
(2016) 02 CAL CK 0122
In the Calcutta High Court
Case No : W.P. No. 17734 (W) of 2015

Jayshree Polytex Limited

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 02-02-2016

Acts Referred:

General Clauses Act, 1897 — Section 3(42)
Insurance Act, 1938 — Section 114, Section 114(1), Section 2(2), Section 2(c),
Section 3(42)

Citation : (2016) AIR(Calcutta) 165 : (2016) 2 CalLJ 89 : (2016) 2 KLT 97 :
(2016) 2 WBLR 624

Hon'ble Judges : Dipankar Datta, J.

Bench : Single Bench

Advocate : Sonal Shah and Shruti Agarwal, for the Appellant;

Final Decision : Allowed

Judgement

Dipankar Datta, J.—1. An interesting question arises for examination by this Bench on this writ petition, i.e. whether repudiation of an insurance claim by an insurer could be made the subject matter of a complaint before the Insurance Ombudsman (hereafter the ombudsman) under the Redressal of Public Grievances Rules, 1998 (hereafter the Rules) at the instance of a company incorporated under the Companies Act 1956.

2. The petitioning company's claim having been repudiated by the insurer (respondent No. 4), a complaint was lodged before the ombudsman whereupon it was conveyed by the office of the ombudsman (respondent No. 3) by a communication dated February 5, 2015 that the ombudsman entertains complaints in respect of "insurance policies issued or purchased in an individual capacity, i.e. personal lines insurances only can be considered". The petitioning company was, accordingly, advised to take up the matter with the insurer or any other Court/forum for resolution of its grievance. This order is the subject matter of challenge in this writ petition.

3. Referring to the provisions of the Rules, Ms. Shaw, learned advocate for the petitioning company, duly assisted by Ms. Agarwal, learned advocate contended that the respondent No. 3 was in error in holding that a complaint before it against an insurer could only be filed by an individual and not by a company. Reliance was placed on the decision of a learned single judge of the Madhya Pradesh High Court (Indore Bench) reported in [, 2010 160 COMP CAS 410 (MP) : Oriental Insurance Company Limited v. Ruchi Worldwide Limited], wherein it was held that a complaint at the instance of a company could be entertained by the ombudsman under the Rules. It was pointed out to this Bench that a different view had earlier been taken by a Division Bench of the Kerala High Court in the decision reported in 2005 (4) KLT 391 : National Insurance Co. Limited v. Indus Motor Co (P) Ltd.; however, the learned Judge while deciding Ruchi Worldwide (supra) had duly considered the decision in Indus Motor (supra) and given detailed reasons for recording disagreement therewith. It was urged that the view expressed in Ruchi Worldwide (surpa) is the correct view and that discarding the view expressed in Indus Motor Co (supra), this Bench ought to set aside the impugned communication and direct the respondent No. 3 to place the complaint before the ombudsman for consideration in accordance with law.

4. Mr. Mukerji, learned advocate representing the respondent No. 3 contended that the Rules have been framed for expeditious disposal of complaints lodged by individuals aggrieved by total or partial repudiation of insurance claims by insurers and such rules do not conceive of examination of complaints lodged by companies aggrieved by such repudiation. Rules 4(i), 4(j), 12 and 13 of the Rules were referred to by him to persuade this Bench to uphold the impugned communication.

5. Mr. Mukerji next referred to the meaning of the word "ombudsman" by seeking to trace its meaning from the Concise Oxford Dictionary. He urged that having regard to the object sought to be achieved by framing the Rules, it would be clear that a complaint relating to settlement of insurance claims made only by a particular category of persons (individuals and their nominee/legal heir) could be entertained. The words "through its legal heirs" were emphasized by him to drive home the point that the Rules are intended to provide a cost effective machinery for individuals to have their disputes settled by the ombudsman and the framers had deliberately not made any reference to "policy holder" as defined in section 2(2) of the Insurance Act, 1938 (hereafter the 1938 Act) but had instead used the words "insured persons" and "personal line" which brings out the specific intention of opening the avenue for approaching the ombudsman to an "insured person" and not "policy holder".

6. Referring to rules 4(i) and (k), where the terms were sought to be explained by reference to "means", it was argued by Mr. Mukerji that the definitions are restrictive and that the words "any person" referred to in rule 13(1) have to be read in the light of the definition of "insured person", which makes the position clear that the Rules aim to cover an insured person only and not a policy holder.

