

(1979) 02 P&H CK 0023
In the Punjab And Haryana At Chandigarh

M.L. Nohria

APPELLANT

Vs

General Insurance Corporation and Others

RESPONDENT

Date of Decision : 16-02-1979

Acts Referred:

Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 — Section 2, 3
Constitution of India, 1950 — Article 12, 16, 226
General Insurance (Emergency Provisions) Act, 1971 — Section 3
General Insurance Business (Nationalisation) Act, 1972 — Section 10, 16, 19, 2, 21

Citation : (1979) 1 LLJ 414

Hon'ble Judges : S.S. Sandhawalia, J; Harbans Lal, J

Bench : Division Bench

Judgement

1. Whether the National Insurance Company Limited is "a State" for the purposes of Article 12, or a statutory Corporation amenable to the writ jurisdiction under Article 226 of the Constitution of India, is the somewhat significant question which arises on the very threshold in this writ petition.

2. The issue being pristinely legal, the facts pale into relative insignificance. Suffice it to mention that the petitioner, who is the Branch Manager of the National Insurance Company Limited, claims to be aggrieved by his alleged supersession by officers junior to him and, therefore, invokes Article 16 of the Constitution in his aid. Further a grievance is made about a marginal reduction in his basic salary, which has been labelled as reduction in rank, for which the remedy is sought for in the writ jurisdiction under Article 226 of the Constitution of India.

3. Apart from the merits, a significant preliminary objection to the very maintainability of the writ petition has been raised and strenuously pressed before us. It is claimed that on the admitted facts the National Insurance Company Limited, respondent No. 2, against whom alone, in essence, the relief is claimed, is not amenable to the writ jurisdiction at all. It is the categorical stand that respondent No. 2 neither falls within the ambit of the extended definition of

the State under Article 12, nor is it a statutory body or a statutory Corporation against which a writ of the nature claimed on behalf of the petitioner could lie.

4. The matrix of facts on which the preliminary objection is sought to be raised is not in dispute and falls within a narrow compass. The National Insurance Company Limited was incorporated way-back in 1906 and carried on the business of general insurance. Undoubtedly it came within the ambit of a company registered under and governed by the Indian Companies Act, 1956, prior to the enactment of the General Insurance Business (Nationalisation) Act, 1972, (hereinafter referred to as "the 1972 Act"), Therefore, for the purpose of the said Act, the National Insurance Company Limited was an Indian Insurance Company as defined in Section 3(i) thereof.

5. Now the core of the argument on behalf of the respondents is this. Admittedly the National Insurance Company Limited prior to 1972 was a company registered under and governed by the Indian Companies Act, 1956 and despite enforcement of the 1972 Act, in essence, the same corporate existence and the essentiality of it being a company under that statute continues unimpaired. It being settled law that an ordinary company registered under the Companies Act is neither "a State" nor "a statutory corporation" for the purposes of Article 226, an identical status is claimed on behalf of respondent No. 2 and the inevitable legal consequence is that no writ would lie against it either.

6. In order to appreciate the aforesaid contention a reference to the legislative history relevant thereto becomes inevitable. It is necessary to recall that the Life Insurance business within the country was nationalised much earlier and in its wake came the Life Insurance Act of the year 1956. However, at that stage the general insurance business, was allowed to continue in private hands though it is also manifest that the Life Insurance Corporation itself also carried on a substantial general insurance business as well. On the policy decision having been taken by a Government to nationalise the general insurance business also, the General Insurance (Emergency Provisions) Ordinance, 1971 was enacted. This was later followed by an Act of Parliament being the General Insurance (Emergency Provisions) Act, 1971 which was passed with the avowed object of protecting the interests of the policy holders, pending the nationalisation of the General Insurance business and to be expedient in public interest. Then followed the primary statute, which falls for consideration, namely, the General Insurance Business (Nationalisation) Act of 1972.

