

**IN THE HIGH COURT OF TELANGANA AT HYDERABAD**

**W.P.No.47102 OF 2018**

**Between:**

DHFL Pramerica Life Insurance Company Ltd.,

... **Petitioner**

**And**

The Union of India & others

... **Respondents**

**JUDGMENT PRONOUNCED ON: 03.06.2024**

**THE HON'BLE MRS JUSTICE SUREPALLI NANDA**

1. Whether Reporters of Local newspapers : Yes  
may be allowed to see the Judgment?
2. Whether the copies of judgment may be : Yes  
marked to Law Reporters/Journals?
3. Whether Their Lordships wish to : Yes  
see the fair copy of the Judgment?

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**SUREPALLI NANDA, J**

**THE HON'BLE MRS. JUSTICE SUREPALLI NANDA**

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**# DHFL Pramerica Life Insurance Company Ltd.,**

**... Petitioner**

**And**

**\$ The Union of India & others**

**... Respondents**

**< Gist:**

**> Head Note:**

**! Counsel for the Petitioner: Sri Salloori Ramesh**

**^ Counsel for Respondents: Dy. Solicitor General of India for R1  
Sri B.Shanker for R3.**

**? Cases Referred:**

**(1) (2019) 6 Supreme Court Cases 175**

**(2) (2021) 13 Supreme Court Cases 561**

**HON'BLE MRS JUSTICE SUREPALLI NANDA**

**WRIT PETITION No.47102 OF 2018**

**ORDER:**

Heard Sri Salloori Ramesh, the learned counsel appearing on behalf of the Petitioner, Learned Deputy Solicitor General of India, appearing on behalf of respondent No.1 and Sri B.Shanker, the learned counsel appearing on behalf of Respondent No.3

**2. The petitioner approached the Court seeking prayer as under:**

" to issue a Writ, Order or direction particularly one in the nature of Writ of Certiorari:-

(a) calling for the records relating to the Impugned Award bearing No.IO/HYD/A/LI/0110/2018-19 in Complaint Reference No.HYD-L-013-1718-0474, dated 4.10.2018 passed by the Respondent No. 2, viz., The Insurance Ombudsman for the States of AP, Telangana and Yanam, # 6-2-46, First Floor, Moin Court, A.C.Guards, Lakdi-ka-Pool, Hyderabad-500004, wherein, the petitioner has been directed to settle the claim; and

(b) quash the same by holding without any jurisdiction and pass such other order or orders....."

3. **PERUSED THE RECORD :**

**A) The counter affidavit filed by the 3<sup>rd</sup> respondent and in particular, paragraph 6, 7, 8, 9 and 13 read as under:-**

6) That as on the date of Insurance, the age of the deceased was about 54 years. This itself is clear that, the Insurance Company shall take utmost care and caution, while insuring the person of above 30 years. It is the duty of the Insurance Company to go for the Medical Checkup of the person who seeks the Insurance by itself and proceed to Insure, based upon the Medical Report. That the said medical checkup by the Petitioner has not taken place.

7) The Insurance Policy is not processed through any qualified Agent of Insurance Company, the policy is processed through Branch Manager Sri. Raju Gollapally of M/s. Dewan Housing Finance Corporation Ltd., It is pertinent to note that the onetime premium policy has been obtained by the M/s. Dewan Housing Finance Corporation Ltd., and the premium has been paid by the M/s. Dewan Housing Finance Corporation Ltd.,

8) That as per regulations of 2017 Rule 6 (4) which is as follows: "Where for any reason, the proposal and other connected papers are not filled in by the prospect, the insurer or the distribution channel shall explain the contents of the form, **and a certificate shall be incorporated at the end of the proposal form from the prospect that the contents of the proposal form**

**and connected documents have been fully explained to him and he has fully understood the significance of the proposed contract."** That in regard to the deceased Policy, the deceased is illiterate and the deceased put his signature in Telugu i.e., in vernacular language as such the deceased has not filled the prospects/application and in the said application there is no certificate **"That the contents of the proposal form and connected documents have been fully explained to him and he has fully understood the significance of the proposed contract."**

