**AFR**

HIGH COURT OF JUDICATURE AT ALLAHABAD

Court No.40
Neutral Citation No. - 2025:AHC:66456-DB

**CORAM : HON'BLE SHEKHAR B. SARAF, J.**
**HON'BLE VIPIN CHANDRA DIXIT, J.**

WRIT-C NO. 21818 OF 2023

SANTOSH KUMAR

V.

ASSISTANT SECRETARY/ DEPUTY SECRETARY/ SECRETARY, INSURANCE OMBUDSMAN, LUCKNOW AND OTHERS

**For the Petitioner** : Mr. Hari Bans Singh, Advocate
**For the Respondents** : Ms. Shruti Malviya, Advocate

Last heard on April 8, 2025
Pronounced on April 29, 2025

**HON'BLE SHEKHAR B. SARAF, J.**

1. This is a writ petition under Article 226 of the Constitution of India wherein the petitioner prays for issuance of a writ of certiorari quashing the impugned order dated May 19, 2023 whereby Assistant Secretary/Deputy Secretary/Secretary, Insurance Ombudsman, Lucknow (hereinafter referred to as 'respondent no.1') has dismissed the complaint filed by the petitioner against rejection of life insurance claim by the Senior Divisional Manager, Life Insurance Corporation (LIC) Division Office, Prayagraj (hereinafter referred to as 'respondent no.3') concerning policy no.205602934 vide

impugned order dated March 23, 2021 which has also been challenged. The petitioner further prays to command the respondents to release the amount of insurance claim of his deceased wife in favour of petitioner.

**FACTS**

2. The factual matrix of the present writ petition is delineated below:

a. On August 16, 2018 the petitioner's wife, Late Meera Devi (hereinafter referred to as 'insured') obtained a life insurance policy from Life Insurance Corporation of India (hereinafter referred to as 'LIC'), bearing Policy No.205602934, for a sum assured Rs. 15 lakh through an LIC agent. The petitioner, being the husband of the insured, was duly nominated as the nominee in the said policy. Upon deposit of the first premium amounting to Rs.1,15,416/- the policy bond was issued and delivered to the insured through the LIC agent.

b. While applying for the policy, the insured allegedly furnished all the requisite details in the application form in accordance with terms and conditions prescribed by LIC as instructed by the agent. Moreover, it was affirmed that no material information was concealed or misrepresented.

c. Unfortunately, on July 8, 2019 the insured passed away due to a heart attack. Thereafter, petitioner, in his capacity as a nominee, submitted a representation before the Branch Manager, LIC, Phoolpur Branch, Prayagraj seeking disbursement of the insurance claim arising out of the death of his wife.

d. As per the terms and conditions of the LIC policy, upon the death of the insured, the entire sum assured becomes payable to the nominee. In the present case, the petitioner, being the nominee, became entitled to receive the death claim benefits.

e. Accordingly, the petitioner submitted an application requesting disbursement of the death claim under the policy dated August 16, 2018. However, vide impugned order dated March 23, 2021, respondent no.3 repudiated the petitioner's claim, stating

that insured had withheld correct information regarding her previous policy at the time of effecting the present assurance, thereby, violating the disclosure requirements. It was alleged that non-disclosure of such material information constituted concealment, and therefore, the claim was held to be non payable. The petitioner was however, granted liberty to approach the Zonal Manager, Kanpur, in case he was dissatisfied with the rejection of claim.

f. Thereafter, the petitioner submitted an application on April 16, 2021 before the Regional Manager, LIC Kanpur (hereinafter referred to as 'respondent no.2'), requesting therein for release of the death claim.

g. The petitioner submitted another representation dated July 20, 2021 before the Chairman of Yogkshem Jeevan Beema, Mumbai, seeking redressal against the rejection of the insurance claim pursuant to the order dated March 23, 2021 issued by the respondent no.3.

h. On August 13, 2021, the insurance claim of petitioner's wife was rejected by respondent no.2 on the ground of non-disclosure of a previous insurance policy. The said decision was communicated to the petitioner by respondent no.3 vide letter dated September 17, 2021. The petitioner was granted liberty to approach the Executive Director, LIC Central Office, Mumbai in the event of dissatisfaction with the aforesaid order.

i. Subsequently, on April 15, 2023 the petitioner once again submitted a comprehensive representation before respondent no.1 against the rejection order dated March 23, 2021. In the said representation, the petitioner reiterated that no material concealment had been made by the insured at the time of issuance of the policy, thus, the basis for the rejection was erroneous. He accordingly requested that the death claim be released in his favour, being the nominee.

j. In response to the aforementioned representation, respondent no.1 issued a letter dated April 21, 2023 demanding certain documents from the petitioner for reconsideration of insurance claim.

k. In compliance with the said communication, the petitioner submitted a fresh representation dated May 6, 2023, along with all requisite documents by registered post addressed to respondent no.1.

l. Despite such compliance, the petitioner's claim was once again rejected vide impugned order dated May 19, 2023 passed by respondent no.1 on the following grounds:

(i) that the petitioner has not submitted a complaint in writing before respondent no.1 in accordance with Rule 13(1), 14(1), 14(3), 14(5), 17(3)(ii) of Insurance Ombudsman Rule, 2017.