7. The background and the broad scheme of nationalisation emanating from the aforesaid three statutory provisions seems to be that the shares in the existing Insurance Companies carrying on the general insurance business were automatically transferred to and vested in the Central Government on the appointed day. The statement of objects and reasons of the 1972 Act made it explicit that on the appointed day the shares in the existing insurance companies carrying on general insurance business would automatically stand transferred to and vested in the Central Government. The act also provided for the framing of

one or more schemes whereby numerous Indian insurance companies would get merged in one another so that ultimately there would be only four Indian insurance companies so constituted as to promote competition between them in order to render effective service in the field of general insurance in all parts of India. It was expressly envisaged that a Government company called the General Insurance Corporation of India would be expressly registered under the Companies Act, 1956, which would be entrusted with the task of supervising, controlling and carrying on the business of general insurance. On the formation of this Corporation respondent No. 1 in the writ petition, which undoubtedly has been registered under the Companies Act, 1956 all shares of Indian Insurance Companies, which had earlier been vested in the Central Government, would stand automatically transferred to the Corporation and the remaining Indian Insurance Companies would become subsidiaries to the said Corporation.

8. It is against the aforesaid legislative backdrop that Mr. Soli J. Sorabji, the learned Additional Solicitor-General of India, appearing on behalf of respondent No. 2, has forcefully contended that this respondent undoubtedly was a company under the Companies Act prior to 1972 and the enactment of 1972 has not brought any seachange in its essential Corporate character, which remains the same. It was submitted that on the other hand the provisions of the 1972 Act are the clearest pointer to the fact that the earlier Corporate nature of the four Zonal Insurance Companies visualised by it and in particular that of the National Insurance Company Limited as a company registered under the Companies Act still remains wholly unimpaired. Consequently it was argued that neither Article 12, nor Article 226 of the Constitution were attracted to the situation and no writ was competent. In the alternative the contention was that even if there has been some change in the Corporate character of the National Insurance Company Limited after 1972, it amounts to not more than this that it has emerged as a bigger amalgamated company in which various smaller companies have now merged, but nevertheless it still retains its Corporate character as company under the Statute.

9. In elaborating the aforesaid contention, Mr. Soli J. Sorabji's primary reliance was on the provisions of the 1972 Act itself. Reference was first made to the defining Section 3 of the statute and in particular to Clause (a), (c), (e) and (i) thereof and for facility of reference they may first be set down:

3. Definitions

In this Act, unless the context otherwise requires:

(a) "acquiring company" means any Indian Insurance Company and, where a scheme has been framed involving the merger of one Indian insurance company in another or the amalgamation of two or more such companies means the Indian insurance company in which any other company has been merged or the company which has been formed as a result of the amalgamation;

(b) "appointed day" means such day not being a day later than the 2nd day of

January, 1973, as the Central Government may by notification appoint;

(c) "Companies Act" means the Company Act, 1956;

(e) "existing insurer" means every insurer the management of whose undertaking has vested in the Central Government u/s 3 of the General Insurance (Emergency Provisions) Act, 1971, and includes the undertaking of the Life Insurance Corporation in so far as it relates to the general insurance business carried on by it;

(f) ** ** *

(g) ** ** *

(h) ** ** *

(i) "Indian Insurance Company" means an existing insurer having a share capital who is a company within the meaning of the Companies Act.

Reading the aforesaid Clauses (a), (e) and (i) together the counsel was plausibly able to contend that respondent No. 2, the National Insurance Company Limited, clearly came within the ambit of definition of an Indian Insurance Company. This stand indeed was not the subject-matter of any serious challenge on behalf of the petitioner at all. This being so it would be plain from Clause (i) that at the material time respondent No. 2 would be company within the meaning of the Companies Act, 1956.

10. Proceeding further on the aforesaid firm premises the learned Counsel for the respondents then adverted to and highlighted the provisions of Section 4(i), by virtue whereof all the shares in the capital of every Indian Insurance Company, which would include within its ambit respondent No. 2, would stand transferred to and vested in the Central Government on the appointed day. It was, therefore submitted plausibly that thereby the corporate identity of the Indian Insurance Company was not in any way destroyed and on the vesting as such, the Central Government became a vested shareholders of the Indian Insurance Company. It was further pointed out that even this situation was only an interim measure and it is the common stand that in accordance with the provisions of Section 10 of the 1972 Act, all the shares of the Indian Insurance Companies which had vested earlier in the Central Government, would thereafter stand automatically transferred to the General Insurance Corporation of India formed u/s 9. To make this situation self evident it is desirable to read the provisions of Section 10, which are as under:

10. Transfer to Corporation shares vested in Central Government.

All the shares in the capital of every Indian insurance company which stand transferred to and vested in the Central Government by virtue of Section 4 (with the exception of the shares transferred to any person under Sub-section (2) of that section) shall immediately after such vesting, stand transferred to and vested in the Corporation and every Indian Insurance Company shall forthwith

give effect to such transfer of shares and rectify its register of members by including therein the Corporation as the holder of such shares.

