2023:DHC:8331

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 8916/2020**

Date of Decision: 07.11.2023

MOHIT KUMAR
S/O MR. RAMAN KUMAR
R/O B-1/378 JANAK PURI,
NEW DELHI-110058

MRS. DIVYA MAHAJAN
W/O MR. MOHIT KUMAR
R/O B-1/378 JANAK PURI,
NEW DELHI-110058 ..... Petitioners

Through: Mr. Prateek Kumar, Advocate

Versus

OFFICE OF THE INSURANCE OMBUDSMAN
2/2A, UNIVERSAL INSURANCE BUILDING
ASAF ALI ROAD
NEW DELHI-110002

THE RELIANCE GENERAL INSURANCE COMPANY LIMITED
HANSALAYA BUILDING, 15,
BARAKHAMBA ROAD, NEW DELHI

INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY OF INDIA (IRDAI)
THROUGH THE STANDING COUNSEL
DELHI OFFICE – GATE NO. 3
JEEVAN TARA BUILDING, FIRST FLOOR
SANSAD MARG, NEW DELHI-110001

..... Respondents

Through: None for respondent No.1
Ms. Prerna Mehta and Mr. Rajeev M. Roy,

Advocates for respondent No.2
Mr. Abhishek Nanda and Ms. Parul Tomer,
Advocates for respondent No.3

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. The petitioners in the instant writ petition are aggrieved by the impugned award dated 19.10.2020 passed by respondent no.1-Insurance Ombudsman. The said award affirmed the order dated 12.04.2020 passed by respondent no.2-Insurance Company, wherein, the claim of the petitioners was rejected.

2. The facts of the case would show that the petitioners have availed Master Travel Insurance Policy No.9202919282220000084 by the name of the Reliance Travel Care Policy-Corporate Short Term. The said travel policy covers both the petitioners who intended to travel by Alitalia Airlines *vide* flight no. AZ-769 from Delhi to Rome (Italy) on 28.02.2020 for their honeymoon trip.

3. The Government of India, on 26.02.2020, issued an Advisory to its citizens to refrain from any non-essential travel to Italy. The petitioners adhering to the advice passed by the Government of India and keeping in mind a rising number of cases of Covid-19 across the globe, decided to cancel their bookings as according to their understanding, the places to visit became uninhabitable. Thereafter, on 11.03.2020, the World Health Organization (WHO) declared the coronavirus as a ‘pandemic’ and on

13.03.2020, the Ministry of Home Affairs notified the States and declared Covid-19 as a notified disaster.

4. On 12.04.2020, the petitioners wrote an e-mail to respondent no.2 - Insurance Company asserting their claim for the amount insured on account of cancellation of their trip. Respondent no.2-Insurance Company, on the same date, reverted back to the petitioners denying their claim on the ground that Covid-19 is not covered under the policy.

5. On the following day i.e., 13.04.2020, the petitioners reverted to the e-mail dated 12.04.2020, stating therein that the rejection of their claim was *de hors* the terms of the policy and it was nowhere stated in the policy that for any reason whatsoever if the trip is cancelled, respondent no.2-Insurance Company would not be liable for the payment of claim. On 15.04.2020, respondent no.2-Insurance Company further reiterated its reason for denying the claim. On 18.04.2020, the petitioners lodged a complaint before the Head of the Grievance Redressal Cell, Reliance General Insurance Co. Ltd. In response thereto, on 05.05.2020 again, the petitioners were served with same reason for denial of their claim.

6. The petitioners filed a complaint under Rule 13(1)(b) of the Insurance Ombudsman Rule, 2017 before the learned Insurance Ombudsman. On 19.10.2020, the complaint of the petitioners came to be rejected by respondent no.1-Insurance Ombudsman and accordingly, the petitioners have approached this court in the instant writ petition.

7. Learned counsel appearing on behalf of the petitioners submits that the reason for rejection of the claim of the petitioners is illegal, improper and the entire understanding of respondent no.1-Insurance Ombudsman is based on misreading of the relevant clauses of the insurance policy. He

submits that respondent no.1-Insurance Ombudsman is a quasi-judicial authority which requires to deal with the cases objectively on the basis of material available before the concerned authority. According to him, the entire understanding of the respondent no.2-Insurance Company and of respondent no.1-Insurance Ombudsman is on account of misinterpretation of Clause 7 of the policy in question.

