IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7804 OF 2021

Aditya Birla Sun Life Insurance Co.Ltd. ...Petitioner

vs.

1. The Insurance Ombudsman
   Goa,Mumbai Metropolitan Region
   excluding Navi Mumbai & Thane, Mumbai

2. Fatema F. Chhatriwala ...Respondents

Mr. Rushabh Vidyarthi with Ishita Bhole i/b. Asim Vidyarthi for Petitioner.

Mr. Kunal Mehta with Gautam Sahni i/b. Vesta Legal for Respondent No.2.

CORAM : G. S. KULKARNI, J.
DATE : 18 AUGUST 2022

JUDGMENT :

1. Rule made returnable forthwith. Respondent waives service. By consent of parties, heard finally.

2. This petition under Article 227 of the Constitution of India challenges an award dated 31 December 2020 passed by the Insurance Ombudsman, whereby the claim as made by Respondent No.2, who is the wife of the deceased insured has been allowed in terms of the following order :

> "Under the facts and circumstances of the case, Aditya Birla Sun Life Insurance Company Ltd is directed to settle death claim for Rs. 30 lacs, if agreed upon by the complainant, as per terms and condition of the policy, in full and final settlement of the complaint."

3. The petition raises the following questions for consideration:-

(i) Although Rule 17(6) read with Rule 17(8) of the Insurance Ombudsman Rules 2017, makes an award of the Insurance Ombudsman binding on the Insurance Company, whether a remedy of assailing such award in a Writ Petition under Article 227 of the Constitution is available to the insurance company or whether such writ petition would not be maintainable ?

(ii) Whether non disclosure of any information on existing ailments by an insured in the proposal form submitted to avail of a life insurance policy, would disentitle the claimant under the policy, to the benefits under such insurance policy ?

4. The factual antecedents are required to be noted:

(i) On 29 December 2017 Dr. Fakhruddin F. Chhatriwala, late husband of Respondent No.2, (for short “the insured”) applied to the Petitioner for a Life Insurance Policy, known as ‘ABSLI Life Guaranteed Milestone Insurance Policy” through the Petitioner's Agent, HDFC Bank. The proposal, as made to the Petitioner, was by the online method, by submitting a proposal form, bearing No.EA00136215. Such proposal form provided for the insured’s consent *qua* the information as contained in the said proposal. A copy of the proposal form along with a premium paid certificate is annexed to the petition (Exhibit-B).

(ii) It is the Petitioner's case is that the proposal form mandated the insured (late husband of Respondent No.2) to disclose particulars about his medical history and more particularly, question nos.14 II, III(i)(ii), IV (a), (h)(i), which were responded in the negative by the said proposer. The questions are required to be noted, which read thus:

Question	Response
14 Medical History	
II) In the past five years, have you ever undergone any surgical operation at a hospital or clinic or undergone any investigations with other than normal or negative results.	No
III) i. Are you on diet or any other medicine of any kind as prescribed by a doctor? ii. Are you currently undergoing or intend to undergo any treatment? iii. Have you been advised for any surgical operation, procedure or hospital admission? (including X-rays, ECG, blood tests, biopsies, etc.)	No No No
IV) Have you ever sought advice or suffered from any of the following? (a) Chest pain, low or high blood pressure, high cholesterol, heart attack, heart murmur or other heart disorders? If Yes, submit appropriate questionnaire. (c) Diabetes / elevated blood sugar or sugar in the urine? If Yes, submit diabetes questionnaire. (h) Dizziness/fainting spells, epilepsy, paralysis, stroke, mental/emotional disorder or any other neurological disorder? If Yes, submit appropriate questionnaire. (i) kidney, urinary, bladder, reproductive	No No No

organ or prostate disorders?	No

(emphasis supplied)

(iii) On 31 December 2017 the Petitioner, having received a 'duly filled and signed' application/ proposal from the insured as also and the premium amount and accepting the representations as made by the insured, issued to the insured the life insurance policy in question bearing No.007453382. The said insurance policy was delivered to the insured on 19 January 2018. In the event of a claim the sum assured under the said policy was of an amount Rs.75 lakhs, on the gross annual premium of Rs.5 lakhs being paid for a premium term of six years.

(iv) It is the Petitioner's case that the said life insurance policy had unique features whereunder the claimant could opt for death benefit either in lumpsum at a discounted rate or obtain the sum in ten equal installments.

(v) On 10 October 2019, the insured expired while undergoing treatment at the Saifee Hospital in Mumbai. The Medical Attendant's Certificate under the signature of Dr. Siddharth Shah of Saifee Hospital dated 4 November 2019 recorded the cause of death to be "septicemia with multiple organ failure k/c/o (known case of) Diabetes Mellitus/Hypertension (DM/HTN)".

(vi) On 7 November 2019, Respondent No.2, being the nominee of the insured under the said insurance policy, intimated to the Petitioner about

the death of her husband. She also lodged a claim in the prescribed form, titled as “Claimant’s Statement Form (Death Claim)”. In one of the columns, in the form under the heading “Past Medical History”, Respondent No.2 as a claimant was required to set out information as to whether the insured was ill prior to his death and the nature and the duration of illness with date of diagnosis and names of doctors consulted in the last three years. Such column was answered in the ‘Nil’ by Respondent No.2.

(vii) On receiving the “claim form” from Respondent No.2, the Petitioner investigated such claim. On a careful evaluation of the documents obtained during investigation, it was revealed to the petitioner that the deceased insured had concealed material facts and/or had provided incorrect information in respect to his past medical history. The petitioner's investigation revealed that the life assured was under treatment for schizophrenia and hypertension prior to the issuance of the policy, however, such material fact was not disclosed by the deceased/insured while obtaining the insurance policy. The Petitioner refers to the following details as obtained form the Saifee Hospital records:-

Sr. No.	Documents	Description
1	Discharge Summary- Saifee Hospital Date of Admission-14.08.2015 Date of Discharge-	In patient No. 5635461 Name- Dr. Fakhruddin F. Chhatriwala Date of Birth – 17.6.1967 Mobile 9819008063

	15.08.2015	**Clinical Summary-** **Patient admitted with A/H/O fall on left elbow due to RTA K/C/O (Known case of) HTN/Psychiatric illness on medication.**
2	Discharge Summary- Saifee Hospital Date of Admission- 29.08.2016 Date of Discharge- 31.08.2016	Name- Dr. Fakhruddin F. Chhatriwala In patient No. 579991 Name- Dr. Fakhruddin F. Chhatriwala Date of Birth – 17.6.1967 Mobile 9819008063 **Clinical Summary -** **Patient came in with c/o pain and abnormal lightening sensation in left elbow since 2-3 months K/C/O (Known case of) Psychiatric illness on treatment**
3	Consultant Certificate dated 09.01.2020- Dr. Hozefa A. Bhinderwala	**Name**- Mr. Fakhruddin F. Chhatriwala For treatment Schizophrenia since 2013.
4	Consultation Documents from Dr. Kedar Toraskar Dated- 11.03.2019	**Name**- Mr. Fakhruddin Chhatriwala **Chief Complaint** – C/O Polymeia with Burning micturation **Past History k/c/o Schizophrenia 3 years under treatment of Dr. Hozefa Bhindewala** **Impression** – Essential HT (Hypertension)
5	Consultation Documents from Dr. Kedar Toraskar- Wockhardt Hospitals Dated- 05.10.2019	**Name**- Mr. Fakhruddin Chhatriwala **Primary Diagnosis** – Type 2 DM **Chief Complaints** -Essential HT (Hypertension), Schizophrenia
6	Death Summary- Saifee Hospital Date of Admission- 06.10.2019 Date of Discharge-10.10.2019	**Name**- Mr. Fakhruddin F. Chhatriwala In patient No. 5717249 Date of Birth – 17.6.1967 Mobile 9819008063 **Diagnosis** – Accelerated HTN Under **Evaluation**

		K/C/O – DM/HTN **Clinical Summary** -52/M/K/C/O DM/ HTN/Psychiatric disorder on treatment

(viii) The Petitioner, hence, has contended that all the documents as obtained by the Petitioner in the investigation, clearly established that the insured was undergoing treatment for schizophrenia and hypertension much prior to the proposal for insurance was made by the insured to the Petitioner and by concealing such relevant information in the proposal form, the insurance policy was obtained by the insured. The Petitioner states that pertinently the insured himself was a doctor and was aware of the nature of his illness and the treatment being given by him, he nonetheless chose not to disclose such material information to the Petitioner. The Petitioner has stated that the ailment as suffered by the insured was significant and the "medical description" of the ailment was thus :

> ". Schizophrenia is a psychiatric disorder characterized by continuous or relapsing episodes of psychosis.
>
> . Hypertension (HTN or HT), also known as high blood pressure (HBP), is a long–term medical condition in which the blood pressure in the arteries is persistently elevated. Schizophrenia is a lifelong illness and requires a combination of treatments, including medication and psychological counselling. It also leads to hypertension, which further resulting in depression, paranoia, and psychotic features."

(ix) It is the Petitioner's case that it was incumbent for the insured to

disclose the true and material facts in the application/proposal form which according to the petitioner were concealed by the insured. It is contended that if such ailments and the facts in relation thereto were to be disclosed by the insured in the proposal form the Petitioner would have rejected the insured's proposal to avail such life insurance policy.

