

Delhi High Court

Vikas Gupta vs Uoi & Anr. on 15 February, 2012

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 15th February, 2012

+ W.P.(C) No.10323/2009

% VIKAS GUPTAPetitioner

Through: Mr. Pankaj Sinha, Adv.

Versus

UOI & ANR. Respondents

Through: Mr. B.V. Niren, CGSC

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

JUDGMENT

RAJIV SAHAI ENDLAW, J.

1. This writ petition filed in public interest seeks mandamus to the respondent Postal Life Insurance Directorate, Department of Posts, Government of India to keep the maximum sum assured for disabled persons at `5,00,000/-, at par with non-disabled persons and to reduce the premium for disabled persons by bringing it at par with that for non- disabled persons.

2. The case, as set out in the writ petition is that Postal Life Insurance Policy is issued by the respondents for the benefit of employees of Post and Telecommunication Department and other government employees; that the W.P.(C) No.10323/2009 Page 1 of 23 said Policy makes a distinction between disabled and non-disabled employees; whereas non-disabled employees can avail a maximum insurance of `5,00,000/-, the maximum sum insured for disabled employees is `1,00,000/- only; not only so, the disabled employees have to pay an extra premium also. The petitioner contends that the discrimination so meted out to the disabled employees is violative of Article 14 of the Constitution of India and the classification of the disabled and non-disabled employees in the matter of issuance of insurance policy is not based on any reasonable differentia and has no nexus with the purpose for which such insurance policies are issued. It is yet further contended that the same is violative of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 enacted in culmination of the decisions taken in the United Nations Convention on the Rights of Persons with Disabilities, to which India is a signatory.

3. Notice of the petition was issued. From time to time, assurance was meted out that the grievance in the writ petition was being looked into and appropriate steps shall be taken. On 06.01.2010 the counsel for the respondent informed that a decision had been taken in principle for providing the insurance cover at par with the non-disabled employees and a W.P.(C) No.10323/2009 Page 2 of 23 decision on the issue of additional premium will also be taken shortly thereafter. On 20.01.2010 the

learned Additional Solicitor General (ASG) appearing for the respondents placed on record a copy of the Notification dated 04.01.2010 issued by the Directorate of Postal Life Insurance to the effect that the maximum limit of insurance for disabled persons had been brought at par with non-disabled persons. Time was sought to obtain instructions on whether the disparity in the matter of payment of premium had been removed or not.

4. An affidavit dated 09.02.2010 was thereafter filed by the GM (PLI), Postal Life Insurance Directorate stating that some extra premium was charged from the persons with disability since disabled persons are more prone to accidental risks as compared to non-disabled persons. It was inter alia stated in the said affidavit:-

"5. That as regards the issue of extra premium it is submitted that the Insurance Policy is a contract between the insurer and the insured. It identifies the insured, the insuring company, risks covered, policy period and premium amount. The Insurance Policy is binding on both the insurer and insured. In the insurance business a pool is created through contributions made by persons seeking to protect themselves from common risk. W.P.(C) No.10323/2009 Page 3 of 23

Premium is collected by insurance companies which also act as trustee to the pool. Any loss to the insured in case of happening of an uncertain event is paid out of this pool. It works on the principle of risk sharing. Therefore prejudice would be caused to the normal insured persons in case of any casualty of the disabled persons. As disabled persons are more prone to accidental risks as compared to normal persons and the amount which is to be paid to the family of the deceased would be paid out of the same pool.

6. That the extra premium payable by the disabled person is marginally different from extra premium payable by normal persons as specified in Rule 14 of Post Office Life Insurance Fund. Also in case of LIC insurance, numerical loading of under-writing system is followed."

5. It was however the contention of the counsel for the petitioner that there was no empirical evidence to support such averment. The petitioner in response dated 08.03.2010 to the aforesaid affidavit of the respondents has inter alia stated as under:

"4. The extra premium clause has no scientific base nor can be justified by any legal enactment. On the contrary, such a stand alone stipulation for Persons with Disabilities in form of a special scheme in the Postal Life Insurance for Government W.P.(C) No.10323/2009 Page 4 of 23 employees is discriminatory, non-inclusive, unjust and violates principles of natural justice of equity and fairness and above

all it runs against the mandate of the Persons with Disability Act and the UN Convention on the Right of Persons with Disabilities that India is a proud signatory to. Further, it specifically violates Articles 3 and 25(e) of the United Nations Convention on the Rights of Persons with Disabilities (hereinafter referred to as UNCRPD).

