

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

Writ Petition No.1338 of 2005

Between:

Mrs.Mary Anne Lamaire

.. Petitioner

AND

National Insurance Company Limited,
Sanathnagar Branch 17, Madhavi Nagar,
Near BHEL, R & D, Bowenpally,
Secunderabad & 3 others.

.. Respondents

Date of Judgment Pronounced: **19.07.2017**

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE A.V. SESA SAI

1. Whether Reporters of Local newspapers may be allowed to see the Judgments?
2. Whether the copies of judgment may be marked to Law Reports/Journals?
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?

JUSTICE A.V. SESA SAI

*** HON'BLE SRI JUSTICE A.V. SESA SAI****+WRIT PETITION No.1338 OF 2005**

% Dated 19-07-2017

Mrs.Mary Anne Lamaire.

....Petitioner

Vs.

\$ National Insurance Company Limited,
Sanathnagar Branch 17, Madhavi Nagar,
Near BHEL, R & D, Bowenpally,
Secunderabad & 3 others.

....Respondents

! Counsel for Petitioner : Sri C.Sreenivas.

^Counsel for respondent Nos.1 to 3 : Sri Kota Subba Rao

^Counsel for respondent No.4 : Sri N.V.Jagannath

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> HEAD NOTE:

? Cases referred

1. (2015) 7 SCC 728
2. (2004) 3 SCC 553
3. 1969 ACJ 419
4. 1985 ACJ 657
5. AIR 1976 SC 2216
6. 2003 (6) ALT 49 (D.B.)
7. 2000 (4) ALT 531
8. 1994 ACJ 211
9. 2008 (6) ALD HC 350
- 10.AIR 2000 SC 2573
11. 1989 AP 140

THE HON'BLE SRI JUSTICE A.V.SESHA SAI**WRIT PETITION No.1338 of 2005****ORDER:**

The order of the Ombudsman, confirming the letter of repudiation issued by the respondents-insurance company is under challenge in the present Writ Petition.

Briefly stated, the case of the petitioner is as under:
Petitioner is the wife of one late John Lamaire who had taken an accident policy valid for the period from 14.07.2001 to 13.07.2002 and when he was travelling as a pillion rider on a scooter driven by his friend, one Mr.Gunasekhar, he fell down from the scooter and due to head injury he lost his life on 20.12.2001. Thereafter, police, on the report of the sister of the deceased, registered F.I.R.No.143 of 2001 on 20.12.2001 under Section 174 Cr.P.C and finally filed a report. Thereafter when the petitioner claimed the insurance amount, the insurance authorities repudiated the same by way of letter dated 26.03.2004. Assailing the said repudiation, the petitioner approached the Ombudsman, who passed award dated 16.11.2004 and the same is the subject-matter of the present Writ Petition.

Heard C.Srinivas, learned counsel for the petitioner, and Sri Kota Subba Rao, learned Standing Counsel for the respondents-insurance company apart from perusing the material available before the Court.

Learned counsel for the petitioner contends that the order passed by the Ombudsman, confirming the action of the insurance authorities in repudiating the claim of the petitioner, is highly erroneous, contrary to law and opposed to the very spirit and object of the provisions of the Insurance Act (for brevity, 'the Act') and completely in utter disregard of the evidence available on record. It is further submitted that the Professor of the University, who conducted autopsy on the dead body of the husband of the petitioner, categorically stated in his letter that the death was due to the head injury and the finding of the Ombudsman in the impugned order is contrary to the said opinion; that the final report filed by the police in F.I.R.No.143 of 2001 dated 20.12.2001 clinchingly discloses that the death was due to head injury; that the Ombudsman ought not to have taken away by the complaint of the sister of the deceased based on a phone call from the driver of the vehicle by completely discarding the other evidence available; that the order of the Ombudsman is full of presumptions and surmises; that the judgments cited by the learned Standing Counsel for the

respondents-insurance company have no relevance to the present case as the petitioner is questioning the validity of the order passed by the Ombudsman which is a creature of a statute; that, as the facts are not in controversy and as the evidence on record is very much clear, the judgments cited by the learned Standing Counsel for the respondent-insurance company do not render any assistance to the petitioner.