(ii) that the complaint was not addressed to the office of respondent no.1.

(iii) that the complaint was barred by limitation.

(iv) that the complaint was outside the pecuniary jurisdiction.

m. Aggrieved by the rejection orders dated March 23, 2021 and May 19, 2023 the petitioner has approached this Court seeking aforementioned relief.

n. A counter-affidavit and supplementary counter-affidavit has been filed on behalf of respondent no.2 and 3 contending that the insurance claim was rejected on account of non-disclosure of previous policy bearing no.205601558 in the proposal form. It is further asserted that incorrect information was provided by the insured in 'column 7a' and 'column 9' of the proposal form, which had been duly filled by the insured herself along with a self-declaration affirming that no fact had been suppressed.

o. The petitioner has filed a rejoinder affidavit and supplementary rejoinder affidavit, reiterating the stand taken in the writ petition. The petitioner has contended that the proposal form was filled in accordance with instructions provided by the LIC agent, and copies of financial documents of the insured like Aadhar card and PAN card were appended thereto. It is further submitted that column 9 of the proposal form was left blank upon the advice of the agent, who had stated that the details of previous policy would already be available in the LIC's records.

**CONTENTIONS OF THE PETITIONER**

3. The learned counsel appearing on behalf of the petitioner has made the following submissions:

a. Before obtaining the said policy, the insured had provided all necessary particulars and disclosed the details of her existing LIC policies in the application form furnished by the LIC agent. No information was concealed, and the omission of one previous policy was based solely on the assurance by LIC agent that such details were already available in LIC's record. Accordingly, the insured affixed her signature to the proposal form in a routine manner, relying on the instruction of the agent.

b. The respondents have failed to furnish any documentary proof or material indicating that the insured had violated any terms and conditions. The respondents were duty bound to examine the entire records as per their need and no specific question with regard to disclosure of earlier policy was raised by the respondents before issuing the said policy.

c. Respondent no.3 rejected the claim of the insured vide order dated March 23, 2021 on the ground of concealment of previous policy, and again on May 19, 2023 citing lack of pecuniary jurisdiction. The insured through her agent, had

disclosed all relevant details including previous policy information and had made the requisite declarations in the proposal form.

d. The issuance of the policy bond in favour of the insured upon receipt of the first premium implies that the proposal form was duly verified, scrutinize and accepted by the competent authority. The respondent authority is legally bound to examine the proposal form before issuing the bond. Even if the previous policy details were not explicitly stated, such information could have been retrieved from LIC's internal records or digital database. Had there been any discrepancy or concealment, the policy bond would not have been issued.

e. The death claim in the present matter cannot be barred in view of Section 45 of Insurance Act, 1938.

f. Even if the insured by any chance has not mentioned about the earlier policy in the proposal form, then also on the basis of said error the death claim cannot be denied by the respondents.

g. The rejection order dated March 23, 2021 passed by the respondent no.3 as well as the subsequent rejection order dated May 19, 2023 passed by the respondent no.1 are arbitrary, unjust, improper and against the statutory provisions governing insurance law.

h. In the impugned order dated March 23, 2021, the respondents objected to not mentioning of only one previous policy no. 205601558, although before taking the present policy amounting to Rs.15 lakh, the insured had already taken three earlier policies bearing no.311496904, 314004138 and 205601558 amounting to Rs.50,000, Rs.50,000 and Rs.3,70,000 respectively. All these policies were disclosed to the agent at the time of applying. The failure to include such information in the proposal form was solely due to the agent's assurance that the details were already recorded in the LIC's database. Hence,

there was no wilful concealment on the part of the insured.

i. To buttress his argument, counsel has placed reliance on **Mahaveer Sharma v. Exide Life Insurance Co. Ltd.** reported in 2025 SCC OnLine SC 435.

**CONTENTIONS OF THE RESPONDENTS**

4. The learned counsel appearing on behalf of respondents has made the following submissions:

a. Before obtaining the policy, the insured herself filled out the proposal form in which she deliberately furnished the incorrect information in column 7a, and column 9 of the proposal form with regard to previous policies.

b. Death of insured occurred on July 8, 2019, and the rejection by respondent no.2 dated August 13, 2021 was intimated on September 17, 2021 but the petitioner has made representation before the Insurance Ombudsman on April 15, 2023, that is, within three years subsequent to rejection in accordance with Section 45 of the Insurance Act, 1938.

c. Section 45 of the Insurance Act, 1938 curtails the right of the insurer to question the policy after three year from the date of the policy, that is, from the date of issuance of policy, the date of commencement of risk, the date of revival of the policy, or the date of the policy's rider, whichever is later. Petitioner's wife took policy on August 16, 2018, died on July 8, 2019 and policy was called in question on ground of mis-statement vide order dated March 23, 2021 by respondent no.3 that is within three years. Hence, the rejection order is in consonance with Section 45 of the Insurance Act, 1938.

