(2011) 07 DEL CK 0476

Delhi High Court

Case No: LPA No. 431 of 2010

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| Life Insurance Corporation of India and Another | | APPELLANT |
| | Vs | |
| Shri Rajiv Khosla and Another | | RESPONDENT |

Date of Decision: July 4, 2011

Acts Referred:

- Constitution of India, 1950 - Article 12, 14, 19(1), 21, 226
- Contract Act, 1872 - Section 23
- Insurance Act, 1938 - Section 12, 14(2), 17, 2(11)

Citation: AIR 2012 Delhi 9 : (2012) 186 DLT 266

Hon'ble Judges: Dipak Misra, C.J; Sanjiv Khanna, J

Bench: Division Bench

Advocate: Sandeep Sethi and B.B. Sawhney, Indira Sawhney, Lakshay Sawhney and Sunil Kumar, for the Appellant; Rakesh Tiku and Vivek Ojha, for the Respondent

Final Decision: Allowed

Judgement

Dipak Misra, C.J.
The present intra-Court appeal is directed against the order dated 7th April, 2010 passed by the learned Single Judge in WP (C) No. 5702/1999.

2. The facts leading to the filing of the writ petition are that the Appellant-Petitioner (hereinafter referred to as "the Appellant") took "Jeevan Kishor Policy" for his daughter, Aprajita, for a sum of Rs. 1 lakh by Policy No. 120312578 dated 14th October, 1994. The yearly premium of Rs. 5,533/- was payable for the policy. The Appellant paid the premium for two consequent years, that is, 1994-95 and 1995-96. The daughter of the Appellant expired on 11th September, 1996 in unfortunate circumstances and thereafter no further premium was paid. After the death of the

daughter, the Appellant sent a letter on 20th December, 1996 to the Life Insurance Corporation of India (LIC) informing them about the death of his daughter and asking for the claim under the policy to be settled. When no response was received, he was compelled to knock at the doors of this Court under Article 226 of the Constitution of India.

3. It was contended in the writ petition that no payment was made in view of the stipulation in the policy to the effect that the policy shall stand cancelled in case the life assured dies before the deferred date. Be it noted, the said clause of the policy was assailed on the foundation that LIC is obliged to make the payment and cannot take shelter under the said policy on the ground that it is not obliged to make any payment if the assured dies prior to the deferred date. It was urged that such a clause was arbitrary, unilateral and unfair.

4. The LIC combated the averments made in writ petition on the ground that the Petitioner could have filed a civil suit as he was seeking enforcement of a contractual obligation; that the claim put forth by the Petitioner has been repudiated in terms of the conditions of the insurance policy, which is basically a contract; that the stipulation in the policy is neither arbitrary nor unreasonable; and that the deferred payment clause is unassailable as the parties to the policy are bound by the terms of the policy.

5. A rejoinder affidavit was filed stating, inter alia, that as long as the premium was paid, it is not open to the LIC to repudiate the claim and deny payment. That apart, the deferred date in the instant case was 14th October, 1996 and the assured died on 11th September, 1996. It is also put forth that the classification of life insurance policies into those payable only after the deferred date and those without such limitation was arbitrary and discriminatory.

6. An additional affidavit was filed by the LIC contending, inter alia, that "Jeevan Kishor Policy" was made only for the middle income/higher income class. It was a flexible policy where the minimum and maximum amount that could be insured was Rs. 20,000/- and Rs. 5 lakhs respectively. The premium is a multiple of the tabular rate paid depending upon the desired sum assured and the age of the assured. It was also explained that in the case of children, it is not practically possible to obtain any medical report for a child which would indicate the future expected mortality in respect of life and any medical examination is unlikely to reveal an authentic and reliable insight into the health status of a child. LIC, in order to safeguard its own interest, has imposed restrictions under the Jeevan Kishor plan before the risk on the children commences and that is why, the imposition of the "deferred date" or "waiting period".

7. The learned Single Judge expressed the view that the stand of the LIC that the Petitioner should have filed a suit was untenable in view of the decision in ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd.

and Others, . Being of this opinion, the learned Single Judge proceeded to state as follows:

8. The stand of the LIC as extracted in the above paragraphs does not sufficiently explain the need for deferring the payment under policy for children for two years. It appears to this Court that once the LIC accepts the contract by offering to insure even the life of a child, then it obviously does do so irrespective of the age of the child. While insurance business is largely dependent on the analysis of risk, it is not possible to accept the submission of the LIC that the "deferred date" clause became necessary only on the basis of the risk that may be faced by the LIC. If the LIC chooses to insure children and collects premia, there is no justification for negativing a claim on the basis that payments thereunder should stand postponed to a "deferred date". There is no justification for imposition of a deferred date on the apprehension that such waiting period is necessary to prevent "moral hazards" involving the life of children.

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10. In a further additional affidavit filed by the LIC on 28th April 2003, the information relating to number of Jeevan Kishor Policies issued from 1990-1991 to 2001-2002 including the ages of the victims have been given. Given the large number of Jeevan Kishor Policies issued [which stood at 471000 as of 2001-02], the actual claims in respect of children in the age group of eleven years for the years 1999-2000, 2000-2001 and 2001-2002 are 39, 55 and 53 respectively. The figures are comparable for other age groups upto 15 years. By no means can it be argued that there will be far too many claims against the LIC if the "deferred date" clause is not incorporated. Given the number of claims being made on a yearly basis on account of the deaths of children under the Jeevan Kishor Policy, this Court holds that the LIC is not acting fairly or reasonably in insisting that no claim will be entertained for two years after the commencement of the policy.