(x) The Petitioner has contended that in regard to such information and medical history of the insured, also an opinion of an external expert was sought by the Petitioner, by appointing Dr.C.H. Asrani, who furnished an opinion to the Petitioner dated 14 February 2020, stating that the insured had knowledge of schizophrenia and hypertension, that he was under the treatment for such diseases much prior to the making of a proposal to avail such insurance policy. The opinion further recorded that as per the hospital discharge summary of August 2015, the insured was a known case of both such diseases, which implied that such ailments existed prior to the insured applying for the insurance policy in question. It was recorded that the documents revealed that the insured was receiving treatment for schizophrenia since the year 2013. Such expert also recorded that there has been an apparent non-disclosure of these ailments by the insured, which was a significant non-disclosure and such revelation at the proposal stage would have led to an altogether different conclusion for the Petitioner as to whether the proposal be accepted. He also recorded that the patients of

schizophrenia have high risk of severe infections including sepsis and that the insured had in fact expired due to such disease. He also recorded that the non-disclosure of such ailments as suffered by the insured was significant.

(xi) The Petitioner considering the investigation report, and the other relevant materials so procured, and in accordance with the provisions of policy and regulations, arrived at a decision to repudiate the insurance claim as made by Respondent No.2. Such decision was communicated to Respondent No.2 by the Petitioner by its letter dated 27 February 2020. Respondent No.2 however requested for reconsideration of her claim. She accordingly moved the Grievance Redressal Committee (for short "the **GRC**"). The GRC, upon evaluation of the material and the evidence, however, came to a conclusion to stand by the petitioner's decision to repudiate the claim, thereby accepting the Petitioner's case that there was a significant non-disclosure of the ailments by the insured and hence, the decision as taken by the Petitioner to repudiate the claim was an appropriate decision. The GRC's decision came to be communicated to Respondent No.2 by its letter dated 22 May 2020, as also, by its email dated 3 June 2020.

(xii) On the above backdrop, Respondent No.2, being aggrieved by the

decision of the Petitioner to repudiate the insurance claim, filed a complaint before Respondent No.1 Ombudsman, constituted under the Insurance Ombudsman Rules, 2017. The case of Respondent No.2 before the Ombudsman was to the effect that the insured was never suffering from schizophrenia and hypertension at the time of availing the insurance policy, except for mild depression. Respondent No.2 contended that the Petitioner did not carry out premedical test/examination and that the death of the deceased was due to 'septicemia and multiple organ failure' which had no correlation with the illnesses namely schizophrenia and hypertension. Respondent No.2 also contended that HDFC Bank, being the agent of the Petitioner, forced and induced the insured to purchase the policy from the Petitioner.

(xiii) The Petitioner filed its reply to the complaint made by Respondent no.2 before the Ombudsman, thereby denying Respondent No.2's case. The Petitioner asserted that the insured was aware about his ailments, namely, schizophrenia and hypertension, much before he applied for the insurance policy, hence he ought to have disclosed such ailments in the specific columns as provided therefor in the proposal form. The Petitioner asserted that such non-disclosure was material to the issuance of the policy in question. It was also contended that the claim as made by Respondent No.2 was not maintainable as Respondent No.2 had made a claim of Rs.75 lakhs

which was beyond the pecuniary jurisdiction of the Ombudsman as provided under Rule 17(3) of the Insurance Ombudsman Rules, 2017 hence, even on such count respondent No.2's complaint was liable to be rejected.

(xiv) Responding to the objection of the Petitioner, Respondent No.2 submitted a letter dated 11 September 2020 before the Insurance Ombudsman purporting to reduce her claim to rupees thirty lakhs. The said letter reads thus:-

> "
> 11.9.2020
>
> To
>
> The Insurance Ombudsman,
> Mumbai.
>
> Dear Sir,
>
> I will be satisfied with the amount of Rs.30 lacs which settled with the Ombudsman even though the claim is 75 lakhs. Request for an early date for the settlement.
>
> Thanking you,
>
> Fatema F. Chhatriwala"

5. The Insurance Ombudsman was, however, not inclined to accept the Petitioner's contention on any of the counts and by the impugned order has awarded respondent No.2's claim as noted above.

Submissions

6. At the outset, learned Counsel for the Petitioner, in assailing the impugned award, would submit that the impugned award is per-se without

jurisdiction inasmuch the actual claim as made by Respondent No.2 before the Insurance Ombudsman was for Rs.75 lakhs, which was clearly beyond the pecuniary jurisdiction of the Ombudsman, as the proviso below Sub-Rule (3) of Rule 17 ordains that the Ombudsman *inter alia* shall not award compensation exceeding Rs.30 lakhs. It is submitted that respondent No.2's letter dated 11 September 2020 submitting that she would be satisfied if her claim is settled at Rs.30 lakhs in no manner was any amendment of her original claim of Rs.75 lakhs.

7. Learned Counsel for the petitioner would next submit that the insured had clearly failed to disclose the pre-existing ailments which were required to be disclosed by him in the proposal form, as submitted online. It is the Petitioner's submission that once there was a non-disclosure and more so, which according to him in the present case was not *bonafide*, it certainly amounted to concealing of material facts to obtain the insurance policy. It is hence submitted that the decision of the Petitioner to repudiate the claim could not have been disturbed by the Ombudsman. Learned Counsel for the Petitioner relying on the decision of the Supreme Court in **Reliance Life Insurance Company Ltd. vs. Rekhaben Nareshbhai Rathod**[1]**,** would submit that any non-disclosure by the deceased insured to the insurer was held by the Supreme Court to result in the insurance contract

1 **(2019) 6 SCC 175**

being vitiated on the grounds enumerated under Section 45 of the Insurance Act, 1938 entitling the insurer to repudiate the contract of insurance. It is submitted that the Supreme Court has clearly held that the disclosure in order to be material, need not be connected directly to the cause of death. On such proposition, reliance is also placed on another decision of the Supreme Court in **Branch Manager, Bajaj Allianz Life Insurance Company Ltd. vs. Dalbir Kaur**[2]**.** It is hence submitted that the non-disclosure of hypertension and schizophrenia was a material non-disclosure on the part of the deceased insured. It is submitted that also there was never a denial on behalf of Respondent No.2 that the insured never suffered such ailments. It is submitted that in fact the record clearly depicted the position that the insured was consistently prescribed medicines for hypertension even before the year 2015, i.e. prior to the insured applying for the life insurance policy in question, and accordingly, on six issues there was a material suppression, as set out in the Petitioner's letter dated 27 February 2020. It is hence submitted that Respondent No.2 was not entitled for the claim as made under the insurance policy in question. The Petitioner would hence pray that the impugned order needs to be quashed and set aside in these circumstances and the writ petition be allowed.

2 **2020 SCC OnLine SC 848**

8. On the other hand, learned Counsel for Respondent No.2 at the outset has raised an objection to the maintainability of this petition relying on the decision of a learned Single Judge of the Calcutta High Court in **Life Insurance Corporation of India vs. The Insurance Ombudsman**[3] to submit that it is not open to the petitioner-insurance company to file a writ petition against an award passed by the Insurance Ombudsman, considering the provisions of the Insurance Ombudsman Rules, 2017. It is submitted that Rule 17(6) read with 17(8) of the 2017 Rules provides for a statutory mandate on the insurer to comply with the award passed by the Ombudsman providing that the award of the Insurance Ombudsman is binding on the insured. The contention is that similar provisions existed in the erstwhile "Redressal of Public Grievances Rules, 1998" which had fell for consideration before the learned Single Judge of Calcutta High Court in the case of **Life Insurance Corporation of India vs. The Insurance Ombudsman** (supra) in which the Court held that a writ petition by an Insurance company would not lie against the award as made by the Ombudsman.

9. Learned counsel for Respondent No.2 apart from the above objection, would submit, there is no jurisdictional error on the part of the Insurance Ombudsman in passing the impugned award, as being urged by the

3 **2017 SCC Online Calcutta 1238**

Petitioner/insurance company. Insofar as the Petitioner's contention that the award as made by the Insurance Ombudsman was beyond the pecuniary jurisdiction of the Insurance Ombudsman, considering the proviso to Rule 17(3) of the 2017 Rules, providing that the Insurance Ombudsman cannot award compensation in excess of Rs.30 lakhs, it is submitted that although Respondent No.2 had made a claim of Rs.75 lakhs it was open for Respondent No.2 to forego a portion of her claim to bring the proceeding within the jurisdiction of the Ombudsman and hence, there was no jurisdictional error on the part of the Ombudsman in allowing the claim as made by Respondent No.2.