9) That as per Regulation 2017 Rule 6 (5) which is follows:  
"The Insurers shall ensure, that a sale executed over distance-marketing modes such as Internet, SMS, Tele marketing, interactive electronic medium etc., shall be undertaken by authorized and qualified sales persons who are specified in this behalf by the Authority. It is mandatory that the consent of the prospect be obtained before canvassing. Care should be exercised to ensure that the prospect contacted has clarity as to identity of the insurer, the distribution channel, the product, benefits and conditions of offer etc. **The canvassing so made shall not involve compulsion, inconvenience or nuisance of any kind to the prospect."** It is submitted that the Petitioner and Dewan Housing Finance Company Ltd., are sister concerns and a specific Policy by name DHFL Pramerica Group Credit Life + is created between the

Petitioner and M/s. Dewan Housing Finance Corporation Ltd., and those who take the finance from M/s.Dewan Housing Finance Corporation Ltd., must compulsorily take the Life Insurance from Petitioner to an extent of loans sanctioned. Hence the Policy is violation of Regulation 2017 Rule 6 (5).

13) It is submitted that, in regard to the document submitted in Page-73 of the Writ Petition, this Respondent denies that the discharge certificate pertains to deceased Pentaiah. The age in the said certificate is 65 years, whereas the deceased Pentaiah died at the age of 54 years, further the address shown in the discharge summary does not pertain to the deceased Pentaiah. **It is pertinent to submit, even if we take the said discharge summary as true, it is clear that there is no serious decease suffered in the discharge summary. That it is common to majority of the citizens having diabetes and hypertension.**

**B) The interim order of this Court, dated 28.12.2018 passed in Writ Petition No.47102 of 2018 in I.A.No.01 of 2018 reads as under:-**

"There shall be interim suspension as prayed for subject to the petitioner depositing half of the amount payable in terms of the impugned award, with the second respondent within a period of eight weeks from today."

**4. The case of the petitioner as per the averments made by the petitioner in the affidavit filed by the**

**petitioner in support of the present Writ Petition, in brief, is as follows:**

a) The Petitioner is a Public Limited Company incorporated under the provisions of Companies Act, having its registered office at Gurugram, Haryana, having one of its offices at Somajiguda Hyderabad, is engaged, inter alia in the business of Life Insurance.

b) The 3<sup>rd</sup> respondent's late husband has obtained a housing loan of Rs. 15,39,863/- from M/s. Dewan Housing Finance Corporation Limited (DHFCL), with Policy bearing No. GC000006B063200 for a sum assured of Rs. 15,39,863/- being Insured/Policy Holder, issued by the petitioner herein in order to insure the said housing loan amount. After the demise of the Insured/ Policy Holder on 09.08.2017, the 3<sup>rd</sup> respondent herein has submitted the claim Forms on 10.10.2017 to the petitioner preferring the death claim as per the terms and conditions of the said policy.

c) However, the Petitioner herein i.e., the Insurer repudiated the contract of insurance i.e., the Group Insurance Policy in question on 06.12.2017 and the death claim was rejected for the bonafide reasons of suppression/non-disclosure of material information by the Assured i.e., assured/Policy Holder having not

disclosed the past history of Type-II diabetes mellitus, Hypertension and Nephrotic Range Proteinuria disease before taking the Group Insurance, more particularly, in the Proposal form dated 24.09.2015 submitted by the insured.

d) Being aggrieved by the said rejection, the 3<sup>rd</sup> respondent herein has appealed to the Grievance Redressal Officer of the Petitioner Insurer requesting for reconsideration and the same was rejected by the Insurer. Thereafter, the 3<sup>rd</sup> respondent appeared before the 2<sup>nd</sup> Respondent by filing the complaint dated 16.03.2018 for settling the death claim.

e) Subsequently, the 2<sup>nd</sup> respondent after conducting the purported enquiry wherein no reasonable opportunity was provided to the Petitioner herein to substantiate its case, passed the Impugned Award dated 04.10.2018 allowing the complaint of the 3<sup>rd</sup> Respondent holding that the rejection of the death claim was unjustified and directed the petitioner to settle the insurance claim amount.

f) Alongside, the 2<sup>nd</sup> respondent failed to appreciate that the Petitioner company in order to prove the intentional non-disclosure of the material facts in the proposal form at the time of taking the policy, has placed on record the crucial documentary evidence i.e., Discharge Summary dated 29.1.2015



issued by the Department of Nephrology, Care Hospital, Banjara Hills, Hyderabad. The material information of which, the deceased insured/Policy holder had deliberately suppressed and not disclosed at the time of obtaining the policy in question.

g) Furthermore, the petitioner has refunded the premium amount of Rs.1,00,968/- excluding the taxes, to the Banker, who granted the Housing Loan i.e., M/s. Dewan Housing Finance Corporation Ltd., towards the full and final settlement under the subject policy which was invalid, void ab-initio and unenforceable in law having obtained fraudulently, dishonestly and by misrepresentation.

h) Therefore, being aggrieved by the impugned Award dated 04.10.2018, which is illegal disclosing the errors apparent on the face of the record and soaked with perversity inasmuch as the same ignores the crucial evidence available on record and runs contrary to the settled principles of law evolved by the Apex Court, the present Writ Petition is filed.

