(2017) 03 NCDRC CK 0018

In the National Consumer Disputes Redressal Commission

Case No : 2675 of 2010

IFFCO TOKIO GENL. INS. CO. LTD. — APPELLANT

Vs

BHABANI PRASAD BASU & MS. SNIGDHA BASU & ORS. — RESPONDENT

Date of Decision : 24-03-2017

Acts Referred:
Consumer Protection Act, 1986, Section 21(b), Section 2(1)(d) - Jurisdiction of the National Commission - Definitions

Citation : (2017) 03 NCDRC CK 0018

Hon'ble Judges : B.C. Gupta, S.M. Kantikar

Advocate : S.M Tripathi, Ranjan Mukherjee, Kunal Chatterji, Varun K. Chopra, Samir Ghosh

Judgement

1. Revision Petition, RP No. 2675/2010 has been filed by the Opposite Party (OP) Insurance Company known as IFFCO-Tokio General Insurance Company Limited, under section 21(b) of the Consumer Protection Act, 1986 against the impugned order dated 25.05.2010, passed by the West Bengal State Consumer Disputes Redressal Commission (hereinafter referred to as ''the State Commission'') in First Appeal, FA/102/2010, "IFFCO-Tokio General Insurance Company Limited versus Bhabani Prasad Basu & Ors.", vide which, while dismissing the appeal, the order, passed by the District Forum Kolkata Unit II in consumer complaint No. CC/433/2008, filed by the present respondents, allowing the said complaint, was upheld.

2. Revision Petition No. 1043/2013 has been filed under section 21(b) of the Consumer Protection Act, by the same Insurance Company against the impugned order dated 21.01.2013 passed by the State Commission in FA/61/2012, "IFFCO-Tokio General Insurance Company Limited vs. Samir Kumar Ghosh", vide which, while dismissing the appeal, the order passed by the District Forum dated 19.01.2012, in consumer complaint No. 18/2009, filed by the complainant Samir Kumar Ghosh, allowing the said complaint, was upheld.

3. This single order shall dispose of both the revision petitions described in the heading above and a copy of the same be placed on each file.

4. Briefly stated, the facts involved in these cases are that the opposite party (OP), the Golden Multi Services Club Limited, stated to be a unit of Golden Trust Financial Services located at Kolkata, has been arranging Medi-claim insurance for the benefit of their members with various insurance companies from time to time. They obtained the insurance cover from the New India Assurance Company for the years 1998 to 2002, and thereafter, the said cover was arranged from the National Insurance Company upto 2005. From the year 2005 onwards, they obtained the said cover from the petitioner/OP IFFCO-Tokio General Insurance Company Limited. There was a Memorandum of Understanding (MOU) between the said insurance company with M/s. Golden Multi Services Club, according to which, the insurance cover was to be provided to the members of the Club, subject to the terms and conditions contained in the said Memorandum of Understanding. The Golden Multi Services Club (hereinafter referred as Club), obtained a master insurance policy from the insurer, under which the members were being insured and issued the necessary certificates. In RP 2675/2010, the complainants Bhabani Prasad Basu and Snigadha Basu, who as stated in the consumer complaint No. 433/3008, were first insured by the New India Assurance Company for a sum of 80,000/- each for the period 20.03.1998 to 19.03.1999. The Policy was being renewed from year to year till the year 2001-2002. Thereafter, the policy was obtained from the National Insurance Company from 23.03.2002 to 22.03.2003 and was renewed for two subsequent years. The present petitioner IFFCO-Tokio General Insurance Company Limited issued them the policy from 15.06.2005 to 14.06.2006, which was subsequently renewed for the period 15.06.2006 to 14.06.2007 and then for the period 15.06.2007 to 14.06.2008. However, the petitioner refused to renew the said medi-claim policy for further period, saying that the MOU between the petitioner and the Club did not subsist after 30.06.2007 and hence, the petitioner had no legal liability to issue a fresh insurance or renew the old policy. As per the petitioner, they had revised their insurance scheme with effect form 01.03.2007, the reasons for which were conveyed to the Club vide letter dated 22.01.2007. It was stated that the insurance scheme as per the MOU would stand terminated by June 2007, but the insurance cover affected till that date, would be honoured by the petitioners. The case of the petitioner, as stated in their letter dated 16.05.2007, addressed to the Club is that it was not viable for them to operate the scheme on a small insured number base. They made it explicitly clear that they shall not be in a position to provide insurance coverage to the members under any scheme with effect from 01.07.2007. The petitioner also took the stand that as per the MOU, the insurance coverage was to be available to members between 5 to 58 years of age only and their families. The family would include spouse and dependent children only. The parents could be covered only, if they were dependent on the proposer member and their age did not exceed 60 years. Accordingly, the petitioner refused to renew the policy beyond

14.06.2008. The complainant filed the consumer complaint in question, seeking directions to the insurance company to renew the medi-claim policies of the complainant and to continue the same uninterruptedly.

