SUPREME COURT OF INDIA

LIC of India

Vs.

Insure Policy Plus Services Pvt. Ltd. & Ors.

C.A.No.8542 of 2009

(Virkamajit Sen and Shiva Kirti Singh,JJ.)

29.12.2015

JUDGMENT

Virkamajit Sen, J.

1. This Appeal assails the judgment of the learned Division Bench of the High Court of Judicature at Bombay dated 22.3.2007, which allowed the writ petitions of the First and Second Respondent herein. In this detailed and indeed lucid Judgment it has been clarified that the insurance policies issued by the Appellant "are transferable and assignable in accordance with the provisions of the Insurance Act, 1938 and in terms of the contract of life insurance."

2. The First Respondent is a company which is engaged, inter alia, in the business of accepting and dealing in assignment of life insurance policies issued by the Appellant. The Second Respondent is the Director and shareholder of the First Respondent. The Third Respondent is a statutory authority established under Section 3 of the Insurance Regulatory & Development Authority Act, 1999, and is hereinafter referred to as IRDA. The business of the First Respondent is to acquire life insurance policies from policy holders by paying them consideration. The assigned policy is registered and recorded in the books of the Appellant, and is then further assigned to a third party for consideration. Upon registration in the books of the Appellant, it could then be further assigned.

3 In January 2003, several branches of the Appellant refused to accept notices of assignment lodged by the First Respondent. A Circular was issued on 22.10.2003, the content of which is reproduced below for facility of reference:

> "There have been reports in the Press recently of the existence of firms that are in the business of buying of Insurance policies which are lapsed after acquiring paid-up value, from the original policyholders by paying them an attractive sum over and above the surrender value. The firm then becomes the assignee and is entitled to all the rights of the policy be it maturity claim/death claim, etc.

The above practice if it becomes prevalent would not only undermine the real purpose of life insurance but also allow third parties to make windfall gains by such wagering contracts. Therefore, it is felt necessary to introduce measures to safeguard the principles of life insurance and the larger interest of our policyholders.

• If any Agent/employee is found to be involved in assisting such Companies in respect of data acquisition of lapsed policies for revival and subsequent assignment, strict action may be initiated against him.

• The Branch Offices would have to be more vigilant in case of revival of policies that have been lapsed for longer duration say over 3 years. In such cases, strict control on non-acceptance of third party cheques, strict adherence to medical requirements, quality of medical examination etc. would be required. Wherever it is clear that a TIP company is involved, the revival may be outrightly rejected.

• If there are a number of assignments in the same Branch Office/Divisional Office in favour of the same Financial Company, the nature of the business of the Company may be investigated.

• If the Branch Office already has information that the nature of business interest of the Financial Company is trading in insurance policies only, the assignments in favour of such a Company may be declined.

• Such policyholders may be educated through a specially designed communication on the implications of "absolute assignments". This may be done to safeguard the interest of those who may become innocent victims of third parties indulging in this business. The Branches may be instructed to start sending the data on absolute assignment to the controlling Divisions cause-wise to keep a vigil on trading of policies."

4. The Appellant also stated in a letter to the First Respondent that assignments in favour of companies who are only trading in insurances would not be permissible. The various complaints by the First Respondent elicited a response by IRDA dated 3.3.3004, in which it opined that the Appellant should register the assignments. The Appellant, however, refused to do so, and instead issued another Circular dated 2.3.2005 reiterating the contents of the previous circular, and laying down a procedure for "uniform implementation by all the offices of the Corporation". A portion of this Circular is reproduced, as it lays down the rationale behind the refusal to register these policies:

"Life Insurance Policies, in general, are a measure of social security for the family members of the life assured and in the absence of adequate savings or securities, these Policies are often the only financial security available to the family members of the deceased life assured. The Government of India has guaranteed the Sum Assured with Bonus in all LIC Policies under Section 37 of the Life Insurance Corporation Act, 1956 to ensure the availability of financial security to the family of the deceased.

