
(2005) 09 DEL CK 0033

In the Delhi High Court

Case No : Writ Petition (C) No. 12626 of 2004

Usha International Limited

APPELLANT

Vs

United India Insurance Co. Ltd.

RESPONDENT

Date of Decision : 02-09-2005

Acts Referred:

Citation : (2005) 4 ACC 27 : (2007) ACJ 2714 : AIR 2005 Delhi 424 : (2005) 123 DLT 466 : (2005) 84 DRJ 6 : (2005) 4 RCR(Civil) 681

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : Sanjay Jain and Ruchi Jain, for the Appellant; Vineet Malhotra, for the Respondent

Final Decision : Allowed

Judgement

Vikramajit Sen, J.—The short question of ubiquitous importance which arises in this Writ Petition is whether a theft committed consequent to damage to a godown occasioned by a cyclone is covered by the Fire 'C' Policy and/or the Burglary and House Breaking Insurance Policy. The Insurance Company has refused to make payment on the grounds that the theft was a sequel to the cyclone that had caused catastrophe in Orissa and its environs. The Insurance Company has refused to acknowledge its liability on the specious reason that the theft was not preceded by a forcible and violent entry to the godown/warehouse.

Uncontroverted PLEADINGS

2. Repeated opportunities have been granted to the Respondents for filing their Counter Affidavit but have not been availed of. Counsel for the Respondents now states that a Counter Affidavit is not to be filed. Opportunity for this purpose is closed. The effect is that asseverations made in the writ petition must be assumed to have been admitted and Therefore correct. Accordingly the factual matrix may be taken, inter alia, from the narration contained in paragraph four (4) of the writ petition. The Petitioner is engaged in the business of

manufacturing and/or marketing of consumer merchandise such as electric fans, coolers, sewing machines, pump sets, diesel engines, piston rings, fuel injection, generators. It has a large number of godowns to store such goods, spread all over India including one such godown at Cuttak, Orissa. To secure the goods lying in the godown at Cuttak, Orissa, the Petitioner was desirous of obtaining an adequate insurance cover to take care of the risks of a variety of nature, including but not limited to the risk of fire, riotous and terrorist acts, malicious damage and damages caused to the premises and properties due to theft, burglary or house-breaking. The Respondent assured the Petitioner that they had appropriate insurance policies to cover such risks and losses in the event of such contingencies. The Respondent represented to the Petitioner that as per the printed paraphrasing of their insurance policies, the risks in question were covered under two distinctly documented "policy covers" and hence instead of one, the Petitioner was required to take two separate cover-notes/policies. Acting upon and induced by such representations and assurances, the Petitioner agreed to take/subscribe to the two separate policies/cover notes for the period starting from 1.4.1999 and ending on 31.3.2000 (midnight), covering risks inter-alia against fire, theft, burglary, riots and such other calamities attributable to nature and circumstances beyond its control.

THE INSURANCE COVERS

3. The description of the policies issued to the Petitioner is as follows:

(a) Fire Policy dated 1.4.1999 bearing no.040100/11/13/02/99 for Rs. 20 crores issued by the, with additional cover of special perils such as cyclone (subsequently enhanced to Rs. 27 crores on payment of additional premium of Rs. 1,44,398/- vide Fire Endorsement dated 19.08.1999).

(b) Burglary and House Breaking Policy (BHB Policy) dated 1.4.1999 bearing no. 040100/46/05/4614/99 for Rs. 20 crores issued by respondent.

4. The relevant provisions of the Fire Policy are extracted below --

FIRE POLICY "C"

In consideration of the insured named in the Schedule hereto having paid to the UNITED INDIA INSURANCE COMPANY LTD. (hereinafter called the Company) the premium mentioned in the said Schedule, THE COMPANY AGREES, (Subject to the Conditions and Exclusions contained herein or endorsed or otherwise expressed hereon that if after payment of the premium the Property insured described in the said Schedule, or any part of such Property be destroyed or damaged by:

1.Fire.

