
(2025) 07 KL CK 1218

In the High Court Of Kerala

Case No : Writ Petition (C).No.8448 Of 2016

New India Assurance Company Ltd

APPELLANT

Vs

G & M Industrial Products

RESPONDENT

Date of Decision : 25-07-2025

Acts Referred:

General Clauses Act, 1897 — Section 2(9), 3
Redressal Of Public Grievances Rules, 1998 — Rule 4(i), 4(1)(k), 4(k), 12(1), 12(2),
13, 13(1), 13(2)

Citation : (2025) 07 KL CK 1218

Hon'ble Judges : S.Manu, J

Bench : Single Bench

Advocate : George Cherian, Latha Susan Cherian, K.S.Santhi, Achu Subha Abraham, Chithra Chandrasekharan, K.R.Monisha, Philip T.Varghese, Thomas T.Varghese

Final Decision : Allowed

Judgement

S.Manu, J

1. First respondent submitted Ext.P1 complaint to the 2nd respondent Insurance Ombudsman on 16.06.2015. Second respondent stated in the complaint that the petitioner company repudiated a claim for compensation raised by them on the basis of Ext.P5 marine cargo specific voyage policy obtained on 15.06.2012.

2. First respondent transported 1,657 metric tons of soda ash from Porbandar Port on 15.06.2012 through a barge. The barge was not able to anchor at the destination, which was Mangalore Port, due to adverse weather conditions. It was diverted to Beypore Port. When the soda ash was unloaded, it was noticed that a huge quantity of bags, amounting to 114.50 metric tons, was damaged. During the entire voyage, the sea was rough, and water happened to enter the vessel, resulting in damage to the material.

3. Petitioner company rejected the claim for compensation to the tune of

Rs.23,56,066/- lodged by the 1st respondent. Hence, Ext.P1 complaint was submitted to the Ombudsman. On receipt of notice from the Ombudsman, the petitioner company submitted Ext.P2 on 27.07.2015. The petitioner stated that they were agreeable to the Ombudsman acting as a mediator between the complainant and the company and giving recommendations for the resolution of the complaint. However, the company added a note stating the reasons for rejecting the claim. It was also pointed out in Ext.P2 that the policy was issued in the name of the 1st respondent which was a partnership company and complaints from such firms were not liable to be entertained by the Insurance Ombudsman. By Ext.P4 dated 5.08.2015 petitioner raised objections against considering the complaint of the 1st respondent. It was submitted by the company that Ombudsman was empowered to receive and consider complaints in respect of personal lines of insurance only. It was contended that the 1st respondent was a partnership company and the policy issued to it was a marine policy on commercial line. The petitioner requested the Ombudsman to dismiss the complaint for the above said reasons.

4. Ombudsman passed the impugned award on 14.10.2015. Ombudsman considered the following points:-

"a) Whether this Forum has the jurisdiction to hear this complaint?

b) Was the policy issued correctly ?

c) Was the damage due to rain water as alleged by the Insurer?

d) Whether damage due to rain water is excluded under the policy?

e) Whether the grounds of repudiation were correct?

f) Quantum of relief, if any."

5. Regarding the jurisdiction to consider the complaint Ombudsman observed that the 1st respondent was a proprietary concern. Unlike a partnership or company the proprietorship business cannot be separated from the owner. The Ombudsman also noted that the 1st respondent agreed to limit the claim to Rs.20,00,000/- as the power of the Ombudsman to grant relief of compensation was circumscribed at Rs.20,00,000/-. Further the Ombudsman noted that the petitioner had agreed by Ext.P2 dated 27.07.2015 for mediation by the Ombudsman. Therefore, the Ombudsman held that the petitioner company, after expressing consent, cannot argue that the Ombudsman had no jurisdiction to consider the complaint. Contention of the petitioner company regarding jurisdiction was overruled by the Ombudsman and the complaint was considered on merits. The petitioner company was directed, by the impugned award, to pay the 1st respondent Rs.20,00,000/-.

6. Learned counsel appearing for the petitioner assailed the award passed by the Ombudsman raising diverse contentions. Learned counsel submitted that though the petitioner had challenged the proceedings of the Ombudsman pointing out

that the claim raised was above Rs.20,00,000/-, the said contention is not being pressed in view of a decision of the Division Bench of this Court in *HDFC Standard Life Insurance Company Ltd., & another v. Jyothi Madhavan.U. & others* [2024 SCC OnLine Ker 5090]. The learned counsel stressed on the contention that the complaint was not liable to be entertained for two other reasons pointed out in the writ petition. He submitted that the provisions of Redressal of Public Grievances Rules, 1998 which governed the proceedings before the Ombudsman at the relevant time enabled the Ombudsman to consider only grievances regarding insurance policies taken on personal lines. He pointed out that admittedly the policy obtained by the 1st respondent was a marine cargo specific voyage policy issued on commercial lines. He hence contended that considering the claim was beyond the jurisdiction of the Ombudsman. The learned counsel further contended that the 1st respondent being a proprietary concern, was not entitled to maintain the complaint before the Ombudsman.

