

(1980) 03 MAD CK 0030
In the Madras High Court
Case No : W.A. No. 434 of 1978

United India Fire and General Insurance Co. Ltd. and Others	APPELLANT
Vs	
A.A. Nathan and Another	RESPONDENT

Date of Decision : 05-03-1980

Acts Referred:

General Insurance (Emergency Provisions) Act, 1971 — Section 7

Citation : (1980) 1 LLJ 369

Hon'ble Judges : V. Ratnam, J;M.M. Ismail, J

Bench : Division Bench

Judgement

1. This is an appeal against the judgment of Ramanujam, J., dated 3rd February, 1978, allowing W.P. No. 5889 of 1978 preferred by the first

respondent herein. The first respondent herein was originally appointed by the Union Co-operative Insurance Society Limited by an order dated 2-

1-1963 as a Probationary Field Officer. The said order of appointment provided that his services might be deemed to be terminated at any time by

giving one month's notice on either side. Subsequently he was confirmed as a Field Officer by an office order dated 29-9-1963 with effect from 1-

9-1963. He was then promoted as a Development Officer and later as Development Secretary. Later by an order dated 19-2-1970 the first

respondent was promoted as Development Manager of the Madras Regional Office with effect from 1-2-70. While he was functioning as

Development Manager, a Custodian was appointed for the Union Co-operative Insurance Society Limited, under the General Insurance

(Emergency Provisions) Act, 17 of 1971. At that stage certain powers given to the first respondent to represent the Society in the matter of signing

polices would appear to have been withdrawn by the Zonal Manager as a result

of which misunderstandings arose between the first respondent and the Zonal Manager. Later under the provisions of Act 17 of 1971 the management of the Union Co-operative Insurance Society Limited, hereinafter referred to as the Society, was taken over by the Central Government and entrusted to a Custodian. Subsequently the General Insurance Business (Nationalisation) Act, 57 of 1972, came into force, and under a notification issued thereunder the said Society merged with the appellant-company. As a result of Section 7 of that Act, the first respondent became, from the date of the merger, an employee of the United India Fire and General Insurance Company Limited. After his services stood transferred to the appellant-company, by an order dated 4-10-1973 his services were terminated by giving one month's salary in lieu of month's notice with reference to the office order dated 2-1-1963.

2. The first respondent filed the writ petition referred to above for the issue of a writ of certiorari to quash the above order. He challenged the above order principally on three grounds :

(i) The terms contained in the original order of appointment dated 2-1-1963 could not be taken to be the conditions of his service as Development Manager which post he was holding at the time of the termination of his service and, therefore, the termination of his service as per the original letter of appointment, even by giving one month's notice would be illegal.

(ii) Even if the terms of the original order of appointment dated 2-1-1963 continued to govern the relationship between the parties, still the termination of the service of the first respondent by giving him one month's salary in lieu of one month's notice was not in accordance with that order, because that order did not provide for the termination of service by giving one month's salary, but provided for termination of service only by giving one month's notice.

(iii) The terms and conditions contained in the original order of appointment having become statutory in view of S. 7 of Central Act 57 of 1972, he was entitled to approach the High Court for the issue of a writ of certiorari to quash the illegal order of termination.

3. Ramanujam, J., by his order rejected the first contention of the first respondent, but accepted the second contention of the first respondent. For the purpose of accepting the second contention, he relied on a Bench decision of

this Court in *P. E. Warne v. Ouchterlony Valley Estate*, 1956 I

M.L.J.556. Consequently he came to the conclusion that the order passed by the appellant terminating the service of the first respondent was not

in accordance with law. The learned Judge then considered the stand of the appellant herein that, even if the termination was illegal, the first

respondent should have been directed to seek his ordinary remedy of claiming damages in a suit for unlawful termination of his services, that he

was not entitled to the issue of a writ under Art. 226 of the Constitution of India and that in any event the appellant was not amenable to the writ

jurisdiction of the High Court. The learned Judge overruled these contentions and allowed the writ petition for the issue of a writ of certiorari to

quash the order of the appellant terminating the services of the first respondent. It is against this order the present writ appeal has been filed.