10. On merits, it is submitted that it is not correct for the Petitioner to contend that this is a case of non-disclosure of the ailments by the insured, for the reason that the insured was diagnosed with hypertension in and around 2019 which was subsequent to the issuance of the insurance policy which according to Respondent No.2 was evident from the medical record, namely, the prescription as issued by Dr. Toraskar's clinic. It is submitted that Dr. K. Toraskar, being the Consultant Chest Physician and Intensivist, referred to the past history of hypertension of six months. It is next submitted that even the discharge summary papers issued by Saifee Hospital dated 31 August 2015 pertained to the date of admission being 29 August 2016 and date of discharge being 31 August 2016, which also

recorded no history of hypertension. It is next contended that the said discharge summary file prescribed 'Tablet Amlopress L' for hypertension is not correct as the said tablet is also prescribed to reduce blood pressure of a patient at any given time and in the case of the insured, it was prescribed to him as his blood pressure had spiked during his surgery on 31 August 2016. It is, thus, Respondent No.2's submission that these two documents negate the contention that the insured was suffering from hypertension as on 31 August 2016. The decision of the Ombudsman, therefore, cannot be held to be perverse nor is there any jurisdictional error. On the petitioner's contention on suppression of ailments is concerned, it is submitted that schizophrenia being psychological disorder has no correlation with the actual cause of death of the insured, which was caused due to multiple organ failure. It is submitted that the suppression, as alleged, in any event, cannot warrant repudiation of the policy. In support of such contention, reliance is placed on the decision of Supreme Court in **Sulbha Prakash Motegaonkar vs. Life Insurance Corporation of India**[4] and on the decision of Supreme Court in **Branch Manager, Bajaj Allianz Life Insurance Company Ltd. vs. Dalbir Kaur** (supra) to submit that it is a clear position in law that it is necessary to consider as to whether non-disclosure of the ailments had a correlation with the cause of death and it is not any and every non-disclosure which would entitle the insurer to repudiate the policy.

4 **(2019) 6 SCC 175**

11. Learned counsel for respondent No.2 would next submit that the opinion of Dr. C.H. Asrani, the expert appointed by the petitioner would demonstrate that even the Petitioner understood that the non-disclosure had to be significant, hence, the approach of the Petitioner to canvass any suppression of information to obtain the insurance policy, ought not to be accepted by this Court. It is submitted that the insurance company having taken a cumulative premium of Rs.10,33,750 from the insured, the Petitioner was liable to honour the claim as made by Respondent No.2 in the absence of any material which would suggest that septicemia and multiple organ failure can have any correlation with past history of schizophrenia. It is, accordingly, submitted that the petition be dismissed.

Analysis and conclusion :

12. I have heard learned counsel for the parties and with their assistance I have also perused the record.

13. On behalf of Respondent No.2, as an objection has been raised to the maintainability of the present petition, the same would be first required to be considered. The objection as raised on behalf of Respondent No.2 is to the effect that in view of Rules 17(6) read with Rule 17(18) of the Insurance Ombudsman Rule 2017, as the award as made by the Insurance

Ombudsman is binding on the Insurance Company, the present petition filed under Article 227 of the Constitution, would not be maintainable. In supporting such contention, learned Counsel for Respondent No.2 has placed reliance on the decision of the learned Single Judge of the Calcutta High Court in **Life Insurance Corporation of India vs. The Insurance Ombudsman** (supra) to contend that it has been held that the Petitioner being the Insurance company cannot be aggrieved by the award passed by the Insurance Ombudsman, inasmuch as there is a statutory mandate on the insurer to comply with the award passed by the Ombudsman as provided under the said rules, which is binding on the insurer. It is submitted that although the said decision was rendered in the context of the Redressal of Public Grievances Rules, 1998, it would squarely apply to the Insurance Ombudsman Rules, 2017 under which the impugned award has been made by the Ombudsman, the provisions of the rules being *pari materia.*

14. To appreciate such objection urged on behalf of Respondent No.2 it would be appropriate to note the statutory scheme falling under the Ombudsman Rule 2017. Some of the relevant rules need to be noted which read thus:-

> "2. The objects of these Rules is to resolve all complaints of all personal lines of insurance, group insurance policies, policies issued to sole proprietorship and micro enterprises on the part of insurance companies and their agents

and intermediaries in a cost effective and impartial manner.

7. **Insurance Ombudsman. —**

(1) There shall be established such number of Insurance Ombudsman for such territorial jurisdiction as the Executive Council of Insurers may specify, for discharging the duties and functions prescribed under these rules.

(2) An Ombudsman shall be selected from amongst persons having experience of the insurance industry, civil service, administrative service or judicial service.

(3) An Ombudsman shall be selected by a Selection Committee comprising of—

(a) Chairperson of the IRDAI, who shall be the Chairman of the Selection Committee;

(b) one representative each of the Life Insurance Council and the General Insurance Council from the Executive Council of Insurers – members;

(c) A representative of the Government of India not below the rank of a Joint Secretary or equivalent, in the Ministry of Finance, from the Department of Financial Services—member.

(4) The Executive Council of Insurers shall prepare a panel through an open process by inviting applications from amongst the eligible candidates and the selection process shall be in accordance with the selection criteria finalised by the Executive Council of Insurers with the approval of the Central Government in the Ministry of Finance.

(5) An Ombudsman shall be appointed after satisfactory vigilance clearance from the immediate previous employer and medical fitness report from an authorised doctor.

11. **Territorial jurisdiction of Insurance Ombudsman. —**

(1) The office of the Insurance Ombudsman shall be located at such places and shall have such territorial jurisdiction as may be specified by the Executive Council of Insurers from time to time.

(2) The Executive Council of Insurers shall specify the territorial jurisdiction of each Ombudsman.

(3) The Ombudsman may hold sitting at various places within his area of jurisdiction in order to expedite disposal of complaints.

13. **Duties and functions of Insurance Ombudsman. —**

(1) The Ombudsman shall receive and consider complaints or disputes relating to—

(a) delay in settlement of claims, beyond the time specified in the regulations, framed under the Insurance Regulatory and Development Authority of India Act, 1999;
(b) any partial or total repudiation of claims by the life insurer, General insurer or the health insurer;
(c) disputes over premium paid or payable in terms of insurance policy;
(d) misrepresentation of policy terms and conditions at any time in the policy document or policy contract;
(e) legal construction of insurance policies in so far as the dispute relates to claim;
(f) policy servicing related grievances against insurers and their agents and intermediaries;
(g) issuance of life insurance policy, general insurance policy including health insurance policy which is not in conformity with the proposal form submitted by the proposer;
(h) non-issuance of insurance policy after receipt of premium in life insurance and general insurance including health insurance; and
(i) any other matter resulting from the violation of provisions of the Insurance Act, 1938 or the regulations, circulars, guidelines or instructions issued by the IRDAI from time to time or the terms and conditions of the policy contract, in so far as they relate to issues mentioned at clauses (a) to (f).

(2) The Ombudsman shall act as counsellor and mediator relating to matters specified in sub-rule (1) provided there is written consent of the parties to the dispute.

(3) The Ombudsman shall be precluded from handling any matter if he is an interested party or having conflict of interest.

(4) The Central Government or as the case may be, the IRDAI may, at any time refer any complaint or dispute relating to insurance matters specified in sub-rule (1), to the Insurance Ombudsman and such complaint or dispute shall be entertained by the Insurance Ombudsman and be dealt with as if it is a complaint made under rule 14.

14. **Manner in which complaint to be made. —**

(1) Any person who has a grievance against an insurer, may himself or through his legal heirs, nominee or assignee, make a complaint in writing to the Insurance Ombudsman within whose territorial jurisdiction the branch or office of the insurer complained against or the residential address or place of residence of the complainant is located.

(2) The complaint shall be in writing, duly signed by the complainant or through his legal heirs, nominee or assignee and shall state clearly the name and address of the complainant, the name of the branch or office of the insurer against whom the complaint is made, the facts giving rise to the complaint, supported by documents, the nature and extent of the loss caused to the complainant and the relief sought from the Insurance Ombudsman.

(3) No complaint to the Insurance Ombudsman shall lie unless—

(a) the complainant makes a written representation to the insurer named in the complaint and—

(i) either the insurer had rejected the complaint; or

(ii) the complainant had not received any reply within a period of one month after the insurer received his representation; or

(iii) the complainant is not satisfied with the reply given to him by the insurer;

(b) The complaint is made within one year—

(i) after the order of the insurer rejecting the representation is received; or

(ii) after receipt of decision of the insurer which is not to the satisfaction of the complainant;

(iii) after expiry of a period of one month from the date of sending the written representation to the insurer if the insurer named fails to furnish reply to the complainant .

(4) The Ombudsman shall be empowered to condone the delay in such cases as he may consider necessary, after calling for objections of the insurer against the proposed condonation and after recording reasons for condoning the delay and in case the delay is condoned, the date of condonation of delay shall be deemed to be the date of filing of the complaint, for further proceedings under these rules.

(5) No complaint before the Insurance Ombudsman shall be maintainable on the same subject matter on which proceedings are pending before or disposed of by any court or consumer forum or arbitrator.

15. Insurance Ombudsman to act fairly and equitably. —

(1) The Ombudsman may, if he deems fit, allow the complainant to adopt a procedure other than under sub-rule (1) or sub-rule (2) of rule 14 for making a complaint, after notifying the parties to the dispute.

(2) The Ombudsman shall have the power to ask the parties concerned for additional documents in support of their respective contentions and wherever considered necessary, collect factual information relating to the dispute available with the insurer and

may make available such information to the parties concerned.