8. He further submits that the travel plan was not cancelled by the petitioners owing to any Government Regulation or Prohibition. He, therefore, submits that when the travel plan was not cancelled by the petitioners on account of any Government Regulation or Prohibition, therefore, respondent no.1-Insurance Ombudsman has wrongly rejected the petitioners' claim.

9. Learned counsel for the petitioners has placed reliance on the decisions of the Hon'ble Supreme Court in the cases of ***General Assurance Society Ltd. v. Chandmull Jain and Anr.***[1]***, Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan***[2]**, *Gurshinder Singh v. Shriram General Insurance Company Limited and Another***[3]**.** He has also placed reliance on the decisions of this court in the cases of ***Pavan Sachdeva v. Office of the Insurance Ombudsman and Anr***[4] and ***Gurmeet Singh v. Office of the Insurance Ombudsman & Others.***[5] and the decision of the High Court of Bombay in the case of ***Aditya Birla Sun Life v. Insurance Ombudsman and Anr.***[6]

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[1] 1966 3 SCR 500
[2] 1987 AIR 1184
[3] 2020 11 SCC 612
[4] W.P.(C) 6304/2019
[5] W.P.(C) 5898/2020
[6] W.P.(C)7804/2021

10. None has appeared on behalf of respondent no.1.

11. Learned counsel appearing on behalf of respondent no.2-Insurance Company opposes the submissions made by learned counsel for the petitioners. She submits that in the instant case, the petitioners try to call upon the Constitutional Court to adjudicate on disputed questions of facts. According to her, the writ petition under Article 226 of the Constitution of India is not maintainable against private Insurance Company. She also submits that the court in exercise of power under Article 226 of the Constitution of India cannot adjudicate the terms of the policies and also the petitioners have efficacious alternative remedy available under the Consumer Protection Act, 2019. She, therefore, submits that in any case the rejection of the claim of the petitioners by respondent no.2-Insurance Company is strictly in terms of the conditions of the policy and therefore, respondent no.1- Insurance Ombudsman has rightly rejected the petitioners' claim.

12. She further submits that the e-mail dated 12.04.2020 sent by the petitioners itself unequivocally states that the petitioners have cancelled their trip on account of Advisory issued by the Government of India on 26.02.2020. She, therefore, submits that it is an admitted case where the petitioners, owing to the Government instructions, have cancelled their trip and therefore, no interference is called for.

13. Learned counsel appearing on behalf of respondent no.3-Insurance Regulatory and Development Authority of India (hereinafter 'IRDAI') also opposes the submissions made by learned counsel for the petitioners. He submits that the petitioners, if at all have any grievance, they must avail the alternate remedy in view of the provisions of the Consumer Protection Act,

2019. He placed reliance on Rule 17(8) of the Insurance Ombudsman Rule, 2017 to submit that the award of respondent no.1-Insurance Ombudsman shall be binding on the insurer or insurance broker, as the case may be. He, therefore, contends that the petitioners are not bound by the said award and accordingly, they can avail the remedy available under the Consumer Protection Act, 2019.

14. I have heard learned counsel appearing on behalf of the parties and have perused the record.

15. Since the facts of the case i.e., availment of the policy in question, cancellation of the trip etc. are not disputed, therefore, they are not required to be considered at length.

16. The only reason for rejection of the claim of the petitioners, as can be inferred from paragraph no. 21 of the impugned award dated 19.10.2020, is the cancellation of the trip of the petitioners on account of Government Regulation or Prohibition. For the sake of clarity, paragraph no. 21 of the impugned award is reproduced as under:-

> *"21.* ***Result of hearing with the parties (Observations and Conclusion):***
>
> *Case called. Parties are present and recall their arguments as noted in Para 12 above.*
>
> *The Complainant had booked ticket for himself and his wife for travel to Italy and Spain from 28.02.2020 and had purchased a travelcare insurance policy from the Insurer for this trip. The Government of India issued an advisory on 26.02.2020 directing its citizens to refrain from any non-essential travel to a few countries, that included Italy, that were showing severe onset of the Coronavirus Pandemic. The Complainant wrote an email to the Respondent Insurer on 12.04.2020 narrating these facts and also stating that as per the advisory issued by the Government of India on 26.02.2020 and being an Indian citizen, he was forced to cancel the abovementioned trip to Italy and Spain and requested the Insurer to compensate him with the insured amount due to the cancellation of the trip.*

The Insurer responded to the Complainant the same day (12.04.2020), stating that they regret to inform that Trip Cancellation/interruption for the said event due to Corona Virus.