7. Pointing to rule 18 of the Rules conferring power on the ombudsman to award ex-gratia payment, it was submitted that the purpose is to protect an individual policy holder's interest only who is unequally pitted against an insurer as distinguished from a company who has bought an insurance policy in the ordinary course of business to protect its commercial interest.

8. Referring to rule 16 (2) of the Rules limiting the quantum of compensation, Mr. Mukerji further submitted that the intention is clear, - the same is intended to accommodate personal coverage only and not company coverage amounting to crores.

9. Finally, Mr. Mukerji submitted that the set-up of the respondent No. 3 is not equipped to deal with commercial insurance claims involving complexity and diversity which call for proper adjudication through due process of law and that the Rules have merely carved out an area from the wide spectrum of insurance related disputes to be resolved by the ombudsman for the assistance of individuals who are socio-economically unequal vis-?-vis the insurers.

10. Mr. Mukerji accordingly asserted that the impugned communication is based on proper interpretation of the Rules and does not deserve interference; more so, since a disputed claim is involved, remedy of the petitioning company lies in approaching the civil court for relief.

11. The Insurance Regulatory and Development Authority of India, respondent No. 2 (hereafter the IRDA), was represented by Mr. Gangopadhyay, learned advocate, who adopted the submissions of Mr. Mukerji. In addition, he referred to the word "Public" in the title of the Rules. According to him, "Public" would mean an individual and not a company and, therefore, entertainment of complaint by a company is not contemplated by the Rules.

12. The version of the respondent No. 4 was highlighted by Mr. Singh, learned advocate. It was contended by him that since the insurance policy was not issued or purchased in any individual capacity, i.e. personal lines, no illegality was committed by the respondent No. 3 in not entertaining the petitioner's complaint. The Rules had been framed on the basis of the powers conferred by section 114(1) of the 1938 Act and were intended to ensure that individuals who had disabilities from proceeding with protracted legal battles are alone the beneficiaries by providing a forum for them to facilitate expeditious remedy. Notwithstanding the presumption that a company is a "person" as per the definition of section 3(42) of the General Clauses Act, 1897 (hereafter the 1897 Act), the claim of the insured before the Ombudsman is plainly not maintainable, for the reason that definition clauses are incorporated in the statutes with a definite purpose. The remedies available under the Rules are individualistic and are reserved in favour of individuals only. The petitioner, which is a company, cannot be assigned the status of an individual so as to take recourse to the remedy provided by the Rules.

13. Referring to rule 12(b) of the Rules conferring power on the ombudsman to

receive and consider "any partial or total repudiation of claims by an insurer" and rule 13(1) of the Rules, Mr. Singh submitted that the words "may himself or through his legal heirs" clearly suggest the intention to restrict lodging of complaints by an insured individual or by his legal heirs and by no stretch of imagination can it extend to a company like the petitioner.

14. Mr. Singh further contended that the definition clause in the 1897 Act cannot be imported to explain the meaning of the expression "(A)ny person" in the Rules, since the rules per se give sufficient indication with regard to the expression "(A)ny person". According to him, if the legislature wished an incorporated company to also come within the meaning of rule 13, the same could have been incorporated in the Rules. Having not so incorporated, it was submitted that it would be not be proper to import a meaning which has not been attributed by the rule making authority to the expression "(A)ny person" and particularly when the context clearly shows otherwise.

15. Mr. Singh further referred to a circular dated November 23, 2010 issued to the Chief Executive Officers of all General and Life Insurers by the IRDA in compliance with an order dated 09.09.2010 passed by the Delhi High Court in W.P. No. 10638 of 2006 [Vinod Kumar Aneja v. New India Assurance Co. Ltd. & ors.] They were advised not to challenge the award of the ombudsman. By the said circular, it has also been communicated that:

"The mechanism of adjudication by the Insurance Ombudsman is an alternative dispute redressal mechanism envisaged under the RPG Rules 1998 and the insurers have themselves devised this dispute redressal mechanism and have also bound themselves unconditionally to honour such Awards."