4. Elaborate arguments were addressed before us and several decisions of the Supreme Court as well as of this court and other High Courts were

cited in order to support or dispute the claim that the appellant-company is not amenable to the writ jurisdiction of the High Court under Art. 226

of the Constitution of India. We are not going into all these decisions in view of the decision of the Supreme Court in *Ramana Dayaram Shetty Vs.*

International Airport Authority of India and Others, wherein almost all the important earlier decisions of the Supreme Court have been

considered. In that case the Supreme Court was considering the question whether the Internal Airport Authority of India could be said to be "other

authority" as mentioned in Art. 12 of the Constitution of India and it was in that context only the Supreme Court considered the question very

elaborately. After referring to the earlier decisions of the Supreme Court, the Court proceeded to lay down certain general principles for

determining whether a particular person or authority or Corporation could be said to come within the scope of "other authorities" in Art. 12 of the

Constitution of India. In paragraph 20 of the judgment (page 230) the Supreme Court observed :

It will thus be seen that there are several factors which may have to be considered in determining whether a corporation is an agency or

instrumentality of Government. We have referred to some of these factors and they may be summarised as under : whether there is any financial

assistance given by the State, if so, what is the magnitude of such assistance; whether there is any other form of assistance given by the State, and, if so, whether it is of the usual kind or it is extraordinary; whether there is any control of the management and policies of the Corporation by the State and what is the nature and extent of such control; whether the Corporation enjoys State conferred or State protected monopoly status and whether the functions carried out by the Corporation are public functions closely related to governmental functions. This particularisation of relevant factors is, however, not exhaustive and by its very nature it cannot be, because with increasing assumption of new tasks, growing complexities of management and administration and the necessity of continuing adjustment in relations between the Corporation and Government calling for flexibility, adaptability and innovative skills, it is not possible to make an exhaustive enumeration of the tests which would invariably and in all cases provide an unfailing answer to the question whether a corporation is governmental instrumentality or agency. Moreover, even amongst these factors which we have described, no one single factor will yield a satisfactory answer to the question and the Court will have to consider the cumulative effect of these various factors and arrive at its decision on the basis of a particularised inquiry into the facts and circumstances of each case. "The dispositive question in any State action case", as pointed out by Douglas, J., *Jackson v. Metropolitan Edison Company* (419 U.S. 345), "is not whether any single fact or relationship presents a sufficient degree of State involvement, but rather whether the aggregate of all relevant factors compel a finding of State responsibility." It is not enough to examine seriatim each of the factors upon which a corporation is claimed to be an instrumentality or agency of Government and to dismiss each individually as being insufficient to support a finding of that effect. It is the aggregate or cumulative effect of all the relevant factors that is controlling.

5. It is against the background of these general observations made by the Supreme Court, we proceed to consider the status and character of the appellant-company. The General Insurance Business (Nationalisation) Act, 1972, Central Act 57 of 1972, was passed to provide for the acquisition and transfer of shares of Indian insurance companies, and undertaking of other existing insurers in order to serve better the needs of the

economy by securing the development of general insurance business in the best interests of the community and to ensure that the operation of the economic system does not result in the concentration of wealth to the common detriment, for the regulation and control of such business and for matters connected therewith or incidental thereto. Section 4 of the Act states that on the appointed day all the shares in the capital of every Indian insurance company shall, by virtue of the Act, stand transferred to and vested in the Central Government, free of trusts, liabilities and encumbrances affecting them. Sub-section (2) of this section provides that out of the shares so transferred and vested, the Central Government shall, immediately thereafter, by notification, provide for the transfer of not less than ten shares of every such company to such persons as may be specified in the notification to enable the Indian insurance company to function as a Government company. Section 5 provides for the transfer of undertakings of other existing insurers. Sub-section (1) thereof provides that on the appointed day the undertaking of every existing insurer, who is not an Indian insurance company, shall stand transferred to and vested in the Central Government and the Central Government shall immediately thereafter provide, by notification, for the transfer to and vesting in such Indian insurance company, as it may specify in the notification, of that undertaking. Section 6 deals with the effect of such transfer of undertakings. According to sub-s. (1) of S. 6, the undertaking of every such existing insurer as is referred to in S. 5 shall be deemed to include all assets, rights, powers, authorities and privileges, and all property, movable and immovable, cash balances, reserve funds, investments, etc. Section 7 is a consequential provision as a result of the transfer of the undertaking. Sub-section (1) of S. 7 provides that every wholetime officer or other employee of an existing insurer, who was employed by that insurer wholly or mainly in connection with his general insurance business immediately before the appointed day shall, on the appointed day, become an officer or other employee, as the case may be, of the Indian Insurance company in which the undertaking of that insurer or that part of the undertaking to which the service of the officer or other employee relates has vested, and shall hold his office or service under the Indian insurance company on the same terms and conditions and with the same rights to pension, gratuity and other matters, as would have been admissible to him if there had been

