

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.264 of 2016
Arising out of
Civil Writ Jurisdiction Case No. 10609 of 2008
Along with
Interlocutory Application No.1012 of 2016**

- =====
1. The Life Insurance Corporation of India through its Chairman having its Head Office at 'Yogakshema', Jeevan Bima Marg, Mumbai.
 2. The Chairman, Life Insurance Corporation of India, 'Yogakshema', Jeevan Bima Marg, Mumbai.
 3. The Divisional Manager, Life Insurance Corporation of India, Divisional Office, Muzaffarpur.
 4. The Branch Manager, Life Insurance Corporation of India of Branch at Maharajganj, District Siwan.

....Respondent Nos. 1o to 4- Appellant/s

Versus

Renu Devi, wife of late Rama Shankar Rai, resident of village Madhopur, P.S. Rasulpur, District Siwan.

.... Petitioner-Respondent/s

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Appearance :

For the Appellant/s : Mr. Rajeev Ranjan Prasad, Advocate
Mr. Nilanjan Chatterjee, Advocate
Mr. Sudhanshu Trivedi, Advocate
Mr. Abhishek Singh, Advocate
Ms. Surbhi, Advocate

For the Respondent/s : None

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**CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
And
HONOURABLE MR. JUSTICE DINESH KUMAR SINGH**

**ORAL JUDGMENT
(Per: HONOURABLE THE ACTING CHIEF JUSTICE)**

Date: 19-12-2016

Re.: Interlocutory Application No.1012 of 2016

The application is for condonation of delay of 97 days in



filing of the present Letters Patent Appeal.

2. For the reasons mentioned in the application, we find that sufficient cause is made out for condonation of delay. Consequently, we condone the delay in filing of the present Letters Patent Appeal.

3. Interlocutory Application stands allowed accordingly.

Re.: Letters Patent Appeal No.264 of 2016

The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench of this Court on 20th March, 2015 whereby it was, *inter alia*, held that the writ petition challenging the repudiation of claim after death of the insured is maintainable. It was also held that the decision making process to repudiate the claim is on a basis of *non-est* and non-existing material to deny the assured amount to the writ applicant. It was also held that even assuming that the appellants had power and jurisdiction to examine the claims after the death of the insured, can the Insurance Company take such a unilateral decision even without complying the principles of natural justice? Relying upon the judgment of the Hon'ble Supreme Court reported as (1980) 4 SCC 379, (S. L. Kapoor v. Jagmohan), it was held that unless the law expressly or by necessary implication excludes the application of principles of natural justice, the Court will read the said requirements in the enactments that are silent in this respect. Even in cases of administrative action having civil consequences, the



opportunity of hearing is required to be given to the affected person. After returning such findings, the appellants were directed to pay a sum of Rs. 1 lac along with compound interest @ 9% per annum from the date of death of the husband of the writ applicant till its actual payment.

2. Learned counsel for the appellants raised two fold arguments in the present appeal. Firstly, that principles of natural justice cannot be made applicable prior to repudiation of claim as utmost good faith on behalf of the insured is the pre condition of the issuance of the insurance policy. If it is found that there is concealment of material facts, the Insurance Company is at liberty to repudiate the claim of the insured. Reliance is placed upon Section 45 of the Insurance Act, 1938 (hereinafter referred to as 'the Act'). The other argument is that the Court has erred in law in allowing compound interest @ 9% per annum. The learned Single Bench could not have issued such direction.

3. We have heard learned counsel for the appellants and find no error in respect of the first argument raised. Section 45 of the Act confers jurisdiction on an insurer, such as the appellants, to question a policy taken by the insured on the ground that the statement in the proposal for insurance or in any report of a medical officer, or referee, or friend of the insured, or in any other document was inaccurate or false, and that such statement was on a material matter or



suppressed facts which was bound to be disclosed by the policy holder.

4. In fact, the reading of Section 45 would show that the insurer is entitled to repudiate the claim within two years if the statement in the proposal or report of the medical officer, or a referee, or a friend was inaccurate or false. However, in the case of statement on the material matter or suppression of a fact which the insured was bound to disclose and was fraudulently made, the limit of period of two years is not applicable.

