
(2016) 11 GAU CK 0011
In the Gauhati High Court
Case No : Writ Appeal No. 356 Of 2013

Sri. Dinesh Chandra Roy

APPELLANT

Vs

Oriental Insurance Co. Ltd.

RESPONDENT

Date of Decision : 01-11-2016

Acts Referred:

Citation : (2016) 5 NEJ 5

Hon'ble Judges : Mr. Hrishikesh Roy and L.S. Jamir, JJ.

Bench : Division Bench

Advocate : Mr. G.N. Sahewalla, Sr. Advocate, Md. Aslam, Mr. D. Senapati, Mr. P. Deka and Mr. A. Chetia, Advocates, for the Appellants/Petitioners; Mr. S. Dutta, Sr. Advocate, Mr. M. Choudhury, Mr. C. Sharma and Ms. N. Modi, Advocates, for the Respondents

Final Decision : Allowed

Judgement

Hrishikesh Roy, J. (Oral) - Heard the learned counsel appearing for the appellants. Also heard Mr. S. Dutta, the learned senior counsel representing the respondents.

2. The appellants are serving as Development Officers under the Oriental Insurance Company (P) Ltd. (hereinafter referred to as "the Insurance Co.") and their respective dates of appointment and confirmation are reflected in Para - 1 of the appeal memo.

3. The business performance of the concerned Development Officers, for the period 2002-2012, was reviewed in the meeting held on 8.6.2012 and it was noticed that the officers had failed to adhere to the stipulated cost limit with reference to the premium procured vis-àvis the incurred cost. Thus action was proposed against them. On this basis, individual notice(s) were issued on 12.06.2012 (Annexure-I series), to recover certain amount from each Development Officer. The recoverable sum was quantified in the notice(s) by referring to the disbursed Non-Core Benefit (NCB) and salary paid in full (without

reduction) to the individual officer.

4. The adherence to cost limit by the Officers is stipulated in the General Insurance (Rationalization of Pay Scales and other conditions of service of Development Staff) Scheme, 1976 (hereinafter referred to as "the 1976 Scheme"). The Clause 11 of the Scheme provides that where the Development Officer exceeds the stipulated cost ratio for a particular performance year, the non-core allowance benefit payable to him in the next performance year, shall be reduced to the extent of the amount by which, his cost ratio exceeded the stipulated limits. If the cost ratio exceeds again for the 2nd year in succession, the Development Officer should be issued a warning letter to the effect that, his non-core allowance will be continued to be reduced in the following years to the extent necessary, to bring his cost ratio within the stipulated limit. And if the non-core allowance sum is exhausted, the officer shall be liable to decrement in basic pay, as stipulated in the prescribed table. For those who exceed the stipulated cost limit for the 3rd or subsequent years in succession, the non-core allowance shall be reduced to the extent of the exceeded cost ratio.

5. Although the above phase wise manner of ensuring adherence to cost control was stipulated by Clause 11 of the 1976 Scheme, the Insurance Co. tried to make bulk recovery of the exceeded costs for the entire period from 2002-2012, at one go. The aggrieved Development Officers challenged such action through the WP(C) No.4985/2012. But noticing that the Development Officers had admittedly exceeded the cost limit and keeping in mind that the Insurance Co. can't operate in loss, no infirmity was found with the recovery notice(s) of 12.6.2012. Hence the challenge of the Development Officers was dismissed through the impugned judgment dated 20.9.2013 (Annexure-E), in the WP(C) No.4985/2012.

6.1. The appellants contend that when a procedure is prescribed to bring on track those, who fail to adhere to the stipulated cost limit, the Insurance Co. should have taken phase wise action in accordance with Clause 11 of the 1976 Scheme and hence the counsel argue that the recovery of the excess payment for all 10 years at one go, was neither contemplated nor permitted, under the 1976 Scheme.

6.2. The Development Officers were never warned to improve their performance to adhere to the stipulated cost limit, in any of the previous years prior to the recovery letter(s) of 12.6.2012 and therefore the appellants argue that the company's action was contrary to the procedure prescribed by Clause 11 of the 1976 Scheme. The appellants submit that if any deficient performance of the Development Officers was noticed in a particular year, the reduction of the non-core allowance should be the first action under Clause 11 of the 1976 Scheme. But in this case the non-core allowance continued to be paid for 10 years and thereafter at one go, the entire sum paid towards non-core allowance, is sought to be recovered by the company through the impugned notice(s) dated 12.6.2012. Moreover for the subsequent years also, attempt was never made to

either reduce or altogether stop the disbursement of the non-core allowance. But inexplicably without issuing any warning letter to the Development Officers for their past performance, the Insurance Co. tried to penalize them at one go, for deficient performance during 2002-2012.

