

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 1222 OF 2023

(Against the Order dated 17/01/2023 in Appeal No. 86/2019 of the State Commission
Maharashtra)

1. STATE BANK OF INDIA

.....Petitioner(s)

Versus

1. SHEETAL NAVNATH VAIDYA & 2 ORS.

2. NEW INDIA INSURANCE COMPANY

.

3. SBI GENERAL INSURANCE

.

.....Respondent(s)

BEFORE:

**HON'BLE AVM J. RAJENDRA, AVSM VSM (Retd.), PRESIDING
MEMBER**

FOR THE PETITIONER :

FOR PETITIONER : MS. NAMRATA CHANDORKAR, ADV. (VC)

FOR THE RESPONDENT :

FOR RESPONDENT NO.1 : MR. ASHOK GADE, ADVOCATE
AND

MS. DEEPLAXMI DESHMUKH, ADVOCATE

FOR RESPONDENT NO.2 : MR. ASHISH VARMA, ADVOCATE
(VC)

FOR RESPONDENT NO.3 : MR. KARTIK JHA, ADVOCATE

Dated : 07 November 2024

ORDER

1. This Revision Petition No.1222 of 2023 has been filed against the order dated 17.01.2023 of Maharashtra State Consumer Disputes Redressal Commission, Mumbai ('State Commission'). Vide this order, the State Commission allowed Appeal No. A/19/86 and set aside the District Consumer Disputes Redressal Forum, Pune ('District Forum') order dated 26.11.2018 wherein the complaint was dismissed.

2. As per report of the Registry, there is a delay of 11 days in filing of the present Revision Petition. In view of the facts and circumstances of the case, the delay is condoned.

3. For Convenience, the parties in the matter are being referred to as mentioned in the Complaint before District Forum.

4. Brief facts of the case, as per the complainants, are that the complainant, widow of the deceased Navnath Vaidya, filed a complaint regarding a claim under a Personal Accident Insurance cover that was initially provided as a complimentary benefit along with a home loan obtained by her late husband from State Bank of India (SBI) in 2007. Navnath Vaidya paid all loan instalments up to October 2015. However, he met with a fatal accident on 15.11.2015. Following his death, the complainant requested that the remaining loan balance be settled through the insurance cover linked with the loan. Instead of settling the dues, the Bank continued to demand payment, prompting her to initiate multiple requests to both OP-1 (SBI) and OP-2 (SBI's insurance partner). The bank ultimately informed the complainant, vide letter dated 26.08.2016, that the accidental insurance cover had been discontinued as of 01.07.2013. The complainant was never informed about this discontinuation and argued that it was the Bank's duty to notify borrowers of such changes, especially considering the policy was a selling point of the loan at the time of issuance. She filed a complaint before the District Forum seeking waiver of the outstanding loan balance of ₹14,30,756.74.

5. In reply before the District Forum, OPs-1 & 2 contended that there was no deficiency in service, as discontinuation of the insurance policy was notified through notice boards and websites. The loan repayments were still due, as the insurance policy was valid only for a year and not extended beyond 2013. The OP-3 (New India Assurance) reply also contended that their involvement ended when the policy was discontinued in 2012, prior to the accident. OP-4 (SBI General Insurance) in its Written Version before the District Forum maintained that, since the policy was not renewed by the bank after 2013, there was no active insurance coverage at the time of the accident in 2015.

6. The learned District Forum vide order dated 26.11.2018, dismissed the complaint with the following reasons:

“REASONS

8. At the very first instance, it is necessary to mention here that the claim under which policy has been made out, the said policy was provided free of cost to the deceased husband of the Complainant. Said fact is admitted by the Complainant herself in the complaint for many a times. As such the Complainant does not fall within the ambit of consumer as per the definition U/s.2 (1) (d) of the Consumer Protection Act. The so called policy was not an independent policy purchased from any insurance Company. It was a complimentary benefit given by the Opponent Nos.1 and 2 to the home loan borrowers. In such circumstances when the Complainant as beneficiary or legal heir of deceased Navnath Vaidya, is not a consumer and the policy provided was not given by taking the premium amount, it cannot be a subject matter of the Consumer Forum.