It is manifest from the above that by virtue of this provision all the shares of the Indian Insurance Companies would stand transferred to and vested in the Corporation and the second thing highlighted is that this Corporation is again a Government company formed and incorporated under the relevant provisions of the Companies Act, 1956, by virtue of Section 9 of the 1972 Act, This being so the end result is that not only respondent No. 2, the National Insurance Company Limited is itself a company formed under the Companies Act, but even subsequent to the 1972 Act its shares at best are now held by the holding company and it is, therefore, a subsidiary to the General Insurance Corporation of India, formed and registered under the Companies Act, 1956.

11. To buttress his contention that the 1972 Act and its preceding legislation was never intended to destroy the existing corporate character of the Indian Insurance Companies but in fact intended to retain the same, a reference was made to Section 19(1) of the Act. This provides that functioning of the acquiring company (which undoubtedly respondent No. 2 is) was to be subject to the rules, if any, made by the Central Government and in accordance with the memorandum and articles of association. This was pointedly relied upon to sustain the stand that the original memorandum and articles of association were not only expressly saved, but a statutory mandate was laid that these would be followed in the companies, subject of course to statutory rules. On these premises the submission was that respondent No. 2, the National Insurance Company Limited far from having become a limb of the Government or a mere Department thereof, had on the contrary in pith and substance, retained and maintained its character of a company under the Act and governed by its memorandum and articles of association.

12. In this very vein reference was made to Section 23(1) which provides for the manner in which the balance of profit would be utilised and prescribed that after making necessary financial provisions incidental to the insurance business, every acquiring company shall distribute the balance of profits as dividend. This was again rightly highlighted as primary and incidental to a corporate character under the Companies Act.

13. Reference was then made to Section 21 which again envisaged the creation of a new Board of Directors for the Indian insurance companies and only as an interim measure provided that the management for some time would continue to vest in the custodian incharge of the management till the appointed day.

14. Lastly, in this context counsel reverted back to the defining Section 3 of the Act and it particular to Sub-section (q) thereof, which provides that the words and expressions used in this Act, but not defined herein or in the Insurance Act, but defined in the Companies Act would have the meaning respectively assigned to them under the Companies Act. It was pointed out that the word "company"

was not defined in the 1972 Act and, therefore, to ascertain the correct legal connotation of the word "company" when used in the aforesaid Act, 1956. Reference therein was made to Section 2(1) which lays down that a "company" means a company as defined in Section 3 and a reference to the said Section would indicate that the word "company" means a company formed and registered under the said Act, or an existing company as defined in Clause (iii), which in turn lays down that existing company means a company formed and registered under any of the previous company laws which includes all the predecessor statutes to the Indian Companies Act, 1956.

15. In the light of all the aforesaid definitions of the word "company", particular reference was made to Section 16(2) of the Act, which is in the following terms:

16. Scheme of merger of companies, etc.

(1) ** ** *

(2) In framing schemes under Sub-section (1) the object of the Central Government shall be to ensure that ultimately there are only four companies (excluding the Corporation) in existence and that they are so situate as to render their combined services effective in all parts of India.

16. It was pointed out that even in the scheme for the merger of the companies, that has been given effect to, what was to emerge were only four companies. Admittedly respondent No. 2, the National Insurance Company Limited is one of these four companies envisaged by Section 16(2) of the Act. The counsel then highlighted that even on the reading of the word "company" in the aforequoted Section 16(2) of the Act, with the relevant definitions, there would emerge four companies under the Indian Companies Act, 1956 which inevitably would be governed by its provisions.

17. Relying on the overall effect of the statutory provisions aforesaid and arguing on principle, the stand taken by Mr. Soli J. Sorabji was that since respondent No. 2, the National Insurance Company Limited, and the other zonal insurance companies have not at all been created by the 1972 Act. They are not the creatures of the statute, but merely a continuation or amalgamation of the original companies, at best in a marginally altered garb. Their essential character as corporate bodies registered under the. governed by the Indian Companies Act, 1956 is, therefore, on where altered or impaired.