5. Thus, it is apparent that the Insurance Company can repudiate the claim because of information that leads to a finding that the insured has not either disclosed a material fact or suppressed a fact, which the insured was bound to disclose and/or was fraudulently made. If the insurer had any material or information, then it is incumbent upon the Insurance Company to confront such material or information or the reasons to repudiate claim, to the insured or his legal heirs and then take a decision as to whether the explanation of the insured or the dependent members is justified or not, else it is a *fait accompli* leaving no choice for the insured but to take recourse to Court of law for determination of sufficiency or inadequacy of facts in the first instance. The principles of natural justice in this situation would be, in fact, required to be complied with as the action of an instrumentality of the State in repudiating the claim of the insured is subject to judicial review.



6. The Supreme Court in judgment in Jagmohan (supra), was examining the requirement of the observance of the rules of natural justice, before an elected municipal body can be superseded. The Court held to the following effect:

“7. The old distinction between a judicial act and an administrative act has withered away and we have been liberated from the psittacine incantation of “administrative action”. Now, from the time of the decision of this Court in *State of Orissa v. Dr (Miss) Binapani Dei*, (1967) 2 SCR 625: AIR 1967 SC 1269 : (1967) 2 LLJ 266 “even an administrative order which involves civil consequences . . . must be made consistently with the rules of natural justice”. What are civil consequences? The question was posed and answered by this Court in *Mohinder Singh Gill v. Chief Election Commissioner, New Delhi*, (1978) 2 SCR 272, 308-309; (1978) 1 SCC 405, 440, 441, Krishna Iyer, J., speaking for the Constitution Bench said (at pp. 308-09): (SCC p. 440, para 66)

“But what is a civil consequence, let us ask ourselves, by passing verbal booby-traps? ‘Civil consequences’ undoubtedly cover infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation, everything that affects a citizen in his civil life inflicts a civil consequence.”

The learned Judge then proceeded to quote from Black’s Legal Dictionary and to consider the interest of a candidate at a parliamentary election. He finally said: (SCC p. 441, para 66)

“The appellant has a right to have the election conducted not according to humour or hubris but according to law and justice. And so natural justice cannot be stumped out on this score. In the region of public law locus standi and person aggrieved, right and interest have a broader import.”

9.....Narrow as were the considerations



applied by the Privy Council to determine whether the principle audi alteram partem applied or not, *Alfred Thangarajah Durayappah v. W.J. Fernando*, (1967) 2 AC 337, appears to us to furnish a complete answer to the submission of the learned Attorney-General that, as a matter of interpretation, Section 238 of the Punjab Municipal Act did not contemplate and did not require that an opportunity should be given to the Committee before an order of supersession was passed. We may notice here that the language of Section 238(1) of the Punjab Municipal Act is very nearly the same as the language of Section 277(1) of the Municipal Ordinance which was interpreted by the Privy Council in *Alfred Thangarajah Durayappah v. W.J. Fernando*, (1967) 2 AC 337. We have already referred to some of the relevant provisions of the Punjab Municipal Act to indicate some of the rights and duties of the committee under that Act. A committee so soon as it is constituted, at once, assumes a certain office and status, is endowed with certain rights and burdened with certain responsibilities, all of a nature commanding respectful regard from the public. To be stripped of the office and status, to be deprived of the rights, to be removed from the responsibilities, in an unceremonious way as to suffer in public esteem, is certainly to visit the committee with civil consequences. In our opinion the status and office and the rights and responsibilities to which we have referred and the expectation of the committee to serve its full term of office would certainly create sufficient interest in the municipal committee and their loss, if superseded, would entail civil consequences so as to justify an insistence upon the observance of the principles of natural justice before an order of supersession is passed.”

7. In another judgment reported as Sahara India (Firm) (1) v. CIT, (2008) 14 SCC 151, held that the principle of natural justice, evolved under the common law, is to check arbitrary exercise



of power by the State or its functionaries. Therefore, the principle implies a duty to act fairly i.e. fair play in action. The aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. They do not supplant the law but supplement it. The Court held as under:-

“15. Rules of “natural justice” are not embodied rules. The phrase “natural justice” is also not capable of a precise definition. The underlying principle of natural justice, evolved under the common law, is to check arbitrary exercise of power by the State or its functionaries. Therefore, the principle implies a duty to act fairly i.e. fair play in action. As observed by this Court in *A.K. Kraipak v. Union of India*, (1969) 2 SCC 262, the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. They do not supplant the law but supplement it. (Also see *ITO v. Madnani Engg. Works Ltd.* (1979) 2 SCC 455; 1979 SCC (Tax) 140.