2.Lightning

3.Explosion/Implosion but excluding loss or damage.

a) To boilers (other than domestic boilers) economisers or other vessels, machinery or apparatus in which steam is generated or their contents resulting from their own explosion/implosion.

b) caused by centrifugal forces.

4. Impact by any Rail/Road vehicle or animal.

5. Aircraft and other aerial and/or space devices and/or articles dropped there from, excluding destruction or damage occasioned by pressure waves caused by such devices.

6. Riot, Strike, Malicious Damage and Terrorism as per clause printed hereon during the period of insurance named in the said schedule or of any subsequent period in respect of which the insured shall have paid and the Company shall have accepted the premium required for the renewal of the Policy, the Company will pay to the insured the value of the property at the time of the happening of its destruction or the amount of such damage or at its option reinstate or replace such property or any part thereof.

PROVIDED that the liability of the Company shall in no case exceed in respect of each item the sum expressed in the said Schedule to be insured thereon or in the whole the total sum insured hereby, or such other sum or sums as may by substituted Therefore by memorandum hereon or attached hereto signed by or on behalf of the Company.

EXCLUSIONS

This Insurance does not cover :

(a) The first Rs. 2,500/- of each & every loss in respect of which the insured is indemnified by this policy.

(b) Loss by theft during or after the occurrence of any insured peril except as provided for in Riot, Strike and Malicious & Terrorism Damage Clause.

(h) Any loss or damage occasioned by or through or consequence directly or indirectly, of any of the following occurrences, namely.

(i) Earthquake, Volcanic Eruption or other convulsions of nature.

(ii) Typhoon, Hurricane, tornado, Cyclone or other atmospheric disturbance, Flood and Inundating

(iii) War, invasion, act of foreign enemy hostilities or warlike operations (whether war be declared or not), civil war.

(iv) Mutiny, civil commotion, assuming the proportions of or amounting to a Popular rising military rising, insurrection, rebellion, revolution military or usurped power.

(v) Burning, whether accidental or otherwise forest, bush and jungles and the

clearing of land by fire. In any action, suit or other proceedings where the Company alleges that by reason of the provisions of the above Exclusions any loss damage is not covered by this insurance the burden of proving that upon the insured.

So far as the BHB Policy is concerned, the relevant features read as follows:

The Company hereby agrees subject to terms, conditions and exclusions herein contained or endorsed or otherwise expressed herein to indemnify the Insured to the extent of intrinsic value of:

a) Any loss of or damage to property or any part thereof whilst contained in the premises described in the Schedule hereto due to Burglary or House-breaking (theft following upon an actual forcible and violent entry of and/or exit from the premises) and Hold-up.

b) Damage caused to the premises to be made good by the insured resulting from burglary under/or house-breaking or any attempt threat any time during the period of insurance.

Provided always that the liability of the Company shall in no case exceed the sum insured stated against each item or Total Sum Insured stated in the Schedule

Clause (iv)

(a) Loss or damage directly or indirectly, proximately or remotely occasioned by or which arises out of or in connection with riot and strike, civil commotion, terrorist activity, earth quake, flood, storm, volcanic eruption, typhoon, hurricane, tornado, cyclone or other convulsions of nature of atmospheric disturbances.

(b) Loss or damage whether direct or indirect arising from war, warlike operations and of foreign enemy hostilities (whether war be declared or not), civil war, revolution, insurrection, civil commotion, military or usurped power, seizure, capture, confiscation, arrests, restraints and detainment by Order of any governments or any other authority.

In any action, suit or other proceedings where the Company alleges that by reason of the above Provisions any loss or damage is not covered by this insurance, the burden of proving that such loss or damage is covered shall be upon the insured.

