IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.265 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 11589 of 2014

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Bhulan Ram, Son of Late Harangi Ram, Resident of Sunderpatti Siraha, P.S. - Pakridayal, District - East Champaran.

.... Appellant

Versus

1. The Insurance Ombudsman, North British Building, State Bank of India, 29 N.S. Road 4th Floor, Kolkata - 700001.
2. The Branch Manager, State Bank of India, Life Insurance Company Limited, Raza Bazar, East Champaran at Motihari.
3. The Regional Director, State Bank of India, Life Insurance Company Limited, Harshwardhan Complex, Frazer Road, Patna - 800001.
4. The Head Claims, State Bank of India, Life Insurance Company Limited, 'Natraj' M.V. Road and Western Express Highway Junction, Andheri (East), Mumbai - 7400069.
5. Baliram Sharma, Agent/Facilitator I.A. Code No. 12033890 State Bank of India, Life Insurance Company Limited, Motihari.

.... Respondents

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Appearance :

For the Appellant : Mr. Dilip Kumar Tondon, Advocate

For the S.B.I. Life : Mr. Bindhyachal Rai, Advocate

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)
Date: 28-04-2016

Heard learned counsel for the parties.

2. The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench of this Court on 14th of

July, 2014 in C.W.J.C. No. 11589 of 2014, whereby the claim of the appellant for payment of death claim on the life of the appellant's wife remained unsuccessful.

3. A proposal dated 14.12.2012 was received in the name of late Smt. Sukhiya Devi, wife of the appellant, with an initial premium deposit of Rs. 22,000/- for a basic sum assured of Rs. 3,92,000/-. Thereafter, the policy was issued. The date of commencement of the policy is 17.12.2012. The appellant submitted claim on 24th of February, 2014 with date of death of his wife being 28th of October, 2013.

4. The stand of the Insurance Company is that Sukhiya Devi died on 28th of October, 2012 even before the date of proposal and the date of commencement i.e. on 14.12.2012 and 17.12.2012 respectively. Therefore, the deceased was not insured on the date of death and thus, the sum assured was not payable.

5. The learned Single Bench dismissed the writ application holding that there is disputed question of fact as to whether the date of death of Smt. Sukhiya Devi is 28th of October, 2013 given by the appellant or 28th of October, 2012 as submitted by the Insurance Company and, thus, relegated the appellant to the alternative remedy.

6. Learned counsel for the S.B.I. Life Insurance Company Limited (hereinafter referred to as "the Insurance

Company") raised a preliminary objection that the writ application itself was not maintainable as the Insurance Company is not a State within the meaning of Article 12 of the Constitution of India. He refers to an order passed by the learned Single Bench on 19.12.2014 passed in C.W.J.C. No. 577 of 2011 wherein it was recorded as admitted fact that the Insurance Company is not a 'State' within the meaning of Article 12 of the Constitution of India.

7. Today, an affidavit has been filed on behalf of the respondents pointing out its equity share-holding pattern. As per the said pattern, the State Bank of India holds 74 per cent of the equity shareholding of the Bank, whereas BNP Paribas Cardif holds 26 per cent of its share capital. It is further pointed out that Central Government holds 62.3130 per cent of the issued equity shares in S.B.I. Therefore, the indirect holding of the Central Government in the Insurance Company is 46.11 per cent, which is less than 50 per cent. Hence, the Insurance Company is not a State.

8. In the counter affidavit, counsel for the respondents referred to a judgment of the Supreme Court reported as ***Federal Bank Ltd. Versus Sagar Thomas and others 2003(10) SCC 733*** to contend that Insurance Company does not fulfil any of the criteria which would make it as an instrumentality of the State nor the functions of the Company are in the nature of sovereign functions, therefore it is not a State. Reference is also made to the case reported

as ***Praga Tools Corporation Vs. Imanual (C.A.) and others, A.I.R. 1969 Supreme Court 1306*** and also to the judgment in ***Ajay Hasia and others Vs. Khalid Mujib Sehravardi and others (1981) 1 SCC 722*** along with other cases.

9. We find the stand of the respondents to be wholly misplaced and untenable. The State Bank of India holds 74 per cent of the equity share holding in the Respondent Insurance Company. The State Bank of India is a statutory entity incorporated under the State Bank of India Act 1955. The Central Government holds majority share holding of the State Bank of India. Thus, the Insurance Company is controlled by State Bank of India and Central Government has a deep and pervasive control over the Insurance Company and thus, it is a State. In ***Federal Bank Ltd. v. Sagar Thomas*** (supra)**,** the question examined was as to whether a Bank without any contribution of the State performs public function. The Court held:-

> "**18.** From the decisions referred to above, the position that emerges is that a writ petition under Article 226 of the Constitution of India may be maintainable against (*i*) the State (Government); (*ii*) an authority; (*iii*) a statutory body; (*iv*) an instrumentality or agency of the State; (*v*) a company which is financed and owned by the State; (*vi*) a private body run substantially on State funding; (*vii*) a private body discharging public duty or positive obligation of public nature; and (*viii*) a person or a body under liability to discharge any function under any statute, to compel it to perform such a statutory function.
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> **28.** The six factors which have been enumerated in the case of *Ajay*

