
(1991) 07 CAL CK 0022
In the Calcutta High Court
Case No : C.R. No. 5399 (W) of 1985

Bholenath Cold Storage

APPELLANT

Vs

National Insurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 15-07-1991

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (1993) 1 CALLT 47 : (1994) 79 CompCas 90

Hon'ble Judges : Susanta Chatterji, J

Bench : Single Bench

Advocate : Sailajananda Bhattacharjee, for the Appellant;

Judgement

S. Chatterji, J.—The present rule was issued on May 17, 1985, at the instance of the writ petitioner praying, inter alia, for a writ of mandamus commanding the respondents to settle the claims lodged by the petitioners and communicate their decision with regard to the claims in consequence of the loss and damage sustained by the petitioner due to the flood in the year 1978 and for other consequential reliefs as stated in detail in the writ petition. It is stated in detail that the petitioner is a registered partnership firm carrying on cold storage business. The plant and machinery were installed and these were extremely sensitive requiring stable temperature. The petitioners proposed to insure their stock of potatoes stored in the cold storage premises situated at Chilleydanga, P.S. Pursura in the District of Hooghly, for a total sum of Rs. 17 lakhs against the contingencies stipulated with respondents Nos. 1 to 5, viz., National Insurance Company, Oriental Fire and General Insurance Company of different divisions and the New India Assurance Company. The petitioner also proposed to insure the buildings, plant and machinery and installation and racks of the cold storage for a total sum of Rs. 28 lakhs with respondents Nos. 1 to 4 respectively. There is also an agreement with respondent No. 2, Oriental Fire and General Insurance Company, towards the deterioration of stock policy for a sum of Rs. 22 lakhs and machinery breakdown policy for a sum of Rs. 8.18 lakhs. It is alleged that

respondent No. 1, National Insurance Company Limited, gave out in writing on February 7, 1979, by issuing an insurance policy bearing No. 320/124811(M) in favour of the petitioner against the contingencies and/or perils of fire, riot, M.D. explosion, E.F.S. cyclone and flood, etc., on the conditions stipulated in the said policy to the extent of Rs. 10 lakhs on stock of potatoes stored in the cold storage. It is further alleged that a clause was incorporated in the policy indicating, inter alia :

"It is hereby declared and noted that notwithstanding anything to the contrary in this policy or in any of its conditions this policy covers destruction of or damage to the property hereby insured caused by change of temperature resulting from total or partial destruction or disablement by fire and other perils covered under this policy, and the refrigerating plant."

2. Various clauses in the policy have been referred to in the writ petition for appreciating the rights and obligations of the respective parties. It is placed on record that on March 7, 1978, the petitioner approached respondent No. 4 in insuring the buildings, plant and machinery as well as stock of potatoes lying with the drawing safe and the petitioner sent a cheque for Rs. 9,800. There is a communication from the petitioner to cover the risk of deterioration of temperature clause of stock policy. There is a reference to a chain of correspondences between the parties as elaborately disclosed in the writ petition. It is specifically claimed that subsequent to the contract entered into by and between the petitioner and the respondents and premium being accepted after approval and/or acceptance of the proposal of the petitioner, there was an unprecedented flood inundating the cold storage premises and as a result thereof, there was a huge damage of potatoes in the cold storage as well as to the building, plant and machinery. Immediately thereafter, the petitioner duly informed about the aforesaid flood by addressing several telegrams and letters to all the respondents. The petitioner allegedly intimated that it sustained a loss to the tune of Rs. 20 lakhs and the petitioner lodged a claim for the aforesaid amount. By a letter dated 13th November, 1978, addressed to the surveyor, Ascon and Avins of 14, India Exchange Place, Calcutta, detailing the particulars of loss sustained by the petitioners. There is an allegation that the claim has not been settled and the petitioner has been compelled to come to the writ court to seek reliefs, that the actions taken by the respondent authorities are contrary to law and prejudicial to the interest of the petitioner and in violation of the principles of natural justice.

3. The writ petition is contested by the respondents by filing an affidavit-in-opposition. A common defence is taken that the parties entered into commercial contracts and even if there is any breach, the remedies are only available by way of suit for damages against the respondent-insurer companies and not by filing a writ petition. It is placed on record that pursuant to the letter of the petitioner to respondent No. 1 dated March 8, 1978, and the proposal for fire insurance dated March 8, 1978, covered the stocks in this cold storage, there is a stipulation by

deleting the clause, viz., "it is a condition that the insurance company shall not be liable for loss and damages which is resulting from a total or partial destruction or disbursement by fire refrigerating plant". It is further placed on record that after the flood, respondent No. 1 appointed the independent surveyor, Ascon and Avins, to survey and assess the damage and/ or loss sustained by the petitioner without prejudice to the rights of the insurance. From the surveyor's report, it has to be ascertained and the report with annexures will speak for itself. It is further elaborated that the purported policy was issued by mutual mistake purporting to cover loss or damage, and mainly the respondents have denied the liability by claiming that since respondent No. 6, Union of India, has been expunged from the cause title, the writ petition is not maintainable and the petition may be dismissed accordingly.