d. Respondent no.1 appositely passed an order dated May 19, 2023, on the ground of want of jurisdiction as Rule 17(3) (II) of Insurance Ombudsman Rules, 2017 explicitly prohibits the Ombudsman to award compensation exceeding thirty lakhs.

e. The insured had made a self-declaration in the proposal form affirming the accuracy of the information provided, and the form was also duly signed by her. As such, there is no valid basis to disbelieve the information given in the form in view of Section 37 of the Indian Contract Act, 1872.

f. It was the obligation on the part of the insured to disclose all the information to the best of her knowledge in the proposal form. An Insurance policy is governed by the principle of *uberrimae fidei,* meaning a contract of utmost good faith requiring the assured to make full and truthful disclosure. When specific information on a specific aspect is sought in a proposal form, the insured is under a solemn obligation to provide complete and accurate details.

g. The previous policy no.205601558 commenced from May 28, 2018, whereas, policy under dispute having policy no. 205602934 commenced from August 16, 2018 and both the policies were purchased within three months. Therefore, it is unreasonable to believe that the petitioner was unaware of the previous policy purchased by him.

h. To buttress her argument, she has placed reliance upon a judgment of the Apex Court in **Reliance Life Insurance Co. Ltd. v. Rekhaben Nareshbhai Rathod** reported in (2019) 6 SCC 175 The relevant paragraphs of the judgment are quoted below:

> *"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.*

***

*34. We are not impressed with the submission that the proposer was unaware of the contents of the form that he was required to fill up or that in assigning such a response to a third party, he was absolved of the consequence of appending his signatures to the proposal. The proposer duly appended his signature to the proposal form and the grant of the insurance cover was on the basis of the statements contained in the proposal form. Barely two months before the contract of insurance was entered into with the appellant, the insured had obtained another insurance cover for his life in the sum of Rs 11 lakhs. We are of the view that the failure of the insured to disclose the policy of insurance obtained earlier in the proposal form entitled the insurer to repudiate the claim under the policy.*

i. To buttress her argument, counsel has further placed reliance on **Smt. Parul Agrawal v. Life Insurance Corporation of India and others** in Special Appeal Defective No. 782 of 2023 (Neutral Citation No.2024:AHC:36063-DB).

**ANALYSIS**

5. We have considered the rival submissions canvassed by both the sides and have perused the materials placed on record. It is necessary to preface our analysis with reference to two issues firstly, the nature of the disclosure made by the insured in the proposal form and secondly, the ground of repudiation of claim.

6. The learned counsel for the petitioner has pleaded that the insurer has illegally rejected the claim vide order dated March 23, 2021 on the ground of non-disclosure of a previous policy. Insured had taken the policy through an agent and she had already given the information of the previous policy to the agent before taking policy but the agent assured her that the earlier policy was already within the knowledge of LIC, therefore, is not needed to be mentioned in the proposal form. The form was filled-up and the insured in a routine manner had signed the same without getting into details of the queries mentioned in the proposal form. It is further contended that though the information has not been wilfully withheld, the same should not deprive the petitioner of his lawful right to claim insurance due to fault of the agent of LIC.

7. Per contra, the learned counsel for the respondents vehemently refutes the submissions of the learned counsel appearing on behalf of the petitioner and submits that the information regarding previous policy is pertinent for the insurer to decide the claim and the same has been mis-stated by the insured in the proposal form by mentioning ‘No’ in ‘column 7a’ and ‘column 9’ was left blank which required diligent mentioning of the previous policies (including surrendered or lapsed policy) purchased during the past 3 years. Ergo, there is a breach of declaration made at bottom of the proposal form, making the policy liable to repudiation.

8. There is no dispute of the fact that policy in dispute was taken on August 16, 2018, death of insured occurred on July 8, 2019 due to a heart attack and claim was repudiated on March 23, 2021 by the insurer. It is also undisputed that there was one previous policy bearing no.205601558 issued in favour of Late Meera Devi (wife of the petitioner) with its commencement being dated May 28, 2018 and in addition to that petitioner in its supplementary rejoinder affidavit has also admitted two other policies bearing no. 311496904 and 314004138. It is to be noted that the previous three policies were paid by the LIC.

9. The respondents have not raised any concern with the two policies bearing no.311496904 and 314004138 taken in the year 2002 and 2010 respectively. The dispute is only with the non-disclosure of one previous

policy bearing no. 205601558 (date of commencement on May 28, 2018) in the proposal form as a ground of repudiation by LIC in order dated March 23, 2021.