SEQUENCE OF EVENTS

RELATING TO THE LOSS

5. On 1st and 2nd November, 1999 the employees of the Petitioner at the Cuttak godown noticed that some miscreants had made a forcible entry into the insured premises and despite due care and best possible efforts on their part, the thieves had managed to take away/steal a large quantity of stored goods by committing house-breaking from the rear-side of the insured godown. The Claim Form

submitted by the Petitioner to the Respondent contained details of the damages/ losses caused to the premises in question and a copy of the FIR/Police Report dated 4.11.1999 was also attached to it. The Claim was quantified at Rs. 7,88,944/- which included a claim of Rs. 1,38,936/- in respect of theft. It was imperative for Respondent to co-relate the respective claims with the appropriate policy(ies) and process the claim. The premises, and the properties lying in the premises, were duly inspected by the Surveyor appointed by the respondent who investigated the case as per his own norms and the Petitioner provided him with all necessary inputs and information as required and/or demanded. The Respondent processed the Petitioner's claim only for Rs. 6,50,008/- and this was communicated to the Petitioner vide letter dated 2.10.2000. However, in the said letter issued by the respondent no decision was taken or communicated with regard to the claim of Rs. 1,38,936/-. Thereafter the Petitioner by its letter dated 26.12.2000 sought reasons from the Respondent for non-settlement of its claim of Rs. 1,38,936/-. Vide its letter dated 2.1.2001 the Respondents rejected the claim of Rs. 1,38,936/- stating that it was not covered in either of the two policies. In its letter dated 24.9.2002 the Respondent gave the following reasoning:

"We had settled above loss for Rs. 5,84,367/- under Fire Policy and loss due to theft after Cyclone was not considered as Fire Policy excludes losses by theft during or after occurrence of any insured peril.

You had requested to consider the claim under Burglary & House Breaking Policy. As per the exclusion IV(a) of BHB Policy `Loss or damage, directly or indirectly" proximately or remotely occasioned by or which arises out of or in connection with Cyclone" is excluded.

In view of above, loss does not fall under the preview of either fire or BHB Policy. We express our inability to consider the loss sustained due to theft after cyclone."

6. The Petitioner vide its letters dated 1.3.2003 and 15.7.2003 drew the attention of Respondent to Notification No. FT/5/2002 dated 24.6.2002 issued by the Secretary, Tariff Advisory Committee, Insurance Regulatory and Development Authority (IRDA) Mumbai to all Insurance Companies whereby the looting caused as consequence of riots was accepted as a valid claim. The Petitioner requested the Respondent to reconsider its decision in the light of the ratio of the said Notification but in vain. Attention has justifiably been drawn to the said opinion of Shri N. Rangachary, Chairman, Insurance Regulatory and Development Authority which reads thus --

References have been received in this office on the status of claims that arise on looting connected with the riots in Gujarat. This matter was examined by the headquarters of Tariff Advisory Committee and on the basis of an interpretation made by the Committee, a view was expressed that claims to looting stand excluded in terms of fire policy currently in force under Item No. V of Section II of the Tariff. This exception built under Item 5 is found in clause (d) according to

which claims relating to burglary, house breaking, theft, arson etc. committed in the course of a disturbance or public peace, if any, in malicious act would stand excluded from payment.

New India, however, has clarified to its offices that such a claim would be payable. Support for this has been sought from the terminology of the old tariff as well as the current practices of the market. New India apparently also believes in adopting precedents where in similar situations in the past in 1984 Delhi riots, 1992 Bombay riots etc., claims have been paid by the nationalized companies. According to New India, the new tariff has not changed materially the old one and the new tariff has only brought together exceptions etc. found in different places.

I have also received a representation from Mehta Padamasay of Bombay where the conditions of the policy had been examined by the firm and found to be supportive of payment. Along with the letter, extracts from well known books on fire insurance have also been attached which support the claim to payment.

Riot, strike, malicious damage and terrorism cover is an integral part of the fire policy. Only recently the terrorism part has been de-linked and separately priced. In other words, we still have the riot, strike and malicious damage claims covered by a fire policy. It is true that section II clause V of the policy documents covers the riots except the four situations which have been mentioned therein. Burglary, house breaking etc. occurring as part of a malicious act where such an act was committed in the course of a disturbance of public peace is listed as an exclusion. The exclusion does not specifically mention looting. However, to my mind, this does not make any material difference because the term can be considered to be similar to those used in the clause.