7. The learned counsel made reference to various provisions of the Redressal of Public Grievances Rules, 1998. He pointed out the definition of the expressions 'insured person' and 'personal lines'. He submitted that 'insured person' means an individual by whom or on whose behalf an insurance policy was taken on personal lines. 'Personal lines' means an insurance policy taken or given in an individual capacity. The learned counsel submitted that a Division Bench of this Court in *National Insurance Co. Ltd v. Indus Motor Company Pvt. Ltd. and others* [2005 (4) KLT 391] considered the provisions of the Rules elaborately and held that the emphasis of Rule 13 read with Rule 4(k) is on the words 'individual', 'personal lines', 'himself or through his legal heirs'. The Division Bench held that an incorporated company would not fall under any of those expressions. In the said case the Ombudsman had dismissed the complaints filed by a company holding that the insured being a company, the policy obtained could not be considered as taken on 'personal lines' or in the other words in an individual capacity. The learned Single Judge who considered the writ petition filed by the company against the award of the Ombudsman set aside the award and held that the complaint was maintainable. The Division Bench reversed the judgment of the learned Single Judge and upheld the order of the Insurance Ombudsman. Learned counsel, relying on the judgment, contended that the Ombudsman therefore lacked jurisdiction to entertain the complaint of the 1st respondent which was not one submitted in an individual capacity. The learned counsel pointed out another reported judgment of this Court in *Bajaj Allianz General Insurance Company Ltd. Ernakulam v. Puthen Modern Rice Mill, Kalady and others* [2021(2) KLT 640]. Learned Single Judge of this Court set aside the award of the Ombudsman, passed on a complaint filed by a partnership firm. Following the judgment of the Division Bench mentioned supra, the learned Single Judge held that the expression any person used in Rule 13 will not take within its scope a partnership firm also. The learned counsel pointed out that the 1st respondent was admittedly a firm. He pointed out that the language employed in Ext.P1 would show that the business was not run by an individual. He contended that in

the complaint the expression used is 'we' to describe the complainant. The learned counsel further contended that the object of Redressal of Public Grievances Rules was to resolve complaints regarding policies issued on personal lines. He submitted that in such policies normally the stakes involved will be comparatively less than the policies issued on commercial lines. Detailed examination of evidence following the rules of evidence is not involved in the summary procedure adopted under the Rules. He therefore argued that disputes regarding policies issued on commercial lines involving huge amounts and serious contentions cannot be decided by the Ombudsman. Hence, the obvious purpose for framing the Rules was to provide a speedy mechanism for redressal of grievances arises from policies issued on personal lines like mediclaim policies, personal accident policies, etc. He further submitted that fixing a cap for granting monetary relief by the Ombudsman was also for the reason that the Ombudsman was not expected to consider complaints regarding policies issued on commercial lines. He hence submitted that the complaint was not maintainable before the Ombudsman and the reasons given by the Ombudsman for rejecting the contention of the petitioner regarding jurisdiction were fallacious.

8. The learned counsel appearing for the 1st respondent submitted that none of the objections raised by the petitioner with respect to the impugned award were sustainable. He contended that the 1st respondent is a proprietorship concern and the same is evident from Ext.P1. The complaint was submitted by the sole proprietor. He argued that a proprietorship concern cannot be equated with a company or a partnership. The learned counsel relied on the judgments of the Hon'ble Supreme Court in *Ashok Transport Agency v. Awadhesh Kumar and Another* [(1998) 5 SCC 567] and *Raghu Lakshminarayanan v. Fine Tubes* [(2007) 5 SCC 103]. The Hon'ble Supreme Court held in those cases that a proprietorship concern is only the business name in which the proprietor of the business carries on the business. The learned counsel therefore submitted that when a proprietorship concern avails a policy the same can be considered only as issued on personal lines. In other words, the applicant is an individual, though he may be having a different business name ie, of the proprietorship concern. He hence submitted that the policy availed was on individual lines and the Ombudsman had jurisdiction to consider the complaint. The learned counsel pointed out the observations of the Ombudsman in the impugned award that evidence was adduced by the 1st respondent to prove that it was a proprietorship concern. Learned counsel argued that no contrary evidence was adduced by the petitioner company. The learned counsel also pointed out that the 1st respondent had been regularly obtaining policies from the petitioner and therefore the legal status of the 1st respondent was well known to the petitioner. The learned counsel submitted that the objection regarding jurisdiction was properly analysed by the Ombudsman and the complaint was entertained. The Ombudsman appreciated the merits of the case and found that the 1st respondent was entitled to succeed. He hence submitted that the award is not liable to be interfered with by this Court.

