

BEFORE DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION
SHIMLA (H.P.)

Complaint No.: 211/2021
Presented on: 28.09.2021
Decided on : 19.10.2023

Nek Ram Pal, Son of Shri Govind Ram Pal,
Resident of Mahadev Kunj, Mahavir Ghati,
Lajwanti Marg, Tara Devi, Shimla, District Shimla, H.P.

....Complainant

Versus

1. Pramerica Life Insurance Ltd.,
4th Floor, Building No.9, Tower-B,
Cyber City, DLF City Face-III,
Gurgaon, Haryana-122002,
Through its Managing Director.
2. Pramerica Life Insurance Ltd.,
4th Floor, Rathore Complex,
Near BCS on National Highway,
New Shimla-171009,
Through its Branch Manager Alka Singh.
3. Mrs. Taruna Thakur,
Agent Pramerica Life Insurance Ltd.,
4th Floor, Rathore Complex,
Near BCS on National Highway,
New Shimla-171009, H.P.

....Opposite Parties

Coram :

Dr. Baldev Singh, President.
Ms. Yogita Dutta, Member.
Mr. Jagdev Singh Raitka, Member.

For Complainant:	Mr. Praveen Chauhan, Advocate, vice Mr. Manoj Chauhan, Advocate.
For Opposite Parties No.1&2:	Mr. Himanshu Kapila, Advocate, vice Mr. M.L. Sharma, Advocate
For Opposite Party No.3:	Complaint dismissed as withdrawn vide order dated 21.04.2022.

ORDER:

Present complaint has been filed by Nek Ram Pal (hereinafter referred to as the complainant) under Section 35 of the Consumer Protection Act 2019 (hereinafter referred to as the Act) against Pramerica Life Insurance Ltd. & Ors. (hereinafter referred to as the OPs), on account of deficiency in service and unfair trade practice, seeking relief therein that the OPs be

directed to refund the balance premium amount of Rs.1,08,007/- alongwith interest, to pay Rs.1,00,000/- as damages, to pay Rs.10,000/- as costs of litigation etc.

2. The case of the complainant in brief is that the OPs-company is engaged in finance service and as such providing services as defined under consumer protection Act and the complainant who had been compelled to purchase life insurance policy by narrating wrong facts and benefits of insurance policy, is a consumer. It is stated that in the month of May 2020, when the complainant was participating in a pensioner meeting at Kalabari Hall, he met with one person namely Smt. Vidya Thakur, who offered complainant to become a insurance agent and she also offered the complainant to purchase a life insurance policy and for that all paper work Mrs. Vidya Thakur introduce complainant with another insurance agent namely Mrs. Shalu, who was working for Reliance Insurance Co. at that time. It is stated that on 06th of May 2020, the complainant visited his native village to know the well being of his brother and on 02.06.2020, when the complainant was at his native village on 02.06.2020, four persons namely Ms. Shalu, Vidya Thakur, AQman and Mrs. Alka Thakur came to meet the complainant in his village house without informing him and offered one retirement life insurance policy to him and for that purpose, they took the signature of complainant on white/blank paper and after taking the signature of complainant, they all four persons suggested complainant that they want to nominate his son Mr. Ratish Pal as a nominee in the said policy and asked him to submit his son's one passport size photo, Pan car, and copy of Aadhar card, and accordingly the same were submitted to them. It is stated that four persons above named demanded Rs.1,03,000/- as a premium amount from complainant and accordingly he issued a cheque No.103031, dated 02.06.2020, amounting to Rs.1,03,000/- in favour of Premerica Life Insurance Ltd. as a premium amount for purchasing a retirement