In this connection, the Hon'ble Supreme Court of India in *Life Insurance Corporation of India Vs. Consumer Education and Research Centre*[1] *(reported in)* has ruled that the LIC discharges important Constitutional functions and the Policies issued by it are a measure of social security for the family of the life assured. Between April 2002 to July 2003, our Offices at various places received several Policies for registration of assignments in favor of some entities. Newspaper articles also appeared in September 2003 about some Companies carrying on trading in insurance Policies. The Corporation had to take urgent notice of such a remarkable spurt in the registration of assignments in respect of such Policies and the Corporation then noticed that these Policies were being purchased and traded in like saleable securities of a stock market. It was also noticed by the Corporation that the only purpose for which such assignment was being obtained, was with a view to trading in them by further selling them, which could continue indefinitely without reference to the life assured.

The Corporation had noticed that this process of trading, without any reference to the life assured, is in the nature of speculation and weighing in as much as none of the subsequent assignees would have either the means or the inclination to find out whether the life assured was still alive. This, in turn, would means that even if the life assured died a premature death, the Policies would continue in circulation by means of such trading until its date of maturity and the Corporation would then have to pay the final/ultimate assignee, the entire maturity amount/value instead of the family members of the life assured, benefiting there under and despite the fact that the death may have occurred several years prior thereto. Such trading in the Corporation' Policies offends the very essence of the Life insurance contract and leaves the family of the life assured totally unprotected in the event of death of the life assured. Hence, in order to prevent such speculation and wagering which causes harm to millions of families all over India, the Corporation has taken a policy decision to refuse the registration of assignments which are in the nature of trading. For this purpose, the Corporation has evolved a procedure to identify such transactions so as to preserve and protect the interests of genuine policyholders of the Corporation, and to leave untouched the genuine assignments by the life assured.

5. The First and Second Respondent before us filed a writ petition before the High Court seeking a Declaration that the insurance policies issued by the Appellant are freely tradable and assignable in accordance with the provisions of the Insurance Act, 1938, and that the Circulars dated 22.10.2003 and 2.3.2005 and the actions of the Appellant in refusing to register the assignment of life insurance policies in favour of the First Respondent are illegal, null and void.

6. The High Court, vide its impugned order, allowed the writ petition. It noted that life insurance policies are the personal, movable property of the policy holder, and can be said to be an actionable claim within the meaning of Section 3 of the Transfer of Property Act. The High Court also recorded that the business of assignment of such policies is prevalent the

world over. While noting that this Court in *LIC of India vs. Consumer Education & ResearchCentre*[1] has held that insurance is a social security measure, as was also reflected in the Statement of Objects and Reasons of the Life Insurance Corporation Act, 1956 (LIC Act), the High Court held that consequent to private entry into the business of life insurance it is no longer possible to contend that life insurance remained a measure of social security. It then went on to discuss the decision of the Supreme Court of the United States of America in *Basil P. Warnoc vs George Davis*[2], wherein it was held that "...in all cases there must be reasonable ground, founded upon the relations of the parties to each other, either pecuniary or of blood or affinity, to expect some benefit or advantage from the continuance of the life of the assured. Otherwise the contract is a mere wager, by which the party taking the policy is directly interested in the early death of the assured. Such problems have a tendency to create a desire for the event. They are, therefore, independently of any statute on the subject condemned as being against public policy." This decision came up for consideration before the *U.S. Supreme Court in Grigsby vs Russell*[3]. Grigsby did not agree with Warnoc, finding instead that life insurance is a form of investment and savings, and to deny the right to sell it would diminish its value. It was held that the rule of public policy that forbids the taking out of insurance by one on the life of another in which he has no insurable interest does not apply to the assignment by the insured of a valid policy to one not having an insurable interest. In the impugned Judgment, the High Court noted that the law in the U.S.A. after Grigsby is that though there has to be an insurable interest at the inception when the policy is taken out, subsequent thereto there is no requirement of insurable interest at the time of transfer or assignment. The argument raised by the First and Second Respondent was that Section 38 of the Insurance Act is a substantive right, whereas the Appellant contended that it is merely procedural. On an examination of the Section and the manner in which it operates, it was held that once the insured transfers or assigns the policy in favour of the assignee, the assignment is complete between them. The insurer clearly has no choice or option in law but to accept the transfer or assignment, provided the procedure laid down by Section 38 is followed. The High Court therefore held that Section 38 is a substantive and not a procedural provision. Section 38 makes it clear that the Legislature did not treat life insurance as a security for protection of the widow or children of the life assured, but as a form of investment and self-compelled saving. It is therefore desirable to impart to it all the common characteristics of property. The Appellant is the only player in the market which is refusing to accept such assignments. It was held that if the terms of the contract between the Appellant and the insured barred assignment, the assignee would also remain bound by this covenant. However, in the absence of any such contractual term the Appellant cannot unilaterally vary the terms of the contract under the guise of a policy decision, thereby endeavouring to disallow transfers that are legally valid under Section 38. As Section 38 is mandatory, it is not open to the Appellant to issue any policy decision that is contrary to it. The Circulars dated 22.10.2003and 2.3.2005 were found to be illegal and it was held that insurance policies are transferrable and assignable.