The relevant clause that one should look to would be clause II under general exclusions of the fire policy. This clearly supports the view that any claim under a RSM cover will not be excluded under the general exceptions provision.

The question whether looting is a part of the riot cover is not the issue now. The question to be considered confines itself to considering whether looting arising out of or following a riot is payable in terms of a fire policy. It is not disputed that the looting has followed the riots in these cases. The issue would be whether we should not take into account the proximate cause for the looting. If loss arises on account of looting in a riot where the riot peril itself is an insured peril, there should not be any difficulty in meeting the claim under the policy. As things stands at present, the tariff as well as the precedents that the industry has followed so far together with the authoritative literature on the subject support the payment for claim under the riot clause provided all other conditions of the policy have been satisfied.

RIVAL CONTENTIONS

7. The argument of learned counsel for the Petitioner that this reasoning should

be extrapolated to the facts and circumstances of the present case into either or both of the insurance covers taken by the Petitioner. The argument has merit. It has been submitted that notwithstanding the Respondent's self-serving and erroneous interpretations of the 'exclusion' clauses contained in the two policies in question, which clauses are otherwise unconscionable, legally unenforceable and opposed to public policy, the claim of Rs. 1,38,936/- was entirely covered under the relevant clauses operative of the BHB Policy. The contention of the Petitioner is that the BHB Policy cannot exclude losses arising out of convulsions of nature such as a cyclone. Furthermore, the Respondents have sought to avoid their contractual and statutory liability by taking recourse to the above exclusion clauses by unilaterally and unjustifiably qualifying the 'theft' and attributing upon it a definition not provided in law, only to avoid payment of the insurance claim. The Petitioner's case is that a bare perusal of the FIR attached with the Claim Form submitted by the Petitioner reveals that a sum of Rs. 1,38,936/- was claimed in respect of theft, which took place on 1st and 2nd November, 1999. The complained act of theft was an independent act committed by miscreants by forcible and violent entry into the premises by house-breaking.

8. So far as the Fire Policy is concerned emphasis has been placed in particular by learned counsel for the Respondent Insurance Company on the exclusions contained therein to the effect that "loss by theft during or after the occurrence of any insured peril except as provided for in Riot, Strike and Malicious & Terrorism Damage Clause is not covered by the insurance". It will be relevant to underscore the fact that the Petitioner's assertion is that they had requested for a complete insurance cover against any and every loss including theft. Therefore, it is not possible to accept the contention that insurance cover was taken only in respect of Fire, and/or Burglary or House Breaking, in terms of the two policies avowedly subscribed to by the Petitioner. In the present case the Respondents had agreed to indemnify the Petitioner/insured to the extent of intrinsic value of any loss of or damage firstly under the comprehensive Fire Policy 'C' and secondly the BHB Policy to property or any part thereof whilst contained in the premises. As has been seen above a cover was for a sum of Rs. 27 crores against FIRE 'C' Policy and Rs. 20 crores against BURGLARY AND HOUSE-BREAKING policy. The defense of the Respondent is that, as mentioned in the Petitioner's letter dated 26.12.2000, the Petitioner's total claim is Rs. 7,88,944/- including "loss of Rs. 1,38,936/- caused due to theft which took place pursuant to the cyclone".

9. However, it is not in dispute that in the FIR the following narration of the incident in question has been recorded:

"Due to severe cyclonic storm on 29.10.99 the roof of both the godowns were blown off and there was an attempt of theft and burglary from the backside of the godowns on 1st and 2nd November, 1999. There were about 10 miscreants entered inside our premises from the backside. However the attempt was partly spoiled as 4/5 persons were there inside our office premises guarding the

godowns. inspire of the efforts by our people, some items have been taken away by the miscreants/thieves from the backside of our godown. since our godown roof has already been blown off during the cyclone we apprehend that there would be more attempt by the miscreants/thieves. Therefore we would request you to kindly give us police protection to avoid further theft/loss from the premises".

