(2013) 04 NCDRC CK 0062

In the National Consumer Disputes Redressal Commission

Ram Lal Aggarwalla APPELLANT

Vs

Bajaj Allianz Life Insurance Co. Ltd RESPONDENT

Date of Decision : 23-04-2013

Acts Referred:

Citation : 2013 0 NCDRC 300 : 2013 3 CPJ 203

Hon'ble Judges : V.B.GUPTA , Rekha Gupta J.

Judgement

1. REVISION petition no. 658 of 2012 has been filed against the order dated 17.01.2012 in First Appeal no. 783 of 2011 of Odisha State Consumer Disputes Redressal Commission, Cuttack (''the State Commission ''). The brief facts of the case given by the petitioner/ complainant in his complaint are as follows:

2. IN the year 2006, the Branch Manager Mr Harjot Singh on behalf of Bajaj Allianz Life Insurance Company without considering the ability and capability of annual gross total income of the petitioner/ complainant, with malafide intention, to achieve his target, executed in the name of the petitioner/complainant, a policy unit Gain Super Diamond Policy no. 00162900015 dated 06.03.2006 as a regular annual premium for Rs.2,00,000/- to be paid for twenty four years without consent, wish and will of the petitioner/ complainant and issued a letter dated 02.05.2006. Moreover, they played games with the funds without authorisation. Therefore, the fund was reduced to Rs.1,36,000/- which the petitioner/ complainant has to be paid by the company. The petitioner/ complainant wanted detailed switching from the company to verify the authentication of switching on dated 06.12.2010, but the company denied the same. The petitioner/complainants demanded through postal registered AD on dated 08.12.2008 but the company yet not have sent the details which the respondent opposite party is supported to be said. The company has also to refund Rs.17,777/- as mortality charges during the period of policy as lapsed for second premium till date of surrender of the policy. The levy of mortality charges is unwarranted by the law. The respondent/ opposite party no. 1 debited Rs.2,00,000/- from a running policy no. 0012075550 as Unit Link Single which

was opened by the petitioner/complainant on 24.10.2005 as Annexure E 1, 2, 3 at page no. 37 to 39 and credited the amount in the policy no. 0016290015 on 06.03.2006 by the company. The respondent - Bajaj Allianz Life Insurance in their written statement have explained that the petitioner/ complainant ''s policy in question is an unit (market) Linked policy and law is now well settled that such policies are speculative in nature and the same are taken for investment purpose and as such the policy holder of such policies are not consumers and disputes relating to such policies are not sustainable before the Consumer Forum. On this score the complaint is liable to be dismissed.

3. THE petitioner/complainant has not approached this Hon ''ble Forum with clean hands. The petitioner/complainant has suppressed vital material facts before this Hon ''ble Forum that the wife of the petitioner/ complainant namely Tarini Agrawal was a I C approved agent of the answering opposite party bearing IC No. 10000939544 during the relevant period and all the transactions relating to the petitioner/complainant ''s policies were made through her as per the conscious consent of the petitioner/complainant. But deliberately the petitioner/ complainant has not impleaded his wife Tarini Agarwal as a part to the complaint. - the petitioner/ complainant in his complaint petition has raised many disputed and complicated facts which cannot be adjudicated in the Consumer Forum and on this score alone the complaint is liable to be dismissed. - the petitioner/ complainant being an experienced advocate and a notary, is a conscious educated person and therefore, the presumption is that he cannot take an insurance policy without being satisfied about the nature and terms and condition of the policy. In fact the petitioner/ complainant has taken the policy with an oblique motive for unlawful gain. It seems that from the very beginning the petitioner/complainant has proceeded with a pre-planned manner to provide business to his wife and to earn Commission from the said business through his wife and thereafter to close/surrender the policy with some please and other and to take back the entire policy premium amount from the company. The aforesaid conduct of the petitioner/ complainant is sufficient to dismiss the complaint with exemplary cost. - the petitioner/complainant has levelled personal allegations against the branch Manager by name without impleading him as a party to the complaint which is bad in the eye of law. However, it is submitted that no prudent person would believe the story and allegation of the petitioner/ complainant that the policy was issued without the knowledge and consent of the petitioner/ complainant. The wife of the petitioner/ complainant is an agent of this policy and the proposal form has been filled up with pen by either the wife/ agent or the petitioner/ complainant on 17.02.2006 in which it is clearly written that the premium amount is Rs. 2 lakh and the premium term of 24 years. The petitioner/ complainant has put his signature in the specified row of the proposal form. Besides, the presumption is that as an authorized agent the wife of the petitioner/complainant is aware about the benefits or loss in a particular policy. Therefore, the allegations levelled in this paragraph are false, fabricated, baseless and the same are hereby denied. The petitioner/complainant is put to

