

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1306 OF 2012

Kishore Premchand Sarvaiya	Petitioner
versus	
The Union of India and others	Respondents

Mr.Prakash Shah with Mr.Jas Sanghavi i/by M/s.PDS Legal for
Petitioner.

Mr.B.M.Chatterji, Sr.Advocate with Mr.D.P.Singh and Mr.R.Basu
for Respondent nos.1 and 2 Union of India.

Ms.Divya Menon i/by Mr.A.S.Vidyarthi for Respondent no.4.

CORAM : S.C.DHARMADHIKARI AND
B.P.COLABAWALLA, JJ.

DATE : 16 November 2015

PC :

1. By this petition under Article 226 of the Constitution of India, the Petitioner is challenging an order passed on 13 October 2010 by Respondent no.4.

2. The Petitioner carries on business as a sole proprietor and of selling of chemicals and allied products. The Respondent nos.1 to 3 are Union of India and the Joint Secretary in the Department of Finance (Insurance and Pension)

of the Government of India. The third Respondent is the statutory authority incorporated under the Insurance Regulatory and Development Authority Act, 1999. The fourth Respondent insurance company carries on general insurance business and the Petitioner had a contract of insurance with the fourth Respondent. In the financial year 2005-06, a policy of insurance in the sum of Rs.15 lakhs was taken by the Petitioner and it is his case that he paid the premium accordingly. According to the Petitioner, the policy was valid from 18 March 2005 to 17 March 2006 and it was in the nature of a floating policy for the goods stored in seven godowns. The Petitioner states that a fire took place on 8 January 2006 in one of the godowns and what the Petitioner claims is that due to this incident, he suffered loss of Rs.16,12,752/-. A surveyor was deputed by the fourth Respondent to assess the loss and thereafter the Petitioner was called upon to produce the documents which he promptly produced. The Petitioner's claim was processed but he was informed that the same cannot be accepted. That is how the Petitioner approached a Grievance Committee and the Grievance Committee considered the complaint of the Petitioner. According to the Petitioner, the repudiation of the claim by the fourth Respondent is without assigning any proper reasons. The rejection is wholly arbitrary and contrary to the terms and conditions of the policy. The Petitioner is aggrieved by the order of Grievance Committee.

3. Mr.Shah appearing for the Petitioner submits that even in contractual matters, a writ petition under Article 226 of the Constitution of India is maintainable. If the fourth Respondent is a State within the meaning of Article 12 of the Constitution of India, then, its actions have to be fair, just, reasonable and transparent. The mandate of Article 14 would bind the Respondent no.4 and equally the grievance committee. He further submits that the grievance committee has not bothered to give a personal hearing to the Petitioner and therefore, the Petitioner could not justify his claim before it. For all these reasons he states that the writ petition is maintainable. Reliance is placed on a decision of the Hon'ble Supreme Court in the case of *Harbanslal Sahnia and another Vs. Indian Oil Corporation Limited and others*¹.

4. We have carefully considered these contentions and the objections to the maintainability of the petition. We have perused the writ petition and all its annexures including the order of grievance committee. The repudiation by the Respondent no.4 has been upheld by the grievance committee. We are mindful of the principle that writ jurisdiction is not barred and can be invoked in contractual matters, provided, the parameters laid down in several decisions of the Hon'ble Supreme Court are satisfied. Meaning thereby, if the action of the statutory authorities or such agencies within the meaning of

¹ (2003)2-SCC-107

Article 12 are unfair, arbitrary, unreasonable and unjust, then in the absence of any factual disputes, a writ petition can be entertained, even to consider contractual matters and issues.

5. In Harbans Sahnia (supra), a termination of dealership license was effected without hearing, though Harbans Sahnia was served a show cause notice and in his submission he had given a reasonable explanation. If the dealership was terminated on irrelevant and non-existent grounds, then the order of termination could be set aside even in writ jurisdiction. In paragraphs 6 and 7 of the judgment in Harbanslal Sahnia (supra), the Hon'ble Supreme Court found that on facts there is no dispute. The Appellant (Harbanslal Sahnia) was served with a show cause notice earlier. That show cause notice was not pursued further. The explanation of the Appellant was found to be acceptable. Thereafter the order of termination came to be passed and which sought to rely upon same grounds which were found to have been given up. It is in these circumstances and when there were no factual disputes, that the Hon'ble Supreme Court held that recourse to contractual remedies is a rule which cannot be applied as a rigid formula. It is certainly not a thumb rule. Mere availability of alternate remedy is not a bar for entertaining a writ petition and that is a matter of discretion and prudence. The Supreme Court found that the Appellant's fundamental rights of carrying on business were affected and, therefore, the writ petition should have been entertained.

6. In the present case, the grievance committee found that materials produced and the documents furnished do not substantiate the claims and in paragraphs 5 and 6 of its order, it has found that the Petitioner should have produced the basic evidence. Thus, the quantum could not be substantiated and proved only with the aid of some documents and in the absence of the crucial ones.

7. Thus, there is a dispute as to whether repudiation of the claim was proper and/or it is contrary to the contractual terms and conditions. The materials produced were adequate in the opinion of the Petitioner but not so in the view of the grievance committee. In our view, such issues cannot be gone into in our limited writ jurisdiction. We cannot consider the matter as if this is a claim in a civil suit. The Petitioner, therefore, would have to take recourse to contractual remedies to substantiate and prove his claim. In our view, in these peculiar facts and circumstances and on account of the nature of disputes between the parties, we cannot entertain the writ petition. It is accordingly dismissed, but with a clarification that the Petitioner can avail of all remedies including a civil suit in a competent civil Court. We clarify that our order as also the findings of the grievance committee will not prevent the Petitioner from availing of such remedies and for the competent Court and Tribunal to resolve the disputes and decide them in

accordance with law. All contentions in relation thereto and of both sides are kept open. No order as to costs.

(S.C.DHARMADHIKARI, J.)

(B.P.COLABAWALLA, J.)

MST