18. Having laid a solid foundation on the basis of principle and the governing statute, Mr. Soli J. Sorabji had then proceeded to place primary reliance on the leading judgment of Chief Justice Ray in Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, . Therein it has been said in no uncertain terms, in para 25 of the report as follows:

The source of the power for making rules and regulations in the case of

Corporation created by a statute is the statute itself. A company incorporated under the Companies Act is not created by the Companies Act, but comes into existence in accordance with the provisions of the Act. It is not a statutory body because it is not created by the statute. It is a body created in accordance with the provisions of the statute.

19. The aforesaid observations are categoric, but the star argument is that the judgment in Sukhdev Singh's case (supra) and Sabhajit Tewary v. Union of India (supra) were rendered on the same day and by the same Bench of the five learned Judges. It was pointed out that while there was a discordant note of dissent by Alagiriswami, J., in Sukhdev Singh's case, the Bench was unanimous in Sabajit Tewary's case in holding that the Council of Scientific and Industrial Research was not a statutory body and Chief Justice Ray speaking for the Bench observed in paragraph 4 as under:

Extracting the features as aforesaid, it was contended that these would indicate that the Council of Scientific and Industrial Research was really an agency of the Government. This contention is unsound. The Society does not have a statutory character like the Oil and Natural Gas Commission, or the Life Insurance Corporation or Industrial Finance Corporation. It is a society incorporated in accordance with the provisions of the Societies Registration Act.

and after referring to a number of earlier precedents it was concluded in paragraph 6 as under:

For these reasons we are of the opinion that the Council of Scientific and Industrial Research is not an authority within the meaning of Article 12 of the Constitution. The writ petition is dismissed.

20. Having established on the basis of precedents that the National Insurance Company Limited, respondent No. 2, would not come within the ambit of statutory body as viewed authoritatively by their Lordships in Sukhdev Singh's case, as also in Sabhajit Tewary's case Mr. Sorabji sought added support from the observations in Praga Tools Corporation v. C.V. Manual and Ors. (supra) and in particular in its re-affirmance in the latest pronouncement in Executive Committee of Vaish Degree College, Shamli and Anr. v. Lakshmi Narayan and Ors. (supra). In Praga Tools Corporation's case Shallet, J., speaking for the Bench had said:

The company being a non-statutory body and one incorporated under the Companies Act there was neither a statutory nor a public duty imposed on it by a statute in respect of which enforcement could be sought by means of a mandamus, nor was there in its workmen any corresponding legal right for enforcement of any such statutory or public duty. The High Court, therefore, was right in holding that no writ petition for a mandamus or an order in the nature of mandamus could lie against the company.

21. In re-affirming the aforesaid view, Fazal Ali, J., in Executive Committee of

Vaish Degree College and Ors. case while reversing the Full Bench judgment of the Allahabad High Court, observed as under:

It is, therefore, clear that there is a well marked distinction between a body which is created by the statute and a body which after having come into existence is governed in accordance with the provisions of the statute. In other words the position seems to be that the institution concerned must owe very existence to a statute which would be the fountainhead of its powers. The question in such cases to be asked is, if there is no statute would the institution have any legal existence. If the answer is in the negative then undoubtedly, it is a statutory body, but if the institution has a separate existence of its own without any reference to the statute concerned but is merely governed by the statutory provisions, it cannot be said to be a statutory body. The High Court, in our opinion, was in error in holding that merely because the Executive Committee followed certain statutory provisions of the University Act or the statute made thereunder, it must be deemed to be a statutory body.

22. Though the matter appears to me as concluded in favour of the respondents by the aforesaid judgments of the final court, reliance was placed on equally categoric statements of the law laid by the different High Courts. Pride of place therein must be given to the elaborate, exhaustive and illustrative judgment of the Division Bench of this Court reported in *Lamba Industries v. Union of India* and Ors. I.L.R (1977) P&H 580, wherein the issue was pointedly raised whether the State Trading Corporation of India, New Delhi, was amenable to the writ jurisdiction under Article 226. After an exhaustive discussion on principle and references to the case law, the preliminary objection was sustained and it was held that the State Trading Corporation of India, New Delhi, being a company registered under the Companies Act was not a statutory Corporation, and, therefore, was beyond the pale of writ jurisdiction.