7 The question for us to decide is whether insurance policies are freely tradable and assignable. To this end, it would be apposite to reproduce Section 38 of the Insurance Act as it stood prior to its amendment in 2015:

"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 authorised 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, and 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 authorised 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 acknowledgement relates.

(5) Subject to the terms and conditions of the transfer or assignment, the insurer shall, from the date of 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)Any rights and remedies of an assignee or transferee of a policy of life insurance under an assignment or transfer effected prior to the commencement of this Act shall not be affected by the provisions of this section.

(7) Notwithstanding any law or custom having the force of law to the contrary, an assignment in favour of a person made with the condition that it shall be inoperative or that the interest shall pass to some other person on the happening of a specified event during the lifetime of the person whose life is insured, and an assignment in favour of the survivor or survivors of a number of persons, shall be valid."

This section has subsequently been amended by The Insurance Laws (Amendment) Act, 2015, and Section 38(2) now reads thus:

"(2) The insurer may accept the transfer or assignment, or 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 in public interest or is for the purpose of trading of insurance policy."

This, along with the other changes introduced in the Section, indicates that the law as it currently stands gives the Appellant a discretion as to whether or not to accept an assignment provided its decision is predicated on the transfer or assignment being (a) mala fide or (b) contrary to the interest of the policy holder or (c) against public interest or (d) only for trading in the policy. The question before us, however, is limited to the law as it stood prior to this statutory amendment.

8. The Appellant has contended that only certain first assignments, in which the policy is a pledge or collateral for a loan, would be acceptable. Based on an undertaking to this effect, we have disposed of Civil Appeal No. 8543 of 2009 which was being heard along with this Civil Appeal. The Order dated 10.12.2015 passed by us reads thus:

"The Affidavit filed on behalf of the Respondent No.1 is taken on record. Learned Senior Counsel appearing for the Appellant also submits that the Undertakings may be accepted by the Court. The Undertakings furnished in the said Affidavit are accepted by the Court. The affiant is cautioned that if any of the Undertakings are breached, apart from any other consequences, the Contempt of Courts would be attracted to the Respondent.

In view of the above, the Interim Orders passed on 4th April, 2008 are recalled. The provisional registration shall be accorded permanence and/or full registration. It is clarified that the Undertakings shall stand extended to any fresh Applications for registration that may now be moved by the Respondents for transactions, assignments and transfers effected prior to the Amendment of Section 38, viz. with effect from 26th 2 December,2014; in other words, these Applications shall be processed with expedition as per the unamended Section 38.

> It is further clarified that in view of the disposal of this Appeal, in the circumstances mentioned above, the Appellant will be liable to pay interest at the prevailing Bank rate (without penal interest) as per Section 8 sub-section(5) of the Insurance Regulatory and Development Authority (Protection of Policy Holder Interest) Regulations, 2002. The disposal of this Appeal is without prejudice to other Appeals in which arguments have been closed.
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> The Civil Appeal is disposed of with no Order as to costs."