8. After so holding, the learned Single Judge directed that the claims made hereafter under the "Jeevan Kishor Policy" would not be repudiated by the LIC on the ground that they have been made before the deferred date, subject, of course, to other conditions being satisfied. It is worth noting, such a direction was issued as the counsel for the Appellant had made a statement that he was not interested in obtaining any amount from LIC but getting the legal position clarified.

9. We have heard Mr. Sandeep Sethi and Mr. B.B. Sawhney, learned senior counsel along with Ms. Indira Sawhney, Mr. Lakshay Sawhney and Mr. Sunil Kumar, learned Counsel for the Petitioners and Mr. Rakesh Tiku, learned senior counsel along with Mr. Vivek Ojha, learned Counsel for the Respondents.

10. It is not in dispute that the deferred date, as per the policy, was 14th October, 1996 but the daughter of the Respondent died before the deferred date. The Special Provision No. 2 of the policy bond reads as follows:

The policy shall stand cancelled in case the life assured shall die before the Deferred Date and in such event provided the policy is then in full force, a sum of money equal to all the premiums paid without any deduction whatsoever shall become payable to the person entitled to the policy moneys.

11. The question that emerges for consideration is whether the conclusions arrived at by the learned Single Judge to the effect that the condition is unfair and unreasonable on the foundation that insurance business is largely dependent on the analysis of the risk; that once the LIC accepts the contract by offering to the insurer, even that of a child, it does so irrespective of the age of the child; and that if LIC chooses to insure the child and collect the premium, there is no justification to negative the claim on the basis that the payments thereunder should stand postponed to a deferred date. In quintessence, the issue is whether the condition incorporated by way of a special provision in the policy invites the frown of Articles 14 and 21 of the Constitution of India.

12. The learned Counsel for the Appellants would contend that insurance is basically a contract and the parties are governed by the stipulations in the contract and when they have signed the contract of insurance knowing the postulates engrafted therein, they cannot raise the plea of unfairness. That apart, if the anatomy of the policy is scrutinized in proper perspective, it is not remotely suggestive of any kind of unfairness and does not smack of arbitrariness inasmuch as there is a proper classification with regard to the payment of the sum assured in case of other categories of policy holder and the beneficiaries under "Jeevan Kishor Policy". The learned Counsel have commended us to certain literatures, citations and circumstances which we shall dwell upon at a later stage of the order.

13. Per contra, the learned Counsel for the Respondents would support the order passed by the learned Single Judge contending, inter alia, that the life insurance policy stands in contradistinction to other categories of policy and once the premium is paid, it is obligatory and incumbent on the part of the Corporation to make good the assured sum and it cannot impede the payability on the ground that there is a stipulation of deferred date. It is propounded by them that the prescription of the deferred date ushers in such a classification which is impermissible and unacceptable as it causes discomfort to Article 14 of the Constitution. Quite apart from the above, it is their submission that life has to be understood in the backdrop of Article 21 of the Constitution of India and on a keener understanding, this kind of condition is absolutely onerous and does not stand the test of the summum bonum principle of life inherent under Article 21 of the Constitution of India.

14. To appreciate the rivalised submissions raised at the Bar, we may refer with profit to the decision in LIC of India and Another Vs. Consumer Education and Research center and Others, wherein the Life Insurance Corporation had confined the benefit of availing the policy to salaried class from government,

semi-government or reputed commercial firms and not to other categories of people. The conditions imposed and denial to accept the policies were assailed before the High Court as arbitrary and discriminatory violating Articles 14, 19(1)(g) and right to life in Article 21 of the Constitution. The High Court declared part of the conditions as valid and the other part, namely, that the proposals for assurance under the plan would be entertained only from persons in government or quasi government organization or a reputed commercial firm which can furnish details of leave taken during the preceding year under Table 58 as subversive of the equality clause and, therefore, constitutionally invalid. The Corporation challenged the said decision and the affected persons also filed cross-appeals. It was contended before the Apex Court that on acceptance of the proposals by themselves in life insurance business, the policy holder gets rights in the policy and as the policy of the Respondents was rejected, they have no right whatsoever and no legal right remained to be enforced under Article 226 of the Constitution. It was further contended that they cannot use judicial process to create rights in their favour unless a binding contract emerged by acceptance of the proposal of the insurance and acted upon. It was also highlighted that the life insurance policies are framed on actuarial consideration and worked out as per the needs of the policy to suit the interests of all those interested in obtaining a particular policy and their viability and hence, the High Court was not justified in interfering with matters based on economic criteria and commercial contracts. The said contention was resisted on the foundation that they were contrary to Article 25 of the Declaration of Human Rights, Article 7 of the International Covenant on Economic and Social Rights and the provision of Part III and also the Directive Principles of State policy. It was also contended that as the corporation is doing life insurance business, its policy must be in conformity with the rights in Part III of the Constitution and the policies engrafted under Part IV and it has no power to impose any unconstitutional conditions in the contract and no classification much less valid classification has been made between salaried persons, government, semi-government, organized sectors or reputed commercial organizations on the one hand and others on the other hand.

15. The Apex Court addressed itself keeping in view the larger public interest and the life insurance policy based on actuarial tables and the policy holder''s needs and after referring to the various Tables, reports of the Committee and the decisions in D.S. Nakara and Others Vs. Union of India (UOI), C.E.S.C. Limited and Others Vs. Subhash Chandra Bose and Others, Consumer Education & Research Centre v. Union of India JT (1995) 1 (SC) 637 and Regional Director, ESI Corporation v. Francis De Costa 1993 Supp (4) SCC 100, expressed thus:

18. It would thus be well settled law that the Preamble Chapter of Fundamental Rights and Directive Principles accord right to livelihood as a meaningful life, social security and disablement benefits are integral schemes of socio-economic justice to the people in particular to the middle class and lower middle class and all offendable people. Life insurance coverage is against disablement or in the event of death of

the insured economic support for the dependents, social security to livelihood to the insured or the dependants. The appropriate life insurance policy within the paying capacity and means of the insured to pay premia is one of the social security measures envisaged under the Constitution to make right to life meaningful, worth living and right to livelihood a means for sustenance.

