
(2009) 07 MP CK 0030
In the Madhya Pradesh High Court

Oriental Insurance Company Ltd.

APPELLANT

Vs

Ruchi Worldwide Ltd.

RESPONDENT

Date of Decision : 31-07-2009

Acts Referred:

Redressal of Public Grievances Rules, 1998 — Rule 13, 13(1)

Citation : (2010) 160 CompCas 410 : (2009) 4 MPLJ 466 : (2009) 97 SCL 383

Hon'ble Judges : Viney Mittal, J

Bench : Single Bench

Judgement

Viney Mittal, J.

This order shall dispose of two writ petitions, being WP No. 1998 of 2001 and WP No. 1743 of 2001, as both the writ petitions have arisen out of the orders passed by the Insurance Ombudsman. WP No. 1998 of 2001 has been filed by Oriental Insurance Company Ltd. (hereinafter referred as the "Insurance Company"), challenging the order dated 4-12-2000, passed by the Ombudsman, whereby the preliminary objection raised by the Insurance Company regarding the assumption of jurisdiction by the Ombudsman has been rejected, and also raising a further challenge to the award dated 10-4-2001, whereby the Ombudsman has directed the payment of Rs. 17,92,194, along with interest, to M/s. Ruchi Worldwide Ltd. (hereinafter referred as the "complainant-company"). WP No. 1743 of 2001 has been filed by the complainant-company, requesting for a writ of mandamus and for issuance of directions to the Insurance Regulatory Authority of India, as well as the Insurance Company, to make the payment as per the award dated 10-4-2001 passed by the Ombudsman. For the sake of convenience, the main order is being passed in WP No. 1998 of 2001.

The complainant-company M/s. Ruchi Worldwide Ltd. is a company incorporated under the Companies Act, 1956. The Oriental Insurance Company Ltd. is an Insurance Company governed by the provisions of the Insurance Act, 1938 (hereinafter referred as the "Act") and the Rules framed thereunder.

The complainant-company imported 5,000 metric tons of white crystal sugar from Brazil. The said consignment was insured and covered by a Marine Insurance Cover, issued by the Oriental Insurance Company. At the time when the said consignment was discharged at Calcutta Port, it was realized that the consignment had suffered damage on account of cut/torn bags, and as such the complainant-company claimed that it had incurred huge losses. Consequently, the complainant-company took-up the matter with the Insurance Company and after completing the formalities, an insurance claim was lodged. However, the said claim was repudiated by the Insurance Company. On such repudiation, the complainant-company filed a complaint under Rule 13 of The Redressal of Public Grievances Rules, 1998 (hereinafter referred as the "Rules"). The said complaint was entertained by the Ombudsman and a notice was issued in the matter. The Insurance Company raised a preliminary objection to the entertainment of the complaint by the Ombudsman and assumption of jurisdiction by him. It was maintained by the Insurance Company that since the complaint had been filed by a Company incorporated under the Companies Act, therefore, under the Rules, no such complaint was maintainable in law, and, therefore, the Ombudsman had no jurisdiction to adjudicate the said complaint. On merits of the claim made by the complainant-company, a contest was also offered.

The Ombudsman, at the first instance, took up the issue of preliminary objection raised by the Insurance Company, and vide an order dated 4-12-2000, rejected the aforesaid preliminary objection. It was held that the complaint by the complainant-company, with regard to the claim in question, was maintainable in law before the Ombudsman, and the Ombudsman was fully justified and within its jurisdiction to adjudicate the said complaint. A copy of the order dated 4-12-2000 has been appended as Annexure P-16, with the writ petition No. 1998 of 2001.

After the aforesaid rejection of preliminary objection by the Insurance Company, the Ombudsman continued with the proceedings with regard to the merits of the claim made by the complainant-company and rendered a final award on 10-4-2001. It was held that the complainant-company was entitled to an amount of Rs. 17,92,194, along with the interest payable at the rate of 9 per cent per annum from the expiry of three months from the date of putting up the claim with the Insurance Company. A copy of the award, dated 10-4-2001, has been appended as Annexure P-19, with WP No. 1998 of 2001.