10. Upon perusal of copy of the proposal form produced by respondents in its counter affidavit, it is to be noted that the query on which there was repudiation of claim by the insurer was with regard to 'column 9' which was left blank by the agent of LIC. The questions enquired in 'column 9' which was left blank in the proposal form in verbatim is as follows:

> *"9. Please give details of your previous insurance taken from LIC as well as from private insurers (including policies surrendered/lapsed during last 3 years)"*

11. Moreover, the questions enquired in 'column 7a' and 'column 8a' of the proposal form and their corresponding answers given by the insured in verbatim are as follows:

> *"7.a. Is your life now being proposed for another assurance or an application or revival of a policy on your life or any other proposal under consideration in any office of the corporation or to any other insurer? If yes, give detail:*
>
> *Reply: No*
>
> *8.a Has a proposal (or an application of revival of a policy) on your life made to any office of the Corporation or to any other insurer ever been:*
>
> *Reply: No"*

12. It is to be further noted that insured had also undergone a medical examination on June 29, 2018 by the insurer wherein her medical report also substantiates her good health condition which implies that there was nothing wrong with her health condition.

13. We are cognizant and conscious of the judgment of the Supreme Court in **Rekhaben Nareshbhai Rathod** (Supra) wherein the repudiation of the insurance claim was due to complete failure to disclose previous insurance claim as availed by the insured. The present case is different from the *Rekhaben Nareshbhai Rathod (Supra)* as in the former case, the reply was given in the negative and in the present case the column was left blank. The insured in the former case had taken previous non-disclosed policy from a different insurer unlike the present dispute wherein both the policies are with the same insurer.

14. It is pertinent to note that basically there are two rejection orders dated March 23, 2021 and May 19, 2023 passed by respondent no.3 and respondent no.1 respectively. The rejection order dated March 23, 2021 passed by respondent no.3 is on the ground of non-disclosure of a previous policy no.205601558 but the subsequent rejection order dated May 19, 2023 in continuation of the previous order, passed by respondent no.1/Insurance Ombudsman on May 19, 2023 is on absurd grounds, which is in verbatim delineated below:

> *"**Re:Policy No.: 205602934***
>
> *We have received your letter dated 08-MAY-2023 alongwith the enclosures*
>
> *In this connection, we may inform you that your complaint cannot be considered by this office as the complaint is not within the scope of Insurance Ombudsman Rules, 2017 (IO Rules) as following -*
>
> *1) As per Rule 14 (3) of IO Rules, "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".*
> ***Your complaint does not satisfy this condition. You may please make a written representation to the insurer.***
>
> *2) According to Rule 13 (1) of 10 Rules -*
> *"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)".*
***Your complaint is not related to any of the points from point No. (a) to (i) above.***
*3) As per Rule 14 (1) of IO Rules, "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".*
***Your complaint does not satisfy this condition***
*In terms of Rule 14(5) of IO Rules, "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 abitrator.*
***Accordingly your complaint cannot be considered by us.***

*5) The policy (under which you have made the complaint) is not issued under personal lines of insurance, group insurance policies, policies issued to sole proprietorship or micro enterprises in terms of Rule 4 of the IO Rules. Therefore your complaint cannot be considered by us.*

*6) As per Rule 17 (3)(ii) of IO Rules, Insurance Ombudsman can "not award compensation exceeding rupees thirty lakhs (including relevant expenses, if any)". You have claimed compensation of more than Rs.30 lakhs; therefore* ***your complaint cannot be considered by us.***
*7) The complaint is not addressed to this office.*
*8) Complaint is time barred."*

15. A perusal of the order dated May 19, 2023, reveals that the decision passed by the Insurance Ombudsman lacks consideration on merits and is entirely vague. Despite the nominee of the insured having submitted a written representation dated April 15, 2023; the existence of a rejection order dated March 23, 2021, from the insurer repudiating the insurance claim; with no proceedings pending before any court or arbitrator; the insurance policy issued under personal lines; the complainant seeking an assured sum of only Rs.15 lakhs; the complaint being duly addressed to the office of Insurance Ombudsman; and the complaint having been filed within the time frame stipulated in the Ombudsman's letter dated April 21, 2023

requesting certain documents; the Insurance Ombudsman has arbitrarily, capriciously and whimsically rejected the complaint without any application of mind by simpliciter quoting the rules for filing a complaint as per the Insurance Ombudsman, Rules 2017.

16. The repudiation in the present case was within a period of three years from the date of commencement of policy. This assumes significance in view of the provisions of Section 45 of the Insurance Act, 1938. The said provision in verbatim is as follows:

