(2003) 04 NCDRC CK 0059

In the National Consumer Disputes Redressal Commission

GIRISH KUMAR DORA — APPELLANT

Vs

Life Insurance Corporation of India — RESPONDENT

Date of Decision : 01-04-2003

Acts Referred:

Citation : 2003 2 CPC 514 : 2003 2 CPJ 217 : 2003 2 CPR 339 : 2003 3 CLT 317

Hon'ble Judges : K.D.Shahi , Surendra Kumar J.

Final Decision : Appeal dismissed

Judgement

1. THIS is an appeal against the judgment and order dated 6.9.2002 passed by the District Forum, Dehradun dismissing the complaint of the complainant.

2. THE case of the complainant is that he submitted his application for a Asha Deep Policy in the prescribed form and also attached the cheque for the premium amount of Rs. 6,455/-. THE said cheque was duly encashed. THE policy was not given to the complainant. He was shocked to receive a letter dated 15.3.1994 from the opposite party intimating that his proposal for the said scheme had been cancelled and the premium amount of Rs. 6,455/- was returned to him. No reason, whatsoever was given for the cancellation of the application. It is said that the act of the opposite party is highly arbitrary, unjust and illegal and amounts to deficiency in service. THE complainant has a right to be admitted to the said scheme. Since, the opposite party did not hear, hence the complaint was filed in the Forum. The opposite party contested the complaint and alleged that when the proposal form was scrutinized, it was considered that the medical examination of the complainant be got conducted. It could not be done as the complainant was out of station. The amount deposited by the complainant was kept in suspense account and a suspense receipt was issued. The proposal was not at all accepted and there was no valid contract and there was no relationship of consumer and service-giver. Before the learned Forum, the complainant did not appear. However, the opposite party was heard and it was held that relationship of consumer could not be established and there is no deficiency of service. The complainant, therefore, filed this appeal.

We have heard the learned Counsel for the parties and gone through the records. The act of the opposite party may be unjust, illegal, void, arbitrary without jurisdiction, for which the appellant may have his remedies, but, unless the relationship of consumer and service-giver is established, a complaint before the District Forum under the Consumer Protection Act shall not lie. We fully agree that on the same facts and circumstances of the case, if others have been allowed the policy, there is discrimination and under Article 14 of the Constitution of India or other relevant provisions of law, the complainant can get remedy, but, to get remedy from this Forum, they have to establish the relationship of consumer.

3. UNLESS the contract is completed and unless the policy is issued, the complainant cannot be said to be consumer. In the complaint, itself, it is nowhere said that a policy has been issued to him or his proposal has been accepted. In the complaint, only the complainant alleged that he had a right to be admitted to the plan as alleged in para 7 of the complaint. It is not said that he had been admitted to the plan. He has alleged that he has a right to be admitted. UNLESS he has been admitted to the plan, there was no completed contract, there was merely a proposal. Now, the question is whether the proposal is said to have been accepted if the cheque was encashed by the opposite party. It is an admitted fact that the cheque was encashed. As the rule of the Insurance Companies, the said amount is kept in suspense account unless the proposal is accepted by the authorities. In this case also, the amount of the complainant was kept in suspense account as is clear from the receipt filed by the Insurance Company. We are not concerned here that the proposal should have been accepted and it was not accepted. If it was illegally not accepted, the petitioner may have got his remedy elsewhere but merely for not accepting the proposal, it cannot be said that there was deficiency in service. Consumer''s Courts cannot force anybody to accept the proposal. The matter has been fully discussed and adjudicated upon in the ruling reported in AIR 1984 Supreme Court 1014, Life Insurance Corporation of India v. Raja Vasireddy Komalavalli Kamba, wherein it has been held that a contract of insurance will be concluded only when the party to whom an offer has been made accepts it unconditionally and communicates his acceptance to the person making the offer. Nothing has been done in this case.

4. IT is further, we have in this ruling, that in the case of insurance proposal, silence does not denote consent and no binding contract arises until the person to whom an offer is made says or does something to signify his acceptance. Nothing has been done in this case. Regarding the encashment of the cheque, it was further stated in the ruling that the said two cheques were encashed and the appellant had duly appropriated the amount and credited in the accounts towards the premium payable by the deceased. Therefore, it was stated that the deceased had fulfilled his part of the insurance contract and the appellant-Corporation by its overt acts of encashing the cheques and crediting the amounts in its accounts accepted the proposal of the deceased. In the premises it was

said in the plaint that there was a concluded and valid insurance contract between the deceased and the appellant-Corporation and that the insurance contract commenced on 11th January, 1961 being the date of the receipt of the balance towards premium by the Corporation. In the Supreme Court ruling, it was further held that the two cheques were not encashed and credited towards the premium account of the proposal but these were kept only in deposit in suspense account without any liability of the appellant.

5. IT was again held that mere receipt and rentention of premium does not create relationship and also does not signifies acceptance.

6. FOR what has been said above, there is no concluded contract between the parties and the learned FORum was right in dismissing the complaint. This appeal has got no force and is accordingly dismissed, however, in the circumstances of the case, cost of the appeal shall be easy. ORDER The appeal is hereby dismissed. However, in the circumstances of the case, cost of the appeal shall be easy. Appeal dismissed.