(3) The Ombudsman may obtain the opinion of professional experts, if the disposal of a case warrants it.

(4) The Ombudsman shall dispose of a complaint after giving the parties to the dispute a reasonable opportunity of being heard.

16. **Recommendations made by the Insurance Ombudsman. —**

(1) Where a complaint is settled through mediation, the Ombudsman shall make a recommendation which it thinks fair in the circumstances of the case, within one month of the date of receipt of mutual written consent for such mediation and the copies of the recommendation shall be sent to the complainant and the insurer concerned.

(2) If the recommendation of the Ombudsman is acceptable to the complainant, he shall send a communication in writing within fifteen days of receipt of the recommendation, stating clearly that he accepts the settlement as full and final.

(3) The Ombudsman shall send to the insurer, a copy of its recommendation, along with the acceptance letter received from the complainant and the insurer shall, thereupon, comply with the terms of the recommendation immediately but not later than fifteen days of the receipt of such recommendation, and inform the Ombudsman of its compliance.

17. **Award. —**

(1) Where the complaint is not settled by way of mediation under rule 16, the Ombudsman shall pass an award, based on the pleadings and evidence brought on record.

(2) The award shall be in writing and shall state the reasons upon which the award is based.

(3) Where the award is in favour of the complainant, it shall state the amount of compensation granted to the complainant after deducting the amount already paid, if any, from the award :

Provided that the Ombudsman shall,—(i) not award any compensation in excess of the loss suffered by the complainant as a direct consequence of the cause of action; or (ii) not award compensation exceeding rupees thirty lakhs (including relevant expenses, if any).

> (4) The Ombudsman shall finalise its findings and pass an award within a period of three months of the receipt of all requirements from the complainant.
>
> (5) A copy of the award shall be sent to the complainant and the insurer named in the complaint.
>
> (6) The insurer shall comply with the award within thirty days of the receipt of the award and intimate compliance of the same to the Ombudsman.
>
> (7) The complainant shall be entitled to such interest at a rate per annum as specified in the regulations, framed under the Insurance Regulatory and Development Authority of India Act, 1999, from the date the claim ought to have been settled under the regulations, till the date of payment of the amount awarded by the Ombudsman.
>
> (8) The award of Insurance Ombudsman shall be binding on the insurers."

15. As to what is revealed from the reading of the above rules, needs to be discussed. It is seen from Rule 2 that the object of the Rules is to resolve all complaints of all personal lines of insurance, group insurance policies, policies issued to a sole proprietorship and micro enterprises on the part of the insurance companies and their agents and intermediaries in a cost effective and impartial manner. It provides for appointment of an insurance Ombudsman under Rule 7 for discharging duties and functions prescribed under the said Rules. Rule 11 provides for territorial jurisdiction of the Insurance Ombudsman. Rule 13 provides for duties and functions of Insurance Ombudsman, namely, to receive and complaints or disputes on various counts as specified in clause (a) to (i). One of the issues on which a dispute can be entertained by the Ombudsman is in respect of a partial or

total repudiation of claim by the life insurer, general insurer or health insurer as sub-clause (b) of Rule 13 would provide. Rule 14 provides the manner in which the complaint is to be made by any person who has a grievance against the insurer, who may himself or through his legal heirs, nominee or assignee, make a complaint in writing to the Insurance Ombudsman within whose territorial jurisdiction the branch of office of the insurer complained against or the residential address or place of residence of the complainant is located. Sub-Rule (4) of Rule 14 provides for a power to condone the delay recording reasons if the complaint is not filed within a prescribed period of one year as provided in clause 3(b) of the said Rules. Rule 15 is significant which provides that Insurance Ombudsman to act fairly and equitably. Sub-rule (3) of Rule 15 provides for obtaining the opinion of professional experts, if the disposal of the case so warrants. Sub-rule (4) makes it obligatory on the Ombudsman to dispose of a complaint after giving the parties to the dispute a reasonable opportunity of being heard. Rule 16 provides for recommendations to be made by the Insurance Ombudsman in regard to a settlement to be brought about between the complainant and the insurer. It provides for the mechanism of settlement to be arrived between the parties. Rule 17 provides for an award to be made by the Insurance Ombudesman in the event when the complaint is not settled by way of mediation. Under Rule 17, the Ombudsman is under

mandatory obligation to pass an award based on the pleadings and evidence placed on record. It further provides that the award shall be in writing and shall state the reasons upon which the award is based. Sub-rule (3) of Rule 17 provides that where the award is in favour of the complainant, it shall state the amount of compensation granted to the complainant after deducting the amount already paid, if any, from the award. Proviso below sub-rule (3) of Rule 17 ordains that the Ombudsman shall not award any compensation in excess of the loss suffered by the complainant as a direct consequence of the cause of action; or, not award compensation exceeding rupees thirty lakhs (including relevant expenses, if any). Sub-Rule (4) provides that the Ombudsman shall finalise its finding and pass an award within a period of three months of the receipt of all requirements from the complainant. Sub-rule (5) provides that a copy of the award shall be sent to the complainant and the insurer named in the complaint. Sub-rule (6) provides that the insurer shall comply with the award within 30 days of the receipt of the award and intimate compliance of the same to the Ombudsman. Further Sub-Rule (7) provides that the complainant shall be entitled to such interest at a rate per annum as specified in the regulations framed under the Insurance Regulatory and Development Authority of India Act, 1999, from the date the claim ought to have been settled under the regulations, till the date of payment of the

amount awarded by the Ombudsman. Sub-Rule (8) provides that the award of the Ombudsman shall be binding on the insurer.

16. Thus, the statutory scheme of the Insurance Ombudsman Rules, 2017, clearly reflects that when the Ombudsman makes an award under Rule 17 while exercising his duties and functions under Rule 13, the Insurance Ombudsman is in fact adjudicating the dispute as made in the complaint. In such context, Sub-rule (4) of Rule 15 is required to be noted which clearly provides that the Ombudsman shall dispose of the complaint after giving the parties to the dispute a reasonable opportunity of being heard. Sub-rule (2) of Rule 17 provides that the award shall be in writing and state the reasons upon which the award is based. Sub-rule (8) of Rule 17 provides that the award of the Insurance Ombudsman shall be binding on the insurer. From a cumulative reading of the rules and its provisions, it is thus clear that the adjudication being undertaken by the Insurance Ombudsman has all trappings of an adjudication by a tribunal when the Insurance Ombudsman adjudicates a complaint. In the course of such adjudication, he is under an obligation to act judicially, he is required to follow all the essential ingredients of what a tribunal would be required to follow in adjudicating such disputes, namely of a hearing to be granted to the parties before him and taking a decision by furnishing reasons on such decision in pronouncing upon the rights or liabilities arising under the

insurance contract. Thus, necessarily the functions which are discharged by the Ombudsman are akin to the function as discharged by a tribunal in adjudicating the dispute.

17. It is well established that the word "tribunal" as used in Article 227 of the Constitution is required to be given a liberal interpretation to include all statutory authorities who are vested with quasi judicial power even though they may not have been labelled as tribunals. In this context, it would be useful to refer to the decision of the Supreme Court in **Manmohan Singh Jaitla vs. Commissioner Union Territory, Chandigarh & Ors.**[5]**.** Paragraph 7 of the said decision needs to be noted which reads thus:-

> "7. The High Court declined to grant any relief on the ground that an aided school is not "other authority" under Article 12 of the Constitution and is therefore not amenable to the writ jurisdiction of the High Court. The High Court clearly overlooked the point that Deputy Commissioner and Commissioner are statutory authorities operating under the 1969 Act. They are quasi-judicial authorities and that was not disputed. Therefore, they will be comprehended in the expression 'Tribunal' as used in Article 227 of the Constitution which confers power of superintendence over all courts and tribunals by the High Court throughout the territory in relation to which it exercises jurisdiction. Obviously, therefore, the decision of the statutory quasi-judicial authorities which can be appropriately described as tribunal will be subject to judicial review namely a writ of certiorari by the High Court under Article 227 of the Constitution. The decision questioned before the High Court was of the Deputy Commissioner and the Commissioner exercising powers under Section 3 of the 1969 Act. And these statutory authorities are certainly amenable to the writ jurisdiction of the High Court."
>
> (emphasis supplied)

18. A reference can also be made to the decision of the Supreme Court in **Durga Hotel Complex vs. Reserve Bank of India**[6] wherein the

5 AIR 1985 SC 364
6 **(2007) 5 SCC 120**

question before the Supreme Court was under the Banking Ombudsman Scheme, 1995. In the context of the present controversy, the observations of the Supreme Court in such decision are quite significant. The Supreme Court, has observed that 'the Ombudsman' at the best, is an authority or tribunal of limited jurisdiction constituted under the scheme. It is held that conceptually, an Ombudsman is only a non-adversarial adjudicator of disputes and hence, was required to act and confine himself to the rules under which the Ombudsman was acting. In the context of the present case, the observations of the Supreme Court that the Ombudsman is an authority or Tribunal of a limited jurisdiction would also support my conclusion that the Ombudsman being a statutory Tribunal, the present petition filed under Article 227 of the Constitution would be maintainable.