strict proof of the same. Even for the sake of argument if its assumed that at the time of taking the policy the petitioner/complainant was ignorant about the details of the policy, but after receipt of the policy certificate and the terms and condition of the policy, he could have returned the policy in the free look period of 15 days as contained in clause no. 14 of the policy document. - the policy being an Unit Linked policy and is dependent on the market volatility and the value may go up or may come down depending upon the market condition. The fund switching has been done strictly on the basis of the written requests of the complainant in the prescribed forms. - the petitioner/complainant has been supplied with the copies of the fund switching forms submitted by him on different dates. - the quantum of the mortality charges has been determined as per the declared rate as contained in the policy document and on the basis of the age of the policy holder in strict guidelines of IRDA. The petitioner/complainant is liable to pay the said amount in terms of the policy and the claim for the refund of the said amount is unsustainable in the eye of law. -the said amount was transferred to the new policy no. 0016290015 in accordance with the instruction of the petitioner/ complainant as partial surrender amount of the first policy no. 0012075550. - the said amount has been deposited against the premium of the new policy, i.e., policy no. 0016290015 as per the instruction of the petitioner/ complainant and this fact is admitted by the petitioner complainant in the preceding paragraphs including his letter.

4. THE District Consumer Disputes Redressal Forum, Cuttack (the ''District Forum '') vide its order dated 23.11.2011 has stated as follows: "During the course of argument the petitioner/complainant submitted a lot of allegations against the respondent/ opposite parties including forgery of his signature on so many documents on different dates. He has also argued that he has not applied on 27.04.2006, 22.05.2006, 24.05.2006, 13.06.2006, 16.06.2006, 18.08.2006, 12.09.206 and 18.09.2006 for switching off the fund. Such allegations regarding forging of his signature cannot be resolved by the Consumer Forum in a summary procedure. On the other hand the learned counsel for the respondent/ opposite parties submitted that the policy in question relates to the year 2006 and soon after deposit of the first premium of Rs.2,00,000/- the policy documents were issued to the petitioner/ complainant but the petitioner/ complainant did not avail the free look period within 15 days from the date of receipt of the bond if he was not interested to continue the policy. So according to him the complaint filed on 12.07.2010 is barred by Law of Limitation. Though a petition for condonation of delay is available with the record but it was not moved and no order was passed on the said petition. So, the complaint was filed beyond the period of limitation. The fact that the wife of the petitioner/ complainant was the agent under the opposite parties is not disputed. It is also not disputed that the petitioner/ complainant is an advocate and a Notary. The plea that he received the policy documents at a belated stage is not satisfactorily proved by the petitioner/ complainant. He being an educated person he cannot take a plea that he was not aware of the terms and conditions of the policy and

the fact that the scheme under which the money was invested was for a period of 24 years with annual premium of Rs.2,00,000/-. The further allegation of the petitioner/complainant that the money had been transferred from one fund to another without his consent resulting in substantial reduction in the total value of the investment is also not acceptable because it depends on the market volatility and the value may go up or come down depending upon the market condition. It is also not disputed that in the meanwhile the petitioner/complainant had surrendered the policy bond and got the money prematurely after deduction of mortality charges and other charges as per the terms of the policy. The investment made by the petitioner/complainant was to gain profit. Hence, it was invested for commercial purposes and therefore, the petitioner/ complainant is not a consumer under the opposite parties. The State Commission, Odisha in First Appeal no. 162 of 2010 in the case of Smt Abanti Kumari Sahoo vs Bajaj Allianz Life Insurance Company Ltd., have held that the money of the petitioner/ complainant invested in the share market is no doubt a speculative gain and the speculative investment matter does not come under the Consumer Protection Act and accordingly, the State Commission dismissed the appeal. In view of the aforesaid discussions and findings of the State Commission, we are of the opinion that the present complaint is not maintainable under the Consumer Protection Act, 1986 and as such it is dismissed being devoid of merit ".

