$~28, 31, 33 & 39

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 3670/2019& CM Nos. 16838-39/2019**

CADILA HEALTHCARE LIMITED ..... Petitioner

Through: Mr Amit Sibal, Sr. Advocate with Mr Vivek Sarin and Mr Brian Moses, Advocates.

versus

UNION OF INDIA AND ORS. ..... Respondents

Through: Mr Ripu Daman Bhardwaj, CGSC with Mr T. P. Singh, Advocate for R-1 & R-6/UOI.
Mr Jayant Bhushan, Sr. Advocate with Mr Rajshekhar Rao, Mr Madhav Misra, Mr Saket Satapathi, Mr Vinayak Mehrotra, Mr Arjun Masters and Ms Veera Singh, Advocates for R-4.
Mr Jai Prakash Narayan Shahi, Advocates for R-5/New India Assurance Company Limited.

WITH

31.

\+ **W.P.(C) 3769/2019 &CM Nos.17273-74/2019**

WOCKHARDT LIMITED ..... Petitioner

Through: Mr Amit Sibal, Sr. Advocate with Mr Saman Ahsan, Mr Anyush Jain and Mr Pritika Malhotra, Advocates.

versus

UNION OF INDIA & ORS ..... Respondents

Through: Mr Anurag Ahluwalia, CGSC with Mr Rahul Arya, GP for R-1.
Mr Jayant Bhushan, Sr. Advocate with Mr Rajshekhar Rao, Mr Madhav Misra, Mr Saket Satapathi, Mr Vinayak Mehrotra, Mr Arjun Masters and Ms Veera Singh, Advocates for R-4.

WITH

33.

\+ **W.P.(C) 3780/2019 &CM No.17306/2019**

BLOCON LIMITED ..... Petitioner

Through: Mr Amit Sibal, Sr. Advocate with Mr Saman Ahsan, Mr Anyush Jain and Mr Pritika Malhotra, Advocates.

versus

UNION OF INDIA & ORS ..... Respondents

Through: Mr Anurag Ahluwalia, CGSC with Mr Rahul Arya, GP for R-1.
Mr Jayant Bhushan, Sr. Advocate with Mr Rajshekhar Rao, Mr Madhav Misra, Mr Saket Satapathi, Mr Vinayak Mehrotra, Mr Arjun Masters and Ms Veera Singh, Advocates for R-4.
Mr Pankaj Gupta, proxy advocate for Ms Suman Bagga, Advocate for R-5.

AND

39.

\+ **W.P.(C) 3835/2019 & CM Nos. 17437-38/2019**

LUPIN LIMITED ..... Petitioner

Through: Mr Anshuman Sharma, Advocate.

versus

UNION OF INDIA AND ORS. ..... Respondents

Through: Mr Jayant Bhushan, Sr. Advocate with Mr Rajshekhar Rao, Mr Madhav Misra, Mr Saket Satapathi, Mr Vinayak Mehrotra, Mr Arjun Masters and Ms Veera Singh, Advocates for R-4.
Mr Pankaj Gupta, proxy advocate for Ms Suman Bagga, Advocate for R-5.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% **12.04.2019**

VIBHU BAKHRU, J

1. The petitioners are companies engaged inmanufacturing and distributing pharmaceuticals.The petitioners are, essentially, aggrieved by the steep rise in the insurance premium payable to the respective insurance companies. The petitioners claim that the said increase is on account of the Circulars dated 12.02.2019 and 21.02.2019 issued by the General Insurance Corporation of India (hereafter 'GIC'). It is stated that in terms of the said Circulars, GIC has directed implementation of the 'Loss Costs' as published by the Insurance

Information Bureau of India (hereafter 'IIBI') in its Circular dated 24.03.2017. The petitioners impugn the aforesaid Circular – Circular dated 24.03.2017 – issued by IIB and Circulars dated 12.02.2019 and 21.02.2019 issued by GIC.