Thereafter, their Lordships dealt with the contention whether the policy can be restricted to a particular class and whether the issue could be addressed before there was a concluding contract between the parties and in that regard opined thus -

20. It is true that life insurance business as defined u/s 2(11) of the Insurance Act, 1938, is business of effecting contracts of insurance upon human life, including any contract whereby the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, and any contract which subject to payment of premiums for a term dependent on human life including those enumerated in Clauses (a) to (c) thereof. Thereby, the contract of insurance is hedged with bilateral agreement on human life upon payment of premia subject to the covenants contained thereunder. But as stated earlier, is the insurer entitled to impose unconstitutional conditions including that which denied the right of entering into the contract, limiting only to a class of persons under a particular policy? We make it clear at this juncture that the insurer is free to evolve a policy based on business principles and conditions before floating the policy to the general public offering on insurance of the life of the insured but as seen earlier, the insurance being a social security measure, it should be consistent with the constitutional animation and conscience of socio-economic justice adumbrated in the Constitution as elucidated hereinbefore."

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23. Every action of the public authority or the person acting in public interest or its acts give rise to public element, should be guided by public interest. It is the exercise of the public power or action hedged with public element becomes open to challenge. If it is shown that the exercise of the power is arbitrary unjust and unfair, it should be no answer for the State, its instrumentality, public authority or person whose acts have the insignia of public element to say that their actions are in the field of private law and they are free to prescribe any conditions or limitations in their actions as private citizens, simpliciter, do in the field of private law. Its actions must be based on some rational and relevant principles. It must not be guided by irrational or irrelevant considerations. Every administrative decision must be hedged by reasons. The Administrative Law by Wade, 5th Ed. at p.513 in Chapter 16, Part IV dealing with remedies and liabilities, stated thus:

Until a short time ago anomalies used to be caused by the fact that the remedies employed in Administrative Law belong to two different families. There is the family

of ordinary private law remedies such as damages, injunction and declaration and there is a special family of public law remedies particularly Certiorari, Prohibition and Mandamus, collectively known as prerogative remedies. Within each family, the various remedies can be sought separately or together or in the alternative. But each family had its own distinct procedure.

At page 514 it was elaborated that "this difficulty was removed in 1977 by the provision of a comprehensive, "application for judicial review", under which remedies in both facilities became interchangeable." At page 573 with the heading "Application for Judicial Review" in Chapter 17, it is stated thus:

All the remedies mentioned are then made interchangeable by being made available "as an alternative or in addition" to any of them. In addition the Court may award damages, if they are claimed at the outset and if they could have been awarded in an ordinary action.

The distinction between private law and public law remedy is now settled by this Court in Life Insurance Corporation of India Vs. Escorts Ltd. and Others, , by a Constitution Bench thus.

If the action of the State is related to contractual obligation or obligations arising out of the Court (contract sic) the Court may not ordinarily examine unless the action has some public law character attached to it. The Court will examine actions of State if they pertain to the public law domain and refrain from examining them if they pertain to the private law field. The difficulty will lie in demarcating the frontier between the public law domain and the private law field. This is impossible to draw the line with procession and we do not want to attempt it. The question must be decided in each case with reference to the particular action, the activity in which the State or the instrumentality of the State is engaged when performing the action, the public law or private law character of the action and a host of other relevant circumstances.

[Underlining is ours]

Thereafter, their Lordships proceeded to deal with the concept of classification and noted the submissions of the learned Counsel for the corporation in paragraph 29 and came to hold thus -

29. ...The classification based on employment in government, semi-government and reputed commercial firms has the insidious and inevitable effect of excluding lives in vast rural and urban areas engaged in unorganised or self-employed sectors to have life insurance offending Article 14 of the Constitution and socio-economic justice.

[Emphasis added]

After so stating, the Apex Court proceeded to state as follows:

31. An unfair and untenable or irrational clause in a contract is also unjust amenable to judicial review. In common law a party was relieved from such contract. In Gillespie Brothers & Co. Ltd. v. Roy Bowles Transport Ltd. (1973) 1 Q.B. 400, Lord Denning for the first time construing the indemnity clause in a contract stated that the court to permit party to enforce his unreasonable clause, even when it is so unreasonable, or applied so unreasonably, would be unconscionable, it was stated:

When it gets to this point, I would say, as I said many years ago. There is the vigilance of the common law which while allowing freedom of contract, watches to see that it is not abused. It will not allow a party to exempt himself from his liability at common law when it would be quite unconscionable for him to do so." In Lloyds Bank Ltd. v. Bundy (1974) 3 All ER 757, inequality of the bargaining power was enunciated by Lord Denning M.R., and held that one who enters into a contract on terms which are very unfair or transfers property for a consideration which is grossly inadequate when his bargaining power is grievously impaired by reason of his own needs or desires, or by his own ignorance or infirmity...the one who stipulates for an unfair advantage may be moved solely by his own self-interest, unconscious of the distress he is bringing to the other.... One who is in extreme need may knowingly consent to a most improvident bargain, solely to relieve the strains in which he finds himself. It would not be meant to suggest that every transaction is saved by independent advice. But the absence of it may be fatal. In A. Schroeder Music Publishing Co. Ltd. v. Macaulay (Formerly Instone) (1974) 1 W.L.R. 1308, House of Lords considered and held that a party to a contract would be relieved from the terms of the contract. In the course of his speech learned Lord Deplock outlined the theory of unreasonableness or unfairness of the bargain to relieve a party from the contract when the relative bargaining power of the parities was not equal. In that case the song writer had contracted with the publisher the terms more onerous to him and favourable to the publisher. The song writer was relieved from the bargain of the contract on the theory of restraint trade opposed to public policy. The distinction was made even in respect of standard forms of contract emphasising that when the parties in a commercial transaction having equal bargaining power have adopted the standard form of contract, it was intended to be binding on the parties. The court would not relieve the party from such a contract but the contracts are between the parties to it, or approved by any organisation representing the interests of the weaker party, they have been directed by that party whose bargaining power, either exercised alone or in conjunction with others providing similar goods or services, enables him to say: "If you want these goods or services at all, these are the only terms on which they are obtainable. Take it or leave it." In Levision v. Steam Carpet Co. Ltd. (1978) 1 Q.B. 69, Lord Denning M.R. reiterated the unreasonable clause in the contract would be applied to the standard form of contract where there was inequality of bargaining power. In Photo Production Ltd. v. Securicor Transport Ltd. 1980 A.C. 827, considering the Unfair Contract Terms Act, 1977, Lord Wilberforce during the course of his speech

emphasised the unequal bargaining power as an invalidating factor upheld the contract in that case since it was commercial bargain between two competent party to enter into a contract on equal bargaining power. Lord Deplock also reiterated his earlier view. Lord Scarman agreeing with Lord Wilberforce described that a commercial dispute between the parties well able to look after themselves, in such a situation what the parties have agreed expressly or impliedly is what matters, and the duty of the courts is to construe their contract according to their tenor. It was held that in that case that parties have equal bargaining power and intervention of the court to relieve the party from the contract was not called for. The Civil Code of Germany in Section 138(2), thereof release a person from the contract when the party has no equal bargaining power.

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40. It is, therefore, the settled law that if a contract or a clause in a contract is found unreasonable or unfair or irrational one must look to the relative bargaining power of the contracting parties. In dotted line contracts there would be no occasion for a weaker party to bargain or to assume to have equal bargaining power. He has either to accept or leave the services or goods in terms of the dotted line contract. His option would be either to accept the unreasonable or unfair terms or forego the service forever. With a view to have the services of the goods, the party enters into a contract with unreasonable or unfair terms contained therein and he would be left with no option but to sign the contract.

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46. We have, therefore, no hesitation to hold that in issuing a general life insurance policy of any type, public element is inherent in prescription of terms and conditions therein. The Appellants or any person or authority in the field of insurance owe a public duty to evolve their policies subject to such reasonable, just and fair terms and conditions accessible to all the segments of the society for insuring the lives of eligible persons. The eligibility conditions must be conformable to the Preamble, fundamental rights and the directive principles of the Constitution. The term policy under Table 58 is declared to be accessible and beneficial to the large segments of the Indian society. The rates of premium must also be reasonable and accessible. Accordingly, we hold that the declaration given by the High Court is not vitiated by any manifest error of law warranting interference. It may be made clear that with a view to make the policy viable and easily available to the general public, it may be open to the Appellants to revise the premium in the light of the law declared in this judgment but it must not be arbitrary, unjust, excessive and oppressive. Both the appeals are accordingly dismissed but in the circumstances parties are directed to bear their own costs."

[Emphasis supplied]

16. In The The United India Insurance Co. Ltd. Vs. M.K.J. Corporation, , it has been held by the Apex Court that it is a fundamental principle of insurance law that utmost faith must be observed by the contracting parties and further good faith forbids either party from non-disclosure of the facts which the party privately knows, to draw the other into a bargain, from his ignorance of fact and his believing the contrary. It has been so held because insurance is a contract of speculation.

17. In Pradeep Kumar Jain Vs. Citibank and Another, the Apex Court distinguished a case of general insurance from that of life insurance. In that context, their Lordships have stated that in case of life insurance policy, certain sum is agreed to be paid by the insurance company in the event of the death of the insured or a contingency arising as indicated in the policy. The obligation is then on the insured to pay the premium periodically and there is no other obligation cast upon him. The same is not the situation in case of insurance relating to motor vehicle.

18. In Life Insurance Corporation of India and Others Vs. Smt. Asha Goel and Another, it has been held thus:

...The contracts of insurance including the contract of life assurance are contracts uberrima fides and every fact of material (sic material fact) must be disclosed, otherwise, there is good ground for rescission of the contract. The duty to disclose material facts continues right up to the conclusion of the contract and also implies any material alteration in the character of the risk which may take place between the proposal and its acceptance. If there are any misstatements or suppression of material facts, the policy can be called into question. For determination of the question whether there has been suppression of any material facts it may be necessary to also examine whether the suppression relates to a fact which is in the exclusive knowledge of the person intending to take the policy and it could not be ascertained by reasonable enquiry by a prudent person.