> *"45. Policy not be called in question on ground of misstatement after three years. —(1) No policy of life insurance shall be called in question on any ground whatsoever after the expiry of three years from the date of the policy, i.e., from the date of issuance of the policy or the date of commencement of risk or the date of revival of the policy or the date of the rider to the policy, whichever is later.*
> *(2) A policy of life insurance may be called in question at any time within three years from the date of issuance of the policy or the date of commencement of risk or the date of revival of the policy or the date of the rider to the policy, whichever is later, on the ground of fraud:*
>
> *Provided that the insurer shall have to communicate in writing to the insured or the legal representatives or nominees or assignees of the insured the grounds and materials on which such decision is based.*
>
> *Explanation I. —For the purposes of this sub-section, the expression "fraud" means any of the following acts committed by the insured or by his agent, with intent to deceive the insurer or to induce the insurer to issue a life insurance policy: —*
>
> *(a) the suggestion, as a fact of that which is not true and which the insured does not believe to be true;*
>
> *(b) the active concealment of a fact by the insured having knowledge or belief of the fact;*
>
> *(c) any other act fitted to deceive; and*
>
> *(d) any such act or omission as the law specially declares to be fraudulent.*
>
> *Explanation II. —Mere silence as to facts likely to affect the assessment of the risk by the insurer is not fraud, unless the circumstances of the case are such that regard being had to them, it is the duty of the insured or his agent keeping silence, to speak, or unless his silence is, in itself, equivalent to speak.*
>
> *(3) Notwithstanding anything contained in sub-section (2), no insurer shall repudiate a life insurance policy on the ground of fraud if the insured can prove that the misstatement of or suppression of a material fact was true to the best of his knowledge and belief or that there was no deliberate*

*intention to suppress the fact or that such misstatement of or suppression of a material fact are within the knowledge of the insurer:*
*Provided that in case of fraud, the onus of disproving lies upon the beneficiaries, in case the policyholder is not alive.*

*Explanation. —A person who solicits and negotiates a contract of insurance shall be deemed for the purpose of the formation of the contract, to be the agent of the insurer.*

*(4) A policy of life insurance may be called in question at any time within three years from the date of issuance of the policy or the date of commencement of risk or the date of revival of the policy or the date of the rider to the policy, whichever is later, on the ground that any statement of or suppression of a fact material to the expectancy of the life of the insured was incorrectly made in the proposal or other document on the basis of which the policy was issued or revived or rider issued:*

*Provided that the insurer shall have to communicate in writing to the insured or the legal representatives or nominees or assignees of the insured the grounds and materials on which such decision to repudiate the policy of life insurance is based:*

*Provided further that in case of repudiation of the policy on the ground of misstatement or suppression of a material fact, and not on the ground of fraud, the premiums collected on the policy till the date of repudiation shall be paid to the insured or the legal representatives or nominees or assignees of the insured within a period of ninety days from the date of such repudiation.*

*Explanation. —For the purposes of this sub-section, the misstatement of or suppression of fact shall not be considered material unless it has a direct bearing on the risk undertaken by the insurer, the onus is on the insurer to show that had the insurer been aware of the said fact no life insurance policy would have been issued to the insured.*

*(5) 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 terms of the policy are adjusted on subsequent proof that the age of the life insured was incorrectly stated in the proposal.* "

17. As per Section 45 of the Insurance Act, 1938, the policy may be called in question within three years mainly on two grounds, firstly, on the ground of fraud and secondly on the ground of mis-statement or suppression of a material fact. As per second proviso to sub-section (4) of Section 45 of the Insurance Act, 1938 it is clear that if the policy is being repudiated on the ground of mis-statement or suppression of a material fact, and not on the ground of fraud, the premiums collected by the insurer are to be returned within a period of ninety days from the date of such repudiation. In the

present case, the respondent/Insurance Company has made no such return of the premiums. Accordingly, it is clear from the action of the respondents that the policy has been repudiated on the ground of fraud.

18. As per sub-section (3) of Section 45, the insurer cannot repudiate the policy on the ground of fraud if, the insured can prove that there was no deliberate intention to suppress the material fact or suppression of a material fact are within the knowledge of the insurer. In case of **Mahaveer Sharma** (Supra), the Apex Court has held that the burden of proving the repudiation on ground of fraud lies on the insurer.

> *"16. In Mahakali Sujatha (Supra), this Court observed that if a claim was repudiated on the ground that the policy holder has suppressed material facts in his application form with respect to existing life insurance policies from other insurers, the burden is on the insurer to prove the allegation of non-disclosure of the material fact and that the non-disclosure was fraudulent."*

19. In **Manmohan Nanda v. United India Assurance Co. Ltd**. reported in (2022) 4 SCC 582 the Apex Court has held that principle of utmost good faith imposes meaningful reciprocal duties owned by the insured to the insurer and *vice-versa*. The court also laid down various tests for determination of material facts and also highlights the doctrine of ***contra proferetum*** in standard form contract. The relevant paragraphs of the judgment are quoted hereinbelow:

> *"34. Under the provisions of the Insurance Regulatory and Development Authority (Protection of Policyholders' Interests) Regulations, 2002 the Explanation to Section 2(d) defining "proposal form" throws light on what is the meaning and content of "material". For an easy reference the definition of "proposal form" along with the Explanation under the aforesaid Regulations has been extracted as under:*
>
> *"2. Definitions.-In these Regulations, unless the context otherwise requires-*
>
> * * *
>
> *(d) "Proposal form" means a form to be filled in by the proposer for insurance, for furnishing all material information required by the insurer in respect of a risk, in order to enable the insurer to decide whether to accept or decline, to undertake the risk, and in the event of acceptance of the risk, to determine the rates, terms and conditions of a cover to be granted.*

