

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**FIRST APPEAL NO. 1060 OF 2018**

(Against the Order dated 14/05/2018 in Complaint No. 98/2015 of the State Commission  
Rajasthan)

1. PREM SINGH

S/O. LATE SH. GOVIND SINGH R/O. VILALGE SHEOPUR,  
WARD NO 22. SANGANER

JAIPUR

RAJASTHAN

.....Appellant(s)

Versus

1. MAX NEW YORK LIFE INSURANCE CO. LTD. & ANR.

THROUGH GENERAL MANAGER, MAX HOUSE, 1,  
THIRD FLOOR, DR. JHA MARG, OKHLA PHASE-III,  
NEW DELHI 110020

2. TMAX NEW YORK LIFE INSURANCE CO LTD

THROUGH MANAGER, C-98, UPASNA TOWER, 2 FLOOR,  
SUBHASH MARG, C-SCHEME

JAIPUR

RAJASTHAN

.....Respondent(s)

**BEFORE:**

**HON'BLE AVM J. RAJENDRA, AVSM VSM (Retd.),PRESIDING  
MEMBER**

FOR THE APPELLANT :

FOR THE APPELLANT : MR. PAWAN KUMAR RAY,  
ADVOCATE

MR. SAMARTH AGRAWAL, ADVOCATE

FOR THE RESPONDENT :

FOR THE RESPONDENTS : MR. RAJNISH RANJAN,  
ADVOCATE

**Dated : 23 September 2024**

**ORDER**

1. The Appellant filed the instant Appeal under section 19 of the Consumer Protection Act, 1986, ("the Act"), against the Order dated 14.05.2018 passed by the learned State Consumer Disputes Redressal Commission, Bench No. 3, Jaipur, Rajasthan. ("State Commission") in Consumer Complaint No. 98 of 2015, wherein the State Commission dismissed the Complaint.

2. For convenience, the parties in the present matter are being referred to as per position held in the Consumer Complaint.

3. Brief facts of the case, as per the Complainant, are that he is a retired employee and he was approached by Manager of OP Company at his residence and represented that their

company operated like a bank and offered Fixed Deposits (FD) that would double in 5-6 years. The Manager of the Local (Regional) Branch assured him that the amount would remain safe and suggested appointing a family member as an authorized agent for further security. He agreed and appointed his daughter-in-law as the agent. However, without explaining the agent's role or product, the OP took Rs.18,00,000 from him, obtained his signature on a blank form. Subsequently, OP-1 sent a policy form for FD and a cover letter, which revealed that the policy issued was actually the "Life Maker Premium Investment Plan". The policy required premiums of Rs.12,00,000 for one policy and Rs. 6 lakhs for the second, contrary to the representation that it was an FD. Despite this, the Complainant paid the amount for an FD. Upon the expiration of the policy period, he contacted the local branch, where he was informed that the policy had already been surrendered, and the value had reduced to zero since the Complainant made only single deposit. He was explained that, to receive payment, he was required to deposit additional amounts over five years. The Complainant was further advised that if he deposited the outstanding amount, the policy could be revived, and payment made according to the company's rules. Based on this, the Complainant consented vide email on 17.03.2013 to pay the outstanding amount of Rs. 72,00,000. However, on 22.09.2013, OP-1 informed the Complainant by email that the policy could not be revived. According to the company's rules, after deducting a 25% surrender charge from the fund value of the deposit, the remaining amount could be refunded. The Complainant who was expecting double the deposit amount within five years, was dissatisfied. When he sought payment of the remaining amount, after 25% deduction, from the local branch, the defendants claimed the fund value was zero and denied any payment. Aggrieved by this, the Complainant filed Consumer Complaint No. 98 of 2015.