19. In New India Assurance Co. Ltd. Vs. Harshadbhai Amrutbhai Modhiya and Another, the Apex Court was dealing with the issue whether the interest is payable by an insurer while indemnifying the insured amount of compensation awarded against him under the Workmen''s Compensation Act, 1923. S.B. Sinha, J. referred to Section 12 of the Act which provides for the mode and manner of payment of compensation by a principal employer and/or his contractor. Thereafter, his Lordship referred to Section 17 of the Act which nullifies contracting out. In that context, his Lordship stated that an employer is not statutorily liable to enter into a contract of insurance. Where, however, a contract of insurance is entered into by and between the employer and the insurer, the insurer shall be liable to indemnify the employer. The insurer, however, unlike under the provisions of the Motor Vehicles Act, does not have a statutory liability. Section 17 of the Act does not provide for any restriction in the matter of contracting out by the employer vis-�-vis the insurer. Further, the terms of a contract of insurance would depend upon the volition of the parties. A contract of insurance is governed by the provisions of the

Insurance Act. In terms of the provisions of the Insurance Act, an insured is bound to pay premium which is to be calculated in the manner provided for therein. With a view to minimise his liability, an employer can contract out so as to make the insurer not liable as regards indemnifying him in relation to certain matters which do not strictly arise out of the mandatory provisions of any statute. Contracting out, as regards payment of interest by an employer, therefore, is not prohibited in law. In the said decision, it has been further held that a contract of insurance is governed by the provisions of the Insurance Act. Unless the said contract is governed by the provisions of a statute, the parties are free to enter into a contract as per their own volition. Where a statute does not provide for a compulsory insurance or the extent thereof, it will bear repetition to state that the parties are free to choose their own terms of contract and, therefore, contracting out so far as reimbursement of the amount of interest is concerned is permissible not being prohibited by the statute.

20. In this context, we may refer to the decision in P.J. Narayan Vs. Union of India (UOI) and Others, A writ petition was filed under Article 32 of the Constitution of India for issuance of a direction to the insurance company to delete the clause in the insurance policy which provides that in cases of compensation under the Workmen''s Compensation Act, 1923, the insurance company will not be liable to pay interest. Their Lordships, dealing with the said issue, expressed the view in the following terms-

We see no substance in the writ petition. There is no statutory liability on the insurance company. The statutory liability under the Workmen''s Compensation Act is on the employer. An insurance is a matter of contract between the insurance company and the insured. It is always open to the insurance company to refuse to insure. Similarly, they are entitled to provide by contract that they will not take on liability for interest. In the absence of any statute to that effect, insurance companies cannot be forced by courts to take on liabilities which they do not want to take on.

21. In Noble Resources Ltd. Vs. State of Orissa and Another, while dealing with the State action on the touchstone of Article 14 of the Constitution of India, their Lordships have opined that if an action on the part of the State is violative of the equality clause contained in Article 14 of the Constitution of India, a writ petition would be maintainable even in the contractual field. A distinction indisputably must be made between a matter which is at the threshold of a contract by selecting a party and a breach thereof; whereas in the former, the court''s scrutiny would be more intrusive, in the latter, the court may not ordinarily exercise its discretionary jurisdiction of judicial review unless it is found to be violative of Article 14 of the Constitution. While exercising contractual powers also, the government bodies may be subjected to judicial review in order to prevent arbitrariness or favouritism on their part. The State action has to be just, fair and reasonable in all their activities including those in the field of contracts.

22. In P.C. Chacko and Another Vs. Chairman, Life Insurance Corporation of India and Others, , a two Judge Bench has opined thus:

We are not unmindful of the fact that Life Insurance Corporation being a State within the meaning of Article 12 of the Constitution of India, its action must be fair, just and equitable but the same would not mean that it shall be asked to make a charity of public money, although the contract of insurance is found to be vitiated by reason of an act of the insured. This is not a case where the contract of insurance or a clause thereof is unreasonable, unfair or irrational which could make the court carry the bargaining powers of the contracting parties. It is also not the case of the Appellants that in framing the aforesaid questionnaire in the application/proposal form, the Respondents had acted unjustifiably or the conditions imposed are unconstitutional.

23. In United India Insurance Company Limited Vs. Manubhai Dharmasinhbhai Gajera and Others, , the question arose with regard to the role of the Court as regards treating a particular clause in a contract as unconscionable or unfair. In that regard, it has been stated thus-

34. We have, despite the new economic policy of the Centre, no option but to proceed on the assumption that the public sector insurance companies being State have a different role to play. It is not to say that as a matter of policy, statutory or otherwise, the insurance companies are bound to regulate all contracts of insurance having the statement of directive principles in mind but there cannot be any doubt whatsoever that fairness or reasonableness on the part of the insurance companies must appear in all of its dealings.

35. The Authority wants the insurance companies to offer a fair deal and all the terms and conditions of their offer must be transparent. There should not be any hidden agenda. Even they should not take recourse to "ticketing contract". When, however, the terms of the new product or revised product require the approval of the Authority, prima facie, the same would mean that they are fair and reasonable. The action on the part of the Authority is not in question. Regulations, guidelines and circulars are binding on the insurance companies. [See State of Kerala and Others Vs. Kurian Abraham Pvt. Ltd. and Another,

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47. Existence of the jurisdiction of the superior courts of India upon invoking Article 14 of the Constitution as also Section 23 of the Contract Act to strike down a clause in the contract which the court feels to be unconscionable having regard to the equal (sic unequal) bargaining power of the parties is not in question, but the said provisions would have no application for the purpose of modifications, alterations or additions of a term in the contract. There cannot furthermore be any doubt whatsoever that each case must be considered on its own facts which would obviously lead to the conclusion that by reason thereof the court shall not read into

the contract an automatic renewal clause in a contract of insurance if there does not exist any.

