

Life Insurance Corporation of India Vs. Dravya Finance Pvt. Ltd. & Ors.

Civil Appeal No. 4095 of 2012
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Full judgment text

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Factual Aspects

1. Under Section 38 of the Insurance Act, 1938 (for short, 'the Insurance Act'), an insured who is holding a policy of life insurance issued by the appellant-Life Insurance Corporation of India (insurer) is entitled to transfer or assign the policy with or without consideration by an endorsement upon the policy itself or by a separate instrument duly signed by the transferor or by the assignor and attested by one witness.

Unamended sub-Section (2) of Section 38 provided for service of notice in writing of transfer or assignment to the insurer in a manner set out therein. Unamended Sub-Section (4) of Section 38 provided that upon receipt of a notice of transfer or assignment under sub-Section (2) of Section 38, the appellant-insurer was under an obligation to record the fact of such transfer or assignment together with the date thereof and the name of the transferee or assignee. On request of the person who gives notice, the appellant-insurer was under an obligation to issue a written acknowledgement of the receipt of such notice on payment of a fee not exceeding Rs.1.

2. The appellant-insurer issued a circular on 24th April 2006 and imposed a registration charge of Rs.250 per assignment. The first respondent-Dravya Finance Private Limited, which is a finance company, challenged the said circular before the Bombay High Court on the ground that firstly, it is contrary to Section 38 of the Insurance Act and secondly, it is in violation of Article 265 of the Constitution of India as a levy of a tax or fee was sought to be made without any authority of law. There were other challenges, such as violation of Articles 14, 19(1)(g) and 300A of the Constitution of India.

3. By the impugned judgment, the High Court of Judicature at Bombay concluded that the levy of a sum of Rs.250/- for registration of assignment under the impugned circular was the levy of service charge or fee without there being any power to do so. Therefore, the impugned circular was held to be unconstitutional and was, accordingly, struck down.

Submissions

4. The learned counsel appearing for the appellant-insurer invited our attention to Section 6 of the Life Insurance Corporation Act, 1956 (for short, 'the LIC Act'). He submitted that under sub-Section (1) of Section 6, the appellant has a duty to carry on life insurance business. In fact, he relied upon sub-Section (3) of Section 6 of the LIC Act by pointing out that in the discharge of its functions, LIC has to act in accordance with business principles.

He submitted that the appellant-insurer has placed on record before the High Court more than sufficient material indicating the large number of notices of assignments received by the appellant and the enormous expenditure involved in dealing with the same. He submitted that when the appellant-insurer issues a life insurance policy, it is a contract of insurance which is purely a business transaction.

He submitted that for registration of assignments, service charges of Rs.250 per assignment are levied as a part of the business transaction between the insured and the appellant-insurer. He submitted that the levy of such a fee to meet the expenditure is a part of the business contract which will not attract Article 265 of the Constitution of India. The learned counsel appearing for the appellant urged that 95% of the surplus of the appellant is usually allocated to the policyholders.

He submitted that under sub-Section (4) of Section 38, a fee of Rs.1 is provided for issuing an acknowledgement of receipt of the notice of the assignment and what is sought to be charged under the impugned circular, is the fee or charge on account of administrative expenses incurred for recording the assignment. He would, therefore, submit that there is no illegality associated with the circular which was impugned before the High Court. The learned counsel appearing for the respondent supported the impugned judgment.

Our Conclusion

5. Section 38 of the Insurance Act, before it was substituted by the Act 5 of 2015, read thus:

"38. Assignment and transfer of insurance policies.-

(1) A transfer or assignment of a policy of life insurance, whether with or without consideration, may be made only by an endorsement upon the policy itself or by a separate instrument, signed in either case by the transferor or by the assignor, his duly authorized agent and attested by at least one witness, specifically setting forth the fact of transfer or assignment.

(2) The transfer or assignment shall be complete and effectual upon the execution of such endorsement or instrument duly attested but except where the transfer or assignment is in favour of the insurer shall not be operative as against an insurer and shall not confer upon the transferee or assignee, or his legal representative, any right to sue for the amount of such policy or the moneys secured thereby until a notice in writing of the transfer or assignment and either the said endorsement or instrument itself or a copy thereof certified to be correct by both transferor and transferee or their duly authorized agents have been delivered to the insurer:

Provided that where the insurer maintains one or more places of business in India, such notice shall be delivered only at the place in India mentioned in the policy for the purpose or at his principal place of business in India.

(3) The date on which the notice referred to in sub-section (2) is delivered to the insurer shall regulate the priority of all claims under a transfer or assignment as between persons interested in the policy; and where there is more than one instrument of transfer or assignment the priority of the claims under such instruments shall be governed by the order in which the notices referred to in sub-section (2) are delivered.

(4) Upon the receipt of the notice referred to in sub-section (2), the insurer shall record the fact of such transfer or assignment together with the date thereof and the name of the transferee or the assignee and shall, on the request of the person by whom the notice was given, or of the transferee or assignee, on payment of a fee not exceeding one rupee, grant a written acknowledgement of the receipt of such notice; and any such acknowledgement shall be conclusive evidence against the insurer that he has duly received the notice to which such acknowledgment relates.