9. The Complainant has produced a sanction letter of home loan wherein at clause no.7 it is mentioned that, "the loan is covered by a free personal accident insurance policy and the insurance certificate issued by the bank to you should be preserve carefully for use in case of need". The Complainant is taking advantage of the first

half of clause no.7 and conveniently neglecting the second part of the same clause. As per the same clause the policy certificate is issued to the loan borrower i.e, deceased Navnath but the same has not been produced on record. In absence of said policy documents the claim of the Complainant cannot be considered as its entire terms and conditions are remaining under dark cover.

10. As the application of policy was the internal policy matter between Opponent Nos. 1 and 2 with Opponent No.3, it was completely under their discretion to continue or discontinue the same at any-point of time. As said policy was not paid policy, it was not binding upon the Opponents to communicate about its discontinuation to any of the loan borrowers. Though also as per the contentions of Opponent Nos. 1 and 2, on the notice board the notice regarding discontinuation was published.

11. By this complaint the Complainant is asking for waiving off the balance home loan amount which was taken by her deceased husband. When any person borrows the loan, it is his duty to repay it and in his absence the liability shifts upon his legal representatives. The Complainant, being the legal representative of deceased Navnath Vaidya, has the liability to repay the loan amount. For waiving of the loan amount, the Complainant has taken shelter of emotional reasons. However, in the eyes of law, emotions cannot supersede the legal procedure. As discussed above, the policy was provided, as a complimentary token to the loan borrowers without charging anything i.e. free of cost. Availing such free of cost facilities does not fall under the provisions of Consumer Protection Act.

12. In view of above discussion as the Complainant is not a consumer, she cannot claim the benefits of any free service as a matter of right. Considering all these aspects the Forum has arrived to the conclusion that present complaint is not maintainable under the provisions of Consumer Protection Act and the same is liable to be dismissed.

Accordingly we proceed to pass the following order-

ORDER

- 1. The complaint stands rejected.*
- 2. Parties to bear their own cost.*
- 3. Copies of this order be supplied free of cost to both the parties. ”*

7. Being aggrieved by the impugned order, the complainant filed an Appeal and the learned State Commission allowed the Appeal, vide order dated 17.01.2023 and set aside the District Commission's order with the following observations:

"10) In the present case also free personal accident insurance cover was withdrawn by opponent no.1 on 01/07/2013. The information/intimation of the same was not given to the husband of the complainant personally. Therefore, either complainant or husband of the complainant were not aware of the discontinuation of the insurance cover initially granted to the husband of the complainant. Admittedly, there is no personal notice issued to the husband of the complainant that the insurance cover was discontinued. Therefore, the bank has committed deficiency in service by not intimating discontinuation of policy to the husband of the complainant.

11) The District Consumer Commission has held that free personal accident benefit cover was granted to the husband of the complainant and therefore the complainant cannot be called as a Consumer under the Act. But, in fact, the bank did not inform discontinuation of insurance cover to the husband of the complainant immediately after the discontinuation of policy. The insurance cover was discontinued in the year 2013 and husband of the complainant met with an accident in the year 2015, in view of the said facts it can be said that the bank has failed in its duties to inform the husband of the complainant that the insurance cover was withdrawn. Hence, the Bank is liable for deficiency in service. Hence, the findings of the District Consumer Commission are not legal and correct, hence, liable to be set aside. In view of the above discussion we proceed to pass the following order:

ORDER

i. Appeal hereby partly allowed. The judgment and order passed by the Additional District Consumer Disputes Redressal Commission, Pune, in Complaint No. APDF/268/17 is hereby set aside.

ii. Consumer Complaint is hereby partly allowed.