*Explanation—"Material" for the purpose of these Regulations shall mean and include all important, essential and relevant information in the context of underwriting the risk to be covered by the insurer."*

*Thus, the Regulation also defines the word "material" to mean and include all "important", "essential" and "relevant" information in the context of guiding the insurer in deciding whether to undertake the risk or not.*

*35. Just as the insured has a duty to disclose all material facts, the insurer must also inform the insured about the terms and conditions of the policy that is going to be issued to him and must strictly conform to the statements in the proposal form or prospectus, or those made through his agents. Thus, the principle of utmost good faith imposes meaningful reciprocal duties owed by the insured to the insurer and vice versa. This inherent duty of disclosure was a common law duty of good faith originally founded in equity but has later been statutorily recognised as noted above. It is also open to the parties entering into a contract to extend the duty or restrict it by the terms of the contract.*

*36. The duty of the insured to observe utmost good faith is enforced by requiring him to respond to a proposal form which is so framed to seek all relevant information to be incorporated in the policy and to make it the basis of a contract. The contractual duty so imposed is that any suppression or falsity in the statements in the proposal form would result in a breach of duty of good faith and would render the policy voidable and consequently repudiate it at the instance of the insurer.*

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*40. If a fact, although material, is one which the proposer did not and could not in the particular circumstances have been expected to know, or if its materiality would not have been apparent to a reasonable man, his failure to disclose it is not a breach of his duty.*

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*Contra proferentem rule*

*45.The contra proferentem rule has an ancient genesis. When words are to be construed, resulting in two alternative interpretations then, the interpretation which is against the person using or drafting the words or expressions which have given rise to the difficulty in construction, applies. This rule is often invoked while interpreting standard form contracts. Such contracts heavily comprise of forms with printed terms which are invariably used for the same kind of contracts. Also, such contracts are harshly worded against individuals and not read and understood most often, resulting in grave legal implications. <u>When such standard form contracts ordinarily contain exception clauses, they are invariably construed contra proferentem rule against the person who has drafted the same.</u>*

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*52.6. Canara Bank v. United India Insurance Co. Ltd. [Canara Bank v. United India Insurance Co. Ltd., (2020) 3 SCC 455 : (2020) 2 SCC (Civ) 126] , is a case in which this Court held that if a column is left blank, the insurance company should ask the insured to fill up the column. If the insurance company while accepting the proposal form does not ask the insured to clarify any ambiguity then the insurance company after accepting premium cannot urge that there was a wrong declaration made by the insured. Leaving out a column blank does not mean that there was a misdescription of facts. To make a contract void, the non-disclosure should be of some very material fact. Therefore, the insurer therein was directed to indemnify the insured in the case. The judgment in Satwant Kaur Sandhu [Satwant Kaur Sandhu v. New India Assurance Co. Ltd., (2009) 8 SCC 316 : (2009) 3 SCC (Civ) 366] was distinguished and held not applicable in this case.*

*55. On a consideration of the aforesaid judgments, the following principles would emerge:*

*55.1. There is a duty or obligation of disclosure by the insured regarding any material fact at the time of making the proposal. What constitutes a material fact would depend upon the nature of the insurance policy to be taken, the risk to be covered, as well as the queries that are raised in the proposal form.*

*55.2. What may be a material fact in a case would also depend upon the health and medical condition of the proposer.*

*55.3. If specific queries are made in a proposal form then it is expected that specific answers are given by the insured who is bound by the duty to disclose all material facts.*

*55.4. If any query or column in a proposal form is left blank then the Insurance Company must ask the insured to fill it up. If in spite of any column being left blank, the Insurance Company accepts the premium and issues a policy, it cannot at a later stage, when a claim is made under the policy, say that there was a suppression or non-disclosure of a material fact, and seek to repudiate the claim.*

*55.5.The Insurance Company has the right to seek details regarding medical condition, if any, of the proposer by getting the proposer examined by one of its empanelled doctors. If, on the consideration of the medical report, the Insurance Company is satisfied about the medical condition of the proposer and that there is no risk of pre-existing illness, and on such satisfaction it has issued the policy, it cannot thereafter, contend that there was a possible pre-existing illness or sickness which has led to the claim being made by the insured and for that reason repudiate the claim.*

*55.6.The insurer must be able to assess the likely risks that may arise from the status of health and existing disease, if any, disclosed by the insured in the proposal form before issuing the insurance policy. Once the policy has been issued after assessing the medical condition of the insured, the insurer cannot repudiate the claim by citing an existing medical condition which was disclosed by the insured in the proposal form, which condition has led to a particular risk in respect of which the claim has been made by the insured.*

*55.7. In other words, a prudent insurer has to gauge the possible risk that the policy would have to cover and accordingly decide to either accept the proposal form and issue a policy or decline to do so. Such an exercise is dependent on the queries made in the proposal form and the answer to the said queries given by the proposer."*