Outbreak was not claimable as per policy terms and condition No. 2, 3 & 7 of the Exclusions.

In his complaint to this forum, the Complainant has argued that the Exclusions clauses of the policy do not mention pandemic due to corona or any virus. He has also argued that the GOIGOI Advisory dated 26.02.2020 had stated that Italy was not suitable for visit, which should be interpreted to mean that Italy had become uninhabitable, which would justify his claim for reimbursement of the cost of trip cancellation.

I have gone through the arguments and evidence submitted by the Complainant and the Respondent Insurer. The policy sub-clauses, which were referred to by the Insurer in repudiating the claim are quoted as below:

> *"COVER 7-TRIP CANCELLATION AND INTERRUPTION*
> *What it does not cover?*
>
> *2. Travel arrangements cancelled or changed by an airline, cruise line, or tour operator, unless the cancellation is the result of bad weather.*
>
> *3. Changes in plans by the Insured/ Insured Person, an Immediate Family Member or Travelling Companion for any reason.*
>
> ***7. Any government regulation or prohibition."***

The Complainant had cancelled the trip, as per is own communication to the Insurer cited above, owing to the GOI Advisory dated 26.02.2020. This justifies the repudiation. The argument of the Complainant that the GOI Advisory should lead to the interpretation that Italy had become uninhabitable, is not justified, because the advisory was only to reduce the chances of spread of the pandemic to/from the visitors and does not give any conclusion that Italy as a country had become uninhabitable.

In these circumstances, the complaint deserves to be rejected.

Award
The complaint is rejected"

17. It is, thus, seen that Clause 7 of the insurance policy states that if beside others, trip is cancelled on account of any Government Regulation or Prohibition, the insured would not be entitled for insurance claim. What is required to be considered in the instant case is whether the petitioners have cancelled their trip on account of any Government Regulation or Prohibition. If the entire material available on record is perused, except an Advisory dated 26.02.2020, there is no Regulation or Prohibition issued by the Government of India. The Advisory dated 26.02.2020 reads as under:-

> "***Update on Novel Coronavirus (COVID 19): New Travel Advisory***
>
> *Posted On: 26 FEB 2020 12:47PM by PIB Delhi*
>
> *In view of the evolving situation related to COVID-19 being reported from other countries, besides the travel advisories already issued by Ministry of Health & Family Welfare, Government of India, following additional directions are issued:*
>
> *1. Indians are advised to refrain from non-essential travel to Republic of Korea, Iran and Italy.*
> *2. People coming from Republic of Korea, Iran and Italy or having such travel history since 10th February 2020 may be quarantined for 14 days on arrival to India.*
> *3. For any technical queries, may contact on 24*7 Health ministry Control Room helpline number +91-11-23978046 or email at ncov2019@gmail.com."*

18. If the said Advisory is to be understood in right perspective, it would indicate that in view of the evolving situation related to Covid-19 from other countries, the Government of India issued certain directions. The directions were only advisory in nature. It includes the Indian citizens to refrain from non-essential travel to Republic of Korea, Iran and Italy.

19. It is, thus, seen that if the words 'Regulation' or 'Prohibition' is to be understood in their strict sense, the subject advisory cannot, at any prudent

stretch of imagination would mean Prohibition for Indian citizen to travel to Republic of Korea, Iran and Italy. The word 'Advisory', as per Cambridge Advanced Learner's dictionary, signifies *'an official announcement that contains advice, information, or a warning'*.

20. Therefore, as the word 'Advisory' in its plain and simple meaning would mean advice or suggestion, this court would interpret the word in its ordinary and popular sense. Hence, the word 'Advisory' would simply mean advice and does not construe to mean prohibition or regulation. In the instant case, if the petitioners, owing to the Advisory and on due application of their mind, decided not to travel to Italy, the same cannot mean that the petitioners were prohibited by the Government of India from travelling to Italy.

21. Therefore, the entire understanding of respondent no.1-Insurance Ombudsman is against the terms of the policy.

22. This court, in the case of ***Pavan Sachdeva (supra),*** was dealing with the controversy relating to rejection of the claim under the Cigna TTK Health Insurance Family Policy. The respondent therein rejected the claim of the petitioners on the ground of non-disclosure of some essential information. The respondent therein also raised similar objection with respect to maintainability of writ petition.