iii. Opponent nos.1 and 2 are directed to waive the home loan amount of Rs.14,30,756.74, which was outstanding after the death of husband of complainant who met with an accident in the year 2015.

iv. The opponent nos. 1 and 2 are directed to pay to the complainant three instalments which were deducted from the account of deceased husband of complainant after his death along with interest 9% per annum from the date of deduction till its realisation

v. Opponent nos. 1 and 2 are also directed to pay to the complainant compensation of Rs.50,000/- towards mental agony and also pay Rs.25,000/- towards costs of litigation.

vi. Appeal against Respondent nos.3 and 4 is dismissed since not pressed against them.

vii. Copies of the order be furnished to the parties.”

8. Being dissatisfied the order of the State Commission dated 17.01.2023 the Petitioner/OP-1-SBI filed the present Revision Petition.

9. In his arguments, the learned counsel for the Petitioner/OP-1 SBI reiterated the grounds stated in the Revision Petition and emphasized that the District Forum previously dismissed the complaint, stating that the complainant did not qualify as a "consumer" under the Consumer Protection Act since the free personal accident cover was provided without charge. The State Commission overlooked this point while allowing the appeal and directing the Bank to cover the outstanding loan amount. Producing insurance certificate was essential for making a claim, and the complainant never provided one. This requirement was not addressed by the State Commission. SBI contended that the personal accident cover was offered free of charge. As per Section 2(42) of the Act, 2019 it does not qualify as a "service." Therefore, the complainant is not a "consumer" and the complaint non-maintainable. The Bank discontinued personal accident cover from 01.07.2013 and her husband's death occurred over two years later, on 13.11.2015. She cannot claim benefits from a discontinued cover which was notified adequately through various media channels, bank branches, and the bank's website, which should have informed the deceased and the complainant. While the complainant referred the case ***State Bank of India v. Surisetty Lakshmi Sai Mahalakshamma***, however, the facts significantly differ. In that case, the death occurred shortly after the discontinuation of the cover, whereas in the present case, over two years had passed. Additionally, aspects such as the free nature of the service, non-production of an insurance certificate and due publicity of discontinuation were not addressed. He argued that State Commission required SBI to waive outstanding loan and refund three instalments with 9% interest, along with compensation and litigation costs, while there was no deficiency of service or unfair trade practice on their part.

10. On the other hand, the learned counsel for the complainant argued that the home loan sanctioned on 20.12.2007 included a *Free Personal Accident Insurance Policy* (Clause 7 of the sanction letter) as part of the loan agreement, covering the loan's outstanding balance or market value, in the event of the borrower's accidental death. Clearly, Clauses 7 & 8 collectively show that they are inherent to the loan agreement, and not merely a complimentary service. Given inclusion of accident insurance cover as part of loan itself, as a borrower, her husband qualified as "consumer" of the Bank's services under the Act. Consequently, she also qualifies and has a right to file a complaint regarding deficiencies in service. The bank discontinued the accident cover in 2013, without any notification whatsoever to her husband, who was directly affected, thus constituting deficiency in service. He emphasized that the State Commission rightly found that SBI was required to directly inform the policyholder of such discontinuation abruptly, rather than relying solely on notice board and website notifications. He relied on ***State Bank of India v. Surisetty Laxman Sai & Ors.***, RP No.2964 of 2017, decided on 23.10.2017 by NCDRC, in which this Commission ruled that banks must issue personal notice to insured parties before discontinuing any insurance cover, allowing them the option to make alternative arrangements. He disputed

SBI's assertion that the loan account was declared non-performing (NPA) due to lack of payment and asserted that no demand notice was ever received by them. This misrepresentation was intended to mislead the court and secure favorable orders. It is undisputed that the insurance policy was active until its discontinuation in 2013. Since the bank provided no personal notification, its failure to inform the borrower constitutes negligence, thus supporting State Commission's finding of a deficiency in service. The State Commission's order for the waiver of outstanding loan of Rs. 14,30,756.74 and refund of three instalments was legally sound, as the bank failed to inform about the policy discontinuation. He asserted that the Respondent paid an additional Rs.16,14,082 under pressure, despite this amount being in dispute, which caused undue hardship to a widow supporting a minor child.