9. Complaint in the instant case was dealt with under the Redressal of Public Grievances Rules, 1998 which was later substituted with 'The Insurance Ombudsman Rules, 2017' which also by and large contain identical provisions. Rule 13 of Redressal of Public Grievances Rules, 1998 dealt with the manner in which complaint to the Ombudsman was to be made. Rule 13(1) reads thus:-

"13. Manner in which complaint is to be made:-(1) Any person who has a grievance against an insurer, may himself or through his legal heirs make a complaint in writing to the Ombudsman within whose jurisdiction the branch or office of the insurer complaint against is located."

10. It is relevant to note the definition of the expression 'insured person' under Rule 4(i). It is extracted hereunder:-

"insured person" means an individual by whom or on whose behalf an insurance policy has been taken on personal lines."

11. Definition under Rule 4(i) mentions about policies taken on personal lines. Expression 'personal lines' is defined under Rule 4(k). The definition reads as under:-

"Personal lines" means an insurance policy taken or given in an individual capacity. "

12. Division Bench of this Court in the judgment reported in National insurance Co. Ltd v. Indus Motor Company Pvt. Ltd. and others [2005 (4) KLT 391] analysed the provisions of the Rules and held as under:-

" 6. The word "person" as such is not defined either in the Insurance Act or in the Rules. Rule 4(i) of the Rules defines the words "insured person" to mean an individual by whom or on whose behalf an insurance policy has been taken on personal lines. Section 4(k) of the Rules states that "personal lines" means an insurance policy taken or given in an individual capacity. Only an insured person as defined in Rule 4(i) read with Rule 4 (k) would fall under the term "any person" in Rule 13. Rule 13 also uses the expression "may himself or through his legal heirs". Rule 13 states that any person who has a grievance against an insurer, may himself or through his legal heirs make a complaint. The expression "may himself or through his legal heirs" qualifies the expression "any person". Definition clause available under the General Clauses Act, in our view, cannot be imported to explain the meaning of the expression "any person" in the Rules, since Rule itself gives sufficient indication with regard to the expression "any person". Further definition clause in Section 3 of the General Clauses Act giving the definition says that the definition clause would apply to the General Clauses Act.

8. Legislature as a rule making authority makes several rules from the experience gathered from the past and may design to use the words to deal with certain classes of persons. This rule firmly establishes that the intention of the legislature must be found by reading the statute as a whole. In order to examine

the nature of the power conferred on the Ombudsman we are guided by Rule 13 read with Rule 4(1)(k)" Rule 4(1)(k) mentioned above may be read as Rule 4(k)" which places emphasis on the words "individual", "personal lines", "himself or through his legal heirs". There is nothing to show that incorporated company would fall under any of those expressions. We may in this connection refer to the definition of the expression "insurer" in Section 2(9) which states that any individual or unincorporated body of individuals or body corporate incorporated under the law of any country. If the legislature wanted the incorporated company also to come within the definition clause of "insured person" or "any person" within the meaning of Rule 13 the same could have been incorporated in the Rules. Having not incorporated we are of the view, the court is not justified in importing a meaning which has not been attributed the rule making authority to the expression "any person" since the context clearly shows otherwise. Above being the legal position, we find it unable to subscribe to the view of the learned single judge."

The Division Bench, in the above judgment held that Rule 13 read with Rule 4(k) would give clarity regarding the nature of power conferred on the Ombudsman. As noted earlier, the Division Bench held that emphasis was on the words 'individual', 'personal lines', 'himself or through his legal heirs'. The Division Bench categorically held that an incorporated company will not fall under any of those expressions. In the judgment in *Bajaj Allianz General Insurance Company Ltd. Ernakulam v. Puthen Modern Rice Mill, Kalady and others* [2021(2) KLT 640] learned Single Judge followed the above judgment of the Division Bench and held that a partnership firm will also not fall within the ambit of the term any person as contained in Rule 13. Contention of the 1st respondent is that those conclusions are not applicable in the case at hand as the 1st respondent is a proprietorship concern. The learned counsel for the 1st respondent relying on the judgments of the Hon'ble Supreme Court had asserted that the proprietorship is only a business name of the individual and hence a policy availed by proprietorship can be considered only as a policy taken on personal lines. Therefore, the said contention needs to be addressed in this writ petition.

