(1940) 04 CAL CK 0021

In the Calcutta High Court

In Re: Genuine Insurance Co. Ltd.

Date of Decision : 09-04-1940

Acts Referred:
Insurance Act, 1938 — Section 110

Citation : AIR 1940 Cal 529

Hon'ble Judges : Ameer Ali, J

Bench : Division Bench

Judgement

Ameer Ali, J.—This is an appeal u/s 110 of the new Insurance Act, Act 4 of 1938, as amended by Act 11 of 1939. The appellants are a share-holder in the Genuine Insurance Co. Ltd., as also the Company itself: the Company in General Meeting having decided, as appears from the report which has been placed before me in other proceedings and which the parties to this appeal do not challenge, to adopt this appeal. The Company was incorporated in 1931. It commenced or confined its business to life insurance in 1934. Before the commencement of the new Act, i.e., 1st July 1939, the Company had deposited with the then proper authorities, the Reserve Bank, Government securities of the face value of Rs. 1,22,100. The market value of these securities in August 1939 was Rupees 1,08,305. I mention this date because it is then that the Company applied for registration under the new Act and obtained its certificate u/s 3. There was correspondence between the authorities created by the new Act, and the Company, to little or none of which I need refer. By notification dated 16th December 1939 these authorities cancelled the certificate under the provisions of Section 3, Sub-section 4 of the Act, the cancellation to take effect from 17th January 1940. The effect of this was however deferred by an injunction or order granted by this Court. That the authorities have acted, whatever be my view, with perfect propriety, and simply upon legal advice that they have received, i.e. upon one reading of the Act, is obvious, for on 5th July 1939 they issued to all companies a circular setting out their view of the law, which is Ex. A to the petition.

2. The whole matter falls within the smallest compass and turns upon the effect of Sub-section 7 of Section 7. As the learned Advocate-General with his usual frankness stated, it is a matter of first impression. In point of fact, my second

impression is precisely the same. The question is, does Section 7, Sub-section 7, supersede Section 7, Sub-section 3? Does Section 7 mean, notwithstanding the provision for instalments contained in Section 7, Sub-section 3, where the amount deposited before the commencement of this Act exceeds the amount fixed for the first instalment, it will nevertheless constitute the first instalment.

3. The first point to note is my introduction of the word "exceeds," because on the argument of the Advocate. General, without this word, if the deposit was less than that required, it would also have to be accepted as the first deposit. The learned Advocate-General''s argument was based substantially upon the word "deposited" in Sub-section (7) of Section 7, i.e. that whatever securities there are must fit in as one of the deposits under the new Act, and, secondly, upon the inference to be derived from the time fixed for conversion or valuation.

4. In my view, Sub-section (7) of Section 7 is simply a general provision to make available the securities already deposited under the old Act for the purpose of being used as deposits under the new Aot, the provision as to valuation being purely a question of machinery. In my view therefore cancellation can only take place if the provisions of Section 7, Sub-section (3) are not complied with. It is quite true that there is no specific provision stating that deposits already made and now deemed to be made under the new Act by virtue of Section 7, Sub-section (7) will be appropriated according to the instalments fixed by Section 7, Sub-section (3), but to my mind that is implied in the words of Section 7, Sub-section (7) themselves, "deemed to be deposited under this Act."

5. That decides the matter in question, but the learned Advocate-General has asked me to express a view as to procedure. No view expressed by me is intended in any way to affect the views of any other learned Judge of this Court. The Advocate-General has referred me to the provisions of the Code whereby when for any kind of appeal in any special jurisdiction no procedure is laid down, the procedure relating to appeals provided in the Code shall be followed, but it seems to me, having regard to the fact that the orders of the authorities do not comply with or follow any specific procedure, that the most convenient course would be for appeals to be by petition, setting out the objections seriatim in a manner analogous to grounds of appeal.

6. Mr. Sushil Sen has asked leave to put before me another aspect of the matter which is indicated in the affidavits, and of which I had in fact taken note although it did not, in my mind, prevail over what I conceive to be the construction of the Section itself. The point is that the construction of the Section which appeals to me affects the rights which accrued to the policy-holders under the old Act, i.e., it may affect those rights, which is the same thing. "Under the old Act, the deposit constituted a life fund which to all intents and purposes was held in trust for the policy-holders. No such express provision appears in the new Act. Therefore, unless the whole deposit under the old Act is taken as the first instalment under the new Act, in certain events the policy-holders might lose the privilege of quasi beneficiaries in the balance of the amount deposited under the

old Act.

7. It is contended, and the contention is by no means unreasonable, that the new Act should be construed in such a manner as not to deprive any class of persons of a right or privilege possessed under any repealed Act. With the principle I agree, but I still consider the sections too clear to be construed by implication arising from such a principle. Mr. Sen has addressed me on the question of costs. He has pointed out that the appellants originally, at certain stages, accepted the respondent''s contentions, that it is a test case, that the authorities were acting in the interests of the public, with all which I agree, but it seems to me that the costs should abide the result. They will be as of a motion. Appeal allowed. Order recalling the cancellation of the registration.