Referring to the Insurance Regulatory and Development Authority Act, 1999, Mr. Singh submitted that it is an enactment to provide for the establishment of an authority to protect the interests of holders of insurance policies. The circular and the policy directives issued by the IRDA are binding on the insurance companies. Rule 15 of the said Rules also makes the recommendation made by the ombudsman optional for the insured but binding upon the insurance companies. In addition to the above, rule 16(6) and 17 of the Rules also confirm that the insurance companies have to satisfy the recommendations made by the ombudsman whereas the insured may not accept the same. Therefore, on the one hand, if an insured company is allowed to lodge a claim and in its discretion it may or may not accept the recommendations of the ombudsman, on the other hand the insurance companies would remain remediless if they consider themselves aggrieved by the award of such ombudsman. In other words, equals would be subject to unequal treatment and the insurance companies victims of discrimination.

16. Mr. Singh thus echoed the submissions of Mr. Mukerji that the remedy of the petitioning company lies in approaching the civil court for redress.

17. The parties have been heard at length.

18. The source of power to frame the Rules is derived from section 114 of the 1938 Act. The clause relating to applicability of the Rules is rule 2, which says that it shall apply to all the insurance companies operating in general insurance business and life insurance business. It is evident from rule 3 that the Rules were framed with the object of resolution of "all complaints relating to settlement of claim on the part of insurance companies in cost effective, efficient and impartial manner". The word "all" in rule 2 would encompass not all complaints but only such of those covered by rules 12 and 13. For facility of reference, rules 12 and 13 are reproduced below:

"12. Power of Ombudsman -

(1) The Ombudsman may receive and consider -

(a) Complaints under rule 13;

(b) any partial or total repudiation of claims by an insurer;

(c) any dispute in regard to premium paid or payable in terms of the policy;

(d) any dispute on the legal construction of the policies in so far as such disputes relate to claims;

(e) delay in settlement of claims;

(f) non-issue of any insurance document to customers after receipt of premium;

(2) The Ombudsman shall act as counselor and mediator in matters which are within his terms of reference and requested to do so in writing by mutual agreement by the insured person and insurance company.

(3) The Ombudsman's decision whether the complaint is fit and proper for being considered by it or not shall be final.

13. Manner in which complaint is to be made -

(1) Any person who has a grievance against any insurer, may himself or through his legal heirs make a complaint in writing to the Ombudsman within whose jurisdiction the branch or office of the insurer complaint against is located.

(2) The complaint shall be in writing duly signed by the complaint or through his legal heirs and shall state clearly the name and address of the complaint, the name of the branch or office of the insurer against which the complaint is made, the fact giving rise to complaint supported by documents, if any, relied on by the complainant, the nature and extent of the loss caused to the complainant and the relief sought from the Ombudsman.

(3) No complaint to the Ombudsman shall lie unless -

(a) the complainants had before making a complaint to the Ombudsman made a written representation to the insurer named in the complaint and either insurer had rejected the complaint or the complainant had not received any reply within

a period of one month after the insurer concerned received his representation or the complainant is not satisfied with the reply given to him by the insurer;

(b) the complaint is not made not later than one year after the insurer had rejected the representation or sent his final reply on the representation of the complainant; and

(c) the complaint is not on the same subject matter, for which any proceedings before any court, or Consumer Forum or arbitrator is pending or were so earlier."

19. Since heavy reliance has been placed by the learned advocates for the respondents on the terms "insured person" and "personal lines" defined in sub-rules (i) and (k) of rule 4, their meaning has also to be traced. An "insured person" is defined to mean "an individual by whom or on whose behalf an insurance policy has been taken on personal lines". The term "personal lines" means "an insurance policy taken or given in an individual capacity". Since reference has also been made to the term "policy holder" by Mr. Mukerji, its definition in section 2(2) of the 1938 Act has been looked into. It reads:

"policy-holder" includes a person to whom the whole of the interest of the policy-holder in the policy is assigned once and for all, but does not include an assignee thereof whose interest in the policy is defeasible or is for the time being subject to any condition".

20. The argument that a complaint could only be lodged before the ombudsman by a person who answers the definition of an "insured person" defined by rule 4(i) of the Rules, has to be considered in the light of what is and what is not provided in the Rules.