2. Since the controversy involved in these petitions is common, the petitions were heard together.

3. For the purpose of addressing the controversy, the facts as stated in W.P.(C) 3769/2019 are noted hereafter.

4. A plain reading of the Circular dated 24.03.2017 indicates that IIBI had published burning costs (Loss Costs) for 109 occupancies as approved by the competent authority. The said Loss Costs were valid from 01.07.2017 to 30.06.2019. The Schedule of Loss Costs annexed with the said Circular specified the loss costs in respect of 109 broad industries (referred to as 'Occupancies'). Entry No. 23 of the said Schedule is relevant to the controversy involved in these petitions and is set out below:-

Sr. No.	Occupancy Code	OCCUPANCY DESCRIPTION	IIBI Loss Cost
23.	2043	Chemical Manufacturing [Using materials with Flash Point below 320C), Bulk	1.94

5. In terms of the said Schedule, the Loss Costs for the purposes of insurance premium for the Occupancy Code 2043 was specified at

₹1.94 *per mille*.

6. GIC issued the Circular dated 12.02.2019, *inter alia*, stating that the gross written premium for certain occupancies would be determined on the basis of IIBI loss costs rates as published by IIBI in its Circular dated 24.03.2017. The relevant extract of the Circular dated 12.02.2019 is set out below:-

> "D) Regarding cession to treaty on following occupancies:
>
> a. Textiles
> b. Plastics
> c. Rubber Goods Manufacturing
> d. Chemical Manufacturing below 32 deg C flashpoint
> e. Storage of Category III Goods
> f. Transporters Godowns
> g. Steel Plants
> h. Power Plants
>
> The Gross Written Premium for cessions to the treaty on the above mentioned occupancies to be determined as under:
>
> 1. IIB loss cost rate published vide circular dated 24th March 2017, release No.2 (as attached)or any future revision to these rates by IIB AND
> 2. NAT CAT rate as per latest declaration by the Reinsured (as attached).
> 3. The total rate so arrived (i.e. 1+2 above) must be further appropriately loaded based on Reinsured's own experience on procurement / management expenses or any

other relevant costs before the final basic rate is arrived at.

Notwithstanding the above, nothing in this clause prevents the Reinsured to offer lower rates than the above to the primary insured, however in all such cases, the risk cannot be ceded to this treaty.

Reinsured to provide a quarterly bordereaux of all risks ceded on the above occupancies, within 10 days of the end of each quarter."

7. The aforesaid Circular was followed by the circular dated 21.02.2019 issued by GIC, which further specified the minimum rates to be charged in addition to the gross written premium as specified in the earlier Circular dated 12.02.2019. In addition, it also specified the occupancy codes to be included in the 'main occupancy' –"Chemical Manufacturing (< 32 deg C Flash point)". The relevant extract of the said Circular is set out below:-

"D) Regarding cession to treaty on following occupancies:

a. Textiles
b. Plastics
c. Rubber Goods Manufacturing
d. Chemical Manufacturing below 32 deg C flashpoint
e. Storage of Category III Goods
f. Transporters Godowns
g. Steel Plants
h. Power Plants

The Gross Written Premium for cessions to the treaty on the above-mentioned occupancies to be determined as under:

1. IIB loss cost rate published vide circular dated 24th March 2017, release No.2 (as attached) or any future revision to these rates by IIB. PLUS
2. NAT CAT rate, as attached. PLUS
3. In case of All Risk / IAR / Mega policies, the following minimum rates are additionally to be charged:

MBD	0.25 per mille	
MLOP	1 per mille	• Rates are irrespective of indemnity periods
FLOP	100% of Fire rate charged (i.e. IIB + NAT CAT or IIB Rate)	

4. The total rate so arrived (i.e. 1+2+3 above) may be further appropriately loaded based on reinsured's own experience on procurement / management expenses or any other relevant costs before the final rate is arrived at.