4. In response to the complaint before the State Commission, OPs filed their written statement wherein all the allegations were denied and it was asserted that the disputed insurance policy was a Unit Linked Plan, wherein the Insurance Company had invested the premium paid by the policyholder in the share market, making the policy subject to market fluctuations. This was taken for purely commercial purposes, classifying the services provided by the OPs as commercial in nature. As per IRDA regulation the Complainant was provided an option to cancel and opt out of the policy if he was unsatisfied. However, the Complainant did not take any action during this period, indicating satisfaction with the policy's terms and conditions. In Proposal Form No. 716501051, his son, Rattan Singh, was the policy holder, and Poonam Kanwar, the Complainant's daughter-in-law, was the agent for the policy. In Proposal Form No. 716501069, the Complainant's daughter, Shakuntla Chandrawat, was the policy holder. Both policy holders, by signing the Declaration and Authorization clause in the proposal forms, had declared that all the facts provided were true and that they understood and accepted the terms and conditions of the policies. The policy holders acknowledged their obligation to pay premium of Rs.12,00,000 annually for five years under Proposal Form No. 716501051, and Rs.6,00,000 annually under Proposal Form No. 716501069. The insurance proposer was required to pay premiums for five years under both policies, but the Complainant only paid the initial premium. OPs contended that he issued a letter dated 03.12.2009, requesting the payment of the next premium under Policy No. 716501051, and through a notice dated 31.01.2010, informed the Complainant that the policy had lapsed. Subsequently, by letter dated 30.11.2009, OP requested payment for the next premium under Policy No. 716501069, and a notice dated 25.01.2010 informed him that this policy had also lapsed. Despite these communications, the Complainant neither paid the

premiums nor revived the policies within the specified period. The Complainant allegedly attempted to revive Policy No. 716501051 by presenting a cheque for Rs.24,00,000, i.e. two years' worth premiums, but the cheque was dishonoured. Consequently, the policy remained lapsed, as it had been before. Complainant was informed about the dishonoured cheque vide letter dated 30.12.2011. It was submitted that both the insurance proposer and the policy holders were fully aware that the premium had to be paid regularly for five years, yet they failed to make the payments, leading to the lapse of the policies. Thus, it was contended that there was no deficiency in service on the part of OPs and it was requested that the complaint be dismissed.

5. The learned State Commission vide order dated 14.05.2018 dismissed the complaint with the following observations:

***“The terms & conditions are decided between both the parties in the contract and both the parties are bound to comply with those conditions. According to the conditions, amount of Rs.18,00,000/- was to be got deposited per annum, which were admittedly not deposited by the Complainant. Insurance, which was got done by the Complainant, was to be invested in the Share market by the Insurance Company and decrease or increase in that amount used to depend on the share market, which not being the consumer purpose, was the purpose to earn profit. Thus, the Complainant himself remained unable to comply with the terms & conditions and rules, under which, he took the policy, the Complainant doesn't come under the category of consumer.*”**

***In this case, on dated 09.05.2018, counsel of the Complainant Shri Anil Saxena met my advocate son Nitish Bagadi in his office at the ground floor at my residence. He approached my son and requested to get the case decided in favour of the Complainant and also attempted to allure (offer) him. Above-said act of the counsel for the Complainant is grossly disgraceful. This act on the part of Shri Anil Saxena, counsel for the Complainant is disgraceful, harmful and misdemeanour for the Advocate profession, therefore, complaint of the Complainant is liable to be dismissed at the costs of Rs. 2,00,000/-, which is dismissed at the cost of Rs. 2,00,000/-. Cost amount of Rs. 2,00,000/- may be deposited in the Consumer Welfare Fund.*”**

***One copy of the Judgment be sent to the Council of Rajasthan, Jodhpur for necessary action.”***

6. Being aggrieved by the impugned order dated 14.05.2018 passed by the Ld. State Commission, Complainant (Appellant herein) filed this present Appeal no. 1060 of 2018 seeking to:

***a) Allow the First Appeal; and***

***b) Set aside and quash the order/judgment dated 14.05.2018 passed by the Hon'ble State Consumer Disputes Redressal Commission, Bench No.3, Jaipur, Rajasthan in CC/98/2015; and***

***c) Allow the prayer of the Complainant in the complaint bearing no. CC/98/2015; and***

***d) To pass such other and further order as this Learned Commission may deem fit and proper under the circumstances of the case.”***

7. In the grounds of the instant appeal, the Appellants have mainly contended the following:

A. State Commission did not consider the fact that it had no power to direct the Bar Council of Rajasthan to take action against the counsel of the Complainant.

