



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 9028 OF 2024

Care Health Insurance Ltd

...Petitioner

Versus

Manjula Haresh Joisar And Anr

...Respondents

Mr. R.S. Vidyarthi, a/w Mohit Turakkia, i/b A.S. Vidyarthi, for the Petitioner.

Appearance not received for Respondents.

**CORAM : SOMASEKHAR SUNDARESAN, J.
DATE : JANUARY 23, 2026**

ORAL JUDGEMENT :

1. Rule. Rule is made returnable forthwith and by consent of the parties, the Writ Petition is taken up for final hearing and disposal.
2. This Petition impugns the award of the Insurance Ombudsman dated May 7, 2024 ("***Impugned Award***"). The short controversy involved in the matter relates to one Mr. Haresh K. Joisar who was insured with an insurance company called Star Health and Allied Insurance Co. Ltd. ("***Star Health***") with a history of disclosed non-healing patches on his tonsils, which had been diagnosed as carcinoma, for which he had also undergone chemotherapy in 2021. Further follow-

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up procedures towards that treatment had also been undergone and claims for such treatment had been made and honoured by Star Health.

3. Eventually, the insurance policy was migrated to the Petitioner, Care Health Insurance Limited ("**Care Health**"). The application for "porting" the insurance policy is said to have been made in January 2022, and the health insurance policy was migrated. The coverage for the policy commenced from January 13, 2022 and lasted until January 12, 2023.

4. Pursuant to the ported policy, a claim was lodged in connection with the insured's hospitalisation by the wife of the insured. Care Health repudiated the claim on April 25, 2022 citing non-disclosure of carcinoma as a reason for repudiation.

5. The short issue that came up for consideration before the Insurance Ombudsman was whether the Petitioner, having been the issuer of the ported insurance policy, would be deemed to have full notice of the entire medical history and claim history of the insured, before taking a decision on porting the insurance policy and agreeing to continue providing such insurance cover. The Learned Ombudsman has taken the view that the onus of ascertaining the entire claim history when porting a policy would lie on the insurance company.

6. Care Health contended before the Ombudsman that the portal designated by the Insurance Regulatory and Development Authority (“*IRDA*”) for sharing of such information to enable porting, maintained by the Indian Insurance Bureau (“*IIB*”) was dysfunctional at the relevant time. Care Health contended that it was entitled to expect full disclosure in line with the doctrine of utmost good faith from the insured when seeking portability.

7. In this regard, it would be important to examine the statutory provisions governing portability. They are contained in the Insurance Regulatory and Development Authority of India (Health Insurance) Regulations, 2016 (“*IRDA Regulations*”).

8. Regulation 17 of the IRDA Regulations is extracted below:-

17. *Migration of health insurance policy (not applicable for Travel and Personal Accident policies)*

i. *General Insurers and Health Insurers offering health covers specific to age groups such as maternity covers, children under family floater policies, students etc, shall offer an option to migrate to a suitable alternative available health insurance policy at the end of the specific exit age or at the time of withdrawal of the policy at the option exercised by the said lives by allowing suitable credits for all the previous policy years, provided the policy has been maintained without a break.*

ii. Pilot products offered by general insurers and health insurers, may be guided by Regulation 11(b).

iii. All health insurance policies issued by General and Health Insurers shall allow the portability of any policy in accordance with Schedule -1 of these Regulations.

[Emphasis Supplied]

9. A plain reading of Regulation 17 would indicate that Regulation 17(i) is a statutory right to the policy holder that the policy holder would have the option to change the insurer with whom his insurance policy is maintained from one insurer to another with “*suitable credits for all the previous policy years*”. The only condition that has to be met by the insured is that the policy ought to have been maintained without a break.

10. Under Regulation 17(iii), all health insurance policies issued by such insurers must allow for portability of any policy in accordance with Schedule-I of those Regulations. The following extracts from Schedule-I are noteworthy:

1. A policyholder desirous of porting his/her policy to another insurance company shall apply to such insurance company to port the entire policy along with all the members of the family, if any, at least 45 days before, but not earlier than 60 days from the premium renewal date of his/her existing policy.

7. On receipt of intimation referred under Clause (1) above, the insurance company shall furnish the applicant, the Portability Form as set out in Annexure-1 to these guidelines together with a proposal form and relevant product literature on various health insurance products which could be offered.

10. The existing insurer, on receiving such a request on portability shall furnish the requisite data for porting insurance policies in the prescribed format in the web portal of IRDAI within 7 working days of the receipt of the request.

11. In case the existing insurer fails to provide the requisite data in the data format to the new insurance company within the stipulated time frame, it shall be viewed as violation of directions issued by the IRDAI and the insurer shall be subject to penal provisions under the Insurance Act, 1938.

12. On receipt of the data from the existing insurance company, the new insurance company may underwrite the proposal and convey its decision to the policyholder in accordance with the Regulation 4 (6) of the IRDA (Protection of Policyholders' interest) Regulations, 2002.

13. If, on receipt of data within the above time frame, the insurance company does not communicate its decision to the requesting policyholder within 15 days in accordance with its underwriting policy as filed by the company with the Authority, the insurance company shall not have any right to reject such proposal and shall accept the proposal.

[Emphasis Supplied]

11. A plain reading of Paragraph 1 of Schedule-I of those Regulations would indicate that any policy holder who is desirous of moving from one insurer to another has a window to seek such migration within a window commencing 60 days prior to scheduled expiry of the policy and ending 45 days prior to the expiry. Embedded in this framework is the fact that the new incoming insurer has a reasonable advance period to assess the insurance claim history before agreeing to the portability.

