(2009) 08 JH CK 0012

In the Jharkhand High Court

Case No : Writ Petition (Civil) No. 400 and 478 of 2003

Central Coalfields Limited Officers Benevolent Society — APPELLANT

Vs

The New India Assurance Company Limited and The Branch Manager, The New India Assurance Company Limited — RESPONDENT

Date of Decision : 11-08-2009

Acts Referred:

Citation : (2009) 08 JH CK 0012

Hon'ble Judges : Amareshswar Sahay, J

Bench : Single Bench

Advocate : Ritu Kumar, for the Appellant; D.C. Ghosh, for the Respondent

Final Decision : Dismissed

Judgement

Amareshwar Sahay, J.—Since the points in issue as well as the facts in both the writ petitions are identical and therefore, both the writ petitions were taken up and heard together and are being disposed of by this common order.

2. In both the writ petitions, the petitioner namely Central Coalfields Limited Officers Benevolent Society has prayed for quashing the letter dated 22.05.2002 (Annexure-2) issued under the signature of respondent No. 2 - Branch Manager, the New India Assurance Company Limited, Branch Office - 2, Radheyshyam Lane, Main Road, Ranchi whereby and whereunder, the Group Insurance Policies known as Group Janta personal Accident Policy of the petitioners have been cancelled/terminated before the expiry of its term of 10 years.

3. The facts in short in W.P.(C) No. 478 of 2003, according to the petitioner, are that the writ petitioner, i.e. the Central Coalfields Limited Officers Benevolent Society, entered into an agreement with the New India Assurance Company Limited on 06.02.1998 after paying Rs. 3,11,935/- for covering 795 of its members i.e. the officers of the Central Coalfields Limited and their spouse and children towards Group Janta Personal Accident Policy. The said Policy was for a period of ten years.

4. The facts in short in W.P.(C) No: 400 of 2003, according to the petitioner, are that the writ petitioner - Central Coalfields Limited Officers Benevolent Society, entered into an agreement with the New India Assurance Company Limited on 06.02.1998 after paying Rs. 2,72,920/- for covering 728 of its members i.e. the officers of the Central Coalfields Limited and their spouse and children towards Group Janta Personal Accident Policy. The said Policy was for a period of ten years and the coverage was available round-a-clock and worldwide w.e.f. 18.05.1998.

5. The grievance of the petitioners (in both writ petitions) is that the respondents by issue of letter as contained in Annexure-2 dated 22.05.2002, have unilaterally cancelled the aforesaid Group Janta Personal Accident Policy without giving any prior notice to the petitioners for cancellation of the aforesaid two Insurance Policies.

6. According to the learned Counsel for the petitioners, the said Policies could have been cancelled only if the condition No. 5 of the Agreement arrived between the parties, as contained in Annexure-I, could have been violated and not otherwise. It is stated that the condition No. 5 of the Agreement (Annexure-1) was never violated in any manner by the petitioners or its any of the members.

7. On the other hand, Mr. G.C. Ghose, learned Counsel appearing for the Insurance Company, by referring the statements made in the counter affidavit, submitted that the Policies were not cancelled for any violation of condition No. 5 of the Agreement contained in Annexure-1, rather the same were cancelled under Clause - 5 of the terms and conditions of the Insurance Policies. It is further contended by him that both the parties were bound by terms and conditions contained in the Insurance Policies which were supplied to the petitioners. According to him, the Agreement i.e. Annexure-1, was executed pursuant to the Insurance Policies just to explain the terms and conditions mentioned in the Schedule of the Insurance Policies. Firstly, the Policy was issued and then subsequently, the Agreement as contained in Annexure-1 was executed. According to the learned Counsel for the respondents, for invoking Clause - 5 or the terms and conditions of the Insurance Policy, no prior notice, as claimed by the petitioner, was required to be issued. Clause - 5 of the Insurance Policy does not speak about any such notice to be given to the insurer. So far the reasons for cancellation of the Insurance Policy is concerned, it is stated that due to change in the circumstances of the economy, the Insurance Policies of Rs. 5 Lac and over Rs. 5 Lac were not found economically viable and, therefore, without making any discrimination, the Insurance Company decided to close the said Insurance Schemes throughout the country following the procedures as provided in the Insurance Policy itself. The Insurance Company, after canceling the Policies requested the petitioner to surrender the Insurance Policy in original and in turn, the Company agreed to refund pro-rate premium for the unexpired period of the Insurance Policies.

8. In order to appreciate the rival submissions made by the parties, the condition

No. 5 mentioned in the Agreement (Annexure-1) is reproduced herein below:

5. The Insurance Company shall not be liable to make any payment, under the Policy in respect of any claim, if such claim in any manner is fraudulent or supported by a fraudulent statement or device whether by the insured person or by any person on behalf of the insured.

Further, Clause-5 of the Insurance Policy, as contained in Annexure-A to the counter affidavit reads as follows:

5. The Company may at any time by notice in writing terminate this policy provided that the Company shall in the case return to the insured the then paid premium in respect of such persons in respect of whom no claim has arisen, less pro-rate part thereof for the portion of the current Insurance period which shall have expired. Such notice shall be deemed sufficiently given if posted addressed to the Insured at the address last registered in the Company''s books and shall be deemed to have been received by the insured at the time when the same would be delivered in the ordinary course of post.

From a bare perusal of the condition No. 5 of the Agreement (Annexure-1), it is clear that the said condition does not speak about cancellation or termination of the Insurance Policy rather it says only that the Insurance Policy would not be liable to make any payment in case the claim made by the insured is found to be based on fraudulent statement or device whether by the insured or by any person on his behalf.

On the other hand, Clause-5 of the Insurance Policy, quoted hereinabove, lays down that the Insurance Company may, at any time, by notice in writing, terminate the Insurance Policy, the Company would refund pro-rate premium for the unexpired period after the Insurance Policy is surrendered in original.

In this view of the matter, it is clear that the Insurance Policies in question were not cancelled or terminated for any violation of the conditions of the Agreement (Annexure-1) but it was terminated uniformity through out the country since the said Scheme was found to be not viable. The petitioners cannot be said to have been prejudiced in any manner since the Insurance Company accepted to refund the amount of premium for the unexpired period on pro rata basis.

9. In view of the discussions and findings above, the grounds for challenge of the cancellation of the Policies raised by the petitioners does not have any substance. Accordingly, having found no merit, both these writ petitions are dismissed. However, it is observed that if the Insurance Policies in question are surrendered by the petitioners to the insurance Company. Then in that case, the premium for the unexpired period be refunded to the petitioners as admitted by the respondent-Insurance Company.

10. With this observation, both these writ petitions started dismissed. However, there shall be no order as to costs.