Aggrieved by the order of the District Forum, the petitioner filed an appeal before the State Commission. The State Commission vide order dated 17.01.2012 has stated as follows: "The District Forum observed that admittedly the complainant is an advocate having vast experience and is also a Notary. His wife Tarini Agrawal was the recognised agent of the insurance company. In such circumstances, the allegation of fraud being practised on him in the matter of issuance of policy is totally unacceptable. The Forum also observed that the policy having been taken for investment of the premium amount in the share market, which is for speculative gain, the complaint did not come within the purview of the Consumer Protection Act, 1986. In this connection, the Forum placed reliance on the decision of this Commission in the case of Smt Abanti Kumari Sahoo vs Bajaj Allianz Life Insurance Company Ltd., (FA no. 162 of 2010). After hearing the complainant, who argued the matter on admission personally, and going through the relevant documents available in the LCR, we see no reason to differ from the finding recorded by the learned District Forum. Accordingly, we reject the appeal memo at the admission stage ".

Dissatisfied by the order of the State Commission, the petitioner has filed this present revision petition before us. The grounds given in the revision petition are more or less repetitive of the original complaint/ first appeal of the petitioner.

5. WE have heard the petitioner in person and have also gone through the records carefully. It is an undisputed fact that the petitioner is an advocate having vast experience of a notary by taking policies through his wife who is the registered agent of Bajaj Allianz Insurance Co. Ltd. Though he claim that he does

not have income but it is seen from the record that he had taken the following policies: Policy no. Product Payment received date Premium Type Premium amount received Life Insurance Premium HCB and CI Ride Premium 0006071146 Cashgain Economy 16.05.2005 1st Year Premium 2872 2872 0 0006071146 -do- 20.12.2005 Renewal Premium 2872 2872 0 0012075550 Unitgain -Single 24.10.2005 Single Premium 1,00,000 1,00,000 0 0012075550 -do- 25.10.2005 Top up Premium 1,42,000 1,42,000 0 0016290015 Unitgain Super Diamond 06.03.2006 1st Premium 2,00,000 2,00,000 0 TOTAL 4,47,744 4,47,744

6. IT is also seen from the proposal form and also a copy of the letter dated 02.05.2006 from the respondent that the policy no. 00166290015 under Product Unit Gain Super Diamond was for an amount of Rs.10,00,000/-. Date of commencement is 06.03.2006 and the date of maturity is 06.03.2030, premium paying term 24 years and Frequency of payment is "annual " and the instalment premium was Rs.2,00,000/-. It is not understood on what ground the petitioner has thereafter stated that it was the Bajaj Allianz Life Insurance Company without considering the ability and capability of annual gross total income with malafide intention to achieve his target Branch Manager Mr Harjot Singh executed in the name of the complainant, a policy unit Gain Super Diamond Policy no. 0016290015 dated 06.03.2006 as a regular annual premium for Rs.2,00,000/- to be paid for 24 years without consent and wish of the petitioner/ complainant and issued a letter dated 02.05.2006. From the proposal form on record it is seen that the petitioner himself filled in the proposal form for unit Gain Super with premium of Rs.2.00 lakh with premium term of 24 years on 17.02.2006. He had made transactions through wife Tarani Agarwal who was the agent and her agent code no. was 1000093544. In the same proposal form some earlier policies taken are also mentioned. It is clearly mentioned in the proposal form that the premium frequency is annual. This proposal form has been signed by the petitioner himself and the insurance consultant report has also been given by Tarini Agarwal. In column no.2 of the same where against a question the applicant, the spouse, child/ parent/ relative of IC or of employee or Bajaj Allianz Life Insurance Company, she has mentioned "YES ". Petitioner has not been able to give any evidence regarding allegation of forgery, fraud and misrepresentation. In view of the foregoing reasons we find that there is no jurisdictional error, illegality or infirmity in the order passed by the State Commission warranting our interference. The revision petition is accordingly dismissed with cost of Rs.10,000/- (Rupees ten thousand only). Petitioner is directed to deposit the cost by way of demand draft in the name of ''Consumer Welfare Fund '' as per Rule 10 A of Consumer Protection Rules, 1987, within four weeks from today. In case the petitioner fails to deposit the said cost within the prescribed period, then it shall be liable to pay interest @ 9% per annum till realisation. List on 31st May 2013 for compliance.