### **DISCUSSION AND CONCLUSION**

**5. A bare perusal of the record indicates that the main contentions put forth by the petitioner is that the petitioner was not provided a reasonable opportunity to**

put forth the petitioner's case and substantiate the same and the 3<sup>rd</sup> respondent suppressed material facts and the said fraudulent suppression of material facts vitiates claim under the policy. Another contention put forth by the petitioner is that the 2<sup>nd</sup> respondent proceeded contrary to the provisions of Rule 16 of the Insurance Ombudsman Rules, 2017, in as much as, the 2<sup>nd</sup> respondent has chosen to pass the same invoking the powers under Rule 17, without complying the provisions of Rule 16(1) & (2) &(3) making any recommendation settling the complaint through mediation within one month of the date of receipt of mutual written consent for such mediation. The third contention put forth by the petitioner is that the impugned award is totally perverse in as much as the 2<sup>nd</sup> respondent ignored the clinching evidence available on record in support of the action of the insurer justifying the reasons for repudiation of the contract of insurance for suppression of material facts/crucial information that the policy holder in the form of medical report evidencing and establishing, the dishonest and fraudulent act and misrepresentation.

6. It is a specific plea of the 3<sup>rd</sup> respondent referring to Regulations of 2017, Rule 6(4), which clearly indicate that the contents of the proposal form and connected documents should be explained to the 3<sup>rd</sup> respondent so that the 3<sup>rd</sup> respondent fully understands the significance of the proposed contract submits that in the present case the Regulations of 2017, Rule 6(4) had not been followed and the 3<sup>rd</sup> respondent being an illiterate put his signature in Telugu, and in the said application, there is no certificate as provided for under Regulations of 2017, Rule 6(4) which reads as under:-

"Where for any reason, the proposal and other connected papers are not filled in by the prospect, the insurer, the insurer or the distribution channel shall explain the contents of the form, and a certificate shall be incorporated at the end of the proposal form from the prospect that the contents of the proposal form and connected documents have been fully explained to him and he has fully understood the significance of the proposed contract."

7. It is specifically averred by the 3<sup>rd</sup> respondent at paragraph '9' of the counter affidavit that the policy is in violation of Regulations, 2017, Rule 6(5), and the same is extracted herein under:-

“(5) The Insurers shall ensure, that a sale executed over distance-marketing modes such as Internet, SMS, Tele Marketing, interactive electronic medium etc., shall be undertaken by authorized and qualified sales persons who are specified in this behalf by the Authority. It is mandatory that the consent of the prospect be obtained before canvassing. Care should be exercised to ensure that the prospect contacted has clarity as to the identity of the insurer, the distribution channel, the product, benefits and conditions of offer etc. **The canvassing so made shall not involve compulsion, inconvenience or nuisance of any kind to the prospect.” It is the specific case of the 3<sup>rd</sup> respondent that the whole of the process of insurance was a act of compulsion mis-selling.**

8. The learned counsel for the petitioner places reliance on the judgment of Apex Court reported in (2019) 6 Supreme Court Cases 175, dated 24.04.2019 in Reliance Life Insurance Company Ltd., and another vs. Rekhaben Nareshbhai Rathod and contends that the Writ Petition has to be allowed as per the observations, in particular at paragraph 36, which reads as under:-

**36. Finally, the argument of the respondent that the signatures of the assured on the form were taken without explaining the details cannot be accepted.**

A similar argument was correctly rejected in a decision of a Division Bench of the Mysore High Court in [V.K Srinivasa](#)

[Setty vs Premier Life and General Insurance Co Ltd](#) where it was held:

"80. Now it is clear that a person who affixes his signature to a proposal which contains a statement which is not true, cannot ordinarily escape from the consequence arising there from by pleading that he chose to sign the proposal containing such statement without either reading or understanding it. That is because, in filling up the proposal form, the agent normally, ceases to act as agent of the insurer but becomes the agent of the insured and no agent can be assumed to have authority from the insurer to write the answers in the proposal form.