24. From the aforesaid decisions, the principles that are culled out are that every action of the State or public authority or the person whose action involves public element should primarily be guided by public interest; that though the insurer is free to evolve a policy based on business principles, yet the insurance being a social security measure, it should be consistent with the constitutional animation and conscience of socio-economic justice enshrined in the Constitution of India; that there is a distinction between the frontiers of the public law domain and the private law field; that an unfair and untenable or irrational clause in a contract is amenable to judicial review; that there are distinctive features between general insurance and life insurance inasmuch as in case of life insurance policy, certain sum is agreed to be paid by the insurance company in the event of the death of the insured or a contingency arising as indicated in the policy and the only obligation of the insured is to pay the premium; that where a statute does not provide for a compulsory insurance, the parties are free to choose their own terms of contract; that in the absence of any statutory liability, the insurance company cannot be forced by courts to take on liabilities which they do not want to take on; that if the action of the State is violative of the equality clause contained in Article 14 of the Constitution of India, a writ petition would be maintainable in the contractual field; that the State and its authorities including the instrumentalities of the State have to show justness, fairness and reasonableness in all their activities in the field of contract, otherwise they invite discomfort to Article 14 of the Constitution of India; that the jurisdiction of the superior court can be invoked under Article 14 of the Constitution of India as also Section 23 of the Contract Act to strike down a clause in the contract which the court feels to be unconscionable having regard to the unequal bargaining powers of the parties; and that the contract of insurance is fundamentally based on faith and are contracts of uberrima fides.

25. Regard being had to the principles that have been spelt out, it is to be scrutinized whether the condition stipulated in the policy, the contract of insurance, is discriminatory inasmuch as the classification made by the Corporation is invidious and defies the concept of classification. In this context, we may refer with profit to a three-Judge Bench decision in Video Electronics Pvt. Ltd. and Another and Weston Electronics Ltd. and Another Vs. State of Punjab and Another, , wherein it has been held as follows:

24. Discrimination implies an unfair classification. Reference may be made to the observations of this Court in Kathi Raning Rawat Vs. The State of Saurashtra, where Chief Justice Shastri at p. 442 (of SCR): (at pp. 443-44 of AIR) of the report reiterated that all legislative differentiation is not necessarily discriminatory. At p.448 (of SCR): (at pp. 127-28 of AIR) of the report, Justice Fazal Ali noticed the distinction between ''discrimination without reason'' and ''discrimination with reason''. The whole

doctrine of classification is based on this and on the well-known fact that the circumstances covering one set of provisions or objects may not necessarily be the same as these covering another set of provisions and objects so that the question of unequal treatment does not arise as between the provisions covered by different sets of circumstances.

26. In this regard, it would not be out of place to refer to the concept of classification as laid down in the locus classicus, i.e., Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others, In the said decision, the Apex Court laid down many a principle pertaining to class legislation and also the presumption of constitutionality. Looking at the role of a Court while dealing with the presumption of constitutionality, the two principles which are relevant for the present purpose are reproduced below:

(e) that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of times and may assume every state of facts which can be conceived existing at the time of legislation; and

(f) that while good faith and knowledge of the existing conditions on the part of a Legislature are to be resumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the Court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation.

27. In Madhya Pradesh Ration Vikreta Sangh Society and Others Vs. State of Madhya Pradesh and Another, , the question that arose before the Apex Court was whether the Madhya Pradesh Foodstuffs (Civil Supplies Public Distribution) Scheme, 1981 formulated by the State Government under Sub-clause (d) of Clause (2) of the Madhya Pradesh Foodstuffs (Distribution) Control Order, 1960 introducing a new scheme for running of individual fair price shops by agents to be appointed under a Government scheme giving preference to cooperative societies in replacement of the earlier scheme of running such fair price shops through retail dealers appointed under Clause 3 of the Order of 1960 was violative of Articles 14 and 19(1)(g) of the Constitution of India. In that context, their Lordships referred to the decision in Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, which has laid down the principle that if a governmental action disclosed arbitrariness, it would be liable to be invalidated as offending Article 14 of the Constitution, but taking into consideration the wider concept, their Lordships held as follows:

The wider concept of equality before the law and the equal protection of laws is that there shall be equality among equals. Even among equals there can be unequal

treatment based on an intelligible differentia having a rational relation to the objects sought to be achieved. Consumers'' cooperative societies form a distinct class by themselves. Benefits and concessions granted to them ultimately benefit persons of small means and promote social justice in accordance with the directive principles. There is an intelligible differentia between the retail dealers who are nothing but traders and consumers'' cooperative societies. The position would have been different if there was a monopoly created in favour of the later. The scheme only envisages a rule of preference. The formulation of the scheme does not exclude the retail traders from making an application for appointment as agents.

28. In National Council for Teacher Education and Others Vs. Shri Shyam Shiksha Prashikshan Sansthan and Others etc. etc., the Apex Court has opined thus:

16. Article 14 forbids class legislation but permits reasonable classification provided that it is founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and the differentia has a rational nexus to the object sought to be achieved by the legislation in question.

29. It is worth noting that in the aforesaid case, reliance was placed upon in Re the Special Courts Bill, In Re: The Special Courts Bill, 1978, wherein Chandrachud, C.J., speaking for majority of the Court, adverted to large number of judicial precedents involving interpretation of Article 14 and culled out several propositions. The relevant propositions which are required to be stated for the present case are as follows:

(3) The constitutional command to the State to afford equal protection of its laws sets a goal not attainable by the invention and application of a precise formula. Therefore, classification need not be constituted by an exact or scientific exclusion or inclusion of persons or things. The courts should not insist on delusive exactness or apply doctrinaire tests for determining the validity of classification in any given case. Classification is justified if it is not palpably arbitrary.

(4) The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is substantially the same.

(5) By the process of classification, the State has the power of determining who should be regarded as a class for purposes of legislation and in relation to a law enacted on a particular subject. This power, no doubt, in some degree is likely to produce some inequality; but if a law deals with the liberties of a number of well

defined classes, it is not open to the charge of denial of equal protection on the ground that it has no application to other persons. Classification thus means segregation in classes which have a systematic relation, usually found in common properties and characteristics. It postulates a rational basis and does not mean herding together of certain persons and classes arbitrarily.

(6) The law can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience. It can recognize even degree of evil, but the classification should never be arbitrary, artificial or evasive.

(7) The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act.