23. The Full Bench of the Kerala High Court in *Gopala Pillai Vs. Kerala State Small Industries Corpn. Ltd. and Others*, , has similarly held that the Kerala State Small Industries Corporation was neither a State nor amenable to the writ jurisdiction under Article 226 despite the fact that all its shares were held by the Government. On an analysis of the case law on the point, it was observed:

This Court has to proceed on the basis that between a corporation created or established by a statute and a company registered under the Companies Act, there is a real distinction in view of the pronouncement of the Supreme Court in *Sabhajit Tewary Vs. Union of India (UOI) and Others*, wherein it is stated:

** ** *

24. Chief Justice Tatachari speaking for the Bench in *Gurbaksh Singh Vs. Delhi State Industrial Development Corporation and Others*, , has also held that the Delhi Industrial Development Corporation was not amenable to the writ jurisdiction for identical reasons.

25. Despite the aforesaid unbroken line of precedents it is necessary to advert to the Division Bench Judgment of this Court in *Lachhman Dass Aggarwal v. The Punjab National Bank and Ors.* (1977) S.L.R 565, wherein it was held that the newly nationalised Punjab National Bank was a creature of the statute and therefore, falls within the term "authority" under Article 12 and was, therefore amenable to the writ jurisdiction under Article 226. At first flush this judgment, which was relied upon by Mr. Jawahar Lal Gupta learned Counsel for the petitions, would appear to support his stand, but a close analysis thereof would indeed show that the position is wholly otherwise. Mr. Sorabji has pointed out a fundamental difference in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, to highlight his argument that thereby in fact the nationalised banks were created for the first time in sharp distinction to the earlier Banking Companies, which were acquired and taken over by the State. In fact the very little of the Act was highlighted to show that thereby plainly the existing banking companies were acquired and vested in the State alongwith all their assets and undertakings. The position under the 1972 Act, however, was radically and manifestly different, where the existing Indian insurance companies were allowed to retain their corporate character and continues business except for the change that their shares were transitorily first transferred to the Central Government and thereafter were automatically vested in the Corporation, which again was a company registered under the Companies Act. Mr. Sorabji was at pains to point out that under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 the nationalised Punjab National Bank was created and was entirely a creature of the statute, Reliance was heavily placed in this connection on Section 2(d) and 3(1) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, (hereinafter referred to as "the Banking Companies Act") which are in the following terms:

2. Definitions:

In this Act, unless the context otherwise requires:

* * * (d) "corresponding new bank", in relation to an existing bank, means the body corporate specified against such bank in column 2 of the First Schedule;

* * *

3. Establishment of corresponding new banks and business thereof.

(1) On the commencement of this Act, there shall be constituted such corresponding new banks as are specified in the First Schedule.

* * *

26. Reading the aforesaid two provisions together alongwith the first schedule, counsel for the respondent was on the firmest ground in contending that by these provisions an entirely new set of nationalised corporate banking bodies were created and constituted. These nationalised banks were distinct and separate entirely from the old and earlier banking companies registered under

the Banking Companies Act.

27. Particular reference was also made to Section 3(4) of the Banking Companies Act, which infused the corporate life into the corresponding new banks providing that this would be a body corporate with perpetual succession and common seal, with power to acquire, hold and dispose of property. An over-all Perspective of the aforesaid provisions of the Banking Companies Act, 1970, therefore, leaves no manner of doubt that the corresponding nationalised banks were constituted and created by the statute whilst the old existing banking companies had ceased to exist and were acquired and taken over by the Government and had totally lost their identity. The significant thing herein is that whilst the earlier banking companies had the suffix of "Limited" which indeed was essential for registration under the Banking Companies Act, the newly created nationalised banks scrupulously avoided the use thereof to highlight the difference between them and the former banking companies. The whole scheme of the Banking Companies Act, 1970, therefore, is sharply and radically different from that envisaged later under the 1972 Act, where there is not even a hint of a similar provision or any change in name of the companies or their nomenclature.

It is in the aforesaid context that Chinna Reddy, J.'s sharp line of distinction between the Punjab National Bank Limited and the newly created nationalised Punjab National Bank is to be viewed. The learned Judge with his illimitable lucidity highlighting this subtle distinction had said that the nationalised bank indeed was the creature of the statute and, therefore, inevitably a statutory body, which would come withing the known legal indicia thereof, it was observed:

Applying the principles laid down in Sukhdev Singh's case there can be no doubt that Punjab National Bank is an "Authority" within the meaning of Article 12 of the Constitution. Punjab National Bank, as distinguished from the Punjab National Bank Limited, is not a company incorporated pursuant to the provisions of the Companies Act, but is a body created by the statute, namely, the Banking-Companies (Acquisition and Transfer of Undertakings) Act, 1970.