The Appellant has argued that if multiple assignments are permitted the assignee will not know if the insured has died, and trading in the policy may continue even after he has. Furthermore, allowing parties in the position of the First Respondent to revive a lapsed policy would amount to wagering. Regarding the prevailing law in other jurisdictions, it has been submitted that the law in the U.S. is not based on Grigsby, as the U.S. legal system it is a federal one. Even if Grigsby were taken as the prevailing interpretation of the law, it does not state that all assignments must be accepted regardless that they are in bad faith. The fact that the Government provides tax deductions under Section 80C of the Income Tax Act, 1961, that Life Insurance is not liable to be attached and sold in execution of a decree under Section 60 of the Civil Procedure Code, and that Life Insurance is guaranteed by the Central Government under Section 37 of the LIC Act indicates that it is a measure of social security, so the power to refuse 'bad faith' assignments should be allowed on the grounds of public policy. Finally, it has been argued once again that Section 38 is merely procedural, and the substantive law is to be found and extrapolated from Common Law.

9 The First and Second Respondent, on the other hand, have contended that Section 38 recognises all assignments that comply with the requirements stated therein. Insurance is intrinsically a matter of contract, and the Appellant cannot, by way of a Circular, amend a contract and interfere with contractual rights and obligations. An insurable interest is a precondition or essential element at the time of taking out the scheme but not thereafter, including at the point of any reassignment. Section 38 is substantive, not procedural, so there is no reason to advert to common law, as the Insurance Act was passed well after the two American Supreme Court decisions alluded to above. Subsection (9) of the post-amendment Section 38 was relied upon, which reads as follows:

> "(9) Any rights and remedies of an assignee or transferee of a policy of life insurance under an assignment or transfer effected prior to the commencement of the Insurance Law (Amendment)Act, 2015 shall not be affected by the provisions of this section."

Thus this sub-section protects the existing rights of the First Respondent. Even in the absence of this sub-section, Section 6 of the General Clauses Act, 1897 would have come to the aid of these Respondents. It has also been alleged that the only reason that the Appellant is averse to allowing re-assignment of policies is because it wants to protect its own interests and repudiate its contractual liability.

10. It would be apposite for us to begin our analysis by discussing the operation of Section 38 of the Insurance Act as it stood prior to its amendment. Section 38(1) prescribed the procedure by which assignment were to be effected, namely, by way of an endorsement or by means of a separate instrument. Sub-section (2) stated that once a transfer or assignment was made in the manner prescribed by sub-section (1), it was complete and effectual. However, this transfer or assignment only became binding upon written notice thereof being given by the transferor and transferee to the insurer. Sub-section

(3) determined the priority of claims on the Insurance Policy by operation of law. Sub-section (4) directed that upon receipt of the notice referred to in sub-section (2), the insurer became bound to record the transfer or assignment together with the date thereof and the name of the transferee and the assignee; and if so requested grant a written acknowledgment of the receipt of such notice. Sub-section (5) mandated the insurer to recognise the transferee or assignee named in the notice as the only person entitled to the benefit under the policy and such person would be subject to all liabilities and equities. Sub-section (6) and (7) provided for some other contingencies with which we are not immediately concerned.

11. It is thus clear that on transfer or assignment of a policy and on the requisite procedure being complied with, the assignee alone has an absolute interest in the policy. The insurer was bound by the provisions of Section 38 to accept such a transfer or endorsement. The only limitations placed on transferring a policy were in terms of the procedure laid out in Section 38, and subject to the terms of policy itself. The Section left no scope for the insurer to dispute the right to transfer or assign the policy. Section 38 was thus clearly mandatory and substantive. The erstwhile Section 39(4) also deserves reproduction in this vein, as it further indicated the mandatory character of Section 38. It reads thus:

> "(4)A transfer or assignment of a policy made in accordance with section 38 shall automatically cancel a nomination:
>
> Provided that the assignment, of a policy to the insurer who bears the risk on the policy at the time of the assignment, in consideration of a loan granted by that insurer on the security of the policy within its surrender value, or its reassignment on repayment of the loan shall not cancel a nomination, but shall affect the rights of the nominee only to the extent of the insurer's interest in the policy."