life insurance policy. It is stated that after issuing a cheque in favour of OPs, the son of the complainant wanted to inquire about the retirement insurance policy, which was taken by the complainant, but to their utter surprise there was no such policy for senior citizen who are above 65 years of age. It is stated that thereafter the son of the complainant immediately approached the OPs, but the OP No.2 replied that complainant has insufficient amount in his bank account and for clearance of the said cheque of Rs.1,03,000/-, she has deposited Rs.26,000/- in the account of complainant on 05.06.2020, whereas the complainant had given a strict instruction to OP No.2, that he does not want to purchase any life insurance policy from OPs and the cheque issued by him be returned, but the respondent No. 2 of her own deposited the less amount of Rs.26000/ in the account of complainant, so that the premium amount be paid to the insurance company. It is stated that on 14.07.2020, the complainant received policy cover note bearing policy No.00723389, through post, wherein policy amount was shown Rs.89,000/-, where as the OP No.2 had taken a cheque of Rs.1,03,000/- from complainant as first premium amount. It is stated that after going through the policy document, the complainant got shocked to see the contents of cover note, wherein the life of his son namely Mr. Ratish Pal was insured and the complainant was shown as a proposer in the said policy. It is stated that signature on the policy cover note including other documents was totally manipulated by the OPs, whereas the complainant never signed any document in the presence of OPs, nor even the son of the complainant signed any policy document in the presence of OPs. It is stated that the policy document was signed by some other person and moreover signatures of the complainant and his son were fraudulently signed by OPs. It is stated that after receiving policy document son of the complainant immediately approached OP No.2 to cancel this policy and OP No.2 agreed to cancel the said policy and on the

same very day, the complainant handed over/deposited the original policy document alongwith one cancelled cheque with OP No.2, under receipt, with the assurance given by OP No.2 that she will refund the policy installment amount of Rs.1,03,000/- to complainant after one week. It is stated that on the same day i.e. 15.07.2020, the complainant received an amount of Rs.9995/- in his bank account which was refunded by the insurance company and when the complainant did not receive the balance premium amount, he again approached OP No.2 to inquire the status of his balance amount and OP No.2 again gave assurance to refund the same. It is stated that thereafter the complainant on 23.09.2020 received an amount of Rs.5000/- in his bank account as a premium refund which was deposited by the OP No.2 herself. It is stated that after receiving the some premium amount back, the complainant was assured that now his life insurance policy was cancelled/closed by the OPs, but on 30.06.2021, the complainant got shocked when he received a bank message that an amount of Rs.91002.50/- was paid to the OPs as premium, whereas the complainant on 15.07.2020 had returned the original policy to OP No.-2 with the request to cancel this policy immediately and moreover the complainant had also received some premium amount back from the OPs. It is stated that till the balance amount has not been refunded to him by the OPs, despite his various requests. It is stated that aforesaid acts on the part of the OPs amount to deficiency in service and unfair trade practice. It is prayed that the complaint may be allowed as prayed for.

3. After admission of complaint, notices were issued to the OPs. The complaint so filed has been opposed by the OPs No.1&2 by filing reply taking preliminary objections therein regarding maintainability, suppression of facts, jurisdiction, complicated question of law and facts are involved etc. It is stated that the complainant is making allegations of fraud, forgery and cheating against the OPs and this Commission has

no jurisdiction to try and entertain such complaints of complex nature as proceedings before this Commission is summary in nature. It is stated that the policy in question was dispatched to the complainant at the given address of complainant mentioned in the proposal form and the same was admittedly received by the complainant. It is denied that the complainant had been compelled to purchase Life Insurance policy by narrating wrong facts and benefits. It is stated that the OPs received proposal application number AF005319881 dated 04.06.2020 wherein the complainant proposed for Pramerica Life Smart Income Life insurance policy and the complainant took the insurance cover in the name of his son Ritesh Pal. It is denied that the signatures of the complainant were obtained on white/blank papers, rather the complainant and his son Ritesh Pal signed the proposal form in English Language after admitting & understanding the contents correct thereof. It is stated that the complainant/life assured had also submitted the required documents for age proof and address proof in support of his application form. It is stated that the premium of Rs.1,03,000/- was paid by complainant through cheque drawn on State Bank of India and thereafter on 23.06.2020, the replying OPs received the letter from complainant wherein he requested for reducing the sum assured against proposal No. AF005319881 from Rs.10,89,000/- to Rs.9,79,000/- and requested to refund the excess premium in his bank account. It is stated that replying OPs duly considered the request and sum assured was reduced from Rs. 10,89,000/- to Rs.9,79,000/- and the revised premium calculated to Rs.93,005/- and the excess amount of Rs. 9995/- was transferred in the bank account of complainant and thereafter policy bearing No. 00723389 commenced on 30/06/2020 was issued to the complainant. It is stated that complainant/life assured had signed the relevant declaration, agreement and authorization as contained in the proposal/ application form, meaning thereby the proposer/life assured was explained all the terms and conditions