5. In their reply to the consumer complaint, the petitioner stated that the renewal of the policy was their exclusive discretion and hence, they could not be held guilty of any deficiency in service. The terms and conditions had been specifically stated in the MOU with the Club and the complaints were not consumers, vis-?-vis, the petitioner.

6. The District Forum after taking into account the averments of the parties, allowed the complaint and directed the insurance company to renew the policies beyond 14.06.2008 and also provide them compensation of 10,000/- for mental agony and harassment etc. The District Forum also directed them to pay 20,000/- as cost for making derogatory remarks against the functioning of the District Forum. Being aggrieved against this order, the insurance company preferred an appeal before the State Commission and the said appeal having been dismissed vide impugned order dated 25.05.2010, the insurance company is before this Commission by way of revision petition, i.e., RP No. 2675/2010.

7. In the second case, the facts are almost similar. Samir Kumar Ghosh, the complainant, stated in his consumer complaint that he agreed to be a member of the Club with the purpose of enjoying the health insurance coverage, which was arranged from the National Insurance Company. The said insurance cover was first received from the National Insurance Company and then from the petitioner. The Club used to collect the premium for the policy from the complainant and have the policy renewed. The process continued till the year 2007. However, their request for further renewal was not granted. The complainant filed consumer complaint No. 18/2009, seeking directions for the insurance company and the Club for the renewal of health insurance policy and also to pay 5 lakh as compensation to him.

8. The District Forum decided the complaint vide their order date 19.01.2012 and directed the renewal of the health insurance policy, and also to pay a compensation of 75,000/- to the complainant for mental harassment and 10,000/- towards cost of litigation. Being aggrieved against the order of the District Forum, two appeals were filed before the State Commission - one by the petitioner insurance company and the other by the Club. The appeal filed by the Insurance Company was dismissed, while the appeal filed by the Club was allowed. The direction to pay compensation of 75,000/- and 10,000/- as cost of litigation was ordered to be imposed on the petitioner insurance company, instead of the Club. Being aggrieved against this order of the State Commission, the petitioner Insurance Company has filed the instant Revision Petition No. 1043/2013.

9. During hearing before us, the learned counsel for the petitioner insurance company submitted that in both the cases, the complainants did not come under

the definition of ''consumer'' as stated in section 2(1)(d) of the Act. The petitioners had taken this specific plea in their memo of appeals filed before the State Commission, but the State Commission had not given any finding on this issue. The learned counsel stated that they had entered into an MOU with the opposite party Club and hence, there was no privity of contract between the petitioner Insurance Company and the individual Club members. In fact, the dispute was between the complainants and the Club, because the complainants had stated that it was the duty of the Club to arrange suitable insurance for them. The learned counsel further argued that the MOU signed with the Club was for a limited period and under the said MOU, a master policy was issued to the Club, under which the Insurance Cover was made available to the members of the Club. In fact, the policy to individual members was issued by the Club only and the petitioner company had simply countersigned the said policy. In terms of this arrangement, the premium was being collected by the Club itself and being paid to the petitioner insurance company. Before the petitioners came into the scene, the Club had arranged insurance cover from the New India Assurance Company and the National Insurance Company during the previous years. The learned counsel argued that the petitioner had revised the insurance scheme with effect from 01.03.2007 and they had written to the Club accordingly vide their letter dated 22.01.2007. However, with the introduction of the new scheme with effect from 01.03.2007, the petitioner insurance company felt that it would not be viable for them to operate the scheme on such a small insured member base. Accordingly, they wrote a letter dated 16.05.2007 to the Club, saying that they shall not be in a position to provide an insurance cover or renew the existing insurance cover after 30.06.2007. However, they were committed to provide full service to all insured members covered up to 30.06.2007. In the case of Complainant Bhabani Prasad Basu, the insurance policy was valid upto 14.06.2007 and had been extended by another year till 14.06.2008. The learned counsel further argued that as per the MOU, insurance cover could be given to the persons between the age group of 5 to 58 only, but in the present case, the complainants had crossed this age and hence, the insurance cover could not be provided to them. The learned counsel has drawn attention to an order passed by the Hon''ble Supreme Court in " United India Insurance Company vs. Manu Bhai Gazera" [2008 (10) SCC 404] , in support of his arguments. The learned counsel stated that the renewal of insurance could be made only with mutual consent of the parties. Referring to the observation of the District Forum about making derogatory remarks against the functioning of the forum, the learned counsel stated that they had never stated anything derogatory against the District Forum. There was, therefore, no deficiency in service on their part and hence, the orders passed by the consumer fora below should be set aside.