23. A Coordinate Bench of this court in its decision in ***Pavan Sachdeva (supra),*** while relying on the decision of the Hon'ble Supreme Court in the case of ***Life Insurance Corporation of India and Ors. v. Asha Goel and Anr***.[7] has held that the writ petition under the facts of that case was maintainable as there was no disputed question of facts involved in the said

writ petition. The Hon'ble Supreme Court in the case of ***Asha Goel (supra)*** has held as under:-

> *10. Article 226 of the Constitution confers extraordinary jurisdiction on the High Court to issue high prerogative writs for enforcement of the fundamental rights or for any other purpose. It is wide and expansive. The Constitution does not place any fetter on exercise of the extraordinary jurisdiction. It is left to the discretion of the High Court. Therefore, it cannot be laid down as a general proposition of law that in no case the High Court can entertain a writ petition under Article 226 of the Constitution to enforce a claim under a life insurance policy. It is neither possible nor proper to enumerate exhaustively the circumstances in which such a claim can or cannot be enforced by filing a writ petition. The determination of the question depends on consideration of several factors like, whether a writ petitioner is merely attempting to enforce his/her contractual rights or the case raises important questions of law and constitutional issues, the nature of the dispute raised; the nature of inquiry necessary for determination of the dispute etc. The matter is to be considered in the facts and circumstances of each case. While the jurisdiction of the High Court to entertain a writ petition under Article 226 of the Constitution cannot be denied altogether, courts must bear in mind the self-imposed restriction consistently followed by High Courts all these years after the constitutional power came into existence in not entertaining writ petitions filed for enforcement of purely contractual rights and obligations which involve disputed questions of facts. The courts have consistently taken the view that in a case where for determination of the dispute raised, it is necessary to inquire into facts for determination of which it may become necessary to record oral evidence a proceeding under Article 226 of the Constitution, is not the appropriate forum. The position is also well settled that if the contract entered between the parties provide an alternate forum for resolution of disputes arising from the contract, then the parties should approach the forum agreed by them and the High Court in writ jurisdiction should not permit them to bypass the agreed forum of dispute resolution. At the cost of repetition it may be stated that in the above discussions we have only indicated some of the circumstances in which the High Court have declined to entertain petitions filed under Article 226 of the Constitution for enforcement of contractual rights and obligation; the discussions are not intended to be exhaustive. This Court from time to time disapproved of a High Court entertaining a petition under Article 226 of the Constitution in matters of enforcement of contractual rights*

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[7] (2001) 2 SCC 160

and obligation particularly where the claim by one party is contested by the other and adjudication of the dispute requires inquiry into facts. We may notice a few such cases; Mohd. Hanif v. State of Assam [(1969) 2 SCC 782] ; Banchhanidhi Rath v. State of Orissa [(1972) 4 SCC 781] ; Rukmanibai Gupta v. Collector, Jabalpur [(1980) 4 SCC 556] ; Food Corpn. of India v. Jagannath Dutta [1993 Supp (3) SCC 635] and State of H.P. v. Raja Mahendra Pal [(1999) 4 SCC 43] .

11. The position that emerges from the discussions in the decided cases is that ordinarily the High Court should not entertain a writ petition filed under Article 226 of the Constitution for mere enforcement of a claim under a contract of insurance. Where an insurer has repudiated the claim, in case such a writ petition is filed, the High Court has to consider the facts and circumstances of the case, the nature of the dispute raised and the nature of the inquiry necessary to be made for determination of the questions raised and other relevant factors before taking a decision whether it should entertain the writ petition or reject it as not maintainable. It has also to be kept in mind that in case an insured or nominee of the deceased insured is refused relief merely on the ground that the claim relates to contractual rights and obligations and he/she is driven to a long-drawn litigation in the civil court it will cause serious prejudice to the claimant/other beneficiaries of the policy. The pros and cons of the matter in the context of the fact-situation of the case should be carefully weighed and appropriate decision should be taken. In a case where claim by an insured or a nominee is repudiated raising a serious dispute and the Court finds the dispute to be a bona fide one which requires oral and documentary evidence for its determination then the appropriate remedy is a civil suit and not a writ petition under Article 226 of the Constitution. Similarly, where a plea of fraud is pleaded by the insurer and on examination is found prima facie to have merit and oral and documentary evidence may become necessary for determination of the issue raised, then a writ petition is not an appropriate remedy.