B. No inquiry was formed to investigate into the allegations levied by the State Commission and no opportunity was provided to the counsel for the Complainant to rebut the allegations. Hence, the order passed by the State Commission was illegal.

C. Imposition of a cost of Rs 2 Lakhs on the Complainant was violative of the dictate of S. 26 of the Act which limits the levy of the cost to the extent of Rs 10,000/- only.

D. Complainant was not provided with policy terms and conditions and hence he had no idea about the Free Look Up Period.

E. OP had not supplied the complainant with the copy of the terms and conditions and the policy cover at the time of receiving money.

F. State Commission had wrongly held that the Complainant did not fall under the category of the consumer merely because he had invested his money in the scheme of the OP Company.

8. In his arguments, the learned counsel for the Appellant/Complainant reiterated the grounds of appeal, asserting that the State Commission failed to recognize OP's deficiency in service. OPs initially assured him that the invested amount would be refunded, only deny later. Moreover, the State Commission overlooked the fact that the OPs had not proven that the Complainant received a copy of the insurance policy, making it impossible to claim that he was aware of the 15-day cancellation period. The State Commission failed to consider the Complainant's status as a service-class individual, who could not reasonably be expected to sign documents committing to share market investments, especially with a premium of Rs. 90 Lakhs just five years before retirement. The State Commission erred for not providing any reasons for its conclusion that the Complainant was disentitled to relief under the Act. He

asserted that the Complainant had availed the OP's services by taking a policy, yet he was denied his counsel the opportunity to explain or present his version. It is a well-established legal principle that no adverse remarks should be made against counsel without providing a chance to be heard. The State Forum's decision was biased, possibly driven by personal animosity, as it failed to order an inquiry or provide any justification for its adverse remarks. The State Forum's order should be set aside. Additionally, the imposition of costs was arbitrary, as no reasons were given for the high amount. The impugned order dated 14.05.2018 is liable to be set aside.

9. Per contra, the learned Counsel for the Respondents/OPs argued that the Complainant's son, Mr. Rattan Singh, joined OP-2 as Sales Manager on 01.05.2008 and received extensive training on the products and systems, equipping him with full knowledge of insurance policies. He asserted that before joining, Mr. Rattan Singh had worked with MET Life as an agent, holding the MDRT (Million Dollar Round Table) status. It was he and Ms. Poonam Kanwar, the Complainant's daughter-in-law who sold the disputed policies to the Complainant. Mr. Rattan Singh was both a Sales Manager in Policy No. 716501069 and the insured under Policy No. 716501051, while the Appellant signed the proposal forms. Ms. Poonam Kanwar received a commission of Rs. 3 lakhs, and Mr. Rattan Singh earned an incentive of Rs. 90,000 and a trip to Goa from these policies, indicating the family's involvement and understanding of the insurance process. He argued that the Complainant withheld critical information regarding policy lapses and premium payments, including the dishonour of a cheque for Rs. 24 lakhs issued for policy revival. He also concealed an email request for reinstatement of the policies. Additionally, after retirement, he filed FIR No. 262/2014 against Ms. Shalini Gupta of the OP, misusing his position to exert undue pressure. It was argued that the Complainant constructed a misleading narrative of an investment intended for an FD, by withholding vital documents, the Complainant had committed fraud on both the Court and the OP. Reliance was placed on *SP Chengalvaraya Naidu v. Jagannath* (1994) 1 SCC 1, *Bhaskar Laxman Jadhav v. Karamveer Kakasaheb Wagh Education Society*, AIR 2013 SC 523, and *Kishore Samrite v. State of UP*, (2013) 2 SCC 398. It was also argued that the Complainant was not a consumer under the Act, as the "Life Maker Premium Investment Plan" was a unit-linked plan designed for commercial investment. In support of this argument, the OPs relied on the judgment in *Ram Lal Aggarwalla v. Bajaj Allianz Life Insurance Co. Ltd.*, (2013 SCC Online NCDRC 399), which held that such unit-linked plans fell outside the purview of the Act.