*(Emphasis Added)*

20. In **Mahakali Sujatha v. Future Generali India Life Insurance Co. Ltd.** reported in (2024) 8 SCC 712, the Supreme Court further held that in insurance contracts, the onus of proving allegations of non-disclosure of material facts and any fraudulent intent lies solely with the insurer. This means the insurer must provide concrete evidence to substantiate claims of misrepresentation or suppression of material information by the insured. The relevant paragraphs of the judgment are quoted hereinbelow:

*"39. From the aforementioned discussion, it is clear that the principle of utmost good faith puts reciprocal duties of disclosure on both parties to the contract of insurance. These reciprocal duties mandate that both the parties make complete disclosure to each other, so that the parties can take an informed decision and a fair contract of insurance exists between them. No material facts should be suppressed, which may have a bearing on the risk being insured and the decision of the party to undertake that risk. However, not every question can be said to be material fact and the materiality of a fact has to be adjudged as per the rules stated in the aforementioned judgment.*

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*42. The question before this Court in Rekhaben case[Reliance Life Insurance Co. Ltd. v. Rekhaben Nareshbhai Rathod, (2019) 6 SCC 175 : (2019) 3 SCC (Civ) 174] was, whether, the repudiation could be sustained on the grounds of suppression of information about other insurance policies. It is pertinent to note that the insured therein had admitted the non-disclosure of the earlier cover for life insurance held by him, but argued that the non-disclosure of such information was not a material fact whose suppression would allow for repudiation of the claim under Section 45. Therefore, the Court ruled in favour of the insurance company and held that such suppression was indeed a material suppression of information, as it had a bearing on the decision of the insurer to enter into the contract of insurance or not.*

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*44. However, the aforesaid judgment in Rekhaben case[Reliance Life Insurance Co. Ltd.v.Rekhaben Nareshbhai Rathod, (2019) 6 SCC 175 : (2019) 3 SCC (Civ) 174] is distinguishable from the present case, insofar as there is no admission by the appellant herein of any previous policies taken by the insured. In that case, after the admission by the policy holder, the Court was tasked only with the question of whether the fact about previous polices qualified to be a "material fact" that was suppressed. However, in the present case, in light of Section 45 of the Insurance Act,*

*1938, the burden rests on the insurer to prove before the Court that the insured had suppressed the information about the previous policies. This burden of proof has to be duly discharged by the insurer in accordance with the law of evidence."*

*(Emphasis Added)*

21. In **Mahaveer Sharma** (Supra), the Supreme Court has held that while insurance contracts are based on the principle of *uberrima fides* (utmost good faith), not every omission amounts to material suppression. The Court emphasized that the materiality of a fact must be assessed from the perspective of a prudent insurer and depends on the factual matrix of each case. The relevant paragraphs of the judgment are quoted hereinbelow:

*"12. An insurance is a contract uberrima fides. It is the duty of the applicant to disclose all facts which may weigh with a prudent insurer in assuming the risk proposed. These facts are considered material to the contract of insurance, and its non-disclosure may result in the repudiation of the claim. The materiality of a certain fact is to be determined on a case-to-case basis. The aforementioned judgments illustrate instances of material facts, wherein the non-disclosure of certain medical conditions was held to be material in the context of a Mediclaim policy.*

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*15. In Mahmohan Nanda (supra), on a consideration of several judgments, this Court deduced, inter alia, the following principles:*

*"xxx*

*55.1 There is a duty or obligation of disclosure by the insured regarding any material fact at the time of making the proposal. What constitutes a material fact would depend upon the nature of the insurance policy to be taken, the risk to be covered, as well as the queries that are raised in the proposal form.*

*55.2 What may be a material fact in a case would also depend upon the health and medical condition of the proposer.*

*55.3 If specific queries are made in a proposal form then it is expected that specific answers are given by the insured who is bound by the duty to disclose all material facts.*

*55.4 If any query or column in a proposal form is left blank then the insurance company must ask the insured to fill it up. If in spite of any column being left blank, the insurance company accepts the premium and issues a policy, it cannot at a later stage, when a claim is made under the policy, say that there was a suppression or non-disclosure of a material fact, and seek to repudiate the claim."*

*16. In Mahakali Sujatha (supra), this Court observed that if a claim was repudiated on the ground that the policy holder has suppressed material facts in his application form with respect to existing life insurance policies from other insurers, the burden is on the insurer to prove the allegation of non-disclosure of the material fact and that the non-disclosure was fraudulent. Further, the burden of proving the fact, which excludes the liability of the insured to pay compensation lies on the insured alone and no one else."*

22. Upon a perusal of the umpteen judgments cited by both the parties and sifting through the ratios laid down by the Apex Court in the various judgments, following principles can be culled out:

A. There is a duty or obligation of disclosure by the insured regarding any material fact at the time of making the proposal and what constitutes a material fact would depend upon the nature of insurance policy taken, the risk covered, as well as the queries raised in the proposal form.