11. The learned counsel for OP-3 (New India Assurance Co Ltd) asserted discontinuation of the policy in 2012, prior to the accident. OP-4 (SBI General Insurance Co. Ltd.) argued that, since the policy was not renewed by the OP-1 Bank after 2013, no active insurance cover existed at the time of the accident in 2015.

12. I have examined the pleadings and associated documents placed on record and rendered thoughtful consideration to the arguments advanced by the learned counsels for both the parties.

13. The case centres on whether the insured was a consumer? Whether OP-1 failed to notify the insured regarding discontinuation of policy? And, if so, whether it constitutes a deficiency in service, warranting relief for the complainant?

14. In the present case, the complainant claimed that OP-1 failed to inform of policy discontinuation and it constituted gross negligence. As a consequence her husband remained under bona-fide impression that it remained valid. Otherwise, he would have taken other policy. She thus sought waiver of loan balance. OP-1 asserted absence of any deficiency and argued that there is no liability due to timely notification. The policy was free-of-cost, limited-term and the bank exercised discretion to discontinue, without needing his consent.

15. This Commission in the case of State Bank of India & Ors. Vs. Surisetty Lakshmi & Ors (Supra) has held as under:

“7. I have heard the learned counsel for the petitioner. Learned Counsel for the petitioner has contended that the Bank had taken a group insurance policy from the SBI Life Insurance Company Ltd. It was in force till 01.07.2013, thereafter it was not renewed. Information of the same was given at the Website of the Bank. He admitted that no information was given personally to those insured as also no notice was given by publication in any newspaper.

8. I have gone through the record. Clause 7 of the Sanction letter reads as under:

“7. Personal accident insurance cover of New India Assurance Company Ltd., The loan is covered by a Free Personal Accident Insurance Policy and the Insurance certificate issued by the Bank to you should be preserved carefully for use in case of need”.

9. I agree with the order of the State Commission that the Bank having offered a personal accident cover as one of the conditions of the sanction letter should not have discontinued the policy suo motu without informing the insured who had opted for and were covered by this insurance. Before suo-motu discontinuing the insurance and by not renewing the insurance policy, the bank was bound to inform the insured not only by publication in the newspaper but also mandatorily by personal notice that the benefit of insurance coverage of loan as given by the sanction letter was proposed to be withdrawn so that they could make alternate arrangement, if they, so desire.”

16. As regards the insurance policy, clearly, its issue is inherent to the loan agreement. Notwithstanding the fact that no premium was charged, the Bank had obtained the insurance from OP-4 Insurer on behalf of the insured towards securing the loan amount. Therefore, the interest paid by the insured to the bank on the loan amount itself constitutes consideration to the insurance policy as well.

17. It is undisputed that the insurance policy was issued as part of grant of loan in the year 2007. The policy was discontinued in the year 2013 and husband of the complainant died in an accident in the year 2015. It is also admitted position that, other than posting in the Bank websites and notice boards of the bank branches, no notice was given to the insured about the discontinuation of the policy. Evidently, the Bank failed in its duties to inform the husband of the complainant that the insurance cover was withdrawn. Hence, the Bank is liable for deficiency in service. In due consideration of decision in the case of Surisetty Lakshmi Sai (Supra) and the deliberations above, I do not find any reason to interfere with the detailed and well-reasoned findings and order of the learned State Commission dated 17.01.2023. The instant Revision Petition No.1222 of 2023 is, therefore, dismissed.

18. There shall be no order as to costs. All pending Applications, if any, also stand disposed of accordingly.

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AVM J. RAJENDRA, AVSM VSM (Retd.)
PRESIDING MEMBER