Hasia (1981) 1 SCC 722 and approved in the later decisions in the case of *Ramana (1979) 3 SCC 489* and the seven-Judge Bench in the case of *Pradeep Kumar Biswas (2002) 5 SCC 111* may be applied to the facts of the present case and see whether those tests apply to the appellant Bank or not. As indicated earlier, share capital of the appellant Bank is not held at all by the Government nor is any financial assistance provided by the State, nothing to say which may meet almost the entire expenditure of the company. The third factor is also not answered since the appellant Bank does not enjoy any monopoly status nor can it be said to be an institution having State protection. So far as control over the affairs of the appellant Bank is concerned, they are managed by the Board of Directors elected by its shareholders. No governmental agency or officer is connected with the affairs of the appellant Bank nor is any one of them a member of the Board of Directors. In the normal functioning of the private banking company there is no participation or interference of the State or its authorities. The statutes have been framed regulating the financial and commercial activities so that fiscal equilibrium may be kept maintained and not get disturbed by the malfunctioning of such companies or institutions involved in the business of banking. These are regulatory measures for the purpose of maintaining a healthy economic atmosphere in the country. Such regulatory measures are provided for other companies also as well as industries manufacturing goods of importance. Otherwise these are purely private commercial activities. It deserves to be noted that it hardly makes any difference that such supervisory vigilance is kept by Reserve Bank of India under a statute or the Central Government. Even if it was with the Central Government in place of Reserve Bank of India it would not have made any difference, therefore, the argument based on the decision of *All India Bank Employees' Assn. AIR 1962 SC 171* does not advance the case of the respondent. It is only in case of malfunctioning of the company that occasion to exercise such powers arises to protect the interest of the depositors, shareholders or the company itself or to help the company to be out of the woods. In times of normal functioning such occasions do not arise except for routine inspections etc. with a view to see that things are moved smoothly in keeping with fiscal policies in general.

In another recent judgment reported as ***Balmer Lawrie &***

Company Limited and others v. Partha Sarathi Sen Roy and others, (2013) 8 SCC 345, after review of the previous judgments the Court held as under:-

> "**14.** A seven-Judge Bench of this Court in *Pradeep Kumar Biswas* v. *Indian Institute of Chemical Biology (2002) 5 SCC 111* held, that while examining such an issue, the court must bear in mind
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> > "whether in the light of the *cumulative facts* as established, the body is *financially, functionally and administratively* dominated by or is under the control of the Government. Such control must be *particular* to the body in question and must be *pervasive*". (SCC p. 134, para 40)
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> > (emphasis supplied)
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> If it is found to be so, then the body comes within the purview of "State" within the meaning of Article 12 of the Constitution. On the other hand, when the control exercised is merely regulatory, whether under a statute or otherwise, the same would not be adequate, to render the body a "State". The Court, while deciding the said issue placed reliance upon its earlier judgments in *Rajasthan SEB* v. *Mohan Lal AIR 1967 SC 1857* and *Sukhdev Singh* v. *Bhagatram Sardar Singh Raghuvanshi (1975) 1 SCC 421* wherein it was held that such a body must perform certain public or statutory duties, and that such duties must be carried out for the benefit of the public, and not for private profit. Furthermore, it was also laid down that such an authority is not precluded from making a profit for pubic benefit. The Court came to the conclusion, that although the employees of the Corporation may not be servants of either the Union, or of the State, at the same time, such a company/corporation must not represent the "voice and hands" of the Government. Therefore, this Court in *Pradeep Kumar Biswas (2002) 5 SCC 111*, held that financial support of the State, coupled with an *unusual degree of control* over the management and policies of a body, may lead to an inference that it is a "State". Additionally, other factors such as, whether the company/corporation performs important public functions, whether such public function(s) are closely related to governmental function, and whether such function(s) are carried out for the benefit of the public, etc. are also considered."

10. We find the objection raised by the respondent to be wholly untenable. The order of the learned Single Bench relied by the learned counsel for the Insurance Company has no application to the facts of the present case. But on the basis of the memo of appeal as per the affidavit filed, the State Bank of India holds 74 per cent of the equity capital of the Insurance Company and thus, it is a State within the meaning of Article 12 of the Constitution of India amenable to writ jurisdiction of this Court.

11. In view of the judgments referred to above, we find that the majority share capital of the Insurance Company is held by Statutory Company and in turn the majority share capital of the State Bank are held by the Government. Thus, the Insurance Company is financially under the control of the Government. Thus, it satisfies the test of the Insurance Company being a State amenable to the writ jurisdiction of this Court.

12. Coming to the merits of the case, the Insurance Company accepted premium on 14th of December, 2012 while insuring life of Sukhiya Devi. Does it mean that the Company issued policy against the dead person as its officers accepted premium from a dead person? Obviously, the stand is incorrect. The insurance policy on the life of a person is given after medical test of the insured and when the premium is submitted by the insured. The stand of the respondents that Sukhiya Devi died on 28th of October, 2012 is

nothing but a crude attempt to frustrate the claim of the insured. It does not stand to any reason that husband would take policy of the life of his dead wife.

13. In view thereof, we find that the dispute raised is not *bona fide* and in fact shows *mala fide* conduct of the respondent Insurance Company. Consequently, we allow the present Letters Patent Appeal, set aside the order passed by the learned Single Bench and direct the respondent Insurance Company to pay the assured amount along with interest at the rate of 12 per cent *per annum* within one month. For raising frivolous plea of death of the insured even before the policy was taken, the Insurance Company is made liable to pay cost which are assessed as Rs. 5,000/-. The cost and the assured amount shall be paid to the appellant within a period of one month.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

P.K.P./Anjani
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