30. In Transport and Dock Workers Union and Ors. v. Mumbai Port Trust and Anr. 2011 AIR SCW 220, it has been opined thus:

21. It has been repeatedly held by this Court that Article 14 does not prohibit reasonable classification for the purpose of legislation or for the purposes of adoption of a policy of the legislature or the executive, provided the policy takes care to reasonably classify persons for achieving the purpose of the policy and it deals equally with all persons belonging to a well defined class. It is not open to the charge of denial of equal protection on the ground that the new policy does not apply to other persons. In order, however, to pass the test of permissible classification, as has been laid down by the Supreme Court in the catena of its decisions, two conditions must be fulfilled; (1) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (2) that the differentia must have a rational relation to the object ought to be achieved by the statute in question, vide Gopi Chand Vs. The Delhi Administration, (see also Basu''s ''shorter Constitution of India, fourteenth edition 2009 page 81).

22. Thus the classification would not violate the equality provision contained in Article 14 of the Constitution if it has a rational or reasonable basis.

31. In Narmada Bachao Andolan Vs. State of Madhya Pradesh and Another, it has been held as follows:

66. Unequals cannot claim equality. In Madhu Kishwar and others Vs. State of Bihar and others, , it has been held by this Court that every instance of discrimination

does not necessarily fall within the ambit of Article 14 of the Constitution.

67. Discrimination means an unjust, an unfair action in favour of one and against another. It involves an element of intentional and purposeful differentiation and further an element of unfavourable bias; an unfair classification. Discrimination under Article 14 of the Constitution must be conscious and not accidental discrimination that arises from oversight which the State is ready to rectify....

32. Keeping in view the aforesaid pronouncements, it is to be scanned whether the stipulation of "deferred date" is unjust and unfair and by providing such a date, an unreasonable classification has been made between two categories of policy holders, namely, the policy holders after a particular age and also period and the policy takers who breathe their last prior to the said period.

33. The special provision No. 2 which we have reproduced hereinbefore stipulates that if the death of the insured occurs within a period of two years of the commencement of policy, only the premium paid till that date would be payable and nothing more. The deferred date has been mentioned in the policy as 14.10.1996. Thus, the submission of the learned Counsel for the Appellant is that the stipulation of deferred date in the policy is neither unfair nor unjust nor unreasonable. It cannot be regarded as an unconscionable clause in the contract of insurance which plays foul of Article 14 of the Constitution of India. It is urged that in the case of a child, it is not possible to obtain any medical report or special report which would indicate the expected mortality in respect of life. The medical examination is unlikely to reveal an authentic and reliable insight into the status of health of a child. It is urged by him that the Corporation has to deal with the risk and uncertainty based on actuarial presumptions and assumptions while undertaking the risks and carving out exceptions and exclusions. It is canvassed by him that there is no legal compulsion on anyone to effect an insurance policy, if the terms and conditions are not acceptable to him.

34. At this juncture, we may note with profit that in the case of Consumer Education and Research Centre and Ors. (supra), the Life Insurance Corporation had confined the benefit of availing the policy to salaried class from government, semi-government or reputed commercial firms and it was not available to other categories of people. In that context, the Apex Court held that though the insurer is free to evolve a policy based on business principles and conditions, yet it has to be consistent with the constitutional philosophy and the conscience of socio-economic justice. Their Lordships further opined that the classification based on employment is insidious and has the inevitable effect of excluding lives in vast rural and urban areas engaged in unorganized or self-employed sectors which offends Article 14 of the Constituion of India. It has also been ruled in the said case that a duty is cast on the Corporation to lay down stipulations in a policy which are reasonable, just and fair and the terms and conditions should be accessible to all the segments of the society for insuring the lives of eligible persons and the eligibility conditions must be

comfortable to the preamble, fundamental rights and directive principles of the Constitution. In the case at hand, there is no stipulation by which any particular category or categories of persons have been excluded. It is contended that the Corporation has several Children''s Deferred Assurance policies intended to meet different needs, requirements with different rates of premium and the policies varying deferred dates for commencement of coverage of risk of death thereunder. Jeevan Kishor Policy (Plan 102) can be proposed by parents of children between ages 1 to 12 years. The risk cover commences from the policy anniversary after attaining the age of seven years or on expiry of a period of two years from the commencement of the policy, whichever is later. The deferred assurance policies have lower rates of premium as there is an initial "claim free" period. At the commencement of the policy, the rate of premium is lower and the said rate remains constant throughout the entire term of the policy which may extend to 35 years. As is perceptible from the analysis of the learned Single Judge, he has compared the figures of actual claims under Jeevan Kishor Policies for the years 1999-2000, 2000-2001 and 2001-2002 in respect of children in the age group of 11 years with those of the other age groups upto 15 years and expressed the view that the clause is unfair. We think it appropriate to reproduce the said paragraph of the order of the learned Single Judge:

10. In a further additional affidavit filed by the LIC on 28th April 2003, the information relating to number of Jeevan Kishor Policies issued from 1990-1991 to 2001-2002 including the ages of the victims have been given. Given the large number of Jeevan Kishor Policies issued [which stood at 471000 as of 2001-02], the actual claims in respect of children in the age group of eleven years for the years 1999-2000, 2000-2001 and 2001-2002 are 39, 55 and 53 respectively. The figures are comparable for other age groups upto 15 years. By no means can it be argued that there will be far too many claims against the LIC if the "deferred date" clause is not incorporated. Given the number of claims being made on a yearly basis on account of the deaths of children under the Jeevan Kishor Policy, this Court holds that the LIC is not acting fairly or reasonably in insisting that no claim will be entertained for two years after the commencement of the policy.