10. Learned counsel for the Respondent has relied heavily on the decision in United India Insurance Co. Ltd. Vs. Harchand Rai Chandan Lal, , in which the Court was called upon to construe a Burglary and House Breaking insurance policy. The wording of this policy is not identical to the policies in hand, especially since "burglary" was specifically defined in Harchand's case. The Court held as follows:

9. It is possible that an insurer may sustain loss in technical terms of criminal law, but no relief can be given to him unless his case is covered by the terms of the policy. It is not open to interpret the expression appearing in the policy in terms of common law; but it has to give meaning to the expression as defined in the policy. The act that causes the loss must fall within the definition in the policy and it cannot take the cover and contents of the definition as laid down in criminal law. Therefore, when the definition of the word "burglary" has been defined in the policy then the cause should fall within that definition. Once a party has agreed to a particular definition, he is bound by it and the definition of criminal law will be of no avail. In this connection, the decision of the National Consumer Disputes Redressal Commission in the case of National Insurance Co. Ltd. v. Public Type College which has taken the colour and content of the definition given in criminal law does not lay down the correct proposition of law. It is settled law that terms of the policy shall govern the contract between the parties, they have to abide by the definition given therein and all those expressions appearing in the policy should be interpreted with reference to the terms of policy and not with reference to the definition given in other laws. It is a matter of contract and in terms of the contract the relation of the parties shall abide and it is presumed that when the parties have entered into a contract of insurance with their eyes wide open, they cannot rely on the definition given in other enactment. Thus, the decision of the National Consumer Disputes Redressal Commission in the case of National Insurance Co. Ltd. v. Public Type College is not a good law and all the tribunals i.e. National consumer Disputes Redressal commission, State Commission and District Forum having applied the ratio of that case, the impugned order cannot be sustained.

14. Therefore, it is settled law that the terms of the contract have to be strictly read and natural meaning be given to it. No outside aid should be sought unless the meaning is ambiguous.

15. From the above discussion, we are of the opinion that theft should have been preceded with force or violence as per the terms of insurance policy. In order to substantiate a claim an insurer has to establish that theft or burglary took place

preceding with force or violence and if it is not, then the insurance company will be well within their right to repudiate the claim of the insurer.

11. This judgment is distinguishable on the factual matrix itself as also since the nomenclature used in the Policies is not identical. A reading of the FIR overwhelmingly leads to the conclusion that after the cyclone hit the State of Orissa, in the course of which the roof of the Petitioner's premises had been blown away, miscreants forcibly entered these very premises. It was forcible because their efforts to loot or thief the goods stored therein was partially repulsed and thwarted by the Petitioner's employees. The Petitioner's apprehension that a further onslaught was likely to occur has been spelt out in the FIR itself in which police protection had been prayed for. It is, Therefore, not possible to equate the present dispute with other cases where theft was carried out because a door had accidentally been left unlocked or a door had inadvertently been left ajar.

INTERPRETIVE APPROACH

12. Taking insurance cover is no longer a luxury; it has become an essential, intrinsic and integral part of our everyday life. When insurance covers are taken the prospective policyholders are not invited or warned to carefully read through the Standard Form Agreement/Policy. Since a Counter Affidavit has not been filed it is relevant to recall the Petitioner's Uncontroversial assertion that it had sought a complete cover against all losses. It had not, Therefore, agreed to preclude from insurance cover loss from a theft simplicitor. It is common knowledge that agents are quick to promise divers and complete manners of insurance cover while cajoling or inducing persons into parting with large premiums. There is no scope for contending that simple theft, in common parlance, was agreed not to be covered and/or excluded. Almost contemporaneous to Harchand case (supra) a Coordinate Bench of the Supreme Court had enunciated and applied the rule of *contra proferentem* particularly for construing an insurance policy in *United India Insurance Co. Ltd. Vs. Pushpalaya Printers*, . It is palpably obvious that counsel had not brought this Judgment to the notice of the Harchand Bench. The Court laid down that where the words of a document are ambiguous they should be construed against the party who prepared the document and in favor of the insured. This rule was applied to that contract of insurance, and in particular to Clause 5 of the Insurance Policy. The Supreme Court was called upon to construe whether damage caused to the building of the insured because of the driving of a bulldozer close to it could be viewed as falling within the sweep of the word 'impact'. In the Courts perspective "the insured possibly did not understand and expect that the destruction and damage to the building and machinery is confined only to a direct collision by vehicle." Succour was confirmed to the insured. The observations of the Constitution Bench in *General Assurance Society Ltd. Vs. Chandumull Jain and Another*, , are to the effect that "in a contract of insurance there is a requirement of *uberrima fides*, i.e., good faith on the part of the