E) The following IIB occupancy codes will apply for each of the occupancies under Point (D):

No.	Main Occupancy	Codes to be included
1.	Textiles	2053, 2089, 2103, 2111, 2115, 2121, 2122, 2134, 2171, 2189, 2199, 2202, 2206, 2207 and 2211

2.	Plastics	2084, 2148 and 2163
3.	Rubber Goods Manufacturing	2165, 2166, 2167 and 2196
4.	Chemical Manufacturing (< 32 deg C Flash point)	2043, 2068, 2066, 2079, 2140, 2141, 2142 and 4010
5.	Storage of Category III Goods	4004
6.	Transporters Godowns	4005
7.	Steel Plants/Integrated Steel Plants, Hot/Cold Rolling, Metal Smelting, Metal Extraction, Ore Processing & Furnaces	2075
8.	Power Plants	2070 and 2210

"

8. The petitioner in W.P.(C) 3769/2019 (Wockhardt Limited) has taken out an insurance policy from Future Generali India Insurance Company Limited. Wockhardt had paid an annual insurance premium of ₹1.32 Crore including GST for the said Insurance Policy. It is stated that on account of the impugned Circulars issued by GIC, the said premium has increased from ₹1.32 Crore (exclusive of GST) to ₹5.83 Crore, excluding GST. Wockhardt contends that the said impugned Circulars, which have resulted in the steep rise in insurance premium,are arbitrary and unreasonable and are, thus, liable to be set aside.

9. Mr Sibal, learned counsel appearing for the petitioners had

assailed the impugned Circulars on, essentially, three grounds. First, he submitted that the impugned Circulars issued by GIC were contrary to the provisions of the Insurance Act, 1938 and the current regime, where insurers were at liberty to charge insurance premium as per their discretion. He contended that the General Insurance Industry in India was tariff baseduntil the year 2007. The same were removed in the years 2007 and 2008 and the insurers were permitted to determine the premiums chargeable by them. In addition, they could also provide discounts on the tariff. He submitted that GIChad, by way of the impugned Circulars, curtailed the freedom to the insurers to charge insurance premium as per their discretion. He further submitted that in terms of Section 101A of the Insurance Act, 1938, every insurer is required to re-insure with Indian re-insurerssuch percentage of the sum assuredunder each policy, as may be specified by Insurance Regulatory and Development Authority of India (IRDAI) with the prior approval of the Central Government.

10. Accordingly, each insurer would be required to mandatorily seek reinsurance from GIC, and insisting upon the premium to be charged by insurers was unfair exercise of the dominance enjoyed by GIC. He submitted that since reinsurance was mandatorily under the provisions of Insurance Act, 1938, the actions of GIC in insisting on the insurance premium to be charged by insurers was amenable to judicial review under Article 226 of the Constitution of India.

11. Next, he submitted that the Loss Costs, as notified by IIBI in its Circular dated 24.03.2017, were valid from 01.07.2017 to 30.06.2019

but were sought to be implemented only in February, 2019. He contended that insistenceupon fixation of insurance premium on the said rates for the entire financial year, was arbitrary and unreasonable.

12. Lastly, he submitted that the Circular dated 12.02.2019 issued by GIC, was only applicable to eight occupancies including the occupancy of chemical manufacturing below 32ºC flash point. He submitted that the occupancy of bulk drug manufacturing was not included and, therefore, the insurance premium for entities engaged in the manufacture of bulk drugs was not covered in the Circular dated 12.02.2019. He pointed out that the IIBI's Circular dated 24.03.2017 specified the Loss Costs of 1.94 *per mille* for the occupancies of chemical manufacturing (using material with flash point below 32ºC) and bulk drugs, however, GIC had only specified that such Loss Costs would be applicable to occupancy of chemical manufacturing below 30ºC flash point and had not mentioned'bulk drugs'. He submitted that, therefore, the insurance companies could not increase the insurance premium by virtue of the said Circulars issued by GIC and their action in doing so was arbitrary and unreasonable.

13. I have heard the learned counsel for the parties.

14. At the outset, it is necessary to observe that GIC has not fixed the insurance premium payable by the petitioners to their respective insurers.

15. Mr Jayant Bhushan, learned counsel appearing for GIC clarified that Circular dated 12.02.2019 and the Circular dated 21.02.2019

issued by GIC was only an endorsement to the re-insurance treaty between GIC and various insurance companies, thus, the said endorsement merely applied to the insurance premium chargeable by GIC for granting re-insurance.