19. A reference can be made to a decision of the Division Bench of the Uttarakhand High Court in the case of **M/s Amrit Versha Udyog Pvt. Ltd vs Uttaranchal Power Corporation Ltd.**[7] which was a case arising under the Electricity Act, 2003 in which one of the issues which fell for consideration of the Court was in relation to an award made by the Electricity Ombudsman. The question before the Division Bench was whether an order passed by the Ombudsman or the decision of the Ombudsman under Section 42(7) of the Electricity Act is one passed by the Tribunal.

7 2016 SCC OnLine Utt 2384

Answering the question in the affirmative, the Court examining the functions of the Ombudsman which were akin to the scheme under the rules in question in the present proceedings, it was observed that where an authority is required to act judicially either by an express provision under a statute under which it acts, the decisions of such an authority generally amount to quasi judicial decisions. It was observed that such adjudication had all "trappings" of the Tribunal. The Court observed that perusal of the Regulations framed under the Electricity Act clearly indicated that the Ombudsman was called upon to decide a lis raised by a consumer and the fact that it was not open to the distribution licensee (or in the present case "the insurer") to challenge the order of the consumer forum as the right to make representation was exclusively conferred only on the consumer, would not in the slightest manner distract from holding that the Ombudsman is a Tribunal. It was held that the Ombudsman was hence clearly a Tribunal. The relevant observations of the Court are required to be noted, which read thus :

> "26. Every court is a Tribunal. The vice versa is not however, correct. A Tribunal discharges judicial power of the State. It does not have all the trappings of a court. The nomenclature by which it is called may not be decisive for the question as to whether it is a Tribunal or not. Undoubtedly, it is dubbed as Ombudsman. The word "Ombudsman" has various shades of meaning; but we are called upon to decide what it is in the context of the functions it performs. Under Sub-Section 5 of Section 42 of the Act, every distribution licensee is expected to constitute a forum. The Act is a departure from the earlier Electricity Act and transformatory changes were intended by the Parliament. The primary concern of the Parliament was to see that production of electricity is enhanced, in particular, by giving a greater role to private

players, providing for commission which would fix the tariff; taking note of the fact that many States did not allow for the Electricity Boards to enhance the tariff, an independent Commission was contemplated. One of the roles assigned to the said Commission was appointment of Ombudsman. The Ombudsman was to decide the representations made by consumers only undoubtedly when they felt aggrieved by non-redressal of their grievances, which they sought to ventilate before the consumer forum, which was to be established by the distribution licensee under Sub Section (5). Here, we are not called upon to decide the question whether the consumer forum is a Tribunal. We say this for the reason that it is contended by Mr. Piyush Garg that the consumer forum is not a Tribunal. That is clearly besides the point. Here, we are to decide the question whether the Ombudsman is a Tribunal.

27. It is equally true that a consumer, who is aggrieved by the nonredressal of his grievances by the consumer forum, has a range of choices before him; in that, he may choose to represent his grievances before the Ombudsman under sub-section (6) of Section 42 or he may go elsewhere in search of relief. The law protects the right of choice. But we would think that it is not relevant that the Ombudsman is not an exclusive forum created under the law to deal with the grievances of the consumer arising from the disposal of his complaint by the consumer forum. **The mere fact that the consumer may approach other forum seeking the relief will not deflect from the Ombudsman being a Tribunal, if it otherwise possess the attributes of a Tribunal.** Therefore, we reject the argument that there is no exclusive power vested with the Ombudsman.

32. A perusal of these provisions would leave us in no doubt that the Ombudsman is called upon to decide a lis raised by a consumer. The fact that it is not open to the distribution licensee to challenge the order of the consumer forum, as right to make representation is exclusively conferred only on the consumer, in our view, does not in the slightest manner detract from our holding that the Ombudsman is a Tribunal. The decision by which the consumer is aggrieved is rendered by the consumer forum, which is appointed by the distribution licensee. Apparently, the Legislature thought that, in such circumstances, it is only the consumer who would have a ground to proceed against the decision of the forum. **What is most relevant is whether the judicial power of the State is being exercised by the Ombudsman in the circumstances in which it does not have all the trappings of a court and, therefore, it is not a court, but becomes a Tribunal. As already noticed, a procedure has been laid down by the Commission through statutory Regulations which we have already adverted to. It encompasses the duty to comply with the principles of natural justice by way of affording an opportunity to the parties to represent and it endows power with the Ombudsman to take evidence, be it oral or documentary. The principles by which it is to be guided are specifically mentioned and which we**

> **have adverted to. It is clearly quasi-judicial in nature.** Also, we cannot liken it to an executive body, which takes its decision based on considerations of policy. Unlike a domestic inquiry report, which is rendered by the person appointed by the disciplinary authority, which can be accepted or rejected by the appointing authority, the Award by the Ombudsman is binding on the parties. It terminates the lis as far as the parties are concerned, subject to their right to question it in the appropriate forum. They cannot ignore the decision, except upon peril of being proceeded with under Section 142 read with Section 146.
>
> …….
>
> 38. Therefore, we may notice that the Apex Court has observed that even under the said Scheme, the Ombudsman, at best, is an authority or tribunal of limited jurisdiction. We must notice that, far from detracting from the reasoning, which we have employed or the finding which we are arriving at, namely, that the Ombudsman under the Act is a Tribunal, we find re-enforcement for our view from the observations made by the Apex Court. Having regard to the scheme of the Act and the Regulations, we are of the clear view that a Tribunal, be it a tribunal of limited jurisdiction, remains a Tribunal, which is what is relevant for the purpose of deciding this case."
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> (Emphasis supplied)

20. In my opinion, the above principles of law although in the context of the Schemes of Ombudsman Regulations, 2004 under the Electricity Act are squarely applicable to the statutory scheme of Ombudsman under the Insurance Ombudsman Rules 2017 as in question, in the present case.

21. In **Columbia Sportswear Company Vs. Director of Income Tax, Bangalore**[8] the question which had arisen before the Supreme Court was as to whether an advance ruling pronounced by the Advance Ruling Authority (for short "**AAR**") can be challenged by the applicant or by the Commissioner or any income-tax authority subordinate to him under

8 (2012)11 SCC 224

Article 226/227 of the Constitution before the High Court or under Article 136 of the Constitution before the Supreme Court. In answering such question, the Supreme Court examined whether the AAR, if not a Court, was a tribunal within the meaning of expression as used in Article 136 and 227 of the Constitution and whether the AAR had a duty to act judicially and was amenable to writs of Certiorari and Prohibition under Article 226 of the Constitution. Considering the meaning of the expression "tribunal" as used in Article 136 and the expression "tribunals" in Article 227 of the Constitution, referring to its decision in **Harinagar Sugar Mills v. Shyam Sunder**[9], the Court observed that the test for determining whether a body is a tribunal or not is to find out whether it is vested with the judicial power of the State by any law to pronounce upon rights or liabilities arising out of some special law. It was observed that such test has been reiterated by the Supreme Court in **Jaswant Sugar Mills Ltd. v. Lakshmi Chand & Ors.**[10]. The Supreme Court examining the provisions and the nature of the duties as conferred on the AAR under the provisions of Sections 245N and 245S observed that the later provision expressly made the advance ruling binding on the applicant, in respect of the transaction and also on the Commissioner and the income-tax authorities subordinate to him and hence, the AAR was a body acting in judicial capacity. The Supreme Court

9 AIR 1961 S.C. 1669

10[AIR 1963 SC 677]

referring to the celebrated commentary of H.M. Seervai in his book "Constitutional Law of India" (Forth Edition) while discussing the tests for identifying judicial functions wherein the learned Author quoted a passage from Prof. de Smiths Judicial Review pg 1502, to the following effect:

> "An authority acts in a judicial capacity when, after investigation and deliberation, it performs an act or makes a decision that is binding and conclusive and imposes obligation upon or affects the rights of individuals."

The Supreme Court also considered the issue as to whether even if the provisions of Section 245N(a)(iii) provided that the ruling of the AAR shall be binding on the persons specified under Section 245S, would it denude the powers of the judicial review vested in the High Court under Articles 226/ 227 of the Constitution. The Supreme Court referring to the Constitution Bench Judgment of the Supreme Court in **L.Chandra Kumar V. Union of India**[11] held that the power vested in the High Courts to exercise judicial superintendence over the decisions of all courts and tribunals within their respective jurisdictions is part of the basic structure of the Constitution. It was therefore, held that a proposition that an advance ruling of the authority should not be permitted to be challenged before the High Court under Articles 226 and/or 227 of the Constitution would be to negate a part of the basic structure of the Constitution. The observations in that regard are required to be noted which read thus:-

11 (1997)3 SCC 261

"15. As Section 245-S expressly makes the Advance Ruling binding on the applicant, in respect of the transaction and on the Commissioner and the income tax authorities subordinate to him, the Authority is a body acting in judicial capacity. H.M. Seervai in his book "Constitutional Law of India" (Forth Edition) while discussing the tests for identifying judicial functions in paragraph 16.99 quotes the following passage from Prof. de Smiths Judicial Review on page 1502:

> "An authority acts in a judicial capacity when, after investigation and deliberation, it performs an act or makes a decision that is binding and collusive and imposes obligation upon or affects the rights of individuals."