of the policy and only after his satisfaction he provided the details in the proposal form and signed the Proposal form after accepting the terms and conditions mentioned therein. It is stated that Policy schedule filled by the complainant itself states the Premium paying term under the policy was of 12 years and as such he was fully aware of the premium paying term and also about the premium payment being regular in nature. It is stated that as per Section 6(2) of the Insurance Regulatory and Development Authority (Protection of Policy holders Interests) Regulations, 2002, insured can avail free look cancellation or modifications within 15 days of the receipt of the policy document. It is stated that since the complainant had duly received the policy document and therefore he was fully aware with the terms and conditions governing the policy but did not opt for free-look cancellation after the receipt of policy meaning thereby he has accepted the terms and conditions of the policy. It is stated that at the time of purchasing of the above said policy contract, the complainant had signed ECS form for making payment of renewal premiums of his policy which was verified and registered by the complainant bank for future premiums and the renewal premium amount will be debited as the instruction provided by the complainant in Mandate Form. It is stated that there is no deficiency in service on the part of the replying OPs. It is prayed that the complaint may be dismissed.

4. Rejoinder was filed on behalf of the complainant and the allegations as contained in the complaint were reasserted after refuting those of replies filed by OPs contrary to the complaint.

5. The parties adduced evidence in support of their contentions. On behalf of the complainant affidavit of complainant was tendered in evidence. Complainant has also filed documents in support of his contentions. On behalf of OPs No.1&2 affidavit of Alka Singh was tendered in evidence.

Contesting OPs have also filed documents in support of their contentions.

6. We have heard learned counsels for the parties and have also gone through the entire record carefully.

7. After hearing the submissions made by Ld. Counsels for the parties and perusing the entire record carefully including pleadings and evidence on record, it is clear that the complainant is alleging that the OPs have committed fraud, cheating and forgery etc. with the complainant. The plea of the complainant is that out of four persons named in the complaint Smt. Vidya Thakur first time met with him in a pensioner meeting at Kalibari hall in the month of May 2020 and thereafter on 02.06.2020, they all came to his native village and persuaded the complainant for purchasing the retirement life insurance policy. On the persuasion of the persons named in the complaint, the complainant handed over the cheque bearing No.103031 dated 02.06.2020 amounting to Rs.1,03,000/- in favour of the OPs to the said persons for purchasing retirement life insurance plan. It is stated that the said persons assured the complainant that the policy will be in the name of complainant and his son Ratish Pal will be his nominee. It is stated that when on 14.07.2020, the complainant received the cover note bearing No.00723389 then came to know that the policy amount was Rs.89,000/- whereas the OPs took a cheque of Rs.1,03,000/- from the complainant as first premium. Not only this, the complainant has been shown as proposer in the policy and policy was issued in the name of his son namely Ratish Pal. It is further stated that neither the complainant nor his son signed any document and the signatures of the complainant and his son were forged by the persons of the OPs named in the complaint. It is stated that after receiving the policy document his son immediately approached the OP No.2 for the cancellation of policy and on 15.07.2020 the complainant received amount of Rs.9995/- from the OPs. It is further stated that when the