12. Paragraph 7 of Schedule-I would indicate that on receipt of such a request from the insured, the insurance company must furnish the Applicant with a form in Annexure-I appended to the guidelines contained in Schedule-I together with a proposal form and relevant product literature on various health insurance products which could be offered. Paragraph 10 of Schedule-I enjoins upon the prior insurer a responsibility to furnish the requisite data for porting insurance policies in the prescribed form on the web portal within seven working days of receipt of the request.

13. Under Paragraph 11, if the existing insurer fails to provide such requisite data, it would be liable to the penal intervention under the Insurance Act, 1938. Under Paragraph 12, *upon receipt of such data*

from the existing insurance company, the new insurance company *may* underwrite the proposal and convey his decision to the policy holder. If, on receipt of the information within the above timeframe the new insurer does not communicate his decision to the insured policy holder within 15 days, the insurance company shall not have any right to reject such proposal and shall accept the proposal. It is clear that the new insurer has a right to reject the request for porting. The deadline of 15 days to communicate a decision only sets a deadline to communicate an acceptance or rejection. By providing for the default option, the IRDA has nudged insurers to act timely. The deadline of 15 days to convey decision to accept or reject the request for porting starts only on receipt of data from the existing insurer. If information is not received, there is no obligation to accept the request for porting the insurance policy.

14. This arrangement put in place by the insurance regulator obviously factors in a clear framework for the new insurer to take an informed decision on whether to accept the ported policy. Embedded in this framework is the expectation that the decision to accept or reject the porting request is conveyed only after full information is available from the existing insurer.

15. The regulatory framework, therefore, entails a standard of diligence from the insurer in taking a view one way or the other on the request for porting. There is no obligation to port the policy and take over the risk without receipt of information from the existing insurer.

16. It is in these circumstances that the order passed by the Learned Ombudsman must be examined. If the IIB portal was dysfunctional, it would always have been open to the Petitioner to reject the request for porting on the premise that it had not received the requisite information to accept the request for porting the policy. It is inexplicable that Care Health agreed to port the policy and accept the premium without the information being made available by Star Health. Assuming that Care Health was happy to accept the porting without receipt of information, as it purports, it would be no answer to state that the insured ought to have made disclosures all over again as if it were a fresh policy. Such an approach would militate against the concept of “migration” which is clearly a regulatory framework for simply moving from one insurer to another without the hassle of opening a new risk assessment all over again. The insured is entitled to believe that the new insurer had taken an informed decision on accepting the porting request. The claim that the IIB portal was not functioning and therefore, the insured can be blamed for not providing the full

information cannot be accepted since it would be a reading that directly conflicts with the very specific regulatory objective of permitting hassle-free migration for the insured.

17. In these circumstances, considering the intensity of the promise that insurance companies hold to society, it is must be legitimately and reasonably expected that insurers would exercise the highest degree of professionalism and back to back, diligence in vetting the policy particulars and claim history of an applicant for porting, before accepting or rejecting a request for porting of the policy. Having accepted the request for porting and having happily accepted the premium, the breakdown in the IIB portal cannot be the reason for excusing Care Health from exercise of diligence before taking a decision on porting the policy. No fault can be found with the well reasoned approach of the Insurance Ombudsman, which is in perfect consonance with the regulatory objective of the IRDA Regulations.

18. In my opinion, it is not necessary to accept Mr. Vidyarthi's contention that as a corollary, no insured will have any responsibility for truthfulness in his statements during porting. This is not a necessary inexorable consequence at all of the Insurance Ombudsman's order. The proposition is not that the insured has no responsibility whatsoever

in providing the information. Instead, the proposition is that when the insurer accepts the porting request, he does so with eyes open and it is presumed to be an informed decision. It is not necessary to enable the insurer to claim and prove whether the IIB portal was not functional. Care Health could have always refused the porting request on the premise that the IIB portal was not functional, assuming that such claim were true.

19. The approach of the Insurance Ombudsman has been to see whether having accepted the porting request consciously, the new insurer had discharged the duty underlying the power to accept or reject the request for porting the insurance policy. Having accepted the insurance policy and the premium, in my opinion, there is no justification for Care Health to disclaim knowledge of the claim history with Star Health.

20. Therefore, no case is made out for interfering with the Impugned Award, which is a fairly reasoned award and is in conformity with the statutory framework described above.

21. Two judgments respectively in the cases of ***Reliance Life Insurance***¹ and ***Aditya Birla Sun Life***² are relied upon by Mr. Vidyarthi to underline the well-known doctrine of utmost good faith (*uberrima fide*) to be followed by the insured. There can be no issue with the law declared in these judgements. However, neither of these two cases were in the context of porting of an insurance policy where two mature financial institutions are expected to hand over information from one to the other to enable the recipient of the information to take an informed decision on whether to take over the risk. To shift this burden to the insured is not a principle flowing from either of these judgements.

22. Care Health was expected to be diligent in reaching out to Star Health if the portal was not functional to take over the records including claim history. Care Health was also reasonably expected to reject the new business proposition on the premise that it did not have the requisite information. Blaming the portal is not an option when the policy has been ported in line with the aforesaid regulatory framework. The expectation is that the entire medical history and claim history of the insured was available with Care Health before accepting the porting request and the consequential receipt of policy premium. It would be

¹ *Reliance Life Insurance Company Ltd. v. Rekhaben Nareshbhai Rathod – (2019) 6 SCC 175*

² *Aditya Birla Sun Life Insurance Company Ltd. v. The Insurance Ombudsman & Anr – judgement dated 23/11/2021 in Writ Petition 7804 of 2021*

presumed that a decision to take over the risk of the insured had been taken as an informed decision on the basis of such information.

23. It is in these circumstances that no intervention is called for with the Impugned Award. The Petition is ***dismissed***.

24. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]