no such vesting and shall continue to do so unless and until his employment in the Indian insurance company in which the undertaking or part has vested is terminated or until his remuneration, terms and conditions are duly altered by that Indian insurance company. Section 8 deals with provident, superannuation, welfare and other funds in the Indian insurance company. Chapter III provides for the creation of the General Insurance Corporation of India. Section 9(1) provides that as soon as may be after the commencement of the Act, the Central Government shall form a Government company in accordance with the provisions of the Companies Act, to be known as the General Insurance Corporation of India for the purpose of superintending, controlling and carrying on the business of general insurance. Section 10 deals with the transfer to the Corporation of the shares vested in the Central Government. Chapter IV containing Ss. 11 to 15 deals with the amounts to be paid for acquisitions. Chapter V containing Ss. 16 and 17 provides for the framing of schemes. Under sub-s. (1) of S. 16, if the Central Government is of opinion that for the more efficient carrying of general insurance business it is necessary so to do, it may by notification, frame one or more schemes providing for all or any of the matters enumerated therein. One such matter is the merger in one Indian insurance company of any other Indian insurance company or the formation of a new company by the amalgamation of two or more Indian insurance companies. Another matter for which provision can be made is the rationalisation or revision of pay-scales or other terms and conditions of service of officers and other employees wherever necessary. Sub-section (2) of this section is important, because it provides that in framing schemes under sub-s. (1) the object of the Central Government shall be to ensure that ultimately there are only four companies (exclude the Corporation) and that they are so situate as to render their combined services effective in all parts of India. Chapter VI containing Ss. 18 to 23 deals with the functions of the Corporation and acquiring companies and their management. Section 24 which occurs in Chapter VII, under the heading ""Miscellaneous"", is significant from one point of view. Sub-section (1) of S. 24 says that except to the extent expressly provided in the Act, on and from the appointed day, the Corporation and the acquiring companies shall have the exclusive privilege of carrying on general insurance business in India. Section 31 which occurs in this chapter, provides that every

officer or other employee of the Corporation or of an acquiring company shall be deemed to be a public servant for the purpose of Chapter IX of

the Indian Penal Code. According to S. 32 every officer of the Central Government and every officer or other employee of the Corporation and of

any acquiring company shall be indemnified by the Central Government or the Corporation or the acquiring company, as the case may be, against

all losses and expenses incurred by him, in or in relation to, the discharge of his duties under the Act except such as have been caused by his own

wilful act or default.

6. A combined effect of all these provisions will clearly indicate the special status of the Corporation created under S. 9 and the insurance

companies constituted under the scheme framed under S. 16.

7. Mr. M. R. Narayanaswami, the learned counsel for the appellant, contended at one stage that the General Insurance Corporation of India

formed under S. 9 could be said to be a Corporation, owing its existence to Central Act 57 of 1972, while the insurance companies which have

come into existence as a result of the schemes framed as contemplated by sub-s. (2) of S. 16 could not be said to be companies owing their

existence to Central Act 57 of 1972, as they were companies registered under the Companies Act. From one point of view we are unable to

accept this argument. As far as the General Insurance Corporation of India is concerned, there is no dispute. As far as the other four companies, of

whom the appellant herein is one, are concerned, even though in origin they were companies registered under the Indian Companies Act, their

present status is not due exclusively to their registration under the Companies Act, but to the scheme framed under S. 16 of Central Act 57 of

1972, which provided that there should ultimately be only four companies for the purpose of carrying on the business of general insurance in India.

Therefore, it is not strictly correct to say that the appellant-company is just like any other company registered under the Companies Act, having

regard to the special circumstances and the statutory provisions referred to above, which resulted in the retention and formation of four companies

as contemplated by S. 16(2).