(5) Subject to the terms and conditions of the transfer or assignment, the insurer shall, from the date of the receipt of the notice referred to in sub-section (2), recognise the transferee or assignee named in the notice as the only person entitled to benefit under the policy, and such person shall be subject to all liabilities and equities to which the transferor or assignor was subject at the date of the transfer or assignment and may institute any proceedings in relation to the policy without obtaining the consent of the transferor or assignor or making him a party to such proceedings.

(6).....

(7)....."

6. This Court in the case of Life Insurance Corporation of India v. Insure Policy Plus Services Private Limited and Ors.¹ has dealt with sub-Section (1) of Section 38 dealing with the assignment and transfer of the policy. In paragraph 11 of the said decision, this Court held that on transfer or assignment of a policy and on the requisite procedure being complied with, the assignee alone has an interest in the policy.

It was held that the insurer was bound by the provisions of Section 38 to accept such transfer or endorsement. This Court also considered amended sub-Section (2) of Section 38 of the Insurance Act which enables the insured to decline to act upon any endorsement made under sub-Section (1), where it has sufficient reason to believe that such transfer or assignment is not bona fide or is not in the interest of the policyholder or public interest or for the purpose of trading of insurance policy.

7. In this case, we are not dealing with the issue when an insurer can decline to act upon endorsement of assignment. In this case, we are concerned with the impugned circular which prescribes fees for recording the assignment of policies. In the impugned circular dated 24th April 2006, it is stated thus:

"At present, assignment of policies is being registered without any charges. However, the cost of the transaction of assignments/re-assignment of a policy is considerable. Therefore, it has now been decided to levy service charges of Rs.250/- transaction of effecting assignment under a policy."

8. The question is whether the appellant-insurer is lawfully entitled to levy a service charge of Rs.250/- for a transaction of assignment of a life insurance policy. In the impugned order, the High Court, in detail, went into the question of whether the levy of Rs.250/- under the impugned circular was a tax or a fee. The High Court held that by the impugned circular, the appellant has provided for service charge or fee for the services to be rendered to the person requesting for registration of an assignment. This finding regarding the nature of the levy has not been assailed by the appellant-insurer.

9. Now, the only question is whether the appellant had a lawful authority to levy a service charge or fee for the transaction of assignment or transfer of policy. It is not the case of the appellant-insurer that in the contract of policy, there is any clause which allows such a levy. Moreover, the assignment or transfer of policy is governed by statutory provisions in the form of Section 38 of the Insurance Act. It is well settled that if the law requires a particular thing to be done in a particular manner, it must be done in that manner and not in any other manner.

Section 38 does not authorise the levy of any such fee. Unamended sub-Section (2) of Section 38 of the Insurance Act provided for giving acknowledgement of a notice of transfer or assignment given in terms of sub-Section (2) of Section 38. It was specifically provided therein that the insurer can charge and levy a fee not exceeding Rs.1 for giving such acknowledgement. Thus, it prescribed a fee for issuing acknowledgement of notice of assignment or transfer.

Though, there was a specific provision made to levy a fee for giving acknowledgement of notice of transfer, the legislature, in its wisdom, has not provided any fee or charge for recording the assignment or transfer in the records of the insurer. Interestingly, in the substituted Section 38 of the Insurance Act, which was brought into force on 26th December 2014, the provision enabling the charging of a fee of Rs.1 for acknowledgement has been done away with.

10. Under Section 48 of the LIC Act, the general rule-making power is vested in the Central Government. Under Section 49, the power to make regulations vests in the appellant-insurer. It is an admitted position that neither rules under Section 48 have been framed nor regulations under Section 49 have been made, authorising the appellant-insurer to levy a service charge or fee for recording the endorsement of transfer or assignment by the appellant-insurer. The rule-making power under Section 114 of the Insurance Act has not been exercised for this purpose. As mentioned earlier, even in the contract of policy, such a provision has not been made.

11. At this stage, we may note that the Insurance Regulatory and Development Authority of India (Fee for granting written acknowledgement of the receipt of Notice of Assignment or Transfer) Regulations, 2015 have been made in accordance with the powers conferred by Section 114A of the Insurance Act. The Regulations were brought into force on 29th April 2015. Regulations 3 and 4 of the said Regulations read thus:

"Fee for granting acknowledgement of Notice of Assignment or Transfer:

(3) An Insurer is permitted to collect the following fee for granting a written acknowledgement of the receipt of notice of assignment or transfer.

(a) In respect of those policies that are issued in electronic form as specified by the regulations under the provisions of Section 14(2) of the Act the fee collected shall not exceed Rs.50 (Rupees fifty only) inclusive of applicable taxes;

(b) In respect of policies issued other than those referred under Regulation (3)(a) above the fee collected shall not exceed Rs.100 (Rupees Hundred Only) inclusive of applicable taxes;

(4) No other fee shall be collected for rendering any other services such as, recording the fact of the transfer or assignment or any other services connected to the assignment or transfer prescribed in Section 38 of the Act."

Hence, the said Regulations prohibit the levy of any fee for recording the assignment of policies.

12. For the aforesaid reasons, we find no error in the view taken by the High Court that the appellant-insurer had no right to claim fees of Rs.250/- for recording the endorsement of assignment or transfer.

13. Hence, there is no merit in this appeal and the same is, accordingly, dismissed.

1 (2016) 2 SCC 507

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