As noticed above, WP No. 1998 of 2001 has been filed by the Insurance Company challenging the order dated 4-12-2000, passed by the Ombudsman, and also challenging the award dated 10-4-2001, Annexure P-19. Similarly, the complainant-company has filed WP No. 1743 of 2001, raising a grievance that the amount awarded by the Ombudsman along with the interest, has not been paid to the complainant-company, and, therefore, directions have been sought against the Insurance Company, as well as the Insurance Regulatory Authority to take up the matter with the Insurance Company, so that the said payment can

be released and the award of the Ombudsman can be satisfied.

The Insurance Company has challenged the order dated 4-12-2000, Annexure P-16, passed by the Ombudsman, and assumption of jurisdiction by him in the complaint filed by the complainant-company, by maintaining that under the Rules, it was only an individual, who had obtained a personal insurance, who could have approached the Ombudsman with a complaint, and since the complaint in question had been filed by a company, incorporated under the Companies Act, therefore, such a complaint was not maintainable before the Ombudsman, and consequently, the Ombudsman had no jurisdiction to deal with such a complaint. Reliance in this regard has been placed upon various rules, which shall be referred to in the later portion of the order.

It may be noticed that although in the pleadings, averments have been made with regard to the merits of the claim and challenging the correctness of the award dated 10-4-2001, Annexure P-19, passed by the Ombudsman, but while addressing the arguments before this Court, none of the learned senior counsel for the parties have adverted to that aspect of the matter, therefore, it would be wholly unnecessary to touch the merits of the complaint and the facts, on the basis of which, the award dated 10-4-2001 has been passed.

The complainant-company has filed a reply to the writ petition filed by the Insurance Company. It has been maintained that the complaint had been rightly filed by the complainant-company before the Ombudsman, and was duly maintainable under the Rules, and, therefore, the Ombudsman had rightly entertained the same and assumed jurisdiction in the matter.

In WP No. 1743 of 2001, although no reply has been filed by the Insurance Company, a reply has been filed by the Insurance Regulatory Authority of India, whereby it has been maintained that the Ombudsman had absolutely no jurisdiction in the matter. Thus, apparently, the stand taken by the Insurance Company has been supported.

I have heard Shri A.M. Mathur, learned senior counsel for the Insurance Company and Shri S.C. Bagadiya, learned senior counsel for the complainant-company, and with their assistance, have also gone through the record of the case.

At the outset, it may be noticed that both learned senior counsel appearing for the contesting parties have, during the course of arguments, reiterated the pleas taken by the parties in their respective pleadings.

Shri A.M. Mathur, learned senior counsel for the Insurance Company, has referred to the Rules, and has drawn the pointed attention of the Court to Rules 4(z) and (k) and also Rules 12 and 13 of the Rules and has maintained that since Rule 4(z) defines the word "insured person" to mean an individual by whom or on whose behalf an insurance policy has been taken on personal lines, and Rule 4(k) defines "personal lines" to mean an insurance policy taken or given in an

individual capacity, therefore, a conjoint reading of the said definition clauses with Rules 12 and 13 would indicate that a complaint under Rule 13 could only be filed by an individual alone, and not by a juristic person, such as the complainant-company. Shri Mathur has asserted that the phrase "any person" used in Rule 13 of the Rules is required to be read in the context of the definition clause contained in Rule 4 of the Rules, and, therefore, no broader meaning could be attached to the aforesaid phrase.

According to Shri Mathur, the phrase "any person" used in Rule 13 of the Rules has to be interpreted in a restricted and exhaustive sense alone, without giving it any enlarged meaning. To support the aforesaid contention, learned senior counsel has also referred to certain other provisions contained in the Rules. Shri Mathur has placed strong reliance upon a judgment of the Apex Court in *Commissioner of Trade Tax, U.P. and Another Vs. Kajaria Ceramics Ltd.*, wherein it has been laid down that the word "means" shows that the definition is exhaustive. The sheet-anchor of the arguments of Shri Mathur is a Division Bench judgment of Kerala High Court, reported as *National Insurance Co. Ltd. Vs. Indus Motor Co. (P) Ltd.*, wherein in almost an identical situation, the Division Bench of Kerala High Court had held that the complaint filed by a company, incorporated under the Companies Act, before the Ombudsman, is not maintainable under the Rules.

