs.93/- was payable. As per policy on the written request of the proposer or his Assignee made at the end of 5 years from commencement of policy, OP was to convert the policy into endowment Insurance policy, meaning thereby, policy should have been converted only on the written request of the complainant and had there been any written request, premium should have been enhanced from Rs.93/- to Rs.320.50 per annum. OP in its written statement has clearly admitted that there was no written request by the complainant to OP for conversion of policy and in such circumstances, there was no occasion on the part of OP to convert policy into Endowment Insurance policy and OP had no right to charge enhanced premium. It is not disputed that complainant has made payment of half yearly premium as per policy. OP has committed deficiency in enhancing premium without written request of the complainant and committed error in charging premium and interest and deducting Rs.12,462/- from the maturity amount. Learned District Forum and learned State Commission committed error in holding that in view of the conversion under the policy, the policy stood converted and enhanced premium charged was proper. Policy could have been converted only on the written request of the complainant and as per admission of OP in the written statement as there was no written request from the complainant there was no occasion to convert policy into Endowment Insurance policy.

6. Learned Counsel for the respondent submitted that on account of full and final settlement complainant is estopped from filing complaint. This argument is also devoid of force because discharge voucher has not been signed by complainant,

 

but has been signed by assignee Vijaya Bank. No doubt, assignee was given right to recover maturity amount under the policy, but merely by accepting residue amount by Vijaya Bank, it cannot be termed as payment received by assignee as full and final settlement of the claim. Hon''ble Apex Court in (1999) 6 SCC 400 - United India Insurance Vs. Ajmer Singh Cotton & General Mills observed as under: "47. "?The mere execution of the discharge voucher would not always deprive the consumer from preferring claim with respect to the deficiency in service or consequential benefits arising out of the amount paid in default of the service rendered. Despite execution of the discharge voucher, the consumer may be in a position to satisfy the tribunal or the Commission under the Act that such discharge voucher or receipt had been obtained from him under the circumstances which can be termed as fraudulent or exercise of undue influence or by misrepresentation or the like. If in a given case the consumer satisfies the authority under the Act that the discharge voucher was obtained by fraud, misrepresentation, undue influence or the like, coercive bargaining compelled by circumstances, the authority before whom the complaint is made would be justified in granting appropriate relief."

In the light of aforesaid observation it becomes clear that complainant''s complaint was maintainable inspite of discharge voucher given by assignee bank as discharge voucher has been obtained by misrepresentation of converting policy into Endowment insurance policy and enhancing premium. Learned District Forum and learned State Commission committed error in dismissing complaint on the ground of full and final settlement of the claim and revision petition is to be allowed.

7. Consequently, revision petition filed by the petitioner is allowed and order dated 28.1.2008 passed by learned State Commission in Appeal No. 1380 of 2003 - Braja Kishore Sahoo Vs. Sr. Branch Manager, LIC of India and order of District Forum dated 20.03.2003 passed in C.D. Case No. 111/2002 - Braja Kishore Sahoo Vs. Sr. Branch Manager, LIC of India & Anr. is set aside and complaint is allowed and OP/respondent is directed to refund Rs.12,462/- with 12% p.a. interest from 15.5.2002 till payment. Parties to bear their own costs.

 