35. Thus, the learned Single Judge has been guided by the number of claims. The basic concept, as is understood, pertains to a different area. The fact of the matter is that the medical report of the children do not provide reliable guide to future expected mortality and that is the reason for no medical examination. The deferred payment for commencement of the risk or waiting period of two years has been postulated. It may bear repetition that the child is not medically examined. It is also seen that the rates in the Tables for the policies with deferred dates are lower than those which are without deferred dates. This is fundamentally an anticipated policy for the children. It is not a case where a clause is incorporated in the contract where the bargaining powers of the contracted parties are different. It is a policy available for a child on a deferred date basis.

36. The learned senior counsel for the Appellant has brought to our notice the Child Life Insurance Policy which we think it appropriate to reproduce in entirety:

As the name suggests, child insurance policy or children plans means an insurance policy on the lives of children, who are not majors. Since the age of child is below 18 years, the proposal will have to be made by a parent or a guardian.

One of the advantages of child insurance plans is that the premium which will be considered at the commencement of the policy is relatively lower because of the young age. Usually, a child insurance plan can be purchased when the child is 3 months old (or 91 days of age). However, the risk cover on the life of the insured child will commence only when the child attains a specified age. This clause is according to the rules of IRDA (Insurance Regulatory and Development Authority). Such a time gap between the date of commencement of the insurance policy and the commencement of the risk is called the "Deferment period". The date, on which the risk will commence, at the end of the deferment period is called the "Deferred Date".

Let us explain the basic concept of a child plan with Ranjan''s example. He is 27 years old, married with a 2-year old daughter. He purchases a child plan for his daughter Sameera. Ranjan has now covered his daughter under the child insurance plan but her life cover doesn''t start till she is 7 years old. However, the plan continues as usual and no mortality charge is deducted till Sameera reaches 7 years of age; this is because her life cover doesn''t start till such time. The day her life cover starts, i.e. the first policy anniversary after her 7th birthday, is called the Deferred Date. From this day onwards the life cover of the child Sameera starts, i.e. if she dies after the deferred date her family would get the entire sum assured. But if she had died before the deferred date, her family would only get back the premiums paid and no sum assured would be payable. When Sameera attains 18 years of age or any later date as may be chosen, the title of the policy automatically passes on to her name. This process is called as Vesting. Therefore, the day on which the policy contract is transferred from Ranjan to Sameera, i.e. the first policy anniversary after her 18th birthday, is called the Vesting Date. After vesting, the insurance policy becomes a contract between the insurance company and Sameera.

This life insurance policy covers the risk of the child''s life. This is a distinctive plan as the entire amount payable gets transferred in the name of the child once he/ she is 18 years old. Thus it becomes a big asset for the child''s future to take care of various financial commitments and pursue higher education, professional courses, develop skill sets, travel places, plan other investments and many others.

37. At this juncture, we may note a submission of the learned senior counsel for the Appellant that there is a statutory regulatory mechanism, namely, the Insurance Regulatory and Development Authority (IRDA) under the Insurance Regulatory and Development Act, 1999. An obligation is cast on the regulatory body to regulate,

promote and ensure orderly growth of the insurance business and reinsurance business. Section 14(2) of the Act enumerates the powers and the functions of the authority. No insurance policy can be introduced in the market or be modified without prior scrutiny and approval of IRDA. The deferred date policies for children issued by the LIC have been approved by IRDA. The same has been based on actuarial and economic policies. It is also worth noting that there are deferred term policies in Canada and in advanced countries like United Kingdom, life insurance is not available for those below the age of 16 years. We have referred to these aspects only to appreciate the nature of the policy, the bargaining power and the international phenomenon. A policy of life insurance is a question of bonafides and faith. The present policy, as is perceived, does not exclude anyone to have such a policy for a child. In Consumer Education and Research Centre and Ors. (supra), their Lordships have held that the policy in issue excluded certain categories of persons as a consequence of which it defied the constitutional animation and conscience. In the case at hand, it is not a case of exclusion.

38. It is urged by Mr. Tiku, learned senior counsel for the Respondents that in case of policies under the contract of life insurance and in other policies where a premium is being paid, the sum assured becomes due and there is no question of deferred date. In essence, the submission is that there is a classification between the policy holders who are not covered by the deferred date and certain other policy holders who come within the domain of the deferred date. The deferred date or the waiting period in a policy and in "Jeevan Kishor Policy" have the following four main features: (i) it is a policy which covers a child where the physical health and the medical examination is not done and it is also not possible to find out the predictability or anticipated certainty of life; (ii) the premium paid is much lower than the premium which is paid in the normal or other categories of life insurance policies; (iii) the policy is uniformly applicable to all children belonging to all stratum of society and it is not that parents belonging to more financially sound category can pay the premium and cover the risk of the child for the assured sum without the waiting period or avoid the deferred date; and (iv) the policy is fundamentally a protection for the child as eventually there is a concept of vesting after attaining the age of 18 years.

39. Judged on these parameters, we are unable to persuade ourselves to concur with the view expressed by the learned Single Judge that the action of the Corporation is unfair inasmuch as the incorporation of the "deferred date" in the special conditions of the policy does not appear to us as unfair, unreasonable or unconscionable. We may hasten to clarify that we have referred to the acceptance of the policy by the regulatory body only to appreciate the submission in proper perspective but we have adverted to the issue as indicated hereinbefore on the anvil and touchstone of Article 14 of the Constitution of India.

40. In view of the aforesaid premised reasons, we arrive at the irresistible conclusion that the conditions incorporated in the "Jeevan Kishor Policy" withstand nuanced judicial scrutiny and do not cause discomfort to Article 14 of the Constitution and consequently, the appeal is allowed and the order passed by the learned Single Judge is set aside. In the facts and circumstances of the case, there shall be no order as to costs.