5. That contents of para 5 are admitted to the extent that any loss to the insured in case of happening of an uncertain event is paid out of this pool and that it works on the Principle of risk sharing. However, it is strongly denied that prejudice would be caused to the normal insured persons in case of any casualty of the disabled persons as disabled persons are more prone to accidental risks as compared to normal persons and the amount which is to be paid to the family of the deceased would be paid out of the same pool. On the contrary, it is submitted that there is no empirical study or data to support or substantiate such a baseless, false & biased view which only reinforces the stereotypes about persons with disability and their proneness to accident. Therefore it is highly discriminatory hence, void in law and against the Constitution of India & UNCRPD. It is further submitted that right to equality and non-discrimination are inalienable rights which cannot be taken away by any contract."

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6. On 10.03.2010, the learned ASG again sought time to explain the basis for the charge of higher premium from persons with disability. Thereafter also from time to time, it was stated on behalf of the respondent that the matter of higher premium for the disabled persons was under consideration of the concerned authorities.

7. The respondents in yet another affidavit dated 01.02.2011 inter alia stated as under:

"3. That the Insurance Policy is a contract between the Insurer and the insured and is binding on both. That the Insurance business has a common pool created through contributions made by persons seeking to protect themselves from common risk. The premium is collected in furtherance of this objective according to different schemes for different category.

4. That regarding the extra premium demanded for the category of Disabled / differently abled persons, the extent of handicap differs from one person to another. Hence it has been decided that the premium shall be decided upon the health profile of the individual proponent".

8. The petitioner in response dated 24.05.2011 to the above has inter alia stated as under:

"4. It is further submitted that charging extra premium from employees with disabilities is a direct discrimination with them on the basis of disability which is in direct conflict with Article 2 of UNCRPD set out as under:

"Discrimination on the basis of disability" means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation;"

5. The justification of health profile put forward by the respondents is faulty for they seem to treat disability as a negative health profile. It is submitted that living with disability is distinct from suffering from a disease, while the respondent seem to consider both as synonymous. An employee with visual impairment or with hearing impairment or with neurological impairment also enjoys good health like anybody else. Therefore, an employee living with a disability will not mean W.P.(C) No.10323/2009 Page 7 of 23 that he / she is suffering from a disease and prone to life risks or susceptible to die pre-maturely. Such a conclusion on the part of respondent is illogical, arbitrary, have no empirical base and without any understanding of disability. Therefore, such a conclusion is required to be struck down.

6. It is further submitted that letter received from the LIC under RTI reveals that the LIC has the mortality rate (empirical data) for persons who have availed the insurance policies from the Corporation. However, LIC categorically states that it doesn't maintain separate data for handicapped category. This clearly shows that PLI is following the pattern which has been decided by LIC arbitrarily and without applying any sound mind."

9. On 28.09.2011, a categorical statement was made by the learned ASG (and as recorded in the order of that date) that no extra premium is collected from the differently abled persons. The respondent was asked to put the said stand on affidavit.

10. However in the affidavit dated 30.11.2011 filed in pursuance to above, it is stated:-

"3. That in view of the above submission made by the answering respondents and the direction of the Hon'ble Court, W.P.(C) No.10323/2009 Page 8 of 23 the deponent

herein submits that the "Post Office Life Insurance Rules - 2011", deals with the relevant schemes for healthy persons and physically handicapped persons. Rule 13 of the Post Office Life Insurance Rules provides for the medical schemes.

As per Rules 13, for the Postal Life Insurance Schemes for sum assured of more than ` 1 lakh and for Rural Postal Life Insurance Schemes with sum assured of ` 25,000/-, a proposer must undergo a medical examination by the prescribed medical authority and must be declared fit for such insurance by the said authority. The medical examination is done thoroughly to ensure that the proposer does not suffer from any adverse medical conditions.

4. Rule 14 deals with non-medical schemes of Postal Life Insurance. Any person whose age on next birthday does not exceed 35 years (with the exclusion of handicapped person) and whose insurance proposal has not been turned down by any insurance company operating in India may apply for non- medical policy with maximum sum assured of ` 1 lakh. In Rule 15, in Rural Postal Life Insurance any person whose age on next birthday does not exceed 35 years and who is eligible for Rural Postal Life Insurance (with the exclusion of handicapped person) and whose proposal has not been turned down by any insurance company operating in India may apply for non-medical insurance with maximum sum assured of ` 25,000/-. In case of W.P.(C) No.10323/2009 Page 9 of 23 non-medical policy of PLI and RPLI, a self declaration is taken from the proposer that he is medically fit at the time of proposal.