All the aforesaid contentions have been vehemently refuted by Shri S.C. Bagadiya, learned senior counsel for the complainant-company. Shri S.C. Bagadiya, has referred to the purpose, for which the Rules have been framed, and has also referred to the language employed in various provisions of the Rules, to contend that the interpretation suggested by the Insurance Company cannot be accepted. Shri S.C. Bagadiya has defended the order passed by the Ombudsman, rejecting the preliminary objection raised by the Insurance Company. In addition, the learned senior counsel has prayed for issuance of requisite directions to make the payment under the award.

I have duly considered the rival contentions of learned senior counsel for the parties. I have also gone through the various provisions of the Act and the Rules, as well as taken into consideration the law on the point.

It is apparent that the parties are raising serious contest with regard to the interpretation of the Rules 12 and 13 of the Rules. Whereas the Insurance Company has chosen to interpret the Rules by giving it a restrictive meaning, the complainant-company interprets the Rules, by assigning it a broader meaning. Because the controversy pertains to the interpretation of the Rules, i.e., a subordinate legislation, therefore, it must be kept in mind that a subordinate legislation is required to be interpreted in a meaningful manner, so as to give effect to the statute itself.

Certain observations made by the Apex Court in the case of *Ramesh Mehta Vs. Sanwal Chand Singhvi and Others*, may be extracted with advantage:

31. A subordinate or delegated legislation must also be read in a meaningful manner so as to give effect to the provisions of the statute. In selecting the true meaning of a word regard must be had to the consequences leading thereto. If two constructions are possible to adopt, a meaning which would make the provision workable and in consonance with the statutory scheme should be preferred.

[Emphasis supplied]

Again in the case of Secretary, Department of Excise and Commercial Taxes and Others Vs. Sun Bright Marketing Pvt. Ltd., Chhattisgarh and Another, , the Supreme Court has made the following observations:

36. It is a well-settled principle of law that a subordinate legislation, either by way of rules framed in terms of the provisions of the Act, or the General Conditions issued by the Excise Commissioner in exercise of its statutory power or the conditions of sale memo framed, would be subject to the provisions of the Act. For proper interpretation of the statutory provisions, the Act and the Rules are required to be harmoniously read.

[Emphasis supplied]

That being the legal position with regard to the interpretation of the rules, it would be pertinent now to extract certain provisions of the Insurance Act, 1938, as well as certain relevant provisions of The Redressal of Public Grievances Rules, 1998, as follows:

The preamble of the Act reads as follows:

An Act to consolidate and amend the law relating to the business of insurance.

Whereas it is expedient to consolidate and amend the law relating to the business of insurance; it is hereby enacted as follows:

Section 2(2) of the Act defines policy-holder as under:

(2) "policy-holder" includes a person to whom the whole of the interest of the policy-holder in the policy is assigned once and for all but does not include an assignee thereof whose interest in the policy is defeasible or is for the time being subject to any condition;

Section 2(9) of the Act defines insurer as follows:

(9) "insurer" means:

(a) any individual or unincorporated body of individuals or body corporate incorporated under the law of any country other than India, carrying on insurance business not being a person specified in Sub-clause (c) of this clause which:

(i) carries on that business in India, or

- (ii) has his or its principal place of business or is domiciled in India, or
- (iii) with the object of obtaining insurance business, employs a representative, or maintains a place of business, in India;
- (b) any body corporate not being a person specified in Sub-clause (c) of this clause carrying on the business of insurance, which is a body corporate incorporated under any law for the time being in force in India; or stands to any such body corporate in the relation of a subsidiary company within the meaning of the Indian Companies Act, 1913 (7 of 1913), as defined by Sub-section (2) of Section 2 of that Act, and
- (c) any person who in India has a standing contract with underwriters who are members of the Society of Lloyd's whereby such person is authorised within the terms of such contract to issue protection notes, cover notes, or other documents granting insurance cover to others on behalf of the underwriters, but does not include a principal agent, chief agent, special agent, or an insurance agent or a provident society [as defined in Part III];

Section 114 of the Act lays down the power of the Central Government to make rules "to carry out the purposes of this Act".

The Redressal of Public Grievances Rules, 1998, have been framed by the Central Government in exercise of the powers vested in it, u/s 114(1) of the Rules.

