(1995) 02 SC CK 0069

In the Supreme Court Of India

Case No : Civil Appeals Nos. 4614-20 Of 1992

Block Development Officers'' Assn. and Others APPELLANT

Vs

State of M.P. and Others RESPONDENT

Date of Decision : 14-02-1995

Acts Referred:

Madhya pradesh panchayat and rural development (gazetted) service recruitment rules, 1988

Citation : AIR 1995 SC 1857 : (1996) 2 BC 416 : (1996) 1 BLJR 451 : (1996) 1 PLJR 22 : (1995) 110 PLR 58 : (1995) 2 SCALE 566 : (1995) 3 SCC 529 : (1995) 2 SCR 812 : (1995) 2 UJ 59

Hon'ble Judges : N. Venkatachala, J;Kuldip Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The respondent Company dealt in oil products and for that purpose, it used to purchase vegetable and refined oil from different parts of the country and transported the same in oil tankers. In order to protect itself against losses due to accidents, theft, pilferage, non-delivery etc., occurring in the course of transit, the respondent took insurance policies with the appellant in January 1988. The first policy was for an insurance cover of Rs 10,10,00,000 which was further increased by Rs 7 crores. Thus the total insurance coverage was for Rs 17.10 crores for which an aggregate premium of Rs 4,26,826 was paid by the respondent to the appellant.

2. One of the conditions of the contract of insurance was that in respect of the unutilised portion of the coverage, the appellant would refund to the respondent the proportionate amount of premium. That is to say, if the value of the total quantity of oil transported fell short of Rs 17.10 crores during the period of policy, the appellant would refund to the respondent the proportionate premium on the amount of shortfall in the quantity transported.

3. It is not disputed that the respondent had transported goods worth Rs

9,71,59,990 during the period of the policies. After the expiry of the period of the insurance policies, the respondent requested for refund of the proportionate premium amounting to Rs 2,05,797 but the respondent Company paid only a sum of Rs 40,889 through a cheque on the ground that the premium charged by the appellant from the respondent was less than what it ought to have been charged. It was pointed out that the premium was levied only at the rate of 30% whereas it should have been at the rate of 50% in view of the circular dated 7-3-1986. It was in these circumstances that the respondent approached the National Consumer Disputes Redressal Commission (for short "the Commission") which has allowed the claim of the respondent.

4. Learned counsel appearing on behalf of the Insurance Company has contended that in view of the circular dated 7-3-1986, the premium should have been paid at the rate of 50% and not at the rate of 30% as was done by the respondent. We are not prepared to accept this contention.

5. If it was a mistake, the same should have been pointed out to the respondent during the period of the policy but the appellant did not raise this objection at any time during the continuance of the policy cover. The respondent also fulfilled its obligations under the policy and paid the premium as was agreed to between the parties. If there was a mistake on the part of the appellant in collecting the premium, the same should have been pointed out at the time of entering into the contract or immediately thereafter. After having received the benefit under the policy of insurance from the respondent by way of premium, it is not open to the appellant to contend that there was a mistake on their part in charging the premium at a rate lower than the rate at which it should have been charged by them. If the parties were not ad idem on this vital part of the contract of insurance, it would have an adverse effect on the contract itself. Since the period of policy is over, the appellant is under an obligation to refund the extra premium in terms of the policy. It cannot itself unilaterally make any adjustment from the amount of unutilised premium and retain a part of it on the ground that the premium charged was less than what it should have been charged.

6. The Commission, in these circumstances, was fully justified in allowing the claim of the respondent and we see no infirmity in the judgment passed by it. The appeal is dismissed but without any order as to costs.