4. A lengthy argument was advanced on behalf of the petitioner and the respondents. The attention of the court has been drawn to the averments made in the writ petition and the affidavit-in-opposition and the affidavit-in-reply. Learned counsel appearing for the petitioner has specifically drawn the attention of the court to various provisions of the law of insurance to consider the construction of the policy. Several reported decisions have been cited, viz., Umesh Cold Storage v. Oriental Fire and General Insurance Co. Ltd. [1988] 1 CLJ 316 Har minder Singh Arora Vs. Union of India (UOI) and Others, and Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay, . It is highlighted that the claim of the policyholder should be understood in the proper perspective and there should be maintenance of register even if the claim is rejected. The attention of the court has been drawn to Section 14(b) of the Insurance Act. There is also reference of Mahabir Auto Stores and others Vs. Indian Oil Corporation and others, , and Jugal Kanta Pramanik v. State of West Bengal [1990] 2 CLJ 137. The scope of the contract and the arbitration clause have also been referred to and the attention of the court has been drawn to Nellimarla Jute Mills Co. Ltd. v. Jute Corporation of India Ltd. [1989] 2 CLJ 252 and S.P. Electronics v. State of West Bengal [1989] 2 CLT 214 (Cal). There is a reference to Hindusthan Petroleum Corporation Ltd. v. Shyam Sundar Ganeriwala [1987] 91 CWN 217. It is emphasized that there must be communication and there is no question of giving provision (sic) by referring to Shiv Shankar Dal Mills and Others Vs. State of Haryana and Others, . The main thrust of the argument is that claim of the petitioner has not been considered in the proper perspective and there is no communication to repudiate the claim lodged by the petitioner.

5. Learned counsel appearing for the respondents has mainly argued that the respondents are not authorities within the meaning of Article 12 of the Constitution of India and the writ petition is not maintainable. He has drawn the attention of the court to Bhashir Kumar Agarwal and Others Vs. Union of India (UOI) and Others, and to Section 4(b) of the Insurance Act. It is argued that first part is directed (sic) and not the second part if the insurance company does not repudiate the claim. There is a reference to Tilokchand and Motichand and Others Vs. H.B. Munshi and Another, , M.L. Nohria Vs. The General Insurance

Corporation of India, Bombay and Others, Life Insurance Corporation of India Vs. Raja Vasireddy Komalavalli Kamba and Others, , and Life Insurance Corporation of India v. Smt. Kiran Sinha AIR 1985 SC 1265.

6. Having considered the materials on record in depth and the submissions made on behalf of the respective parties at length, this court finds that there are valid and subsisting policies covering the claim of the petitioner. Admittedly, there was a flood. Undisputedly, the petitioner has sustained loss and damage. The petitioner has duly communicated the loss and damages. The claims have got to be settled in accordance with law as provided in the Insurance Act and in the manner as covered by several clauses of the policy. The respondents are certainly instrumentalities of the Government and they are certainly authorities as envisaged under Article 12 of the Constitution of India and they are amenable to writ jurisdiction. Reference may be made to the latest decision of the Supreme Court in Mahabir Auto Stores and others Vs. Indian Oil Corporation and others, and Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, . There cannot be any doubt that the remedies are available for breach of contract by the statutory authorities, and the door of the writ court is closed. The horizon has been broadened and the respondents cannot be permitted to ask the petitioner to go for alternative remedies by filing a suit. The concept of implied rejection is wholly unwarranted and uncalled for. Upon, perusal of the materials on record, this court is convinced that the claim of the petitioner has not been dealt with in the manner as required under law. No formal communication has been sent to the petitioner after giving an opportunity of hearing and/or by passing any speaking order. There is also violation of the principles of natural justice in keeping silent over the claim of the petitioner for a long time without assigning any reason.

7. For the foregoing reasons, this court does not find any bar and/or impediment to grant reliefs to the petitioner in the manner as indicated below. The Rule is made absolute by issuing an appropriate writ commanding the respondents to consider the claim of the petitioners within 8 (eight) weeks from the date of communication by giving an opportunity of hearing and by passing a speaking and reasoned order to settle the claim of the petitioner in accordance with law. There will be no order as to costs.