Certain relevant rules may be extracted as follows:

2. Application,-These rules shall apply to all the insurance companies operating in general insurance business and in life insurance business:

Provided that the Central Government may exempt an insurance company from the provisions of these rules, if it is satisfied that an insurance company has already a grievance redressal machinery which fulfils the requirements of these rules.

Objects,-The objects of these rules are to resolve all complaints relating to settlement of claim on the part of insurance companies in cost-effective, efficient and impartial manner.

Rule 4 of the Rules contains the definitions. The relevant portion thereof, may be extracted as below:

4. Definitions,-In these rules unless the context otherwise requires,- (a) to (h) **

(i) "insured person" means an individual by whom or on whose behalf an insurance policy has been taken on personal lines;

(j) **

(k) "personal lines" means an insurance policy taken or given in an individual capacity.

Power of Ombudsman.-(1) The Ombudsman may receive and consider:

- (a) complaints under Rule 13;
 - (b) any partial or total repudiation of claims by an insurer;
 - (c) any dispute in regard to premium paid or payable in terms of the policy;
 - (d) any dispute on the legal construction of the policies insofar as such disputes relate to claims;
 - (e) delay in settlement of claims;
 - (f) non-issue of any insurance document to customers after receipt of premium.
- (2) The Ombudsman shall act as counsellor and mediator which are within his terms of reference and; if requested to do so in writing by mutual agreement by the insured person and insurance company.
- (3) The Ombudsman's decision whether the complaint is fit and proper for being considered by it or not, shall be final.

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 complained against is located.

(2) The complaint shall be in writing duly signed by the complainant or through his legal heirs and shall state clearly the name and address of the complainant, the name of the branch or office of the insurer against which the complaint is made, the fact giving rise to complaint supported by documents, if any, relied on by the complainant, the nature and extent of the loss caused to the complainant and the relief sought from the Ombudsman.

(3) No complaint to the Ombudsman shall lie unless:

- (a) The complainants had before making a complaint to the Ombudsman made a written representation to the insurer named in the complaint and either insurer had rejected the complaint or the complainant had not received any reply within a period of one month after the insurer concerned received his representation or the complainant is not satisfied with the reply given to him by the insurer;
- (b) The complaint is made not later than one year after the insurer had rejected the representation or sent his final reply on the representation of the complainant; and
- (c) The complaint is not on the same subject-matter, for which any proceedings before any Court, or Consumer Forum, or Arbitrator is pending or were so earlier.

Ombudsman to act fairly and equitably.-(1) The Ombudsman may, if he deems fit, adopt a procedure other than mentioned in Sub-rules (1) and (2) of Rule 13 for dealing with a claim:

Provided that the Ombudsman may ask the parties for necessary papers in support of their respective claims and where he considers necessary, he may collect factual information available with the insurance company.

(2) The Ombudsman shall dispose of a complaint fairly and equitably.

Recommendations made by the Ombudsman.-(1) When a complaint is settled, through mediation of the Ombudsman, undertaken by him in pursuance of request made in writing by complainant and insurer through mutual agreement, the Ombudsman shall make a recommendation which he thinks fair in the circumstances of the case. The copies of the recommendation shall be sent to the complainant and the insurance company concerned. Such recommendation shall be made not later than one month from the date of the receipt of the complaint.

(2) If a complainant accepts the recommendation of the Ombudsman, he will send a communication in writing within 15 days of the date of receipt of the recommendation. He will confirm his acceptance to Ombudsman and state clearly that the settlement reached is acceptable to him, in totality, in terms of recommendations made by the Ombudsman in full and final settlement of complaint.

(3) The Ombudsman shall send to the insurance company a copy of the recommendation along with the acceptance letter received from the complainant. The insurer shall thereupon comply with the terms of the recommendations immediately not later than 15 days of the receipt of such recommendation and the insurer shall inform the Ombudsman of its compliance.

Award.-(1) Where the complaint is not settled by agreement under Rule 15, the Ombudsman shall pass an award which he thinks fair in the facts and circumstances of a claim.

(2) An award shall be in writing and shall state the amount awarded to the complainant:

Provided that Ombudsman shall not award any compensation in excess of which is necessary to cover the loss suffered by the complainant as a direct consequence of the insured peril, or for an amount not exceeding rupees twenty lakhs (including ex gratia and other expenses), whichever is lower.

(3) The Ombudsman shall pass an award within a period of three months from the receipt of the complaint.