8. What is, however, relevant for the purpose of the present discussion is not whether any particular company owes its existence to Central Act 57

of 1972 or to the Companies Act, but the nature and character of the status and position of the company with reference to Art. 12 of the

Constitution of India, and the decisions of the Supreme Court bearing on the question. Having regard to three special features, we have no

hesitation whatever in coming to the conclusion that the appellant-company will come within the scope of the expressing "other authorities,

occurring in Art. 12 of the Constitution. In the first place, under S. 24 of the Act, a right exclusive privilege to carry on the general insurance

business in India is conferred only on the four companies. It is such a right that has been conferred and protected by the statute. Secondly, under

S. 31 of the Act every officer or other employee of the Corporation as well as of the acquiring company shall be deemed to be public servant for

the purpose of Chapter IX of the Indian Penal Code. Thirdly, under S. 32 and indemnity is provided by the Central Government and the

Corporation and the acquiring company in respect of the discharge of duties by the officers of the Central Government and the officers and other

employees of the Corporation or acquiring company. It is pertinent to note that under S. 32, for the purpose of the indemnity, every officer or

other employee of the company is treated on a par with the officers of the Central Government. These three circumstances cumulatively, in our

opinion, in addition to the other provisions contained in the statute will clearly establish that the appellant-company will come within the scope of

other authorities," occurring in Art. 12 of the Constitution of India, as has been explained by the several decisions of the Supreme Court.

9. Independently of the above, as far as Art. 226 of the Constitution of India is concerned, it is not even necessary to consider whether the

authority concerned would fall within the scope of the Art. 12 of the Constitution. Only when a question of fundamental rights is involved, and a

person approaches the the Court for the enforcement of his fundamental right, the question whether the person or authority or corporation against

whom relief is claimed is a State or not will arise. Article 226 of the Constitution is couched in wider and more general terms and therefore even

the strict interpretation as to what would constitute a State under Art. 12 may not be relevant for Art. 226. Article 226 of the Constitution of India

reads :

226(1). Notwithstanding anything in Art. 32, every High Court shall have power throughout the territories in relation to which it exercises

jurisdiction to issue to any person or authority, including in appropriate cases any Government within those territories, directions, orders or writs,

including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of

the rights conferred by Part III and for any other purpose.

This article uses expression ""any person or authority, including in appropriate cases any Government."" Decided cases have held that the authority

must be of a public character, because the Article is not intended to replace the ordinary or general remedy available to a citizen to approach a civil

Court by instituting a suit. Hence with reference to Art. 226 the only consideration will be whether the appellant company can be said to be a

public authority or not. Having regard to what we have pointed out above, with regard to the rights, privileges and duties of the appellant-

company, in the light of the provisions contained in Central Act 57 of 1972, we have no hesitation whatever in holding that the appellant-company

will come within the scope of Art. 226 of the Constitution of India and well, therefore, be amenable to the writ jurisdiction of the High Court.

10. The next point for consideration is whether the first respondent was entitled to the relief he had prayed for. As we pointed out already,

Ramanujam, J. took the view that the condition contained in the original order of appointment continued to apply to him, but that stipulation was

not strictly complied with. With respect to the learned Judge, we are of the opinion that the conclusion of the learned judge, that the condition

contained in the communication dated 2-1-1963 would continue to apply to him, is not correct. The communication dated 2-1-1963 was in

relation to the appointment of the first respondent as Probationary Field Officer. The order itself states :

Subsequent to our appointment letter dated 18-6-1962 issued in your favour as Trainee Field Worker, and consequent upon your success in the

Inspectors' Examination held in October, 1962, by the Federation of Insurance Institute, Bombay, we have the pleasure in appointing you as

Probationary Field Officer of our Society with Head Quarters at Madras, with effect from 1st January, 1963, subject to the approval of

Administrative Machinery. Benefits allowed to the permanent staff will be accorded to you on receipt of the approval of your appointment by the

Administrative Machinery.

You will be a wholetime member of our field staff and your duties as Field officer will be -

- (a) to recruit, train, direct and control the agents introduced by you;
- (b) to service the business under your organisation;
- (c) to perform such other duties as may be entrusted to you by this office.

You will be paid a monthly remuneration of Rs. 185 as under :

Rs.

Basic salary ... 130

Dearness allowance ... 55

(Grade Rs. 130-10-250) 185

You are expected to give a premium income of Rs. 30,000 every year.

