IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 271 OF 2003

1. Mr. Joseph Colin Colaco,
   and his wife

2. Mrs. Millicent Colaco
   both residing at Rosilda
   Apartments, Ground Floor,
   Altinho, Panaji, Goa. ... Petitioners

versus

M/s National Insurance Company
Ltd. With office at 101, Govinda
Building, M. G. Road, Panaji, Goa. ... Respondent

Mr. M. B. Da Costa, Senior Advocate with Mr. J. A. Lobo, Advocate for the Petitioners.

Mr. M. S. Joshi, Advocate for the Respondent.

CORAM : A. P. DESHPANDE &
N. A. BRITTO, JJ.

DATE : 30TH SEPTEMBER, 2008.

ORAL JUDGMENT(Per A. P. DESHPANDE, J.)

The Petitioners in this petition are husband and wife who are residents of Panaji, Goa. In the year 2000, the Petitioners subscribed a long term Mediclaim Policy for a period of 15 years offered by the Respondent. The Respondent/National Insurance Company acting through its Senior Divisional

Manager at Panaji issued the said policy in favour of the Petitioners with a view to cover the Mediclaim. After almost for a period of two years, the Respondent Insurance Company, revoked and terminated the Insurance Policy by taking recourse to clause 5.9 which gave option to both parties to terminate the policy/contract. The termination of the policy was effected from 1st February, 2003 vide notice dated 1st January, 2003 which is purported to have been received by one of the Petitioners on 10th January, 2003. Aggrieved by the termination of the contract covered by the Policy the present Writ Petition has been filed by the Petitioners under Article 226 of the Constitution of India seeking the following reliefs - (1) to declare that clause 5.9 of the policy agreement is violative of Article 14 of the Constitution of India and consequently null and void. (2) a writ of mandamus is sought against the Respondent to withdraw the impugned notice and to extend the contract for a period of 15 years.

2. The Respondent-Insurance Company has filed its return and is justifying the action of termination of the contract. According to the Insurance Company, as per the established norms and practice of the Respondent, mediclaim policies are only available for a period of one year duration. The Respondent does not provide long term mediclaim policies and thus the issuance of mediclaim policy for a period of 15 years by the Senior Divisional Manager was wholly beyond his authority and outside the scope of the business, hence cannot bind the Insurance Company. It is tried to be emphasized that erroneously and without knowledge and/or consent of the superior officers, a long term mediclaim policy

has been issued in favour of the Petitioners by the said officer. It is also stated that not only the Petitioners but some other persons were also issued similar long term mediclaim policies by the same Officer at Panaji. When the Respondent realized that policy was not in confirmity with the business of the Respondent it chose to revoke and terminate the policy not only of the Petitioners but those similarly situated and who were issued long term mediclaim policies. The Respondent also claims to have initiated an inquiry against the erring Officer for the said act.

3. In the above set of facts, the learned Counsel for the Petitioners has contended that clause no.5.9 of the policy is arbitrary, unfair, unjust and unconscionable as the same permits the Insurance Company to revoke and terminate the contract. Perusal of clause 5.9 would reveal that right of revocation of the contract is not only restricted in favour of the Insurance Company but the insured as well is provided with the option to revoke and/or cancel the policy. Seen from this angle, both the parties to the contract have been vested with a choice/option to repudiate the contract. No undue advantage is vested in the Insurance Company in the matter of repudiation of the contract. Hence, it cannot be said that the said clause is unfair and unjust much less unreasonable. An identical clause had fallen for consideration before the Constitution Bench of the Supreme Court in the case of **General Assurance Society Ltd.** v. **Chandmull Jain and another**(AIR 1966 SC 1644), wherein it is held that a condition in an insurance policy giving mutual rights to parties to terminate the insurance contract at any time, is a common condition in policies and must be accepted as reasonable

and the right to terminate at will, cannot, by reason of the circumstances be read as a right to terminate for a reasonable cause. This Judgment of the Supreme Court supports our view that clause no.5.9 of the policy is not unreasonable and arbitrary and no relief prayed for, for quashing of the said clause can be granted to the Petitioners. The termination of the contract covered by the Policy cannot be faulted.

4. The next submission made by the learned Counsel on behalf of the Petitioners is that there is no clear 30 days notice. It is also submitted that no reason for termination of the contract is spelt out in the notice terminating the contract/policy and, lastly, it is submitted that the Petitioners had subscribed the long term mediclaim policy at an age of about 63 years and now the Petitioners age would be above 70 years and hence, the Petitioners would be put to suffer undue hardship and inconvenience as they will have to pay more premium if they are to subscribe a new Policy as of now. The learned Counsel for the Respondent-Insurance Company touching this aspect of the contention has submitted that a long term mediclaim policy is not a business activity of the Insurance Company at all and hence a mistake or an error committed by an Officer ought not to cause undue prejudice to the Respondent-Company which holds public money. It is then contended that though 30 days notice for terminating the contract is stipulated under the policy, if the same falls short by a few days it does not vitiate the action. True it is that termination of contract cannot be rendered illegal for the reason that the notice falls short of 30 days as the period of notice is not a condition or

stipulation under a statute. It is also submitted that under the interim order passed by this Court, the Insurance Company has deposited a sum of Rs.1,00,000/- in this Court in the name of the Petitioners. At this stage, it would be appropriate to mention that the Petitioners had paid by way of premium a sum of Rs.94,339/- plus a sum of Rs.3,100/- at the time of subscribing the policy. So the total amount paid by the Petitioners in the year 2000 was Rs.97,439/-. It is also stated in the affidavit in reply filed by the Insurance Company that the Insurance Company has nowhere stipulated any premium for the so-called long term mediclaim policy and without there being any basis the erring Officer has received a sum of Rs.94,339/- plus Rs.3,100/- from the Petitioners to cover the mediclaim for a period of 15 long years. It is not the case of the Petitioners that the Respondent-Company as a part of its business activity used to issue long term mediclaim policy or a policy for 15 years, whereas it is a categorical case made out by the Respondent in the affidavit in reply that the Respondent had never issued any long term mediclaim policy. It is also stated that the premium charged and received by the erring Officer from the Petitioners is nowhere stipulated. If this be the position, we cannot find any fault with the action on the part of the Respondent in terminating the policy. However, the fact remains that the present Petitioners are not at fault. The fault, if any, lies with the Respondent and its erring Officers. It is no one's case that the Petitioners are guilty of any suppression of fact or misstatement of fact. Thus the Petitioners cannot be made to suffer on account of an error or a mistake committed by a Senior Officer of the Respondent. Returning back only the premium paid in the year 2000 would not be just and proper. The Petitioners need

be compensated by directing payment of interest on the amount of premium and the interest ought to be granted little bit on a higher side so as to adequately compensate the Petitioners who by relying on the representation made by the Officer of the Respondent subscribed to a non existing policy. We are further informed by the learned Counsel for the respective parties that no claim was or has been lodged by the Petitioners under the policy in question.

4. In the circumstances, the Writ Petition is partly allowed. We permit the Petitioners to withdraw a sum of Rs.1,00,000/- deposited in this Court. We direct the Respondent to pay interest on Rs.97,439/- with effect from 27-10-2000(being the date on which the premium was paid by the Petitioners to the Respondent) at the rate of 18% per annum until actual payment of the amount to the Petitioners. The Respondent shall pay a sum of Rs.10,000/- by way of costs to the Petitioners. The Respondent shall pay the amount of interest so also costs to the Petitioners within a period of four weeks from today. Rule made absolute in above terms.

A. P. DESHPANDE, J.

N. A. BRITTO, J.

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