(4) A copy of the award shall be sent to the complainant and the insurer named in the complaint.

(5) The complainant shall furnish to the insurer within a period of one month from the date of receipt of the award, a letter of acceptance that the award is in full and final settlement of his claim.

(6) The insurer shall comply with the award within 15 days of the receipt of the

acceptance letter Sub-rule (5) and it shall intimate the compliance to the Ombudsman.

At this stage, it would also be relevant to extract Section 3(42) of the General Clauses Act, 1897 (hereinafter referred to the General Clauses Act):

3. Definitions.-In this Act, and in all Central Acts and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context,:

** ** *

(42) "person" shall include any company or association or body of individuals, whether incorporated or not;

It is apparent from the above quoted provisions that the Insurance Act had been enacted to consolidate and amend the law relating to the business of insurance in the Country. Section 2(2) of the Act, defines "policy-holder", as including a person to whom the whole of the interest of the policy-holder in the policy is assigned once for all. It is apparent from the aforesaid definition that the said definition is couched in very broad terms and is not restrictive, in any manner while referring to a policy-holder. Such a policy-holder can be a natural born person, or even a juristic person, such as an incorporated company, who holds an interest in the policy, either originally issued or later on assigned.

Apparently, the complainant-company, having taken out an insurance policy from the Insurance Company, is a policy-holder within the meaning of the said clause. Section 2(9) of the Act defines an "insurer". Concededly, the present Insurance Company falls within the definition of the "insurer" under the said Act. The Redressal of Public Grievances Rules have been framed by the Central Government u/s 114 of the Act, to carry out the purposes of the Act. The aforesaid Rules have to be interpreted in a manner, so as to advance the object and intention of the Act, and cannot be assigned any such meaning, which may be in derogation of the said purpose, or may lead to a restrictive operation of any provisions of the Act.

Rule 2 of the Rules shows that the said Rules apply to all the Insurance Companies, unless so exempted by the Central Government, in a case where there is already a grievance redressal machinery set-up by the company itself. Rule 3 specifically stipulates; the objects of these Rules as "to resolve all complaints relating to settlement of claim on the part of insurance companies in cost-effective, efficient and impartial manner". Rule 12 of the Rules, enumerates the powers of Ombudsman. Clause I(a) thereof empowers the Ombudsman to receive and consider complaints, under Rule 13. Various other clauses of the said Rule deal with various other powers of the Ombudsman. Rule 13 of the Rules lays down the procedure and the manner in which a complaint is to be made before the Ombudsman. It stipulates that any person, who has a grievance against an insurer, may himself or through his legal heirs, make a complaint in

writing to the Ombudsman.

The question which arises for adjudication before this Court is as to whether the phrase "any person" used in Rule 13(1) of the Rules has to be interpreted in a restrictive sense, so as to mean only a natural born person, or keeping in view the object, for which the Act has been enacted and purpose for which the Rules have been framed, can be ascribed a larger meaning, so as to include all the policy-holders, even a juristic person, such as a company or a firm or an association, entitling it to file a complaint?

It may be noticed that Rule 13 of the Rules, at no place, uses the word "insured person", or restricts the claim qua the insurance policy taken on "personal lines". As a matter of fact, on the face of it, there is no such restriction inferable from the bare perusal of Rule 13 of the Rules, as is being suggested by the Insurance Company. However, the Insurance Company has sought to give the aforesaid meaning to Rule 13 on the basis of the definitions contained in Rules 4(i) and 4(k). In my considered view, the language employed by Rule 13, itself being clear and suggestive of no two interpretations, the interpretation suggested by the Insurance Company cannot be accepted. Rule 13 only stipulates a complaint to be filed by any person, who has a grievance against an insurer. Such a complaint, may be filed by himself by the policy-holder, or through his legal heirs. The power to entertain a complaint has been specifically vested on the Ombudsman under Rule 12(1)(a). Rule 14 requires the Ombudsman to act fairly and equitably. Rule 15 requires the Ombudsman, to settle the complaint, in pursuance of request made in writing by complainant and insurer, through mutual agreement and on failure to do so, to render his award in terms of Rule 16.