16. In *Swadeshi Cotton Mills v. Union of India*, (1981) 1 SCC 664, R.S. Sarkaria, J., speaking for the majority in a three-Judge Bench, lucidly explained the meaning and scope of the concept of “natural justice”. Referring to several decisions, His Lordship observed thus: (SCC p. 666)

“Rules of natural justice are not embodied rules. Being means to an end and not an end in themselves, it is not possible to make an exhaustive catalogue of such rules. But there are two fundamental maxims of natural justice viz. (i) *audi alteram partem* and (ii) *nemo judex in re sua*. The *audi alteram partem* rule has many facets, two of them being (a) notice of the case to be met; and (b) opportunity to explain. This rule cannot be sacrificed at the altar of administrative convenience or celerity. The general principle—as



distinguished from an absolute rule of uniform application' seems to be that where a statute does not, in terms, exclude this rule of prior hearing but contemplates a post-decisional hearing amounting to a full review of the original order on merits, then such a statute would be construed as excluding the *audi alteram partem* rule at the pre-decisional stage. Conversely if the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature, and no full review or appeal on merits against that decision is provided, courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing, shorn of all its formal trappings and dilatory features at the pre-decisional stage, unless, viewed pragmatically, it would paralyse the administrative process or frustrate the need for utmost promptitude. In short, this rule of fair play must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands. The court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications. But, the core of it must, however, remain, namely, that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise."

18. Recently, in *Canara Bank v. V.K. Awasthy*, (2005) 6 SCC 321: 2005 SCC (L & S) 833, the concept, scope, history of development and significance of principles of natural justice have been discussed in extenso, with reference to earlier cases on the subject. Inter alia, observing that the principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order



affecting those rights, the Court said: (SCC pp. 331-32, para 14)

“14. Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the fact and circumstances of that case, the framework of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. The expression ‘civil consequences’ encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life.”

19. Thus, it is trite that unless a statutory provision either specifically or by necessary implication excludes the application of principles of natural justice, because in that event the court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences for the party affected. The principle will hold good irrespective of whether the power conferred on a statutory body or tribunal is administrative or quasi-judicial.”

8. In respect of the appellants itself, the Constitution Bench judgment reported as (1995) 5 SCC 482 (LIC v Consumer Education & Research Centre), held that in issuing a general life insurance policy of any type, public element is inherent in prescription



of terms and conditions therein. The Insurance Company owe a public duty to evolve their policies subject to such reasonable, just and fair terms and conditions accessible to all the segments of the society for insuring the lives of eligible persons. Though in the aforesaid case, the Hon'ble Supreme Court was seized of the matter when a directive was issued that the appellants will insure lives of the Government servant or to the employees of the instrumentalities of the State. The Court concluded as under:-

“53. We have, therefore, no hesitation to hold that in issuing a general life insurance policy of any type, public element is inherent in prescription of terms and conditions therein. The appellants or any person or authority in the field of insurance owe a public duty to evolve their policies subject to such reasonable, just and fair terms and conditions accessible to all the segments of the society for insuring the lives of eligible persons. The eligibility conditions must be conformable to the Preamble, Fundamental Rights and the Directive Principles of the Constitution. The term policy under Table 58 is declared to be accessible and beneficial to the large segments of the Indian society. The rates of premium must also be reasonable and accessible. Accordingly, we hold that the declaration given by the High Court is not vitiated by any manifest error of law warranting interference. It may be made clear that with a view to make the policy viable and easily available to the general public, it may be open to the appellants to revise the premium in the light of the law declared in this judgment but it must not be arbitrary, unjust, excessive and oppressive. Both the appeals are accordingly dismissed but in the circumstances parties are directed to bear their own costs.”