81. If an agent nevertheless does that, he becomes merely the amanuensis of the insured, and his knowledge of the untruth or inaccuracy of any statement contained in the form of proposal does not become the knowledge of the insurer. Further, apart from any question of imputed knowledge, the insured by signing that proposal adopts those answers and makes them his own and that would clearly be so, whether the insured signed the proposal without reading or understanding it, it being irrelevant to consider how the inaccuracy arose if he has contracted, as the plaintiff has done in this case that his written answers shall be accurate."

9. The learned counsel appearing on behalf of the 3<sup>rd</sup> respondent, on the other hand relies upon a recent Apex Court judgment reported in (2021) 13 Supreme Court Cases 561, dated 05.10.2015 passed in Sulbha Prakash Motegonkar and others vs. Life Insurance Corporation of India and contends that diabetes and hypertension which reflected in discharge summary and which has been alleged by the petitioner herein as having been suppressed by the 3<sup>rd</sup> respondent are not life threatening diseases, which could or did cause the death of the insurer, that would disentitle the deceased from getting his life insured, and hence, the repudiation of the claim was incorrect and not justified. The Apex Court in the said judgment and in particular paras 5 and 6 observed as under:

"5. It is not the case of the Insurance Company that the ailment that the deceased was suffering from was a life threatening disease which could or did cause the death of the insured. In fact, the clear case is that the deceased died due to ischaemic heart disease and also because of myocardial infarction. The concealment of lumbar spondylitis with PID with sciatica persuaded the respondent not to grant the insurance claim.

6. We are of the opinion that the National Commission was in error in denying to the appellants the insurance claim and accepting the repudiation of the claim by the respondent. The death of the insured due to ischaemic heart disease and myocardial infarction had nothing to do with his lumbar spondylitis with PID with sciatica. **In our considered opinion, since the alleged concealment was not of such a nature as would disentitle the deceased from getting his life insured, the repudiation of the claim was incorrect and not justified.**"

**10. The relevant portion of the impugned award, dated 04.10.2018 passed by the 2<sup>nd</sup> respondent reads as under:-**

"The insurer has established the materiality of the information not disclosed but failed to prove any fraudulent intent on the part of the insured in not disclosing his treatment details as the main intention of the insured was not to take the insurance policy but to take housing loan.

From the occurrences of the events it is evident that the insurer took undue advantage of the ignorance of the insured. The insured was not even aware that a policy was issued in his name till housing loan was disbursed after deducting premium. There was no scope for him to see the proposal form and suppress the information regarding his health. Apparently the proposal form was filled by the agent of the insurer without taking the insured into confidence."

11. This Court opines that the reasoning given by the 2<sup>nd</sup> respondent in the above referred paras of the award impugned, dated 04.10.2018 passed by the 2<sup>nd</sup> respondent clearly indicates that the same is justified and it cannot be said that the 3<sup>rd</sup> respondent had fraudulent intent in not disclosing the discharge summary dated 29.01.2015 issued by the Department of Nephrology, Care Hospitals, Banjara Hills, Hyderabad. This Court opines that the judgments relied upon by the learned counsel for the petitioner do not apply to the facts of the case by virtue of the clear observations made in the operative portion of the impugned award, dated 04.10.2018 passed by the 2<sup>nd</sup> respondent( referred to and extracted above)

12. Taking into consideration the aforesaid facts and circumstances of the case and the view of the Apex Court in the judgment reported in (2021) 13 Supreme Court Cases 561, dated 05.10.2015 in "Sulbha Prakash Motegonkar and others vs. Life Insurance Corporation of India, this Court opines that there is no illegality in the award bearing No.IO/HYD/A/LI/0110 passed by the 2<sup>nd</sup> respondent in complaint reference No. HYD-L-013-1718-0474, dated 04.10.2018, hence the writ petition is



**dismissed and accordingly, the interim order passed by this Court, dated 28.12.2018 stands vacated. However, there shall be no order as to costs.**

Miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.

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**SUREPALLI NANDA,J**

Date: 03.06.2024

**Note :** L.R. Copy to be marked.

***B/o.ktm***