assured and the contract is likely to be construed contra proferentem that is against the company in case of ambiguity or doubt." Why then should the word 'burglary' be given any meaning apart from the extent and manner in which it is understood by a lay common man.

13. Courts have often applied the repugnancy rule with a view to effect a balance between consumer and commercial interests. By this interpretive device the efficacy of an exclusion clause is whittled down wherever it tends to annihilate or cripple the main purpose of the contract. The remarks of Lord Denning in *Sze Hai Tong Bank Ltd. vs. Rambler Cycle Co. Ltd.* [1959] A.C. 576 are apposite that - "there is, Therefore, an implied limitation on the clause, which cuts down the extreme width of it: and, as a matter of construction, their Lordships declined to attribute to it the unreasonable effect contended for. But their Lordships go further. If such an extreme width were given to the exemption clause, it would run counter to the main object and intent of the contract." In *J. Evans & Son v. Andrea Merzario* [1976] 1 W.L.R. 1078, an oral promise given by the forwarding agent that the goods would be stowed in a hold was accepted to override an exemption clause in favor of the carrier in respect of liability for damage to goods shipped on the deck. In view of the Uncontroverted asseveration of the Petitioner that it had asked for a complete insurance cover against any and every loss, the Evan's approach irresistibly commends itself. Even otherwise, 'burglary' does not carry with it the necessary element of use of force for the commission of the theft. In the treatise *Exclusion Clauses in Contracts* by David Yates it has been observed that "Standard form contracts are typically used by enterprises with strong bargaining power. The weaker party, in need of goods or services, is frequently not in a position to shop around for better terms, either because the supplier has a monopoly (such as the statutory undertakers supplying gas, water, electricity and telephone services), or because all competitors use the same clause because it is embodied in a contract produced by a professional or trade association. The "consumer"s" contractual intention and expectation is subjected, more or less voluntarily, to terms imposed by the economically stronger party." In the words of Professor Flemming "Disclaimers belong to the era of free enterprise, the rejection of disclaimers to the era of social welfare". This approach has been preferred by the Hon'ble Supreme Court in *Pushpalya Printers* and I would enthusiastically traverse that path. Infact, in *Harchand* the Supreme Court had also expressed similar sentiments which, as per queries made by me from the Respondent's counsel have gone unheeded; and have been intentionally ignored by the respondent obviously for commercial gain. The Court had opined as follows--

17. But before parting with the case we would like to observe that the terms of the policy as laid down by the insurance company should be suitably amended by the insurance company as as to make it more viable and facilitate the claimants to make their claim. The definition is so stringent in the present case that it gives rise to a difficult situation for the common man to understand that in order to maintain their claim they will have to necessarily show evidence of violence or

force. The definition of the word "burglary" should be given a meaning which is closer to the realities of life. The common man understands that he has taken out the policy against theft. He hardly understands whether it should be preceded with violence or force. Therefore, a policy should be a meaningful policy so that a common man can understand what is the meaning of burglary in common parlance. Though we have interpreted the present policy strictly in terms of the policy but we hope that the insurance companies will amend their policies so as to make them more meaningful to the public at large. It should have the meaning which a common man can easily understand rather than become more technical so as to defeat the cause of the public at large.