Shri A.M. Mathur, learned senior counsel for the Insurance Company, has referred to Rule 12(2) to contend that the Ombudsman is to act as a counsellor and mediator in matters, which are within his terms of reference and, if requested to do so in writing by mutual agreement by the "insured person and insurance company". According to the learned senior counsel, the aforesaid user of the term "insured person" in this Rule 12(2) clearly indicates that a complaint to the Ombudsman can only be filed by an "insured person" as defined under Rule 4(z) and by nobody else.

However, having given my thoughtful consideration to the aforesaid contention of the learned senior counsel for the Insurance Company, I find myself unable to accept the same.

A complaint before the Ombudsman may be filed by a complainant, who may be an insured person, as defined under Rule 4(0) of the Rules, or may be any other person, who has a grievance against the insurer (as clear from Rule 13 of the Rules). Rule 13 intentionally appears to have not employed the phrase "insured person", but rather has used wider terms such as any person "who has a grievance" or "the complainant". Even Rule 15 envisages a situation where a

complaint is settled, through mediation of the Ombudsman, undertaken by him in pursuance of request made in writing by complainant and insurer through mutual agreement. A conjoint reading of Rules 12(2) and 15, would show that two separate and distinct cases of complaints have been recognized under the Rules. A complaint may be filed by an insured person, which of course, would be a person as defined under Rule 4(i) of the Rules. But a complaint may also be filed by any other person who has a grievance against the Insurance Company. The aforesaid interpretation would be more meaningful, and in consonance with the definition of the policy-holder, as given in the Act, and would also be in consonance of the objects of the Rules, as stipulated in Rule 3 thereof. The said interpretation, requires to be preferred by the Court, over the one suggested by the Insurance Company, keeping in view the law laid down by the Apex Court in Ramesh Mehta's case (supra) and Sun Bright Marketing (P.) Ltd.'s case (supra), being an interpretation of the subordinate legislation, which must be supportive of the provisions and spirit of the statute.

It may also be pertinent to point out here that Rule 4, while defining various words and phrases itself stipulates that the said meaning would be "unless the context otherwise requires". In view of the aforesaid discussion, it is apparent that the definitions given in Rules 4(r) and 4(k) would not be attracted to Rule 13, since the language employed therein indicates a different context, which is more akin to providing a Forum to a policy-holder, as defined under the Act.

The provisions of Section 3(42) of the General Clauses Act have already been extracted above. As per the said meaning, a person must include a corporation, a company, a forum or an association of persons. Since the application of the aforesaid definition would fulfil the object of the statute and the Rules in question, therefore, it must be held that "person" as employed in Rule 13 would include a company, an association or any juristic person.

It has been held in *Motipur Zamindari Co. Ltd. Vs. The State of Bihar and Another*, that whether the word "person" in a statute can be treated as including a corporation, must depend on a consideration of the object of the statute, and of the enactment passed, with a view to carry that object into effect.

In *Agrawal Trading Corporation v. Collector of Customs* [1912] 1 SCC 553, it has been held by the Supreme Court as follows:

7. The second contention that because the firm is not a legal entity, it cannot be a person within the meaning of Section 8 of the Foreign Exchange Regulation Act or of Section 167(3), (8) and (37) of the Sea Customs Act, is equally untenable. There is of course, no definition of "person" in either of these Acts but the definition in Section 2(42) of the General Clauses Act, 1897 or Section 2(3) of the Act of 1868 would be applicable to the said Acts in both of which "person" has been defined as including any company or association or body of individuals whether incorporated or not. It is of course contended that this definition does not apply to a firm which is not a natural person and has no legal existence, as

such Clauses (3), (8) and (3 7) of Section 167 of the Sea Customs Act are inapplicable to the appellant firm. In our view, the Explanation to Section 23C clearly negatives this contention, in that a company for the purposes of that section is defined to mean any body corporate and includes a firm or other association of individuals and a director in relation to a firm means a partner in the firm. The High Court was clearly right in holding that once it is found that there has been a contravention of any of the provisions of the Foreign Exchange Regulation Act read with Sea Customs Act by a firm, the partners of it who are incharge of its business or are responsible for the conduct of the same, cannot escape liability, unless it is proved by them that the contravention took place without their knowledge or they exercised all due diligence to prevent such contravention.

