

(1998) 07 NCDRC CK 0014

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

Life Insurance Corporation of
India

APPELLANT

Vs

K.C. Cherian

RESPONDENT

Date of Decision: July 11, 1998

Citation: 1998 3 CPJ 166 : 1999 1 CLT 167 : 1999 1 CPR 53

Hon'ble Judges: B.N.Krishnan , Y.V.Rao , Mangala Sanes J.

Final Decision: Appeal allowed

Judgement

1. THE appellant was the opposite party in Complaint No. 143 /1996 on the file of Consumer Disputes Redressal Forum, North Goa and being aggrieved by order of District Forum directing it to issue insurance policy to the complainant, has preferred this appeal.

2. TO understand the circumstances under which this appeal has been filed, only a few facts need be stated.

The complainant had deposited a sum of Rs. 20,097/- with the opposite party (LIC) on 22.2.1996 for issue of Jeevan Adhar Policy pursuant to proposal made on 22.2.1996 to enable him to claim the Income Tax Benefit for the year 1995-96 and from 28.2.1996 to 3.5.1996 there was absolute silence on the part of LIC and on 20.5.1996 he was asked to resubmit the proposal and he wrote a letter to LIC on 25.5.1996 stating that injustice was done to him and ultimately he was informed that his proposal would be accepted for the year 96-97. He was not agreeable for the same and LIC should be directed to accept the proposal and issue certificate for the year 95-96 so that he could claim Income Tax Benefit to the extent of Rs. 8,000/-.

This complaint was resisted by the opposite party.

That the complainant has paid the sum of Rs. 20,097/- has not been disputed. It has been stated that it was taken under Suspense Memorandum and the matter was being scrutinised. Certain clarification was sought for, as complainant wanted the benefit of policy to enable him to claim Income Tax Benefit. It wanted further clarification from Institute of Psychiatry and Human Behaviour and even letter was written to that Institute and by the time all formalities were completed, the financial year 95-96 was closed and therefore there was no question to accept the proposal for the year 95-96 and it wanted to accept the proposal for year 96- 97 and therefore there was no scope to issue policy for the year 95-96.

3. PARTIES filed their affidavits and also correspondence that took place between them and thereafter the District Forum allowed the complaint and directed the Insurance Company to issue policy for the year 95-96.

It is the legality and correctness of this order that have been questioned by the opposite party in this appeal.

4. FIRST of all we have to examine whether the complainant could come under the category of Consumer within the meaning of Consumer Protection Act, 1986. Under Section 2(d) of the Act having regard to transaction. Section 2(1)(d)(i) is not attracted. It is to be seen whether the complainant has hired or availed of any service of opposite party for consideration. If we hold that he has hired or availed the services for consideration, then there could be no doubt that he would be a consumer. There is no dispute about the correspondence that has taken place between the parties and opposite party and institute of Psychiatry, the copies of Which are enclosed with the written version of opposite party.

In the first instance, it may be noticed that the amount of Rs. 20,097 /- has been paid and received by LIC under the Suspense Memorandum on 27.2.1996. The mere receipt of this amount itself does not amount to the proposal made by the complainant having been accepted. As already pointed out, the complainant purporting to take benefit of Income Tax Exemption by taking this Jeevan Adhar Policy on account of mental retardness of his son. In relation to this aspect, the LIC

should satisfy itself that it is an appropriate case to issue the said policy. The LIC infact has written a letter dated 11.7.1996 to the Director of Institute to clarify the certain aspects in relation to certificate issued by it. It has received undated certificate with reference to enquiries made and it was only by 7.9.1996 the opposite party was satisfied that Jeevan Adhar Policy could be issued but by that time the financial year 95-96 had come to close long back and, therefore, it mentioned that it could not accept the proposal during the financial year 95- 96 but could accept for the year 96-97. The complainant was insisting that it should be accepted during the year 95-96 to enable him to claim the Income Tax Benefit for the financial year 95-96. When the formalities in relation to acceptance of proposal went on up to September, 1996, there was no scope for LIC to accept the proposal during the financial year 95-96 and it wanted to accept the proposal during the financial year 96-97. The complainant was not agreeable to that proposal made by the opposite party and the proposal made by the complainant to accept the policy during the year 95-96 has not been accepted by LIC for the reasons adverted to already and no policy has been issued. It is under these circumstances that we have found out whether it can be said that the complainant has hired or availed the services of LIC for consideration within the meaning of Section 2(1)(d)(ii) of the Act. No policy has been issued by LIC. There is no completed contract between the parties, the proposal has not been accepted and that is why the policy has not been issued. The learned Advocate for the complainant does not dispute that there is no specific complete contract between his client and opposite party but what he tried to say was that he was given to understand that his proposal has been accepted and therefore by implication we should hold that it is a completed contract. No provision of law of deemed acceptance has been brought to our notice. It is to be seen whether acceptance of proposal by implication could be inferred under these circumstances. In the first instance it may be noticed that very payment of amount is on 22.2.1996 that is at fag end of financial year 95-96 and LIC had written letter to him on 25.5.1996 to resubmit the medical certificate from the concerned department appointed specialist as the one submitted did not contain the full details. Again the complainant has written a letter on 25th May, 1996. Further the complainant was again informed on 7.9.1996 to comply with the required formalities to complete the proposal and before that date the LIC has been corresponding with the Institute of Psychiatry. After all the opposite party is not an individual and it has thousands and lakhs of proposals and when it has been asked to issue the policy to cover the case of mentally retarded person it should be satisfied that all the formalities for issue of policy to cover such a person are satisfied. Having regard to the conduct of opposite party, I find it cannot be said that there is any question implied acceptance of proposal made by the complainant. When the proposal could not be accepted during the year 95-96 for the reasons adverted to already and when the proposal could be accepted during the financial year 96-97 and the complainant was not prepared for same, we cannot infer any acceptance of proposal by LIC during the year 95-96 so as to enable the complainant

to claim the Income Tax benefit. Therefore, we are satisfied that the complainant does not fit into the category of consumer as defined under Section 2(1)(d)(ii) of the Act because there is no completed contract between the parties and it cannot be said the complainant has hired or availed the services of LIC.

In the matter pertaining to Section 2(1)(d)(ii), the National Commission was concerned about the aspect for sale or purchase in the decision reported in I (1996) CPJ 91 (NC). After referring to its earlier decision, it was observed : That it had repeatedly held that transaction for sale or purchase should have already taken place. It has been pointed out that if the transaction for sale or purchase has not taken place, the person does not come under the meaning of consumer. The same logic can be applied to the present case interpreting the meaning of hires or avails the services for consideration and therefore, the District Forum was not right in holding that the complainant came under the category of consumer and the consumer dispute lies before it.

5. EVEN otherwise, it may be pointed out that various letters are addressed by the opposite party in relation to the proposal made by the complainant. It must have some time for scrutiny and correspondence. It cannot be stated that LIC has adopted unreasonable attitude for issue of policy. For scrutiny, it takes some time to process the proposal submitted by the complainant for the financial year 95-96. Therefore, there is no scope to say that policy ought to have been issued for the financial year 95-96 to enable the complainant to get rebate for payment of Income Tax Benefit specially having regard to the fact that the proposal was made at the fag end of the year 95-96.

6. IN that view of the matter, it is clear to us that the issue of policy on the part of LIC for the year 95-96 is clearly ruled out. Therefore, in any view of the matter, we find that the order of District Forum cannot be sustained. IN the result, the order of District Forum is set aside and appeal is allowed with no order as to cost and the complaint shall stand dismissed. Appeal allowed.