5. That physically handicapped persons are covered under Rule 17 of the Post Office Life Insurance Rules. As per Rule 17, physically handicapped persons are assured under the "Scheme for Physically Handicapped" and have to undergo a special medical examination in order to determine the exact nature and extent of their handicap and its bearing on the life insured. The said Rule covers both congenital and non-congenital handicaps and is complete scheme for all kinds of handicapped persons. The premium in respect of the policy taken under the scheme is determined by the accepting authority based on the report of the medical examination. A copy of the relevant provisions of the Post Office Life Insurance Rules - 2011 has been annexed herewith and marked as ANNEXURE -R1.

6. That the premium to be charged from proposer with any adverse medical history and physically handicapped persons is directly based on their physical condition as ascertained by the medical authorities under the Special medication examination undergone by the person concerned. Thus the distinction made between a healthy person and persons with adverse medical history and physically handicapped persons is absolutely reasonable and fair. It is imperative for the Medical authorities to determine the exact nature and extent of the handicap and its W.P.(C) No.10323/2009 Page 10 of 23 bearing on the life being insured as there is always the risk that the person may be suffering from a handicap due to which life risk is

increasing. This would in turn affect the life span adversely of the person concerned. Therefore, it is not only fair but also reasonable to have different premiums applicable to medically fit persons as opposed to persons with adverse medical history and physically handicapped persons."

11. We have heard the counsel for the parties. At the outset, we express our displeasure at the respondents, inspite of unequivocal statement made before this Court on 28.09.2011 to the effect that no extra premium is charged from the differently abled persons, upon being directed to file an affidavit in confirmation of the same, having turned turtle, falsifying not only the statement made before this Court but also purporting to justify the same.

12. The counsel for the petitioner has contended that a higher premium for life insurance cannot be claimed merely for the reason of the insured suffering from a disability, as is being done. It is argued that a disability does not per se shorten the life and thus affect the risk insured. To demonstrate the same, it is urged that a blind or a deaf or a dumb person has the same life expectancy as a person with sight, hearing and speaking W.P.(C) No.10323/2009 Page 11 of 23 ability. The discrimination is urged to be also in violation of the Disabilities Act and of the U.N. Convention aforesaid. Attention has been particularly invited to:

(i) Article 2 of the U.N. Convention (supra) defining "Discrimination on the basis of Disability" as any distinction, exclusion or restriction on the basis of disability having the effect of nullifying enjoyment on equal basis of human rights and as including all forms of discrimination;

(ii) Article 4 of the Convention whereunder the signatories thereto had undertaken to take all appropriate measures to abolish existing laws, regulations, practices constituting discrimination against persons with disability;

(iii) Article 25 of the Convention whereunder the signatories thereto had undertaken to prohibit discrimination against persons with disabilities in the provision of health insurance and life insurance where such insurance is permitted by national law and to provide such insurance in a fair and reasonable manner.

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13. The counsel for the petitioner has also contended that the respondent inspite of numerous opportunities has failed to place any data before this Court to demonstrate that life expectancy of a person with disability is less than that of a non-disabled person. He has also placed on record a plethora of other material in this regard.

14. Per contra, the counsel for the respondents has argued that the higher premium charged from the persons with disability is owing to assessment of their life status and not on account of disability and thus it is wrong to contend that there is any discrimination on account of disability.