We have, therefore, no doubt in our mind that the Authority is a body exercising judicial power conferred on it by Chapter XIX-B of the Act and is a tribunal within the meaning of the expression in Articles 136 and 227 of the Constitution.

… .. ..

17. Considering the settled position of law that the powers of this Court under Article 136 of the Constitution and the powers of the High Court under Articles 226 and 227 of the Constitution could not be affected by the provisions made in a statute by the Legislature making the decision of the tribunal final or conclusive, we hold that sub-section (1) of Section 245S of the Act, insofar as, it makes the advance ruling of the Authority binding on the applicant, in respect of the transaction and on the Commissioner and income-tax authorities subordinate to him, does not bar the jurisdiction of this Court under Article 136 of the Constitution or the jurisdiction of the High Court under Articles 226 and 227 of the Constitution to entertain a challenge to the advance ruling of the Authority.

…. … … .

19. In L. Chandra Kumar v. Union of India and Others (1997)3 SCC 261, a Constitution Bench of this Court has held that: (SCC pp.301-02, para 79)

> "79. … .. … the power vested in the High Courts to exercise judicial superintendence over the decisions of all courts and tribunals within their respective jurisdictions is also part of the basic structure of the Constitution."

Therefore, to hold that an advance ruling of the authority should not be permitted to be challenged before the High Court under Articles 226 and/or 227 of the Constitution would be to negate a part of the basic structure of the Constitution. Nonetheless, we do understand the apprehension of the Authority that a writ petition may remain pending in the High Court for years, first before a learned Single Judge and

> thereafter in Letters Patent Appeal before the Division Bench and as a result the object of Chapter XIX-B of the Act which is to enable an applicant to get an advance ruling in respect of a transaction expeditiously would be defeated. We are, thus, of the opinion that when an advance ruling of the Authority is challenged before the High Court under Articles 226 and/or 227 of the Constitution, the same should be heard directly by a Division Bench of the High Court and decided as expeditiously as possible.
>
> … … …
>
> 21. Article 136 of the Constitution itself states that this Court may, "in its discretion", grant special leave to appeal from any order passed or made by any court or tribunal in the territory of India. The words "in its discretion" in Article 136 of the Constitution makes the exercise of the power of this Court in Article 136 discretionary. Hence, even if good grounds are made out in a Special Leave Petition under Article 136 for challenge to an advance ruling given by the Authority, this Court may still, in its discretion, refuse to grant special leave on the ground that the challenge to the advance ruling of the authority can also be made to the High Court under Articles 226 and/or 227 of the Constitution on the self same grounds. In fact, in Sirpur Paper Mills Ltd. v. Commissioner of Wealth Tax, Hyderabad [AIR 1970 SC 1520] it has been observed that this Court does not encourage an aggrieved party to appeal directly to this Court against the order of a Tribunal exercising judicial functions unless it appears to the Court that a question of principle of great importance arises. Unless, therefore, a Special Leave Petition raises substantial questions of general importance or a similar question is already pending before this Court for decision, this Court does not entertain a Special Leave Petition directly against an order of the tribunal."

22. Thus the position in law as held by the Supreme Court is quite clear that the AAR was held to be a a body exercising judicial power as conferred on it by Chapter XIX-B of the Act and was a tribunal within the meaning of the expression in Articles 136 and 227 of the Constitution. In my opinion, the law as expounded by the Supreme Court in **Columbia Sportswear Company** (supra) is squarely applicable in the present context, for this Court to come to a conclusion that the Insurance Ombudsman is a

tribunal within the meaning of Article 227 of the Constitution, considering that the provisions of Rule 17(6) read with 17(8) of the Insurance Ombudsman Rule 2017 are not different from the provisions of Section 245N(a)(iii) of the Income Tax Act,1961 which mandates that ruling of AAR shall be binding on the persons specified in Section 245S. It thus cannot be held that the petitioner would not have a remedy under Article 227 to assail the orders passed by the Insurance Ombudsman which in fact adjudicates a lis and determines the rights of the parties namely between that of the complainant/respondent No.2 and the Insurance company on the other hand.

23. I am, therefore, of the considered view that as the adjudication of a complaint before the Insurance Ombudsman possesses all essentials of a judicial/quasi judicial adjudication akin to an adjudication by a tribunal. It thus may not be an acceptable proposition that merely because Sub-Rule (8) of Rule 17 provides that an award shall be binding on the insurer, the insurer would be precluded from assailing the award by invoking the jurisdiction of this Court under Article 227 being a remedy as guaranteed by the Constitution, more particularly, being an adjudication governed by statutory rules as noted above. The question No. (i) as noted in paragraph (3) would accordingly stand answered.

24. In view of the above discussion and clear position in law as laid down by the Supreme Court, I respectfully do not find myself to be in agreement with the view taken by the learned Single Judge of the Calcutta High Court in **Life Insurance Corporation of India vs. The Insurance Ombudsman** (supra) that a writ petition under Article 227 of the Constitution against an award passed by the Ombudsman would not be maintainable, when the Court observed thus:-

> "15. The three circulars read together emphasize the anxiety of the IRDA to have an efficient resolution of insurance disputes as expeditiously as possible. It urges the insurers to honour, inter alia, an award of the Insurance Ombudsman. It does not provide an opportunity or a licence to the insurer to challenge the award of the Insurance Ombudsman in any proceedings. Quite to the contrary, it advises the insurer to honour it. The Rules of 1998 does not contemplate a challenge to the award of an insurance Ombudsman at the behest of the insurer. It allows the insurer not to comply with the award when the same is challenged at the behest of the complainant. The Rules of 1998 and the three circulars of IRDA does not envisage or recognize that, the insurer would be a party aggrieved by an award passed by the Insurance Ombudsmen acting under the Rules of 1998."

25. Having held the writ petition to be maintainable, now the Petitioner's case on merits needs to be examined. It appears to be clear that the 'proposal form' as described by the insured specifically provided for columns in which the deceased insured was required to furnish all the necessary details in regard to his past medical history. Column 14, titled as

'Medical History', as noted above, specifically required the insurer to provide information as to whether in the past five years nearing the said proposal/application, he had undergone any surgical operation at a hospital or clinic or had undergone any investigation with other than normal or negative results. He was also required to specify whether he was on diet or on any other medicine of any kind as prescribed by a doctor; as to whether he was undergoing or intending to undergo any treatment; as to whether he was advised for any surgical operation, procedure or hospital admission (including x-rays, ECG. Blood tests, biopsies, etc.) Further he was also required to furnish information as to whether he had suffered any chest pain with low or high blood pressure, high cholesterol, heart attack, heart murmur or other heart disorders and submit an appropriate questionnaire. He was also required to submit information on dizziness/fainting spells, epilepsy, paralysis, stroke, mental/emotional disorder or any other neurological disorder. All this information as required to be furnished by the insured was answered/supplied in the negative by the insured.

26. It appears to be quite clear from the materials as also the investigation as revealed by the petitioner in the investigation of the insured's case, that is from the medical history of the insured, that the insured was a known case of hypertension as clear from the discharge

summary dated 15 August 2015 issued by Saifee Hospital which made the following remark “K/C/O HTN/PSYCHIATRIC ILLNESS ON MEDICATION”. This apart, he was advised in the discharge summary to continue with the Tablet Amlopress L for the hypertension (HT) medication. Such discharge summary pertained to a period of two years prior to the insured making the insurance proposal in question. The discharge summary referred by Respondent No.2 dated 31 August 2016 referred under the “head of no history of hypertension”, in my opinion, is wholly inconsistent when there is no denial to the earlier medical history as revealed from the discharge summary dated 15 August, 2015 of the Saifee Hospital, Mumbai. Even otherwise, in the said discharge summary dated 31 August 2016, hypertension Tablet Amlopress L has been continued. It thus cannot be that only on one occasion the blood pressure of the insured when hospitalised in August 2015, was required to be controlled. Also there appears to be no dispute on the certificate of Dr. Hozefa A. Bhinderwala, Consultant Psychiatrist dated 9 January 2020 who certified that the deceased insured was under his treatment for schizophrenia since 2013. It is also clear from the prescription of Dr. Kedar Toraskar that he continued the hypertension medication. Further, the death summary as issued by Saifee Hospital refers to the clinical history of the deceased as under :

“Clinical Summary

> 2/M, K/C/O DM/HTN/ Psychiatric disorder; on treatment
> Admitted with c/o dizziness f/b loss of consciousness which lasted for 5 mins and subsided on its own
> During the episode as per relatives rigidity in both ul and II
> On 16/10/19 morning started c/o headache nausea when family physician took bp- 17096 and hgt 140mg/dl
> On investigation – MRA brain wnl / LFT derranged / hyponatremia/USG abdomen : GB calculli
> On 09/10/19 – reports: hyponatremla/ s.creatinine 1.52/hco3 : 10:8/ s. K: 5.5
> Patient was v. drowsy/ restless and decreased u/o --- RRT, was activated in the evening (9/10/19) i/v/o not responding
> CODE Blue activated – requied intubation – ventilatioin:-/ coffee ground vomiting, with aspiration--- shifted to icu
> … tienr – found pallor ++/ unresponsive / on ventilator acidotic breathing / BP not recordable --- noradrenaline / vasopressine start
> /v/o/ still low.bp – adrenaline cadded.
> … 3G : severe metabolic acidosis / Hb dropped/ thrombocytopenia ++ --- 4 PCV/FFP/ Platelets transfusion was done
> pantodac infusion / NaHCO3 infusion was started..
> ice evening 09/10/19 – till 3.20 am (10/10/19) had 5 episodes of cardiac arrest-- reverted, but his BP remained on lower side
> - 70/30 mmHg)
> Inspite of all advanced critical care management-- he didn't responded to the the treatment,
> expired on 10/10/19, at 3.20 am"
>
> (emphasis supplied)