It, therefore, emerge that Lachhman Dass Aggarwal's case (supra) far from in any way siding the case of the petitioner, in fact appears to be directly contradictory to the very stand taken by the counsel for the petitioner.

28. In fairness to Mr. Gupta it must be noticed that he placed heavy reliance on Section 61 of the Act, which provides for the scheme of merger of the companies. Counsel contended that this Section conferred a power on the Central Government to merge the insurance companies not necessarily of their own volition but even involuntarily under its provisions. The core of the argument was that the obligatory merger under the Scheme u/s would create altogether a new company which by fiction should be deemed as the creature of the statute and not merely an amalgamated company. Reference was also made to Clause (f) of Section 16(1) of the Act, which refers to the continuance in service of the employees under the acquiring company, when the amalgamating company has

ceased to exist by reason of the Scheme.

29. I am unable to agree with the aforesaid contention. Section 16 is an enabling provision which empowers the Central Government to frame schemes for the merger of one Indian Insurance Company with any other Indian Insurance Company or for the amalgamation of two or more Indian Insurance companies. Now this is not a matter of controversy that even under the Indian Companies Act it is possible for the companies to amalgamate and merge in each other. Nor is it in dispute that if two companies registered under the Companies Act merge together, the amalgamated company does not in any way lose its original corporate character. In fact the only legal result that ensues is that the amalgamated company loses its identity, whilst the company in which it is amalgamated retains its original character, Merely because the process of merger is absolutely voluntary or is a consequence of a scheme framed u/s 16(2), does not to my mind go to the root of the matter or abrogate the very character of the amalgamated company. The merger of a number of companies under the Indian Companies Act would not make the resultant company to be either a State under Article 12 or a Statutory Corporation created by the statute itself. The homely example was rightly given by Mr. Sorabji that if a number of small steel companies chose to amalgamate in the Tata Iron and Steel Company, the latter would not lose its character as a company and would neither become a State, nor statutory body. It is, therefore, right to say that on the merger of a number of companies, whether voluntary or involuntary would again result in a company and not a statutory body, which may come within the ambit of Article 12. It is in this context that Section 16(1)(f) on which reliance was placed is to be viewed, It merely refers to the amalgamating company which ceases to exist or loses its identity by being totally submerged with the amalgamated company. I am unable to see how the provision of Section 16 can in any way aid or advance the cause of the petitioner.

30. In an attempt to counter the reliance on Sukhdev Singh's case on behalf of respondent No. 2, Mr. J.L. Gupta refers to the observations of Mr. Justice Mathew therein (in para 96 of the report), therein it is observed that a finding of State financial support plus an unusual degree of control over the Management and policies might lead one to characterize an operation as state action. Even this observations made in a much larger context and in particular with regard to the nature of company does not appear to be of any aid to the petitioner. Mr. Gupta could not as a matter of fact, point out nothing which would come within the ambit of such an unusual degree of control by the Government over the Management and policies which can give rise to any such-inference. It is not disputed that respondent No. 2 has its own memorandum and articles of association and its Board of Directors. As if there is any control with the name it is again vested in the General Insurance Corporation of India which again is a company registered under the Companies Act. Therefore, so far as respondent No. 2 is concerned the exceptional degree of control, which may raise the inference of a corporate body being a very limb or part of the Government is

plainly and squarely lacking here.

31. In passing it may be mentioned that Mr. J.L. Gupta had attempted to place reliance on the provisions of Section 7. which is primarily related to the transfer of services of ex-employees in certain cases. However, as Mr. Soli J. Sorabji was able to point out, this section deals primarily with the employees of existing insurer other than the Indian Insurance companies and by and large has a reference to the foreign insurers operating in India. This Section, therefore, had little or no relevance in the context of the Indian Insurance Companies with which alone we are dealing with the learned Counsel for the petitioner had slipped in attempting to rely upon a provision which has least relevance with the issue.

32. To conclude it appears plain to me that the National Insurance Company Limited is neither a State for the purposes of Article 12 nor a statutory Corporation amenable to the writ jurisdiction under Article 226 of the Constitution of India. The preliminary objection forcefully raised on behalf of the respondents is hence upheld. The writ petition consequently must be dismissed.

33. In view of the slightly intricate issues arising, the parties are left to bear their own costs.