It has been vehemently contended by Shri A.M. Mathur, learned senior counsel for the Insurance Company that the language employed in Rule 13, clearly indicates that a complaint can be filed by any person, either himself or through his legal heirs. Thus, maintains the learned senior counsel, that since a company could not be visualized to have any legal heirs, therefore, the intention of the framers of the Rules was clearly decipherable that a complaint could be filed by a natural born person alone.

To appreciate the aforesaid contention, it would be relevant to first refer the judgment rendered by the Apex Court in Union Bank of India Vs. Khader International Construction and Others, . The Supreme Court in the said case was dealing with the question whether under Order 33 Rules 1, 3 of the Code of Civil Procedure, a juristic person, such as a company, could file a plaint and could be treated as an indigent person. Since an objection was raised to a plaint filed by a company that the said provision was only applicable to a natural born person, inasmuch as, a detailed procedure was required to be followed, which could only be complied with by a natural born person. It was noticed by the Apex Court that in CPC, though the term "person" occurs at several places, it is not defined in the Code. The term "decree-holder" as defined in Section 2(3) means any person in whose favour a decree has been passed or an order capable of execution has been made; u/s 2(10), a "judgment-debtor" is defined to mean any person against whom a decree has been passed or an order capable of execution has been made; Order 1 CPC deals with the parties to suit to be arrayed as plaintiffs or defendants. The relevant observations made by the Apex Court may be extracted with advantage:

22. Any juristic person such as a company or idol can maintain a suit. These persons can be either decree-holders or judgment-debtors and in all these instances, the term "person" is used to describe such company or idol or other juristic person as provided in the General Clauses Act. The definition of the term "person" is given in the General Clauses Act according to which such term shall include any company or association or body of individuals whether incorporated or not. The said definition provides that the word "person" would include both

natural and artificial persons.

Under Order 33, the petitioner who files an application has to present the application in person. Rule 3 states that the person who is presenting the application shall be in a position to answer all material questions relating to the application and he may also be examined by the Court.

The counsel for the appellant argued that in view of this provision, the word "person" has to be understood to mean a natural person, otherwise the company would not be in a position to present the application. We do not think that such a view is correct, A company being a juristic person, it would be represented by a person competent to represent it. It is enough that a person competent to represent a company need present the application under Rule 3 Order 33. Minors, lunatics or persons under any disability are also entitled to file suit either represented through a guardian or next friend. They can also maintain an application under Order 33. Under such circumstances, the real petitioner is not the person to present the application, but the guardian or the next friend who is competent to represent such petitioner to present the application under Rule 3 Order 33. Therefore, to give meaning to the word "person", the procedure prescribed under Rule 3 has no significance.

Lord Selborne in *Pharmaceutical Society v. London and Provincial Supply Assn.* observed:

There can be no question that the word "person" may and...prima facie does, in a public statute include a person in law; that is, a corporation, as well as a natural person. But although that is a sense which the word will bear in law, and which as I said, perhaps ought to be attributed to it in the construction of a statute unless there should be any reason for a contrary construction, it is never to be forgotten, that in its popular sense and ordinary use it does not extend so far.

Therefore, the word "person" has to be given its meaning in the context in which it is used. It refers to a person who is capable of filing a suit and this being a benevolent provision, it is to be given an extended meaning. Therefore, we are of the view that a public limited company, which is otherwise entitled to maintain a suit as a legal person, can very well maintain an application under Order 33 Rule 1 CPC. We hold that the word "person" mentioned in Order 33 includes not only a natural person but other juridical persons also. The appeal is, therefore, without any merit and dismissed without any order as to costs.

[Emphasis supplied]

It is, therefore, apparent, as laid down by the Apex Court, that the word "person" has to be given its meaning in the context in which it is used. The aforesaid observations made by the Apex Court apply on all fours to the controversy in question also.