6.3. The impugned action is also challenged on the ground that the Development Officers were denied any opportunity before huge amounts were proposed to be recovered from them and the same is inconsistent with the stepwise procedure prescribed by Clause 11 of the 1976 Scheme.

7.1. On the other hand, Mr. S. Dutta, the learned senior counsel submits that the Development Officers were bound to adhere to the stipulated cost limit in generating business for the Insurance Company and since they have failed to achieve the economical business performance for the concerned period, the action taken against them by the respondents is justified.

7.2. The senior counsel submits that the cost ratio benchmark in the 1976 Scheme, was revised through the Administrative Guidelines, issued on 5.2.2003 and since the legality of the amendments were challenged in the Supreme Court, the Insurance Co. could not take any action against the errant Development Officers during 2002-2012. But when the Supreme Court finally decided the case of the National Insurance Company Limited v. General Insurance Development Officers Association reported in (2008) 5 SCC 472 on 3.4.2008, the respondents decided to make recovery of the excess cost incurred on account of the deficient service, rendered by the Development Officers. It is submitted by Mr. Dutta that the onetime action for the entire period of 2002-2012 was on account of the pending case before the Supreme Court and therefore he argues that phasewise action for the 10 years was not possible here.

7.3. The respondents argues that when the Development Officers do not dispute that they have exceeded the cost ratio limit and consequential business loss is suffered by the Insurance Co., it is not necessary to issue any prior notice for recovery of the excess payment from the errant Development Officers.

8. Before addressing any of the other points, it would be appropriate for us to notice the case cited by Mr. S. Dutta, the learned counsel for the respondents. When the principal scheme was framed in 1976, under Section 16(1)(g) of the General Insurance Business (Nationalization) Act, 1972, the legality of the Scheme was upheld earlier by the Apex Court, by turning down the challenge to the 1976 Scheme. Then service conditions of the Development Officers were altered through the Administrative Guidelines dated 5.2.2003 and this was the basic challenge in the case we are considering. Under the 2003 Amendment, the existing cost ratio was brought down by 1% and this led to stipulation of a better cost limit to be achieved by the Development Officers in generating business for the Insurance Co. The Supreme Court passed certain interim order on the 2003 Amendment under challenge but the Insurance Co. was not prevented from proceeding against any Development Officer, under the principal Scheme of

1976, as per the prevailing cost ratio, prior to the amendment. Yet, phase wise action was not taken for deficient service during 2002-2012 but at one go, recovery of huge amount(s) was sought through the impugned notice(s) of 12.06.2012, from the respective Development Officers.

9. As earlier noted, the Insurance Co. should have proceeded step wise and at first, could have reduced the non-core allowance, then withholding the core allowance for the next year was the permitted option, followed by warning of termination of the Development Officers for consecutive default in the 3rd year. But no such staggered action was taken prior to 2012 and in fact the core allowance continued to be paid perhaps undeservingly, to the Development Officers. Such disbursed allowance in fact, was a major component of the sum sought to be recovered at one go, when the officers were unable to adhere to the stipulated cost limit during 2002-2012.

10. The appellants do not say that they have adhered to the cost limit stipulated for their business performance, but even then, stepwise action could be the option against the errant officers in accordance with the prescribed procedure. When phase wise action is contemplated under Clause 11 of the 1976 Scheme, departure there from, can't be legally supported.

11. The Insurance Co. intended to recover huge amounts from each of the Development Officers for their deficient business performance during 2002-2012 but we feel that such action should have been proceeded by notice/warning letter, etc. and also due opportunity for the affected person(s) but since this was not done, the impugned action to our mind, is unsustainable and the same, accordingly deserves interference.

12. In the judgment under challenge, the learned Judge refused to grant relief to the Development Officers on the ground that they do not dispute that they had exceeded the cost limit stipulated for business performance. But this in our respectful view was an erroneous approach, as stepwise procedure is stipulated for penalizing those who exceed the cost limit. Hence the respondents can have no excuse to opt for abrupt action instead of the permitted stepwise procedure stipulated in the 1976 Scheme, to penalize the errant Development Officers.

13. The pendency of the challenge before the Apex Court to the 2003 Amendment to the 1976 Scheme, can't condone the belated action taken at one go for deficient performance for 10 years (from 2002 to 2012) and therefore in our evaluation of the facts and the law, the Development Officers are entitled to relief from the Court.

14. Following the above discussion, we allow this Appeal and quash the impugned notice(s) dated 12.06.2012 (Annexure-1 series), which were unsuccessfully challenged in the WP(C) No.4975/2012. Accordingly the judgment dated 20.9.2013 (Annexure-E) in the WP(C) No.4985/2012, is also quashed.

15. With the above order, the Appeal stands allowed, by leaving the parties to

bear their respective cost.