B. The test is whether the facts in question would influence the prudent insurer or not. If the mind of a prudent insurer would be affected, either in deciding whether to take the risk at all or in fixing the premium by knowledge of a particular fact then the fact will be a material fact.

C. A material fact would also depend upon health and medical condition of the proposer.

D. The *contra proferentem* rule has an ancient genesis. When words are to be construed, resulting in two alternative interpretations then, the interpretation which is against the person using or drafting the words or expressions which have given rise to the difficulty in construction, applies. When such standard form contracts ordinarily contain exception clauses, they are invariably construed *contra proferentem* rule against the person who has drafted the same.

E. If specific queries are made in the proposal form then it is the duty of the insured to answer that specific queries, but if any query or column in a proposal form is left blank then the

> insurance company must ask the insured to fill it up. If in spite of any column being left the insurance company accepts the premium, and thereafter, issued policy bond, it cannot at a subsequent stage repudiate the claim of the insured. It is the duty of the insurer to verify the details of previous policy which is already on record with them.

**CONCLUSION**

23. Upon examining the facts of the present case, it is to be noted that the petitioner had taken four policies from the LIC. For three of the said policies, the LIC has made payment with regard to the claims made by the Petitioner. However for the last policy that was taken on August 16, 2018, for the sum assured of Rs.15 lakh, the same was rejected by the LIC on the ground that the 'column 9' of the proposal form was left blank by the petitioner. In fact, clause 9 specifically sought for details of policies that have been taken by the petitioner within the past three years and the petitioners did not mention that the petitioner had previously taken a policy bearing no.205601558 from LIC itself for a sum assured of Rs.3,70,000 on May 28, 2018 less than three months before taking the present policy.

24. In our view, this is not suppression of a 'material fact' and accordingly the LIC cannot shrug away from the responsibility by merely taking the ground that the previous policy was not disclosed. The petitioner has pleaded that he had disclosed the information to the agent of the LIC and as per the agent the said previous policy is not required to be filled-up in the form as it was already within the records of LIC. The insured had also given copy of his PAN card and Aadhar card to the respondents while filling up the proposal form. Moreover, issuance of policy bond imputes verification of proposal form along with financial documents like Aadhar and PAN with which all the previous policies are linked. The earlier policies all being purchased from LIC, one would expect that minimum due diligence would be carried out by LIC also.

25. Applying the aforesaid judgment to the facts of the case, it is to be noted that if in spite of any column being left blank, the insurance company accepts the premium and issues a policy bond, it is presumed to have waived

of its right to repudiate the policy on ground of suppression or non-disclosure of a material fact at a later stage. Thus, it is the burden of the respondents to verify the details provided by the insured available with the office of the LIC before issuance of policy bond. Mere shifting of their burden upon the petitioner from his rightful claim would not help the respondents in any manner specially when the previous policy as well as the present policy are given by the same insurer.

26. It is to be noted that the Supreme Court in the case of ***Mahaveer Sharma*** *(Supra)***,** after examining the judgments in the cases of ***Rekhaben Nareshbhai Rathod*** *(Supra)*, ***Manmohan Nanda (****Supra)* and ***Mahakali Sujatha*** *(Supra)*, categorically affirmed the principles established in the case of ***Manmohan Nanda*** *(Supra)*. The principles as culled out in paragraph 22 as above, clearly require the insurer to be more vigilant while issuing a policy. As categorically stated in paragraph 55.4 of the judgment in the case of ***Manmohan Nanda*** *(Supra)*, it is the duty of the Insurance Company to ask the insured to fill up any particular column that may have been left blank and if the insurer does not do so and goes ahead in issuing the insurance bond, it cannot, at a later stage, repudiate the contract on the ground of suppression or non-disclosure of a particular fact. In the instant case, the petitioner had only taken policies from the LIC and a minimum due diligence by the LIC would have revealed that the petitioner had taken a previous policy from the LIC. The LIC not seeking any clarification with regard to the blank column and subsequently accepting the premiums and issuing the insurance bond, has waived its right to repudiate the contract on the basis of suppression of material facts or non-disclosure of material facts. What is to be further noted is that any non-disclosure in the present case, was not with regard to health of the petitioner and the petitioner died of a sudden heart attack that was not connected to any previous ailments. In light of the same, the particular action in the instant case of repudiating the contract by the LIC is arbitrary and against the principles of law established by the Supreme Court.

27. The order passed by the Insurance Ombudsman is also of no assistance to the respondents as the same is clearly an order without application of mind as pointed out in paragraph 14 herein above.

28. In light of the above, the impugned orders are quashed and set-aside with a direction upon the LIC to make payment of the insured sum in accordance with law to the petitioner within a period of six weeks from date.

29. With the above directions, the writ petition is disposed of.

30. Since a point of law was involved, there shall be no order as to costs.

(Shekhar B. Saraf, J.)

I agree

(Vipin Chandra Dixit, J.)

29.04.2025
Kuldeep