complainant demanded remaining amount then again the complainant received amount of Rs.5,000/- and the OPs have yet to make payment of the remaining amount of Rs.17,005/- in favour of the complainant. It is further stated that the complainant was assured by the OPs that the policy has been cancelled, but to utter surprise of the complainant, he on 30.06.2021 received a letter that amount of Rs.91,002.50/- is to be paid by the complainant to the OPs against the insurance policy. It is alleged that the policy documents were manipulated and forged by the persons of OPs named in the complaint and neither the complainant nor his son signed any document nor any term and condition was told to them. Not only this, the complainant at that time was 65 years old and when he inquired about the insurance policy then came to know that no retirement life insurance policy was available for a person who has attained the age of 65 years. Hence, it is very much clear that specific allegations of the complainant in the complaint are of cheating, forgery and fraud played by the OPs upon the complainant. The notice of complaint was issued to the OPs and OPs No.1&2 contested the complaint by filing reply whereas the complaint against the OP No.3 was dismissed as withdraw vide order dated 21.04.2022. The contesting OPs have controverted the allegations made in the complaint para-wise and have also taken number of preliminary objections including the objection that in this matter allegation of fraud, forgery and cheating against the OPs have been made and the same are complicated question of facts which cannot be decided in summary proceedings in the consumer complaint. Therefore, it is to be seen whether we can decide the controversy involved in the complaint on merits and there exists complicated question of facts including allegations regarding cheating, forgery and fraud etc. As mentioned hereinabove, the complainant has taken the stand that the policy document has been manipulated by the persons of OPs firstly by assuring the complainant that policy will be in the name of

complainant whereas the policy has been issued in the name of son of complainant and complaint was shown as proposer, secondly the allegations of complainant is that there was no insurance policy for a person who has attained the age of 65 years and the complainant has already attained the age of 65 years when approached by the persons of OPs, thirdly the allegations are that neither the complainant nor his son signed any document for purchasing the insurance policy and signatures of both of them were forged by the persons named in the complaint and fourthly the amount mentioned by the OPs was refunded to them by the OPs through cheque but less amount has been shown in the insurance policy and the OPs are yet to make payment of remaining amount to the complainant. The above mentioned scenario clearly goes to shows that the facts involved in the complaint are complicated and complex question, which cannot be decided in summary proceedings in this complaint. Moreover, there are specific allegations of cheating, forgery and fraud and as such the consumer commission has no jurisdiction to decide the controversy involved in the complaint. Hence, the proper adjudication of the matter in dispute can be done only by the civil court of appropriate jurisdiction and not by this Commission. We are also aware about the legal position that the Commission may not refer the matter to the Civil Court as per the composition of the Commission. However, we are compelled by the disputed facts which are complicated in nature to reach at a conclusion that matter can be adjudicated only by the Civil Court and not by this Commission. The Hon'ble Supreme Court and the Hon'ble NCDRC in cases *M/S. Umarpur Rice Mills (P) Ltd. vs New India Assurance Co. Ltd. & Ors.* decided on 17th December, 2019 by NCDRC, *Oriental Insurance Company Ltd. v. Munimahesh Patel*, IV (2006) CPJ 1 (SC), *Synco Industries Versus SBI* AIR 2002 SC 568, have held that where factum of fraud etc. is involved and disputed facts are complicated question of facts and law required to be proved by

leading elaborate/detailed evidence, which is not possible to be led in summary proceedings before the Commission, then the proper course is to refer the parties to approach the civil court of appropriate jurisdiction for the adjudication of the matter. In our considered opinion the present case is a fit one to be referred to the civil court as the evidence led by the parties is not sufficient to decide the controversy between the parties and detailed evidence oral as well as documentary is required for the adjudication of the same. In view aforesaid reasons and law laid down by the Hon'ble Apex Court and Hon'ble NCDRC, we are of the considered opinion that the present complaint before this Commission is not maintainable and deserves to be dismissed.

8. In view of the foregoing discussion and reasons assigned therein the complaint is ordered to be dismissed, leaving the parties to bear their own costs. The complainant is at liberty to approach the appropriate forum/court of competent jurisdiction for redressal of grievance, if so advised. Pending application(s), if any, shall also stands disposed of. Copy of this order be supplied to the parties free of cost as per rule. The file after its due completion be consigned to the Record Room.

Announced on this the 19th day of October, 2023.

(Dr. Baldev Singh)
President

(Yogita Dutta)
Member

(Jagdev Singh Raitka)
Member

GUPTA