27. This apart the expert Dr. C.H. Asrani, as appointed by the Petitioner, rendered his opinion on the basis of all the documents submitted to him, clearly opining that as per discharge summary dated 31 August 2015, the insured was a known case of both schizophrenia and hypertension implying that these ailments were present before 2015. He also opined that the insured was being treated for schizophrenia since 2013. He also stated that the insured was having regular treatment from his psychiatrist and gave positive history for being hospitalized in August 2015. He also opined that, hence, there was a significant non-disclosure on both

these counts and that the insured had clearly not disclosed, that he was a patient of schizophrenia and hypertension. He also recorded that the non-disclosure of such ailments in the insured's proposal was significant as it would have led to an altogether different decision by the petitioner as to whether such proposal of the insured could at all be accepted for a life insurance policy to be issued to him. He also opined that schizophrenia patients have high risk of severe infections, including sepsis and the insured had died due to sepsis.

28. In my opinion, when the above material was available before the Ombudsman, he ought to have given due regard to the same and on considering the same in its proper perspective ought to have discussed the consequence which could be a fall out from such medical material. The observations and conclusions of the Insurance Ombudsman are bereft of any reasoning on such material which formed part of the record before him, they are cryptic, as also extraneous to the issue before him. The relevant observations leading to the award of the Insurance Ombudsman are required to be noted which read thus :

> "3. Observations and conclusions:
>
> The complainant's husband purchased the above policy in December 2017 and expired in October, 2019. The total premium paid Rs. 10,33,750/- and the sum assured is Rs. 75,00,000/- Though the claim amount is Rs. 75,00,000/- but the complainant has requested to this Forum vide letter dated 11.09.2020 to consider it for Rs. 30,00,000/- only
> The claimant submitted to the Respondent an application for the Death

> claim payment. The same was rejected as the policyholder had not disclosed his medical history at the time of same issuance of the policy and the same was communicated to the claimant.
> The Respondents had repudiated the claim on the basis of the medical opinion from Dr. C H Asrani, Mumbai wherein it has been mentioned that the deceased Life Assured was under treatment for Schizophrenia and Hypertension prior to issuance of the policy. As per hospital records, the cause of death was septicemia with multi-organ failure. Though deceased Life assured had taken treatment for Schizophrenia in 2013, but as per 'Harrison's textbooks of Internal Medicine' and medical journals like the 'Indian Journal of Psychiatry' standard duration of treatment for an episode of schizophrenia is 2-3 years depending on the response of the patient, and thereafter routine follow-ups. As stated by complainant Life assured was of sound mind while taking the policy. For such Non-medical underwriting proposals, Moral Hazard Report by the company's executive is vital and to be filled diligently by enquiring all past history of the proposer due to high Sum Assured. In this case, the company's executive was aware of the elbow supportive brace worn by her husband while signing the documents. The life assured had a good relationship with HDFC Bank Manager, hence there is the possibility of their awareness of the medical history of the deceased Life assured. Proposal form was also filled up by the company's executive. The Cause of death is septicemia with multi-organ failure which is not related to the Psychiatric illness and Hypertension. He had taken treatment for Type 2 DM from Dr. Toraskar in 2019 i.e after taking the policy. Also, Life assured had already paid two year's premium and had in fact asked for cancellation of policy since he was interested in single premium mode. It is observed that the deceased policyholder had no fraudulent intention in not disclosing the above medical history at the time of going in for insurance in December 2017. In fact M.H.R. which was essential for the purpose of underwriting a proposal was not filled up diligently by the Company's executive. The suppression of material facts by the deceased life assured has not much relevance with the cause of death of the life assured. The claim is for Rs. 75 lacs whereas this Forum jurisdiction is for a maximum claim amount of Rs. 30 lacs. The decision of the Respondent is therefore set aside by the following Order."
>
> (emphasis supplied)

29. Considering the aforesaid observations, in my opinion, there is perversity on many counts, on the part of the Insurance Ombudsman in recording such findings. Firstly, the Insurance Ombudsman has completely overlooked the basic requirements of the insurance contract, namely, that there has to be disclosure in good faith which is *sine-qua-non* for an

insurance contract to be enforceable when a claim under such contract is made. The Ombudsman has, in fact, proceeded on surmises and conjunctures when he observes that the Life Assured had good relations with the HDFC Bank Manager, the Petitioner's agent, and hence, there was a possibility of awareness of the medical history of the deceased insured. When the Ombudsman further observes that the proposal form was filled up by the company's executive, is totally extraneous and besides the point, inasmuch as it was never the case of Respondent No.2 that prior to the insured's death, the insured had taken a position that he was not aware about the proposal made by him or his agent and more particularly he was not aware of the contents of such insurance proposal as made to the Petitioner. Thus, for Respondent No.2, to subsequently say that the deceased insured was not aware of the proposal form and/or that the agent of the Petitioner had filled up the online form, in my opinion, is absolutely untenable and accepting such case of respondent no. 2 by the Insurance Ombudsman, in my opinion, is a glaring perversity. Such reasoning of the Insurance Ombudsman lacks both legal and factual logic. This more significantly, when the insured was himself a medical practitioner by profession. It was, therefore, totally unacceptable for the Ombudsman to observe that the proposal form was not filled up by the insured but by the petitioner's agent which was to the knowledge of the Petitioner would

make the insurance contract valid. If it was to be the case that the insured had not himself filled up the proposal form, Respondent No.2 herself was not in position to make any claim as the contract itself was fundamentally not enforceable as being not made by the deceased insured in the manner as the law would require. However, this is certainly not the case of respondent No.2.

30. The second fundamental error on the part of the Ombudsman is not to relate the cause of death to the ailments as suffered by the insured, namely, septicemia and multiple organ failure on the ground that the insured had taken treatment for Type-2 diabetes, schizophrenia and hypertension. The entire medical material, in fact, was clear to the effect that since 2013, the insured was suffering from schizophrenia and hypertension, as also he was a known case of hypertension, which could lead to vulnerability to severe infection such as septicemia. It is certainly quite astonishing to note that the Insurance Ombudsman has observed that the deceased policy holder had no fraudulent intention in not disclosing the medical history at the time of going in for insurance in December 2017. It is unconscionable as to how such observations could be made and without any supporting material and merely on the basis that the proposal form was filled up by the agent's executive, so as to come to a conclusion that the non-disclosure of material facts by the deceased insured did not have any

relevance with the cause of death of the life assured. Such finding of the Insurance Ombudsman amounts to an *ex facie* perversity. Thus, in so far as the merits are concerned, in my opinion, looked from any angle, the impugned award passed by the Ombudsman is wholly perverse and unconscionable and hence, cannot be sustained even on merits.

31. It is a settled principle of law that a contract of insurance is governed by the principle of utmost good faith namely by the doctrine of *uberrima fidae* which would imply that all parties to an insurance contract must deal in good faith, making a true declaration of all material facts in the insurance proposal. In the present case, the deceased insured had certainly not disclosed material information. In the context of a party to an insurance contract lacking in making disclosure, learned Counsel for the Petitioner would be correct in placing reliance on the Supreme Court in **Reliance Life Insurance Company Ltd. vs. Rekhaben Nareshbhai Rathod** (supra) wherein the Supreme Court taking a review of the legal position on the principles of an insurance contract has observed that even an incorrect statement which may not be a suppression of a material fact, could be enough for the insurance company to repudiate the contract of insurance policy. In such context, in paragraphs 28, 29, 30, 31, 32 and 36, the relevant observations as made by the Supreme Court are required to be noted, which read thus :

"28. Materiality of a fact also depends on the surrounding circumstances and the nature of information sought by the insurer. It covers a failure to disclose vital information which the insurer requires in order to determine firstly, whether or not to assume the risk of insurance, and secondly, if it does accept the risk, upon what terms it should do so. **The insurer is better equipped to determine the limits of risk-taking as it deals with the exercise of assessments on a day-to-day basis. In a contract of insurance, any fact which would influence the mind of a prudent insurer in deciding whether to accept or not accept the risk is a material fact.** If the proposer has knowledge of such fact, she or he is obliged to disclose it particularly while answering questions in the proposal form. **An inaccurate answer will entitle the insurer to repudiate because there is a presumption that information sought in the proposal form is material for the purpose of entering into a contract of insurance**.