10. In support of his arguments, the learned counsel has further drawn attention to the orders passed by the Hon''ble Supreme Court in "Oriental Insurance Company vs. Sony Cheriyan" [II (1999) CPJ 13 SC] , according to which, the terms of the agreement have to be strictly construed to determine the extent of

liability of the insurer. In the case, " Ravneet Singh Bagga vs KLM Royal Dutch Airlines & Anr. [1999 (4) RCR (Civil), 690] , the Hon''ble Apex Court held that deficiency in service could not be alleged without attributing any fault, imperfection etc. in the quality, manner of performance etc.

11. The learned counsel for the complainant at the very outset, has drawn attention to an interim order passed by this Commission on 06.08.2010, in which it is mentioned that the petitioner was ready to consider the case of the complainants for renewal of the insurance. The petitioner was also asked to deposit a sum of Rs.10,000/- and another sum of Rs.20,000/- in terms of the directions of the District Forum, but the petitioner Insurance Company never complied with the order dated 06.08.2010. Further on 02.12.2010, this Commission directed the Insurance Company to renew the policy on old terms and conditions. Both the above orders were passed in RP No. 2675/2010, but the Insurance Company did not take any steps to implement these orders and hence, the petition deserves dismissal on this ground alone.

12. The learned counsel has drawn attention to a copy of the Insurance Policy placed on record, saying that the said policy had been issued on the prescribed proforma of the petitioner, carrying their name and logo on the top of the said document. However, the said document had been countersigned by the Club. It is very clear, therefore, that the complainants fall within the definition of ''consumer'' vis-a-vis, the petitioner Insurance Company, because the policy has been issued by the petitioner in their name. The learned counsel argued that the scope of revision petition under section 21(b) of the Act was limited and interference in the exercise of the revisional jurisdiction could be made only, if there was any jurisdictional error or material illegality in the orders passed by the Fora below. The learned counsel further stated that as stated in the MOU as well, the claims under the policies were to be settled directly in favour of the beneficiaries, indicating clearly that the complainants were consumers under the given arrangement. The learned counsel also stated that the stipulation in MOU that insurance cover could be given to persons between the age group of 5 to 58 years only, was unacceptable. In fact, in RP No. 1043/2013, the complainant had already crossed the age of 58 years, when the insurance cover was provided to him. The learned counsel further stated that as per clause 23 of the MOU, the agreement could be terminated only, by giving a notice for three months in writing. The action taken by the Insurance Company in not renewing the insurance policy was, therefore, not in accordance with the terms and conditions of the MOU.

13. The learned counsel for the Club stated that from the copies of the insurance policies in question and the MOU, it was clear that there was privity of contract between the petitioner Insurance Company and the Complainants. In fact, the Club had no authority from the Insurance Regulatory Development Authority (IRDA), to issue the policies in question. The Club had countersigned the policies on the insistence of the petitioner insurance company only. The learned counsel

further stated that the policies had been taken from different companies at different times, considering the terms and conditions offered by a particular insurance company and there was nothing wrong in that. The learned counsel stated that the Club was just a facilitator in the matter of arranging insurance for its members from the insurance company.

14. We have examined the entire material on record and given a thoughtful consideration to the arguments advanced before us.

15. The facts involved in these two cases, as admitted by the parties are that the Club has been arranging medi-claim policies for the benefit of its members from different insurance companies from time to time. During the said process, they entered into an MOU with the petitioner Insurance Company also and detailed terms and conditions for the arrangement have been listed in the said MOU. The MOU states clearly that the coverage will be available for members between 5 to 58 years of age only and in no case, the insurance coverage will be given to a person who has crossed the age of 60 years. It is also stated that the premium for the policy shall be collected by the Club and got deposited with the petitioner Insurance Company. It is also stated that the claim will be settled directly in favour of the members/beneficiaries under the policy. Both the parties have been given liberty to terminate the agreement by giving a notice of three months in writing.

16. The first issue that arises for our consideration is whether the complainants in the two cases are covered under the definition of ''consumer'', vis-a-vis, the petitioner Insurance Company. It is clear from the record available that the insurance policies have been issued in the name of the complainants by the petitioner Insurance Company on their own letterhead, carrying their name and logo as well. It is true that the policy documents have been countersigned by the Club, but the policies stand in the name of the complainants only. It is clear, therefore, that the petitioner Insurance Company cannot deny their liability under the policies, vis-a-vis, the complainants. It is held, therefore, that the complainants do fall within the definition of ''consumer'' under the Consumer Protection Act, 1986. It is true that the complainants are members of the Club and the Club had played a significant role in arranging the insurance cover for them from various insurance companies from time to time. The Club has also obtained a master policy from the petitioner Insurance Company, but this does not mean that there is no privity of contract between the complainants and the petitioner Insurance Company. The contention raised by the petitioners that the complainants are not their consumers is not valid, therefore. It is held that the complainants do fall within the definition of consumer, vis-a-vis, the petitioner Insurance Company.