12. The Appellant has argued that Section 38 could result in scenarios where it was bound to accept fraudulent policies since it had not been bestowed with discretionary powers. We do not find any content in this contention, for the reason that in cases of fraud, the assignment could be challenged on that ground even after being recorded. Furthermore, when the Appellant encountered a fraud inter alia in reviving lapsed policies, such as in cases of reviving the policy of an insured who is already deceased, it could refuse to recognize the revival, which it is well within its rights to do as a contractual clause to this effect forms part of the policy.

13. The amendment to the Insurance Act by the Insurance Laws (Amendment) Act, 2015, is significant. As previously discussed, Section 38 as it now stands gives the insurer the discretion to decide whether or not to accept a transfer or assignment of an Insurance Policy. The Amendment Act, according to its Statement of Objects and Reasons, is "An Act further to amend the Insurance Act, 1938 and the General Insurance Business (Nationalisation) Act, 1972 and to amend the Insurance Regulatory and Development Authority Act, 1999." It is thus neither a declaratory or clarificatory piece of legislation. The language of the extant Section 38 cannot be interpreted to mean that this is what Section 38 had meant all along. Furthermore, had the Legislature intended to amend Section 38 retrospectively, it would have said so explicitly. Instead, it has incorporated sub-section (9), which protects rights and remedies of assignees that arose prior to the commencement of the Amendment Act. It is thus clear that Parliament intended to allow all previous assignments and transfers provided that they complied with the requirements laid out in Section 38. In the face of this clear legislative intent, no other interpretation of Section 38 is possible. It is accordingly not incumbent for us to discuss whether insurance policies partake of the nature of social security, or whether the transfer of such policies tantamount to wagering contracts.

14. In our considered opinion it is not open to the Appellants to charter a course which is different to the postulation in the Insurance Act, by means of its own Circulars. We need not go beyond mentioning the decision of this Court in *Avinder Singh v. State of Punjab*[4] wherein it has been held that the Legislature cannot efface itself by delegating its plenary powers unless the delegate functions strictly under its supervision. If the delegate is allowed to function independently it would tantamount to "usurpation of legislative power itself." This view came to be reiterated to decades later in *Agricultural Market Committee v. Shalimar Chemical Works Ltd*[5]. This Court held that " Power to make subsidiary legislation may be entrusted by the legislature to another body of its choice but the legislature should, before delegating, enunciate either expressly or by implication, the policy and the principles for the guidance of the delegates". The position that obtains today is diametrically opposite inasmuch as the statute permitted, at the relevant time, the assignment and/or transfer of life insurance policies, but the delegate, through its Circulars, has attempted to nullify that provision of law. We conclude, therefore, that the circulars are ultra vires the Statute and must therefore be made ineffectual.

15. We also think that it is not appropriate to import the principles of public policy, which are always imprecise, difficult to define, and akin to an unruly horse, into contractual matters. The contra proferentem rule is extremely relevant inasmuch as it is the Appellant who has drafted the insurance policy and was therefore well-positioned to include clauses making it specifically impermissible to assign policies. In the absence of any such covenant, the Appellant cannot be heard to say that such transfers or assignments violate public policy. In any event, as we have seen above, the general global practice is to permit assignments of insurance policies.

16 It is for these manifold reasons and in view of the analysis of the law prior to as well as post the amendments carried out in the Insurance Act that we find the Appeal to be devoid of merits. The impugned Judgment is well -reasoned and takes within its sweep all the relevant documents raised. The Appeal is accordingly dismissed.

Judgment Referred.

[1]*AIR 1995 SC 1811*
[2]*104 US 0771*
[3]*222 US 0149*
[4]*(1979) 1 SCC 0137*
[5]*(1997) 5 SCC 0516*