The Society reserves the right to review your work in terms of the provisions of the Code of Conduct and read just the terms thereof as provided

as provided therein.

Your services may be deemed to be terminated at any time by giving a month's notice on either side.

You will strictly be guided by the rules and regulations of the Society and will conform to the instructions issued by this Office periodically.

This appointment letter is issued in quadruplicate and you kindly return the 3 copies duly signed in token of your acceptance.

11. It was thereafter that the first respondent was confirmed in service on 26th September, 1963, by an office order, which states :

Mr. A. A. Nathan, Field Officer, Madras, has been confirmed in service of our Society, with effect from 1-9-1963 on the same salary and D.A.

(viz. Rs. 130 Rs. 55).

12. We are clearly of the opinion that the communication dated 2-1-1963 was concerned only with the appointment of the first respondent as

Probationary Field Officer and it had nothing whatever to do with his subsequent

appointment and promotion. The moment he joined the service of the Society, just like any other officer of the Society, he would be governed by the terms and conditions applicable to the officers of the Society. It is not in dispute that there were certain employment conditions applicable to the officers in the Union Co-operative Insurance Society Limited. The Manual of Employment Conditions in the Union Co-operative Insurance Society Limited, of the year 1969, was produced before us. In that manual Appendix 3 contains the service regulations of the Union Co-operative Insurance Society, Bombay, and it is stated that these regulations shall apply to every full-time employee. There is no controversy that the first respondent was a full-time employee. Consequently these regulations will necessarily apply to him. Rule 10 of these regulations states that an employee shall have option to retire or may be called upon to retire after the completion of 20 years of service. Every employee shall, however, be retired on the completion of 60 years of age; Where it appears desirable in the interests of the society, the Board will have discretion to re-employ a person under this rule on the terms and conditions as will be determined by the Board in each case.

13. This rule has the caption, "superannuation." This clearly contemplates the superannuation age as 60, and yet it gives an option to the employees to retire voluntarily after the completion of 26 years of service. The same rule also gives a right to the employer to call upon the employee to retire after the completion of 26 years of service. Under the general heading of Service Regulations, there are a few rules occurring in the same Appendix

3. One of the rules that finds place there is Rule 9, which says :

Every employee who wishes to resign or leave service shall be at liberty to do so provided he gives one calendar month's notice in writing of his

intention to do so

A comparison and contrast of this rule with the rule under the heading "superannuation", will clearly bring out one feature. On the completion of 26

years of service there is an option given to either party to retire from service. But, on the other hand, with regard to resignation or leaving the

service, an option is given only to the employee, on giving one calendar month's notice, in writing, and there is no corresponding right conferred on

the employer. In view of this, we are of the opinion that, after the first

respondent became a full-time employee of the Union Co-operative

Insurance Society, Bombay, the conditions contained in the communication dated 2-1-1963, ceased to be applicable and it was the regulations

which were applicable to the employees that were applicable to the first respondent herein also. If so, the appellant did not have the right to

terminate the service of the first respondent, either by giving one month's notice or even by giving one month's salary in lieu of notice. If so, the

order passed by the appellant becomes illegal.

14. Mr. M. R. Narayanaswami, the learned counsel for the appellant sought to contend that he could sustain the order on the basis that, when

there is no specific provision for terminating the service of the first respondent by the appellant-company, the general presumption was that the

employer could terminate the service of the employee by giving one month notice and that the order could be justified by holding that the appellant

had the right to terminate the service of the first respondent by giving one month's salary in lieu of one month's notice. We are unable to accept this

argument. In this particular case the appellant had terminated the service of the first respondent by relying solely on the power said to have

reserved to the employer under the communication dated 2-1-1963, since the impugned order dated 4th October, 1973, states :

We refer to our letter of appointment dated 2nd January, 1963, and in terms thereof we hereby terminate your services with our Company with

immediate effect. In accordance with the provisions contained in the said letter of appointment, we are enclosing a voucher for Rs. 728.20 being

the salary in lieu of a month's notice inclusive of 4 days emoluments for this month also.

15. In view of this, it is not open to the appellant now to abandon that stand and seek to sustain the order of termination of service on some other

ground, when the first respondent had prayed for a writ of certiorari to quash that order.

16. Under these circumstances, the writ appeal fails and is dismissed. There will be no order as to costs.