21. One would necessarily be inclined to look for the meaning of "insured person" wherever such term has been used in the Rules, and not for ascertaining the meaning of any other term, expression, phrase or sentence appearing in the Rules. The term "insured person" has been used only once in the Rules [in rule 12(2)]. Such term has to be understood in the context where it is used. Reading of rule 12 in its entirety would unmistakably lead to the conclusion that the same relates to the power of the ombudsman. Sub-rule (1) delineates the jurisdiction to receive and consider any matter of the nature spelt out in clauses (a) to (f); the authority of the ombudsman to act as counselor and mediator in matters within the terms of reference, should he be requested to do so by a written mutual agreement of the insured person and the insurance company, is conferred by sub-rule (2); whereas, sub-rule (3) makes the ombudsman's decision final as to whether the complaint is fit and proper for consideration or not. The term "personal lines" is not used in the body of the Rules except in rule 4(i) defining "insured person". Since the definition of the term "insured person" refers to "personal lines", rule 4(k) defining "personal lines" may be looked into only for the purpose of understanding the term "insured person" and not otherwise.

22. Rule 13, however, is the provision identifying the party at whose instance a

complaint before the ombudsman would lie and in what circumstances. Importantly, sub-rule (1) of rule 13 does not use the term "insured person"; on the contrary, it uses the term "(A)ny person".

23. The dictionary meaning of the word "any" is "one or some or all". In Black's Law Dictionary, it is explained that the word "any" has a diversity of meaning and may be employed to indicate "all" or "every" as well as "same" or "one" and its meaning in a given statute depends upon the context and subject matter of the statute.

24. The Supreme Court in its decision reported in , AIR 2007 SC 788 [M/s. Associated Indem Mechanical (P) Ltd. v. State of West Bengal], while interpreting "any" in the definition clause of "premises" appearing in the West Bengal Government Premises (Tenancy Regulation) Act, 1976 held that:

"The opening part of the definition of the word "premises" in Section 2(c) employs the word "any". "Any" is a word of very wide meaning and prima facie the use of it excludes limitation (See Angurbala Mullick v. Debabrata Mullick, , AIR 1951 SC 293 at 297)".

25. "Any" in the context it has been used in rule 13 clearly suggests that it has been used in a wide sense extending from one to all, admitting no exception. It creates a right in favour of any aggrieved person to lodge a complaint against an insurer in respect of any matter covered by clauses (b) to (f) of sub-rule (1) of rule 12, should such situation arise. Notably, clause (f) refers to "customers".

26. It stands to reason that even a customer would be comprehended within "(A)ny person". In the absence of the definition of the term "person" in the Rules, one may seek guidance from the 1897 Act in terms whereof unless there is anything repugnant to the context, "person" "shall include any company or association or body of individuals, whether incorporated or not" [see section 3(42)]. Regard being had to such definition which is applicable to Central statutes, there is no difficulty in comprehending a company within the meaning of "(A)ny person" in rule 13 since the context permits so.

27. Law is well-settled that the Courts can neither by means of an interpretative process nor under the guise of ensuring parity in what it may seem to the Court would be desirable to achieve uniformity (an area once again exclusively pertaining to policy of legislation) add to or alter the language, structure and content of a provision by reading into it what was not specifically intended or what perhaps was deliberately and consciously avoided by the Parliament itself [see , (2001) 4 SCC 558 (Vijayalakshamma & Anr. v. B.T. Shankar)].

28. It is also settled law that the intention of the legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support, addition or substitution of words, or which results in rejection of words as meaningless, has to be avoided [See ,

(2003) 6 SCC 659 (Shiv Shakti Coop. Housing Society, Nagpur v. Swaraj Developers and ors.).

29. The Rules, which have been framed with the object of expeditious disposal of insurance claims in a cost effective, efficient and impartial manner, envisage disposal of complaints in two ways. The first is by way of mediation [see rule 12(2) read with rule 15(1)] and the other by adjudication by passing a speaking award with detailed reasoning [see rule 14(2) read with rule 16]. The power of the ombudsman to act as counselor and mediator is restricted in matters at the instance of an "insured person". A company, not covered by the definition of "insured person" cannot seek resolution of dispute by mediation going by sub-rule (2) of rule 12. However, it may seek adjudication of its complaint filed under rule 13(1). The pecuniary limit beyond which compensation (including ex-gratia and other expenses) shall not be awarded is specified in the proviso to sub-rule 2 of rule 16.