9. In another judgment reported as (2015) 8 SCC 519



(Dharampal Satyapal Limited v. Deputy Commissioner of Central Excise, Gauhati), the Hon'ble Supreme Court was examining the right to recover the amount paid by virtue of Section 154 of the Finance Act, 2003. The question examined was whether before passing such an order of recovery whether it was necessary to serve the show cause notice. The only difference from the facts of that case is it was recovery which was sought to be affected in the said case, whereas in the case of Life Insurance, the claim of money is sought to be repudiated. The Court held as under:-

“18. As a pure principle of law, we find substance and force in the aforesaid submission of Mr Sorabjee. No doubt, the Department was seeking to recover the amount paid by virtue of Section 154 of the 2003 Act which was enacted retrospectively and the constitutional validity of the said section had already been upheld by this Court in *R.C. Tobacco (P) Ltd. v Union of India*, (2005) 7 SCC 725 at the time of issuance of notice for recovery. Further, no doubt, the effect of the said amendment retrospectively was to take away the benefit which was granted earlier. However, the question is whether before passing such an order of recovery, whether it was necessary to comply with the requirement of show-cause notice? The appellant wanted to contend that Section 11-A of the Excise Act was applicable, which requires this procedure to be followed. Even if that provision is not applicable, it is fundamental that before taking any adverse action against a person, requirement of principles of natural justice is to be fulfilled. This Court in *CCE v. I.T.C. Ltd.*, (1995) 2 SCC 38, has held that show cause and personal hearing is necessary before saddling an assessee with additional demand. It is also trite that when a statute is silent, with no positive words in the Act or the Rules spelling out need to hear the party whose



rights or interests are likely to be affected, requirement to follow fair procedure before taking a decision must be read into the statute, unless the statute provides otherwise.

20. Natural justice is an expression of English Common Law. Natural justice is not a single theory—it is a family of views. In one sense administering justice itself is treated as natural virtue and, therefore, a part of natural justice. It is also called “*naturalist*” approach to the phrase “*natural justice*” and is related to “*moral naturalism*”. Moral naturalism captures the essence of commonsense morality—that good and evil, right and wrong, are the real features of the natural world that human reason can comprehend. In this sense, it may comprehend virtue ethics and virtue jurisprudence in relation to justice as all these are attributes of natural justice. We are not addressing ourselves with this connotation of natural justice here.

21. In Common Law, the concept and doctrine of natural justice, particularly which is made applicable in the decision-making by judicial and quasi-judicial bodies, has assumed a different connotation. It is developed with this fundamental in mind that those whose duty is to decide, must act judicially. They must deal with the question referred both without bias and they must give (*sic* an opportunity) to each of the parties to adequately present the case made. It is perceived that the practice of aforesaid attributes in mind only would lead to doing justice. Since these attributes are treated as natural or fundamental, it is known as “*natural justice*”. The principles of natural justice developed over a period of time and which is still in vogue and valid even today are: (i) rule against bias i.e. *nemo debet esse judex in propria sua causa*; and (ii) opportunity of being heard to the party concerned i.e. *audi alteram partem*. These are known as principles of natural justice. To these principles a third principle is added, which is of recent origin. It is the duty to give reasons in support of decision, namely, passing of a “*reasoned order*”.

22. Though the aforesaid principles of natural justice are known to have their origin in Common Law, even in India the



principle is prevalent from ancient times, which was even invoked in Kautilya's *Arthasastra*. This Court in *Mohinder Singh Gill v. Chief Election Commr.*, (1978) 1 SCC 405: AIR 1978 SC 851, explained the Indian origin of these principles in the following words: (SCC pp. 432-33, para 43)

“43. Indeed, natural justice is a pervasive facet of secular law where a spiritual touch enlivens legislation, administration and adjudication, to make fairness a creed of life. It has many colours and shades, many forms and shapes and, save where valid law excludes, it applies when people are affected by acts of authority. It is the hone* of healthy government, recognised from earliest times and not a mystic testament of Judge-made law. Indeed from the legendary days of Adam—and of Kautilya's *Arthasastra*—the rule of law has had this stamp of natural justice which makes it social justice. We need not go into these deeps for the present except to indicate that the roots of natural justice and its foliage are noble and not new-fangled. Today its application must be sustained by current legislation, case law or other extant principle, not the hoary chords of legend and history. Our jurisprudence has sanctioned its prevalence even like the Anglo-American system.”

23. Aristotle, before the era of Christ, spoke of such principles calling it as universal law. Justinian in the fifth and sixth centuries AD called it “*jura naturalia*” i.e. natural law.