10. I have examined the pleadings and associated documents placed on record and rendered thoughtful consideration to the arguments advanced by learned counsels for both the parties.

11. The main issue to be determined is whether there was any deficiency in service or unfair trade practice by OPs to the Complainant? If so, what is the liability of the OPs.

12. It is undisputed that the Complainant had entered into a transaction with the OPs and made the payments in question. It is also matter of record the policy document was supplied and it inherently provided for 15 days window for cancellation and refund without any

condition. Evidently, the Complainant did not exercise the facility to cancel the policy and obtain refund. It is an uncontested position that the Sales Manager OP-2 Mr. Rattan Singh was the son of the Complainant when the policy was issued. Further, it was Mr Rattan Singh and Ms. Poonam Kanwar, the Complainant's daughter-in-law who sold the disputed policies to the Complainant. The details of Mr. Rattan Singh were recorded in the policy as Sales Manager in Policy No. 716501069 and the insured under Policy No. 716501051, while the Appellant signed the proposal forms. Ms. Poonam Kanwar is stated to have received commission of Rs. 3 Lakhs, and Mr. Rattan Singh earned an incentive of Rs.90,000 and a trip to Goa for sale of these policies. Therefore, this is a within family issue and well within the knowledge of the Complainant. Further, the policy lapsed and the cheque for Rs. 24 lakhs issued for policy revival was dishonoured. Also, after retirement, the Complainant had filed FIR No. 262/2014 against Ms. Shalini Gupta of the OP with respect to the same matter. Therefore, the Complainant's contention that he was unable to exercise his right due to the non-supply of the policy by the OP company is untenable. Even for the sake of argument, if the policy was not provided, by exercising due diligence, he could have obtained the document through his son and daughter-in-law, which he did not. In any case, a prudent and educated individual, such as the Complainant, is reasonably expected to review the documents before signing or raise a request for the same if not furnished. Therefore, he cannot cause benefits to his family with the policies and shift responsibility for his lack of reasonable care onto the OPs. Further, the regulations issued by the Insurance Regulatory and Development Authority of India (IRDAI) are publicly accessible, and ignorance of the law is no defence. It is also clear that, while the involvement of his family members is uncontested, the name of the manager who allegedly approached the Complainant was not disclosed, further casting doubt on the veracity of the Complainant's claim itself.

13. In view of the foregoing, I do not find anything substantial in the present appeal which warrants interference with the findings and detailed and well reasoned order of the learned State Commission.

14. Notwithstanding the above, I find merit in the contention of the Complainant that the learned State Commission, without any inquiry, made adverse remarks against the Complainant's counsel and imposed punitive costs. Clearly, the State Commission ought to have acted in accordance with the principles of natural justice and caused institution of an enquiry into the matter rather than directly imposing punitive penalty.

15. In view of the foregoing deliberations, the said adverse remarks of the learned State Commission in the order dated 14.05.2018 stand deleted and the direction imposing of costs of Rs,2,00,000 is set aside. The rest of the order dismissing the complaint is upheld. Accordingly, the First Appeal No. 1060 of 2018 is disposed of.

16. Needless to say, the Complainant has right to approach appropriate legal fora to seek relief in respect of his grievances. He may also seek benefit of the provisions of Section 14 of the Limitation Act, 1963 in doing so.

17. There shall be no order as to costs and all pending Applications, if any, also stand disposed of accordingly.

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**AVM J. RAJENDRA, AVSM VSM (Retd.)**  
**PRESIDING MEMBER**