30. Now, if indeed the complaints which the ombudsman is empowered to consider were to be restricted to individuals by whom or on whose behalf an insurance policy has been taken on personal lines, rule 13 ought to have employed "insured" between "(A)ny" and "person". When literal meaning of a provision does not bring about absurd or unreasonable results, the Court is not supposed to read a provision by adding or subtracting words therein/therefrom. The respondents cannot, in the absence of an express exclusion or exclusion by implication, carve out an artificial distinction and thereby arbitrarily classify who would have the locus standi to approach the ombudsman and who would not. It would amount to hostile discrimination if a complaint of alleged arbitrary repudiation of an insurance claim for Rs. 4,00,000/-, as in the present case, is spurned at the threshold on the specious ground that the complainant is a company whereas a claim for Rs. 20,00,000/- at the instance of an individual could be entertained. Neither complexity of facts and law nor infrastructural deficiency could be valid justification for declining to examine a complaint lodged by a company seeking adjudication of its complaint and claim that is below the pecuniary limit. So long the Rules are not adequately amended, the ombudsman has no option but to proceed with consideration of a complaint, albeit at the instance of a company, fairly and equitably if the other conditions in the Rules are fulfilled. There is no rationale that would justify exclusion of a company from approaching the ombudsman for adjudication of its complaint/claim in terms of the Rules.

31. The argument of Mr. Singh based on the decision in Vinod Kumar Aneja (supra) also does not commend to this Bench to be sound. There is no question of unequals being treated as equals. If the Rules have been interpreted to mean that an award passed by the ombudsman upon adjudication, say awarding Rs. 20,00,000/- to an individual, is not amenable to challenge, it would hardly make any difference if the same amount were awarded to a company by the ombudsman. The logic is not far to seek. Paragraph 15 of the decision provides a

complete answer, relevant portion whereof reads as follows :

*** The mechanism of an adjudication by the Insurance Ombudsman is an alternative dispute redressal mechanism envisaged in the RPG Rules, 1978. Therefore, a claimant under a policy has to necessarily go before the Insurance Ombudsman in the first place for redressal. The insurance companies have themselves devised this dispute redressal mechanism. They have also bound themselves unconditionally to honour such Award of such Insurance Ombudsman. It is too late in the day for Respondent No. 1 to seek to wriggle out of the Award dated ... of the Insurance Ombudsman on any ground whatsoever. ***"

32. The expression "may himself or through his legal heirs" in sub-rule (1) of rule 13, which has been referred to by the learned advocates for the respondents to contend that it is only a naturally born person or his legal heirs who alone is entitled to lodge a complaint before the ombudsman, is now taken up for consideration. Similar contention had been raised in Ruchi Worldwide (supra) and dealt with by the learned Judge. This Bench concurs with the reasoning of His Lordship. In addition, it is observed that the expression is only an extended arm of "(A)ny person" employed at the beginning of sub-rule (1) of rule 13. It sufficiently enables the "person" or the heir of a deceased individual to lodge a complaint before the ombudsman, inter alia, if the benefits flowing from a contract of insurance were repudiated either in part or in whole, but cannot be read in a restrictive sense to exclude a complaint being lodged by a juristic person.

33. Equally unmeritorious is the contention of Mr. Gangopadhyay that "Public" in the title of the Rules would not include a juristic person like the petitioning company. The object sought to be achieved by the Rules cannot be downplayed by reference to any particular word in the title thereof. The word "public" has to be read with the word following it i.e. "Public Grievance" and when read together with "Redressal ... Rules", it is clear that any injury, injustice or wrong at the instance of an insurer which confers a right to lodge a complaint may be brought by the person aggrieved before the ombudsman which, in view of the aforesaid discussion, would definitely include a juristic person.

34. In the result, this Bench holds that a complaint under rule 13(1) read with rule 12 of the Rules could be lodged by a company like the petitioner and the ombudsman failed to exercise jurisdiction vested in him by declining to adjudicate the same. The order impugned stands set aside with the consequence that the complaint of the petitioning company revives. The ombudsman shall now proceed to adjudicate the rival claims and dispose of the complaint as expeditiously as possible but not later than 12 weeks from date of receipt of a copy of this judgment and order.

35. The writ petition stands allowed, without order for costs.

36. Urgent photostat certified copy of this judgment and order, if applied, may be

furnished to the applicant at an early date.