It would also be relevant to notice certain guidelines laid down by the Supreme

Court for Interpretation of Statutes, in Utkal Contractors and Joinery Pvt. Ltd. and Others Vs. State of Orissa and Others, :

9. In considering the rival submissions of the learned Counsel and in defining and construing the area and the content of the Act and its provisions, it is necessary to make certain general observations regarding the interpretation of statutes. A statute is best understood if we know the reason for it. The reason for a statute is the safest guide to its interpretation. The words of a statute take their colour from the reason for it. How do we discover the reason for a statute? There are external and internal aids. The external aids are statement of objects and reasons when the Bill is presented to Parliament, the reports of Committees which preceded the Bill and the reports of Parliamentary Committees. Occasional excursions into the debates of Parliament are permitted. Internal aids are the preamble, the scheme and the provisions of the Act. Having discovered the reason for the statute and so having set the sail to the wind, the interpreter may proceed ahead. No provision in the statute and no word of the statute may be construed in isolation. Every provision and every word must be looked at generally before any provision or word is attempted to be construed. The setting and the pattern are important. It is again important to remember that Parliament does not waste its breath unnecessarily. Just as Parliament, is not expected to use unnecessary expressions, Parliament is also not expected to express itself unnecessarily. Even as Parliament does not use any word without meaning something, Parliament does not legislate where no legislation is called for. Parliament cannot be assumed to legislate for the sake of legislation; nor can it be assumed to make pointless legislation. Parliament does not indulge in legislation merely to state what it is unnecessary to state or to do what is already validly done. Parliament may not be assumed to legislate unnecessarily. Again, while the words of an enactment are important, the context is no less important. For instance, "the fact that general words are used in a statute is not in itself a conclusive reason why every case falling literally within them should be governed by that statute, and the context of any Act may well indicate that wide or general words should be given a restrictive meaning" (See Halsbury, 4th Edn. Vol. 44 Para 874).

Before parting with this order, it would also be required to refer to the judgment of the Kerala High Court in the case of Indus Motor Co. (P.) Ltd. {supra}, on which, a strong reliance has been placed by the Insurance Company, since, the controversy in the said case before the Division Bench was identical, as is involved in the present case before this Court. The Division Bench, on the interpretation of Rule 13, conjointly reading the same with Rule 4(i), read with Rule 4(k), of the Rules, came to the conclusion that "any person" in Rule 13 would mean only a natural born person. The Division Bench made the following observations in the matter:

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 state 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.

It was further observed:

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) 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 been attributed by 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.

However, a perusal of the aforesaid observations made by the Division Bench shows that the law laid down by the Apex Court, as noticed above, the various provisions of the Insurance Act, the purpose and the objects of the Act and Rules, had not been taken into consideration. The definition of the policy-holder as given in Section 2(2) of the Act appears to have escaped the notice of the Division Bench in that case.

In view of the aforesaid fact, and after having given my anxious and thoughtful consideration to the entire matter, I find myself in respectful disagreement with the aforesaid judgment of Division Bench of Kerala High Court.

There is yet another aspect of the matter also. Even the Division Bench of Kerala

High Court, while delivering the said judgment on 5-9-2005, had taken note of the fact that in the intervening period, when the said controversy had remained pending in the Court, many complaints might have been entertained and awards rendered by the Ombudsman and by passage of time, it would not be possible for such parties to re-agitate their claims before the Civil Court. Thus, the Division Bench made its judgment applicable prospectively. In the present case, the award in question had been rendered by the Ombudsman on 10-4-2001, i.e., before the said judgment of the Division Bench of Kerala High Court. In these circumstances, although, I have already respectfully indicated my disagreement with the said judgment, still, the said judgment being prospective only, does not come to any rescue of the Insurance Company.

Consequently, I have no hesitation in holding that the complaint filed by the complainant-company before the Ombudsman in the matter, was fully maintainable in law, and had been appropriately entertained by the Ombudsman, and, therefore, the order dated 4-12-2000, Annexure P-16, rejecting the preliminary objection of the Insurance Company is fully justified and does not call for any interference.

As noticed in the earlier portion of the order also, no arguments have been addressed by learned senior counsel for the parties on merits of the controversy with regard to the validity or otherwise of the award dated 10-4-2001, Annexure P-19.

In view of the aforesaid discussion, WP No. 1998 of 2001 filed by the Insurance Company is hereby dismissed. As a natural corollary, WP No. 1743 of 2001 filed by the complainant-company is allowed and the Insurance Company is directed to comply with the award dated 10-4-2001, in letter and spirit, by paying the requisite amount within a period of two months from the date a certified copy of this order is received. In default of the aforesaid payment by the Insurance Company, the complainant-company would be entitled in law to initiate appropriate proceedings, for execution of the said award, before the Insurance Regulatory Authority, in accordance with law.