29. **Contracts of insurance are governed by the principle of utmost good faith. The duty of mutual fair dealing requires all parties to a contract to be fair and open with each other to create and maintain trust between them. In a contract of insurance, the insured can be expected to have information of which she/he has knowledge. This justifies a duty of good faith, leading to a positive duty of disclosure.** The duty of disclosure in insurance contracts was established in a King's Bench decision in *Carter* v. *Boehm* [*Carter* v. *Boehm*, (1766) 3 Burr 1905 : 97 ER 1162] , where Lord Mansfield held thus: (ER p. 1164)

"Insurance is a contract upon speculation. The special facts, upon which the contingent chance is to be computed, lie most commonly in the knowledge of the insured only; the underwriter trusts to his representation, and proceeds upon confidence that he does not keep back any circumstance in his knowledge, to mislead the underwriter into a belief that the circumstance does not exist, and to induce him to estimate the risque, as if it did not exist."

30. It is standard practice for the insurer to set out in the application a series of specific questions regarding the applicant's health history and other matters relevant to insurability. The object of the proposal form is to gather information about a potential client, allowing the insurer to get all information which is material to the insurer to know in order to assess the risk and fix the premium for each potential client. Proposal forms are a significant part of the disclosure procedure and warrant accuracy of statements. **Utmost care must be exercised in filling the proposal form. In a proposal form the applicant declares that she/he warrants truth. The contractual duty so imposed is such that any suppression, untruth or inaccuracy in the statement in the proposal form will be considered as a breach of the duty of good faith and will render the policy voidable by the insurer. The system of adequate disclosure helps buyers and sellers of**

insurance policies to meet at a common point and narrow down the gap of information asymmetries. This allows the parties to serve their interests better and understand the true extent of the contractual agreement.

31. The finding of a material misrepresentation or concealment in insurance has a significant effect upon both the insured and the insurer in the event of a dispute. The fact it would influence the decision of a prudent insurer in deciding as to whether or not to accept a risk is a material fact. As this Court held in *Satwant Kaur* [*Satwant Kaur Sandhu* v. *New India Assurance Co. Ltd.*, (2009) 8 SCC 316 : (2009) 3 SCC (Civ) 366] "there is a clear presumption that any information sought for in the proposal form is material for the purpose of entering into a contract of insurance". Each representation or statement may be material to the risk. The insurance company may still offer insurance protection on altered terms.

32. In the present case, the insurer had sought information with respect to previous insurance policies obtained by the assured. **The duty of full disclosure required that no information of substance or of interest to the insurer be omitted or concealed. Whether or not the insurer would have issued a life insurance cover despite the earlier cover of insurance is a decision which was required to be taken by the insurer after duly considering all relevant facts and circumstances.** The disclosure of the earlier cover was material to an assessment of the risk which was being undertaken by the insurer. Prior to undertaking the risk, this information could potentially allow the insurer to question as to why the insured had in such a short span of time obtained two different life insurance policies. Such a fact is sufficient to put the insurer to enquiry.

36. Finally, the argument of the respondent that the signatures of the assured on the form were taken without explaining the details cannot be accepted. A similar argument was correctly rejected in a decision of a Division Bench of the Mysore High Court in *V.K. Srinivasa Setty* v. *Premier Life and General Insurance Co. Ltd.* [*V.K. Srinivasa Setty* v. *Premier Life and General Insurance Co. Ltd.*, 1957 SCC OnLine Kar 27 : AIR 1958 Mys 53] where it was held: (SCC OnLine Kar paras 80-81)

> "*80*. Now it is clear that a person who affixes his signature to a proposal which contains a statement which is not true, cannot ordinarily escape from the consequence arising therefrom by pleading that he chose to sign the proposal containing such statement without either reading or understanding it. That is because, in filling up the proposal form, the agent normally, ceases to act as agent of the insurer but becomes the agent of the insured and no agent can be assumed to have authority from the

> insurer to write the answers in the proposal form.
>
> *81*. If an agent nevertheless does that, he becomes merely the amanuensis of the insured, and his knowledge of the untruth or inaccuracy of any statement contained in the form of proposal does not become the knowledge of the insurer. Further, apart from any question of imputed knowledge, the insured by signing that proposal adopts those answers and makes them his own and that would clearly be so, whether the insured signed the proposal without reading or understanding it, it being irrelevant to consider how the inaccuracy arose if he has contracted, as the plaintiff has done in this case that his written answers shall be accurate."
>
> (emphasis supplied)

32. In a subsequent decision of a three Judge Bench of the Supreme Court in **Branch Manager, Bajaj Allianz** (supra), the Supreme Court reiterated the principles that the contract of insurance is one executed in utmost good faith and the proposer who seeks to obtain a policy of life insurance is duty bound to disclose all material facts bearing upon the issue as to whether the insurer would consider it appropriate to assume the risk which is proposed. It was observed that it is with this principle in view, that the proposal form requires a specific disclosure of pre-existing ailments, so as to enable the insurer to arrive at considered decision based on the actuarial risk. In paragraphs 9, 12 and 13, the Supreme Court observed the effects of non-observation as under :

> "9. A contract of insurance is one of utmost good faith. A proposer who seeks to obtain a policy of life insurance is duty bound to disclose all material facts bearing upon the issue as to whether the insurer would consider it appropriate to assume the risk which is proposed. It is with this principle in view that the proposal form requires a specific disclosure of pre-existing ailments, so as to enable the insurer to arrive at a considered decision based on the actuarial risk. In the present case, as we have indicated, the proposer failed to disclose the vomiting of blood which had taken place barely a

> **month prior to the issuance of the policy of insurance and of the hospitalization which had been occasioned as a consequence.** The investigation by the insurer indicated that the assured was suffering from a pre-existing ailment, consequent upon alcohol abuse and that the facts which were in the knowledge of the proposer had not been disclosed. This brings the ground for repudiation squarely within the principles which have been formulated by this Court in the decisions to which a reference has been made earlier. In *Life Insurance Corporation of India* v. *Asha Goel*, this Court held:
>
> > "12…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 risk which may take place between the proposal and its acceptance. If there is 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."
>
> 12. … … ...
>
> 13. **The medical records which have been obtained during the course of the investigation clearly indicate that the deceased was suffering from a serious preexisting medical condition which was not disclosed to the insurer. In fact, the deceased was hospitalized to undergo treatment for such condition in proximity to the date of his death, which was also not disclosed in spite of the specific queries relating to any ailment, hospitalization or treatment undergone by the proposer in Column 22 of the policy proposal form. We are, therefore, of the view that the judgment of the NCDRC in the present case does not lay down the correct principle of law and would have to be set aside. We order accordingly.**"
>
> (emphasis supplied)

Applying the principles of law as laid down by the Supreme Court in the above decisions to the facts of the present case, it is quite clear that the insurance contract in question itself stood vitiated and was rightly repudiated by the petitioner.

33. Apart from the above discussion, there is much substance in the

contention as urged on behalf of the petitioner that Ombudsman ought to have rejected the complaint as made by respondent no.2 for the reason that the claim as made by respondent No.2 for compensation of Rs.75 lakhs, which was beyond the pecuniary jurisdiction of Insurance Ombudsman, in view of the proviso to sub-rule (3) of Rule 17 which restricted the jurisdiction of the Insurance Ombudsman to Rs.30 lakhs. Thus, at the threshold the Insurance Ombudsman has no jurisdiction to entertain the complaint of respondent No.2. However, it appears that respondent No.2 intended to bring the complaint within the jurisdiction of the Insurance Ombudsman and for such purpose respondent No.2 by her letter dated 11 September 2020 as addressed to the Ombudsman stated that she would be satisfied with the amount of Rs.30 lakhs. The Insurance Ombudsman accepting such letter that the claim itself was for an amount of Rs.30 lakhs held the complaint to be maintainable. In my opinion, such approach on the part of the Insurance Ombudsman was objectionable for more than one reason. As seen from the reading of respondent No.2's letter dated 11 September 2020, respondent no. 2 has stated that she would be satisfied with an amount of Rs.30 lakhs to be settled by the Ombudsman. In my opinion, such letter of respondent no. 2 was a settlement proposal not an amendment of the claim as made by respondent No.2 which was for an amount of Rs.75 lakhs. Thus, the fact remains that the principal claim of

respondent No.2 even on respondent No.2's showing as contained in the said letter, continued to be for an amount of Rs.75 lakhs, implying that the Insurance Ombudsman *per se* had no jurisdiction to entertain such complaint. It needs to be observed that this is not a situation that a party rightfully invoking the pecuniary jurisdiction of the forum, has agreed to reduce or settle its claim at a lower amount, which would be permissible, it is however, quite reverse, as respondent No.2 filed a complaint making a claim of Rs.75 lakhs which was beyond the pecuniary jurisdiction of the Ombudsman and subsequently, intends to settle at a lower amount. This by no means would amount to curing the fundamental defect on the complaint, namely, that the complaint remained to be a complaint claiming Rs.75 lakhs, which the Ombudsman had no jurisdiction to entertain being beyond his pecuniary jurisdiction under the rules.

34. Thus, with quite certainty the above discussion would lead this Court to come to the conclusion that the writ petition needs to succeed. Accordingly, the impugned award dated 31 December 2020 passed by the Insurance Ombudsman is quashed and set aside. Rule is made absolute in such terms. No costs.

(G. S. KULKARNI, J.)