17. The main point that arises for our consideration is whether the petitioner Insurance Company could be directed to provide insurance cover for an indefinite period, depending on the terms and conditions stated in the MOU with the Club. On record is a document dated 22.01.2007, issued by the petitioner to the Club,

saying that following discussions with them, they wanted to carry out modifications in the terms and conditions of the insurance policies. Further, in the letter dated 16.05.2007, the petitioner Insurance Company state as follows:-

"We observe that after introduction of the new Scheme with effect from 1 st March 2007, the volumes (in terms of members covered and premiums received) have come down drastically. The matter has been examined further at our end and we are constrained to point out that it will not be viable for us to operate the Scheme on such a small insured member base. Further, the purpose of introduction of the new Scheme was to offset the sharply deteriorating results of the old Scheme, which will not be achieved with such small numbers.

In light of the above, we wish to inform you through this letter that we shall not be in a position to provide fresh or renewal insurance coverage to your members under any Scheme with effect from 1 st July 2007. However, we confirm that we are committed to providing full service to all your insured members as covered under insurance policies incepting upto 30 th June 2007 till the natural expiry of their annual coverages as per individual Certificates issued to them."

18. It is clearly made out from the above that the petitioner Insurance Company stated in categorical terms that it shall not be viable for them to operate the scheme on such a small insured number base. However, they committed that for all insurance cover provided upto 30.06.2007, they were committed to provide full service to all insured members of the Club, covered under the policies.

19. Considering the plea taken by the petitioner in the letter dated 16.05.2007, it is clear that the petitioner could not be forced to extend the insurance cover for an indefinite period. It is a settled legal proposition that insurance is a contract between the two parties on the terms and conditions mutually settled between them. The MOU itself provides an exit clause to either of the parties to terminate the agreement between them. It is clear, therefore, that the Insurance Company was well within its rights to terminate the said agreement. Moreover, there is a stipulation in the MOU that the insurance cover shall be provided to the persons between the age of 5 to 58 years only. In case, the complainants have crossed the age of 58 years, they have no right to obtain cover under the terms and conditions of the MOU. In any case, it is not denied by any of the parties that although the petitioner stated that the scheme was being terminated on 30.06.2007, they still extended the insurance cover to the complainants in RP No. 2675/2010 for a period of one year beyond 14.06.2007, meaning thereby that these complainants were covered till 14.06.2008. The contention of the learned counsel for the complainants, therefore, that it was the duty of the Insurance Company to give them a notice of 3 months is not valid at all, because the insurance cover in that case has been extended by full one year till 14.06.2008.

20. Based on the above discussion, we do not find any reasonable basis to agree with the conclusion arrived at by the District Forum, duly affirmed by the State

Commission that the petitioner Insurance Company was liable for deficiency in service in not granting renewal of the medi-claim policy. The plea taken by the District Forum that the Insurance Company cannot refuse the renewal of the policy on the ground of viability, does not stand on any reasonable footing, and is liable to be rejected.

21. It is held, therefore, that the orders passed by the fora below are perverse in the eyes of law, as they represent a deviation from the basic principle that a contract of insurance is a contract between the two parties on terms and conditions to be settled between them. The contention raised by the State Commission that the terms and conditions of the policy cannot be changed to the detriment of the existing members is also without any reasonable basis, because the contract of insurance in these cases was valid for one year at a time only and the same was being renewed from year to year. It would be wrong to lay down a stipulation that the insurance company had no right to change the terms and conditions after the contract for a particular year came to an end.

22. It may further be stated that the District Forum imposed a cost of Rs.20,000/- on the petitioner Insurance Company for making derogatory remarks against the functioning of the Forum and also observed that the attitude of the Insurance Company was autocratic and exceptionable. We have examined the reply filed by the Insurance Company before the District Forum and also examined the order passed by the District Forum in great detail. We do not find anything objectionable in the assertion made by the petitioner Insurance Company in their reply before the District Forum. The remarks made by the District Forum regarding the functioning of the petitioner Insurance Company are therefore, ordered to be expunged, as they have been made without any reasonable ground or basis. The directions to give compensation on that account is also struck down.

23. Based on the discussion above, these revision petitions are allowed and the orders passed by the State Commission and the District Forum are set aside. The consumer complaints in question, stand dismissed. There shall be no order as to costs.