14. It will be sanguine to contend that wherever a person takes out an insurance cover he consults a lawyer. It is equally unfair to submit that wherever a standard form agreement is executed, a person who has not drafted it actually reads each line of it carefully. The reality is that such a consumer seeks an assurance that if loss is incurred by him as a result of any of the envisaged events, these will be indemnified because of his paying the premium/charges demanded by the Insurance Company. The words employed in the Policy must Therefore be given their ordinary meaning, unless it is shown that the terms were carefully negotiated. In the Concise Oxford Dictionary Burglary connotes "illegal entry into a building with intent to commit a crime such as theft". In Black's Law Dictionary the definition is thus -

At common law, the crime of burglary consisted of a breaking and entering of a dwelling house of another in the nighttime with the intent to commit a felony therein. The modern statutory definitions of the crime are much less restrictive. For example, they commonly require no breaking and encompass entry at all times of all kinds of structures. In addition, certain state statutes classify the crime into first, second, and even third, degree burglary.

A person is guilty of burglary if he enters a building or occupied structure, or separately secured or occupied portion thereof, with purpose to commit a crime therein, unless the premises are at the time, open to the public or the actor is licensed or privileged to enter. It is an affirmative defense to prosecution for burglary that the building or structure was abandoned.

It seems to me to be unfair to give the word "burglary" any connotation other than the above. Since the word "House-breaking" has also been used, especially with the disjunctive "or" separating it from burglary, this approach is unescapable since the element of forced entry is specifically contemplated in "house-breaking". Hence "force" should not be perceived as an essential element in Burglary at least for the purposes of insurance policy in hand.

DECISION

15. The nomenclature of Fire Policy is indeed misleading as loss by fire is only one out of the six contingencies envisaged therein; the sixth possibility covers events of riot, strike, malicious damage and terrorism (hence RSMDT for short),

the exclusion being loss by theft during or after the occurrence of any insured peril and/or natural calamity. The convoluted and complicated provision leads naturally to the question of how theft occurring during a riot is to be dealt with. These clauses would be mutually destructive of each other, thereby making the transaction a charade, unless they are construed to indicate that for theft to be included in the insurance cover it should bear causal relationship with the 'RSMDT'. In other words if a theft is committed by a person who is not a rioter or arsonist, that event may fall beyond the 'RSMDT' cover. This is also the opinion expressed by the Chairman of the Insurance Regulatory and Development Authority, and in the pragmatic and as also positive approach of the New India Assurance Company, but regretfully not the Respondent herein. The Concise Oxford Dictionary defines riot as a violent disturbance of the peace by a crowd, and Black's Law Dictionary, Fifth Edition, defines the word thus -

"The term "riot" means a public disturbance involving (1) an act or acts of violence by one or more persons part of an assemblage of three or more persons, which act or acts shall constitute a clear and present danger of, or shall result in, damage or injury to the property of any other person or to the person of any other individual or (2) a threat or threats of the commission of an act or acts of violence by one or more persons part of an assemblage of three or more persons having, individually or collectively, the ability of immediate execution of such threat or threats, where the performance of the threatened acts or acts of violence would constitute a clear and present danger of, or would result in, damage or injury to the property of any other person or to the person of any other individual."

This definition brings the occurrences which are the subject matter of this petition within the ambit of the word "riot" and beyond the purview of the exclusion clause. The FIR records that 10 persons had forcibly entered the premises of the Petitioner and committed theft of some movable properties despite the resistance of the Petitioner's employees. The Respondents were, Therefore, liable to be indemnifying by the Petitioner against theft under the Fire Police "C". Viewed in this analysis, the theft on which the claim is predicated would be payable on both the policies.

16. In these circumstances the writ petition is allowed. The Respondent is directed to pay to the Petitioner the sum of Rs. 1,38,936/- together with interest thereon at the rate of 5% per annum from the date when the claim was preferred, since the only defense of the Respondent is that this claim was classifiable as a theft. If payments are not made within four weeks the Respondent shall be liable to pay interest at the rate of 8 per cent per annum together with costs quantified at Rs. 10,000/-.