15. However, a perusal of the Post Office Life Insurance Rules, 2011 notified on 28.04.2011 shows that Rules 14 & 15 thereof expressly exclude handicapped persons; Rule 17 thereof provides for "Scheme of PLI for Physically Handicapped Persons"; such persons are required to undergo a special medical examination to determine the exact nature and extent of their handicap and its bearing on the life being insured. Premium in respect of such policies is to be "determined by the accepting authority".
16. The "physically handicapped persons" are thus indeed being treated separately by the respondents and the respondents have in affidavits (supra) W.P.(C) No.10323/2009 Page 13 of 23 already admitted to charging higher premium from them justifying the same on the higher risk being insured.
17. The question which thus arises is whether in the matter of life insurance, such classification of persons with physical disability can be said to be discriminatory.
18. The Disabilities Act though in the Preamble thereof proclaims to have been enacted to ensure equality the people with disabilities but in Chapter VIII thereof titled "Non-Discrimination" only deals with non-discrimination in transport, non-discrimination on the road, non-discrimination in the built environment and non-discrimination in Government employment and does not provide for non-discrimination in the matter of insurance.
19. The counsel for the petitioner has referred to:-
- (a) State of Orissa v. Dr. Binapani Dei AIR 1967 SC 1269 - to contend that not only the judicial authorities but also the quasi judicial and administrative authorities are obliged to follow the requisites of Article 14 of the Constitution;
 - (b) Govind A. Mane v. State of Maharashtra (2000) 4 SCC 200 W.P.(C) No.10323/2009 Page 14 of 23 and Satyawati Sharma v. UOI AIR 2008 SC 3148 to contend that though Article 14 does not prohibit classification, the same must be founded on an intelligible differentia having a rational nexus to the object sought to be achieved - that the classification based on employees' / person's disability is neither reasonable nor has any rational nexus to the object sought to be achieved by the Policy;
 - (c) Dr. K.R. Lakshmanan v. State of Tamil Nadu AIR 1996 SC 1153 where the legislation was struck down for being violative of Article 14 of the Constitution;
 - (d) Transport Corporation of India v. Employees' State Insurance Corporation AIR 2000 SC 238 where the notification issued under the Employees' State Insurance Act, 1948 covering the main establishments in Andhra Pradesh was held to be applicable also to employees of the branch offices situated in Bombay;

(e) Zee Telefilms Ltd. v. UOI AIR 2005 SC 2677 to contend that the classification under the policy is not based on hard facts and is based on mere surmises; and W.P.(C) No.10323/2009 Page 15 of 23

(f) Superintendent, Central Prison, Fatehgarh v. Dr. Ram Manohar Lohia AIR 1960 SC 633 to contend that the instant policy is invalid in so far as it contravenes Article 14 by classifying the beneficiaries of the scheme based on physical disability.

20. We find that in the matter of insurance, the Apex Court in LIC of India v. Consumer Education and Research Centre (1995) 5 SCC 482 observed that authorities 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. It was further held that the eligibility conditions must be conformable to the Preamble, Fundamental Rights and the Directive Principles of the Constitution. The Supreme Court observed that, the Preamble, the arch of the Constitution, assures socio-economic justice to all the Indian citizens in matters of equality of status and of opportunity with assurance to dignity of the individual; Article 14 provides equality before law and its equal protection; Article 19 assures freedom with right to residence and settlement in any part of the country and Article 21 by receiving expansive interpretation of right to life extends to right to W.P.(C) No.10323/2009 Page 16 of 23 livelihood; Article 38 in the Chapter of Directive Principles enjoins the State to promote the welfare of the people by securing and protecting effective social order in which socio-economic justice shall inform all the institutions of national life - it enjoins to eliminate inequality in status, to provide facilities and opportunities among the individuals and groups of people living in any part of the country. Reference was also made to Article 39 which assures to secure the right to livelihood, health and strength of workers, men and women. It was further held that the material resources of the community are required to be so distributed as best to sub serve the common good. Reference was made to Article 41 assuring social security and Article 47 imposing a positive duty on the State to raise the standard of living and to improve public health. Reliance was also placed on several Articles of Universal Declaration of Human Rights to apply the said principles. It was held that though a contract of insurance is a bilateral agreement on human life upon payment of premia but the insurer is not entitled to impose unconstitutional conditions which deny the right of entering into the contract, limiting only to a class of persons under a particular policy. It was held that insurance being a social security measure should be consistent with the constitutional animation and conscience of W.P.(C) No.10323/2009 Page 17 of 23 socio-economic justice adumbrated in the Constitution. It was further observed that over-emphasis on classification would inevitably result in substitution of the doctrine of equality enshrined in Article 14 with the doctrine of classification. Dealing with the arguments of the insurer, it was held that though for the insurer, to successfully operate the life insurance it is necessary to forecast mortality among insured lives within a relatively narrow margin of error and to this end the insurer is entitled to scrutinize the medical history of the lives to be covered under the appropriate policy but it was held that the insurer cannot adopt a soft and easy course as in that case of restricting insurance to those in employment of government, semi- government and reputed commercial firms and thereby excluding lives in vast rural and urban areas engaged in unorganized or self-employed sectors. Such an action of the insurer was held amenable to judicial review. The policy, confining insurance to salaried class from government, semi- government or reputed

commercial firms was thus held to be discriminatory and offending Article 14 and struck down.