13. Definition of 'insured person' under Rule 4(i) shows that the expression covers an individual. Definition of the expression 'personal lines' emphasizes that it means a policy taken or given in an individual capacity. Provisions of Rule 13 show that if there is a grievance against an insurer he himself or his legal heirs can make a complaint to the Ombudsman. Sub-rule (2) of Rule 13 provides that the complaint in writing shall be duly signed by the complainant or through his legal heirs. Though nowhere in the Rules there is any express exclusion of complaints submitted other than by individuals, conjoint reading of the provisions to understand the scheme gives the impression that the Rules were intended for redressal of grievances of individuals. There is no indication in the Rules that adjudication of disputes arising from policies issued on commercial lines to entities like companies, partnership or other business establishments including proprietorship concerns by the Ombudsman was envisaged under the

Rules. As noted above, all indications are to the contrary.

14. Contention of the 1st respondent that proprietorship concerns are business names of the proprietors and hence policies obtained by such concerns are to be considered as availed by individuals cannot be accepted in the context of the Redressal of Public Grievances Rules, 1998. Law laid down by the Hon'ble Supreme Court as pointed out by the learned counsel for the 1st respondent was in the context of the Code of Civil Procedure. The issue considered by the Hon'ble Supreme Court in Ashok Transport Agency (supra) case was regarding the applicability of Order XXX to a proprietorship concern. In Raghu Lakshmi Narayanan (supra), the Hon'ble Supreme Court was following the judgment in Ashok Transport Agency (supra). Observations made by the Hon'ble Supreme Court are to be understood in the context in which they were made. Observations made while considering the applicability of the provisions of the Code of Civil Procedure cannot be applied as such to understand the scope of the provisions of Redressal of Public Grievances Rules. Object and purpose and also the matter it governs makes the Redressal of Public Grievances Rules a unique law. Scope of the provisions of the said Rules has to be understood keeping in mind that the provisions are intended to provide remedies in the case of disputes arising from insurance policies.

15. The Ombudsman considered the objection regarding jurisdiction in the impugned award and observed that expression 'personal lines' has not been defined in the Rules. This observation of the Ombudsman was incorrect. As noted above, Rule 4(k) defined the expression 'personal lines'. The Ombudsman instead of referring the relevant Rules, relied upon the information available on the website of IRDA. The said approach was erroneous. Ombudsman held that from the legal angle, proprietorship business is not separated from the owner unlike a partnership or a company and hence complaints raised by proprietors can be considered. The relevant issue which should have been addressed was as to whether a complaint pertaining to a policy obtained on commercial lines and not in an individual capacity was maintainable as per the provisions of the Rules. The Ombudsman misguided himself and failed to address the issue appropriately. The reasoning of the Ombudsman that after agreeing that the Ombudsman can act as a mediator, the petitioner cannot object to adjudication by the Ombudsman was also incorrect. It is to be noted that though the petitioner had stated in Ext.P2 that they were agreeable for the Ombudsman to act as a mediator, the company also specifically pointed out that the complaint was not admissible under the purview of Insurance Ombudsman. The Ombudsman failed to note that the power of the Ombudsman regarding consideration of complaints under Rule 13 is specifically dealt with under Rule 12(1), whereas the power of the Ombudsman to act as a Counsellor and Mediator is separately dealt with under Rule 12(2). That being so, expression of willingness for mediation by a party cannot preclude the said party from raising objections regarding maintainability of the complaint before the Ombudsman. Assumption of jurisdiction by the Ombudsman to adjudicate the complaint on the basis of

willingness expressed by the petitioner for mediation was without perceiving that mediation and adjudication under the Rules were two distinct functions entrusted with the Ombudsman.

16. In view of the above discussion, I hold that Redressal of Public Grievances Rules, 1998 conferred authority on the Insurance Ombudsman only to consider complaints of individuals who or on whose behalf insurance policies were taken on personal lines. Policies obtained by proprietorship concerns were not within the purview of the Rules. Hence, the Ombudsman ought not to have entertained the complaint of the 1st respondent and passed the award. The award is therefore liable to be set aside.

The writ petition is allowed. The impugned award dated 14.10.2015 of the Insurance Ombudsman, Kochi is set aside.