24. The principles have a sound jurisprudential basis. Since the function of the judicial and quasi-judicial authorities is to secure justice with fairness, these principles provide a great humanising factor intended to invest law with fairness to secure justice and to prevent miscarriage of justice. The principles are extended even to those who have to take an administrative decision and who are not necessarily discharging judicial or quasi-judicial functions. They are a kind of code of fair administrative procedure. In this context, procedure is not a matter of secondary importance as it is only by procedural fairness shown in the decision-making that a decision becomes acceptable. In its proper sense, thus, natural justice would mean



the natural sense of what is right and wrong.

27. It, thus, cannot be denied that the principles of natural justice are grounded in procedural fairness which ensures taking of correct decisions and procedural fairness is fundamentally an instrumental good, in the sense that procedure should be designed to ensure accurate or appropriate outcomes. In fact, procedural fairness is valuable in both instrumental and non-instrumental terms.

28. It is on the aforesaid jurisprudential premise that the fundamental principles of natural justice, including *audi alteram partem*, have developed. It is for this reason that the courts have consistently insisted that such procedural fairness has to be adhered to before a decision is made and infraction thereof has led to the quashing of decisions taken. In many statutes, provisions are made ensuring that a notice is given to a person against whom an order is likely to be passed before a decision is made, but there may be instances where though an authority is vested with the powers to pass such orders, which affect the liberty or property of an individual but the statute may not contain a provision for prior hearing. But what is important to be noted is that the applicability of principles of natural justice is not dependent upon any statutory provision. The principle has to be mandatorily applied irrespective of the fact as to whether there is any such statutory provision or not.

35. From the aforesaid discussion, it becomes clear that the opportunity to provide hearing before making any decision was considered to be a basic requirement in the court proceeding. Later on, this principle was applied to other quasi-judicial authorities and other tribunals and ultimately it is now clearly laid down that even in the administrative actions, where the decision of the authority may result in civil consequences, a hearing before taking a decision is necessary.....”

10. In view of the aforesaid judgments, we have no



hesitation to reject the contention of the appellants that the Insurance Company is not bound to provide opportunity of hearing to the insured or to the legal heir before repudiating the claim on the policy of Insurance granted by the appellant. An opportunity of hearing communicating the reasons as to why the claim cannot be accepted, should be communicated to the insured or to the legal heir to provide fairness and transparency in the decision making process.

11. In respect of second argument, we find that awarding of compound interest in the absence of any agreement to the said effect is not sustainable. Reference may be made to another Constitution Bench Judgment in Central Bank of India vs. Ravindra, (2002) 1 SCC 367, wherein it has held to the following effect:-

“54. It is interesting to note that the same Bench which decided *D.S. Gowda case, (1994) 5 SCC 213*, also decided *State Bank of India v. Ganjam District Tractor Owners' Assn. (1994) 5 SCC 238*, and held that where the agreement between the bank and the borrower did not provide for payment of compound interest or interest with periodical rests, the bank could not have charged the same.

55.(1) Though interest can be capitalised on the analogy that the interest falling due on the accrued date and remaining unpaid, partakes the character of amount advanced on that date, yet penal interest, which is charged by way of penalty for non-payment, cannot be capitalised. Further interest i.e. interest on interest, whether simple, compound or penal, cannot be claimed on the amount of penal interest. Penal interest cannot be capitalised. It will be opposed to public policy.

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(3) The prevalence of banking practice legitimatises stipulations as to interest on periodical rests and their capitalisation being incorporated in contracts. Such stipulations incorporated in contracts voluntarily entered into and binding on the parties shall govern the substantive rights and obligations of the parties as to recovery and payment of interest.”

12. In view of the above, we find that grant of compound interest is not sustainable. One option at this stage is to issue notice to the writ applicant and to burden her with cost of litigation which probably would exceed the amount of interest she will get in terms of the order passed. Therefore, we modify the said condition and order that the writ applicant shall be entitled to 9% simple interest from the date of death of her husband till its actual payment.

13. With the aforesaid modification in the order of learned Single Judge, the appeal stands disposed of

(Hemant Gupta, ACJ)

(Dinesh Kumar Singh, J)

Sunil

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