In our opinion the aforesaid judgment of the Apex Court applies on all fours to the facts of the present case also.

21. Our further research shows:-

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a. that the European Court of Justice (Grand Chamber) in *Association belge des Consommateurs Test-Achats ASBL Vs. Conseil des ministres* [2011] 2 CM LR 38 of the European Union held differences in insurance premiums on account of gender to be violative of the prohibition against the discrimination on the basis of sex. The argument of women being at greater risk on account of pregnancy and maternity was negated by observing that "though the costs related to pregnancy and maternity for obvious biological reasons can arise only in the case of women but must not result in differences in premiums and that the fact that male insured persons are enlisted to finance the costs related to pregnancy and maternity is of course justified by the principle of causation. It is true that only women can become pregnant, but every pregnancy also involves a man."

b. Literature from America also shows that though in the past discrimination against persons suffering from mental illness existed but the tide of discrimination is starting to turn. Laws like the Americans with Disabilities Act, 1990, the Mental W.P.(C) No.10323/2009 Page 19 of 23 Health Parity Act, 1996 and other such State laws show an increased awareness of the problems of discrimination against those with mental illness and have given the lawyers tools for combating discrimination. The Americans with Disabilities Act offers strong protections for the disabled in many areas which have overcome much of the discrimination that occurs with insurance and has become a foundation for opposing insurance discrimination based on mental disability. It has been held that discrimination on the basis of mental disability wrongly deprives full insurance benefits to the majority of individuals suffering from mental illness. It has further been held that denial of insurance benefits violates the principles behind federal and state laws created to eradicate discrimination based on mental illness. Society has been held to be best served by an insurance system that gives people suffering from any illness the chance to return to a healthy and productive life.

c. In *Thanda Wai v. All State Insurance Co.* reported in 75 F Supp. 2d 1 (D.D.C. 1999) before the United States District Court, District of Columbia - the mandatory insurance W.P.(C) No.10323/2009 Page 20 of 23 coverage was denied to the landlords for having let out the house to those suffering from disability. It was the stand of the United States in that case that the same was discriminatory and violative of the provisions of Americans with Disabilities Act, 1990 and the Fair Housing Act,

1968. It was further stated that such statutes are to be interpreted broadly to further their underlying purposes. The provision in the statute prohibiting disability based discrimination was held to cover discrimination in the matter of insurance policy. Disability based discrimination in the terms and conditions of insurance policies were argued to constitute an infringement of the full and equal enjoyment of the insurance company's goods, services, privileges & advantages. It was yet further argued that outright rejection of a person based on their disability plainly constitutes a denial of full and equal enjoyment of insurance company's goods and services. The importance of insurance to individuals with disabilities was described by observing "there can hardly be a service more central to the day to day life of a seriously disabled person than insurance - for it is often W.P.(C) No.10323/2009 Page 21 of 23 insurance coverage that will determine a disabled person's ability to prevent the disability from limiting his or her participation in society. The Court held that although insurance policies are not expressly mentioned in the text of Fair Housing Act, denial of insurance on the basis of disability was nevertheless violative of the provisions thereof and would make a dwelling unavailable to persons with disability.

22. It would thus be seen that disability per se cannot be the basis of discrimination in the matter of insurance. This Court is therefore unable to uphold the action of the respondents and/or the provisions of the Rules (supra) which create persons with disabilities class unto themselves. The same undoubtedly is a violation of the Disabilities Act even though not expressly dealing with the matter of insurance. The persons with disability cannot be grouped together for the purpose of insurance. They are to be treated similarly as others/non-disabled persons and just like in the case of non-disabled persons, the insurance risk is assessed on an individual basis, are liable to be similarly assessed; while so assessing, depending upon the risk assured and the risk assessed, premium is to be computed. W.P.(C) No.10323/2009 Page 22 of 23

23. We therefore allow this writ petition and direct the respondents to treat persons with disability at par with the non-disabled persons in the matter of Postal Life Insurance by providing them with the same maximum cover and charging them the same premium as being charged from non-disabled persons, regard of course being had to the risk, depending on assessment of individual cases.

The petition is disposed of with no order as to costs.

RAJIV SAHAI ENDLAW, J ACTING CHIEF JUSTICE FEBRUARY 15, 2012 â gsrâ /pp W.P.(C) No.10323/2009 Page 23 of 23