16. It is relevant to note that the last paragraph to the Circular dated 12.02.2019clearly stated that nothing stated in the Circular would prevent the re-insured from offering lower rates to the primary insured.

17. Mr Sibal had contended that the aforesaid notings was qualified by GIC by stating that "*in all such cases, the risk cannot be ceded to this treaty*". He had submitted that the said qualification meant that in the event an insurance company had offered lower premium to the insured, GIC would not re-insure the risk. He had submitted that this had effectively prevented insurance company from offering lower rates to the petitioners. This contention is unmerited in view of the clarification provided by Mr Bhushan, the learned counsel appearing for GIC. He stated that the meaning of the said clarification is that the GIC would not re-insure the risk at a rate lower than as indicated in the said Circular. He submitted that the rates as specified therein only pertain to the insurance premium chargeable by GIC for re-insurance. Thus, the insurance company was free to offer lower rates to the insured. However, for the purposes of re-insurance, they are required to pay the premium as indicated in the endorsement dated 12.02.2019 (referred to as 'Circular' by the petitioners).

18. In view of the aforesaid clarification, it is at once clear that the petitioners seek a judicial review into the quantum of the premium fixed by GIC for providing reinsurance to various insurance companies. This question is, plainly, within the commercial wisdom of GIC and would warrant no interference in proceedings under Article 226 of the Constitution of India. Plainly, it would not be permissible for this Court to supplant its opinion regarding quantum of premium that ought to be charged by GIC. GIC is fully entitled to determine the rates at which it offers re-insurance in respect of risks covered by various insurance companies.

19. It is also relevant to note that insurance companies are not required to seek re-insurance of the entire amount of risks covered by them. This Court is informed that the insurance companies are required to mandatorily re-insure only 5% of the risk covered in respect of the industry in question (pharmaceutical industry).

20. In view of the above, the fundamental premise, that by virtue of the impugned Circulars, GIC had fixed the insurance premium chargeable by various general insurance companies, is erroneous and the petitioners challenge founded on this premise must necessarily fail.

21. The next question to be examined is whether the Circular dated 24.03.2017 issued by IIBI could be implemented for the financial year 2019-2020. This Court is of the view that IIBI's Circular dated 24.03.2017 does not have any statutory force. The Loss Costs as specified therein were only reference rates and GIC had merely

adopted the same. This Court finds no reason as to why GIC should be precluded from adopting the Loss Costs as published by IIBI.

22. The last question to be examined is whether the action of the insurance company on the basis that the impugned Circulars issued by GIC are applicable to the bulk drug industry, is erroneous. In this regard, it is relevant to note that the petitioners have founded their petition on the premise that the impugned Circulars issued by GIC are also applicable to the bulk drugs industry and, therefore, it may not be open for them to contend otherwise.

23. Notwithstanding the above, it is also clear from the plain tenor of the impugned Circulars that the same is applicable to the Occupancy Code-2043 which, admittedly, includes bulk drugs. GIC, in its endorsement (Circular) dated 12.02.2019, had specified the gross written premiums as chargeable for occupancies, which included "chemical manufacturing below 32ºC flash point". Any ambiguity as to whether the said occupancy covered bulk drugs was removed by the subsequent endorsement dated 21.02.2019, which indicated that the main occupancy (chemical manufacturing below 32 ºC flash point) included several codes including Occupancy Code-2043. Admittedly, Occupancy Code-2043 includes bulk drugs.

24. Mr Bhushan had also confirmed that it is GIC's stand that the bulk drugs would be covered under the main occupancy – chemical manufacturing (below 32 ºC flash point). It is, thus, apparent that GIC, as well as the insurance companies, are *ad idem* as to the scope of the

impugned Circulars.Considering that the two parties involved in reinsurance of risks are *ad idem*, any other interpretation of the relevant endorsement (Circular) is wholly unnecessary.

25. In view of the above, the petitions are unmerited and, accordingly, dismissed. The pending applications are also dismissed.

VIBHU BAKHRU, J

APRIL 12, 2019
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