JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.1698 of 2020
Adamjee Life Assurance Co. Limited
Versus
The President of Pakistan through Director Legal and others

Date of Hearing:	21.12.2023
Petitioner by:	Mr. Saadat Ali Saeed, Advocate.
Respondents by:	Ms. Asia Batool, learned Assistant Attorney-General. Mr. Muhammad Islam Sandhu, Advocate for respondent No.2.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Adamjee Life Assurance Co. Limited, seeks the issuance of a writ of *certiorari* with respect to the order dated 13.05.2020 passed by the President of Pakistan (respondent No.1) and order dated 28.10.2019 passed by the Federal Insurance Ombudsman (respondent No.3).

2. Vide order dated 28.10.2019, respondent No.3 allowed the complaint filed by Farzand Latif (respondent No.2) against the petitioner and directed the latter to pay Rs.1,467,750/- as death claim under the insurance policy held by respondent No.2's deceased father. The petitioner was also directed to pay liquidated damages under Section 118 of the Insurance Ordinance, 2000 (**"the 2000 Ordinance"**).

3. The record shows that on 23.05.2012, the petitioner had issued a life insurance policy in favour of respondent No.2's father, Abdul Lateef, who is said to have defaulted in the payment of renewal of premium after one year of the issuance of the said policy. As a result of the said default, the policy issued in favour of Abdul Lateef lapsed in terms of clause 13.1 of the terms and conditions of the said policy. Subsequently, on 09.08.2017, Abdul Lateef applied to the petitioner for the reinstatement of the said policy and submitted a medical declaration which provided that he did not suffer from any ailment. Vide letter dated 21.09.2017, the

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petitioner informed Abdul Lateef that his policy would be reinstated subject to the payment of Rs.400,000/- as outstanding premium as well as "underwriting decision". Admittedly, Abdul Lateef had paid Rs.500,000/- and submitted his reply dated 09.08.2017 to the questionnaire in which he did not make disclosure as to any ailment he was suffering from. After this, his policy was reinstated on the same terms and conditions as before.

4. After the reinstatement of the said policy, Abdul Lateef died on 02.05.2018. His son, respondent No.2, made a claim against the petitioner for benefits under the said policy. The petitioner denied respondent No.2's claim under the said policy on the ground that Abdul Lateef had failed to make a disclosure about the material fact regarding his ailments at the stage of the reinstatement of the policy. Vide letter dated 11.02.2019, the petitioner expressly turned down respondent No.2's claim under the said policy.

5. On 26.03.2019, respondent No.2 submitted a complaint against the petitioner before respondent No.3. Vide order dated 28.10.2019, the said complaint was allowed with the direction to the petitioner to pay respondent No.2 Rs.14,67,750/-.

6. Respondent No.2's complaint before respondent No.3 was allowed primarily on the ground that under Section 80 of the 2000 Ordinance, a policy of life insurance cannot be called in question by an insurer, after two years from the date on which it was issued, on the ground that a statement made in the proposal for insurance or in any report of a medical officer, or referee, or friend of the policy holder, or in any other document leading to the issuance of the policy, was inaccurate or false. The petitioner's representation against respondent No.3's order dated 28.10.2019 was turned down by respondent No.1 on 13.05.2020. The said concurrent orders dated 28.10.2019 and 13.05.2020 have been assailed by the petitioner in the instant writ petition.

7. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, submitted that

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respondents No.1 and 3 concurrently erred by not appreciating that the bar imposed on an insurer under Section 80 of the 2000 Ordinance to call in question an insurance policy within two years of its issuance on the ground that an inaccurate or false statement had been made by the policy holder, did not apply where *"the insurer shows that such statement was on a material matter or suppressed facts which it was material to disclose and that it was fraudulently made by the policy holder and that the policy holder knew at the time of making it that the statement was false or that its suppressed facts which it was material to disclose"*. Furthermore, it was submitted that there was ample evidence on record to show that Abdul Lateef was suffering from cardiac ailment, which fact he had failed to disclose to the petitioner while applying for the issuance or reinstatement of the policy.

8. It was asserted that since Abdul Lateef had concealed the material fact as to his ailments while submitting the questionnaire dated 09.08.2017, respondent No.2 had no right to make a claim under the policy. Learned counsel for the petitioner prayed for the writ petition to be allowed and for the concurrent orders dated 28.10.2019 and 13.05.2020 to be set-aside.

9. On the other hand, learned counsel for respondent No.2 submitted that it was the responsibility of the petitioner to have carried out the process or procedure regarding the questionnaire; that having not done so, the petitioner cannot deny respondent No.2's claim under the policy; that initially when the policy was issued in the year 2014, the petitioner had carried out all due diligence before the issuance of the policy; and that the impugned orders dated 28.10.2019 and 13.05.2020 do not suffer from any jurisdictional irregularity so as to warrant interference in the Constitutional jurisdiction of this Court. Learned counsel for respondent No.2 prayed for the writ petition to be dismissed.

10. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of the instant petition

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have been set out in sufficient detail in paragraphs 2 to 6 and need not be recapitulated.

11. The sole ground on which the petitioner is denying respondent No.2's claim under the insurance policy issued by the petitioner to respondent No.2's deceased father, Abdul Lateef, is that he, while applying for the reinstatement of the policy, which had lapsed due to the non-payment of premium, had concealed the material fact as to his ailments. Reliance is placed by the petitioner on the "non-medical questionnaire" submitted by Abdul Lateef on 09.08.2017 which shows that he was not suffering from any ailment.

12. Along with its objections to the complaint submitted by respondent No.2 before respondent No.3, the petitioner had produced a number of documents which showed different cardiac tests of Abdul Lateef carried out by the Institute of Cardiology at Multan, Rehmat Cardiology Centre, Qasim Diagnostic Centre and the statement from Dr. M. Farooq. These documents also show that Abdul Lateef suffered from a heart condition since 2014.

13. I am of the view that it was obligatory for Abdul Lateef to have made the disclosure as to his ailments in the non-medical questionnaire submitted at the stage of the reinstatement of his policy. The vital question that needs to be answered is whether an insurance company would reinstate a policy of an applicant who is suffering from ailments as the ones suffered by Abdul Lateef.

14. The concurrent views taken by respondents No.1 and 3 are that by virtue of Section 80 of the 2000 Ordinance, an insurance policy could not be questioned within two years of its issuance. The said Section is reproduced herein below:-

> ***"80. Policy not to be called in question on ground of mis-statement after two years.-*** *Notwithstanding anything in section 79, no policy of life insurance effected before the commencement date of this Ordinance shall after the expiry of two years from the commencement date of this Ordinance and no policy of life insurance effected after the commencement date shall, after the expiry of two years from the date on which it was effected, be called in question by an insurer on the ground that a statement made in the proposal for insurance or in any report of a medical*

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officer, or referee, or friend of the policy holder, or in any other document leading to the issue of the policy, was inaccurate or false, unless the insurer shows that such statement was on a material matter or suppressed facts which it was material to disclose and that it was fraudulently made by the policy holder and that the policy holder knew at the time of making it that the statement was false or that it suppressed facts which it was material to disclose:
Provided that nothing in this section shall prevent the insurer from calling for proof of age at any time if he is entitled to do so, and no policy shall be deemed to be called in question merely because the benefits payable under the policy are adjusted on subsequent proof that the age of the life insured was incorrectly stated in the proposal."

15. Respondents No.1 and 3, count the two years as commencing from the date of the reinstatement of the policy and not from the date when the policy was first issued. This conclusion is not in conformity with the law laid down by the Hon'ble Lahore High Court in the case of State Life Insurance Corporation of Pakistan Vs. Razi-ur-Rehman (2009 CLD 1666), wherein a policy had lapsed due to the non-payment of premium. The policy was subsequently reinstated but the insurance company had turned down the claim under the policy. Section 80 of the 2000 Ordinance was held to be of no avail to the policy holder as the two-year period contemplated in the said Section was held to commence from the date when the policy was originally issued and not when it was subsequently reinstated. In this regard, paragraph 7 of the said report is reproduced herein below:-

"7. Above mentioned provision of law is clear in its meanings. It is non abstante clause. It supersedes section 79 in totality. Furthermore, it inter alia holds that no policy shall be called in question after the expiry of two years from the date it was effected by saying that the statement of the policy holders or the report of a medical officer etc. was later found to be as inaccurate. In the present case the same commenced in 1991. Its revival is obviously continuation of the same policy. The provision, however, says that an insurer can challenge it if it was on a material matter or suppressed facts which it was material to disclose and that it was fraudulently made by the policy holder."

16. Additionally, in the case of State Life Insurance Corp. Vs. Sadaqat Bano (2008 CLD 1069), it was held, after reference to a number of judicial precedents, that *"according to Section 80 (ibid) an insurance policy, cannot be called in question on the grounds*

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of misrepresentation, false statement or suppression of material facts, after two years from the date when the policy was originally effective." Furthermore, it was held that *"the period of two years even in cases where the policy was revived and renewed would be counted from the original date of the policy in question."* In the said judgment, it was clarified that the suppression of the material fact by the policy holder must be found to be fraudulent.

17. Since I do not find the impugned orders dated 13.05.2020 and 28.10.2019 passed by respondents No.1 and 3, respectively to be in conformity with the law laid down by the Superior Courts in the afore referred judgments, the instant petition is allowed; the said orders dated 13.05.2020 and 28.10.2019 are set-aside; the matter is remanded to respondent No.3 for a decision afresh after satisfying itself on the veracity and genuineness of the documents produced by the petitioner in support of its stance that Abdul Lateef had suffered from such ailments, which, if disclosed at the stage when he applied for the reinstatement of the policy, would not have caused the petitioner to reinstate the policy.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 01.03.2024.

(JUDGE)

*Ahtesham**

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