24. This court, in the case of ***Pavan Sachdeva (supra)*** in terms of paragraph nos.26 to 30 has held as under:-

26. Applying the above test to the facts of the present case, it must be held that the present Writ Petition is maintainable. There are no disputed questions of fact involved in the present petition. Further, what is challenged before this court is the order passed by the Insurance Ombudsman appointed under Rule 7 of the Insurance Ombudsman Rules, 2017 (hereinafter referred to as "Rules"). The object of the Rules is to resolve all complaints of insurance in a cost effective and impartial manner. The Insurance Ombudsman can, under Rule 16 of the Rules,

make recommendations on a fair settlement, and failing a settlement, under Rule 17, pass an Award adjudicating such complaint, as has been done in the present case. The Ombudsman, in such adjudication has to keep in mind the relevant considerations required for such adjudication. Where the Writ Court finds that the Award has been passed by the Ombudsman by ignoring relevant considerations or on irrelevant considerations, it would be entitled to entertain such petition and issue a Writ of Certiorari quashing such Award.

27. In the present case, the Ombudsman has clearly failed to apply the correct test to the dispute before it. The impugned order records that "the Discharge Summary dated 01.10.2017 confirms that the insured patient had Sarcoidosis since 1982". The Discharge Summary in fact, records "Past Medical History" as under:-

"Sarcoidosis 1982 took steroids for 3 months"

28. The above remark in the Discharge Summary cannot be read to mean that the petitioner continued to suffer from Sarcoidosis as has been interpreted by the Ombudsman. The impugned order has therefore, proceeded on an incorrect basis and cannot be sustained.

29. There is no dispute on the quantum of the claim of the petitioner. The petitioner has claimed Rs. 6,06,859/- towards medical reimbursement. Such claim is stated to have been made on 01.10.2017. There is no dispute on this date as well.

30. Accordingly, the respondent no. 2 is directed to pay to the petitioner, within a period of four weeks from the date of the judgment, a sum of Rs. 6,06,859/- (Rupees six lakhs six thousand eight hundred and fifty nine only) along with simple interest at the rate of 9% per annum with effect from 01.10.2017 till the date of payment. The respondent no.2 shall also pay cost quantified as Rs. 25,000/- (Rupees twenty five thousand only) to the petitioner.

25. It is clearly seen that in the instant case, there is no disputed question of facts. What is to be considered is the import and extent of the relevant clauses of the insurance policy. The Hon'ble Supreme Court, time and again, has unequivocally held that the Constitution does not place any fetter on exercise of the extraordinary jurisdiction. Rather, it is left to the discretion of the High Courts. Therefore, it cannot be laid down as a general

proposition of law that in no case the High Court can entertain a writ petition under Article 226 of the Constitution to enforce a claim under a life insurance policy. The determination of the question depends on consideration of several factors i.e., whether a writ petitioner is merely attempting to enforce his/her contractual rights or the case raises important questions of law and constitutional issues, the nature of the dispute raised, the nature of inquiry necessary for determination of the dispute etc. The matters are required to be considered in view of the facts involved in each case.

26. If the court finds that the insurer has illegally repudiated the claim *de hors* the specific terms of the policy, the import of the decision in the case of ***Asha Goel (supra)*** would mean that in such cases, the writ petition would still be maintainable as it has been rightly relied upon by this court in the case of ***Pavan Sachdeva (supra).***

27. It is, thus, seen that respondent no.1-Insurance Ombudsman as well as respondent no.2-Insurance Company have completely misunderstood the relevant clauses and therefore, have committed grave error of law.

28. Accordingly, this court finds that the relevant clauses are required to be considered in an appropriate sense. In view of the discussion made hereinabove, an appropriate interference is called for and the instant writ petition deserves to be allowed and the impugned decisions require to be set aside.

29. Accordingly, the order dated 12.04.2020, passed by respondent no.2-Insurance Company and the order dated 19.10.2020, passed by respondent no.1-Insurance Ombudsman, are hereby set aside.

30. Since there is no other reason for repudiating the claim of the petitioners except Clause 7 of the insurance policy, therefore, the matter does not require to be remitted back to respondent no.1-Insurance Ombudsman or to respondent no.2-Insurance Company for fresh consideration.

31. Accordingly, it is directed that the claim of the petitioners pertaining to policy no. 9202919282220000084 be honoured within a period of four weeks from the date of receipt of the copy of the order passed today alongwith interest @ 6% from the date claim became due.

32. With the aforesaid observations, the petition stands disposed of alongwith pending application(s), if any.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

NOVEMBER 7, 2023
p'ma/kv