Learned counsel for the petitioner, in support of his submissions and contentions, takes the support of the following judgments:

11.(2015) 7 SCC 728

12.(2004) 3 SCC 553

13.1969 ACJ 419

Per contra, it is strenuously contended by Sri Kota Subba Rao, learned Standing Counsel for the respondents-insurance company that there is no illegality nor there exists any infirmity in the impugned order passed by the Ombudsman and, in the absence of the same, the present Writ Petition is not maintainable and the petitioner is not entitled for any relief from this Court under Article 226 of the Constitution of India; that the finding of fact recorded by the respondents, as confirmed by the learned Ombudsman, cannot be disturbed under Article 226 of the Constitution of India in the absence of any perversity; that, since the Ombudsman considered the entire evidence on record,

no interference of this Court is warranted; that the present Writ Petition is not maintainable and the Civil Court is the proper forum as there are serious factual controversies; that the statement recorded at the spot shows that the husband of the petitioner died not because of the head injury; that, as per the policy conditions, the accident must be the sole cause of death and in the present case the petitioner's husband was suffering from other ailment i.e. epilepsy and the post-mortem report clearly reveals the same. In support of his submissions and contentions, the learned Standing Counsel for the respondents-insurance company placed reliance on the following judgments:

- 14.1985 ACJ 657
- 15.AIR 1976 SC 2216
- 16.2003 (6) ALT 49 (D.B.)
- 17.2000 (4) ALT 531
- 18.1994 ACJ 211
- 19.2008 (6) ALD HC 350
- 20.AIR 2000 SC 2573
- 21.1989 AP 140

In the above background now the issue that emerges for consideration of this Court is:

Whether the order of the Ombudsman, confirming the letter of repudiation issued by the respondents-insurance company is sustainable and tenable and whether the petitioner herein is entitled for any relief from this Court under Article 226 of the Constitution of India?

The institution of Ombudsman is a creature of statute. In exercise of the powers under Section 144 of the Act, the Central

Government framed the Redressal of Public Grievances Rules, 1998. Rule 14 of the said Rules obligates the Ombudsman to act legally and equitably. The Central Government, in its wisdom, incorporated the said Rule obviously keeping in view the intention of the legislature in enacting the Act.

The institution of the Ombudsman is required to function in accordance with the object and intention of the Act and the Rules framed thereunder. The issue in the present Writ Petition is whether the said institution acted in accordance with the object of the said legislature which is obviously intended for the welfare of the policy holders. There is absolutely no dispute on the aspect of taking policy by the husband of the petitioner and its validity as on the date of the accident and the death of the husband of the petitioner. It is also not in controversy that the husband of the petitioner died after he fell down from his friend's vehicle while travelling as a pillion rider. As per the final report filed by the police, under Section 173 Cr.P.C. in F.I.R.No.143 of 2001 dated 20.12.2001, the police categorically mentioned the cause of death as an accident. The police arrived at the said opinion obviously in the light of the letter of the Doctor (Professor) who conducted autopsy on the body of the deceased. In this context it may be relevant to refer to the said letter. When

the police asked for clarification on certain queries the Doctor opined as follows:

1. Whether the deceased died due to head injury or hypotrophy of the heart, Myocardial infaction heart?
Myocardial infaction heart?
A. Head injury only. However deceased suffering with Myocardial infection.
2. Whether the deceased received firstly head injury or Hypotrophy of the heart, Myocardial infaction heart?
A. Head injury first.
3. Whether the cause of death is natural or accidental?
A. Accidental.
4. What is the meaning of Hypotrophy of the heart, Myocardial infaction heart?
A. Refere Davidson Medicine Text Book.
5. Whether the head injury caused due to the falling on the road or caused in the road accident?
A. Falling on the road (investigate).

Though the Ombudsman referred to the post-mortem report, he failed to consider the opinion and the clarifications given by the Doctor, who conducted autopsy. The above said opinion of the Doctor alongwith the final report submitted by the police under Section 173 Cr.P.C. thoroughly missed the attention of the Ombudsman which obviously resulted in rejection of the claim. Much reliance also cannot be given to the statement of Mr.Reid who stated that the deceased, after falling from the vehicle, was moving like a person having epilepsy. The fact remains that he never stated that because of fits the deceased was moving in the said manner. The statement of the sister of the deceased pales into insignificance in view of the medical evidence available on record.

In this context it may be appropriate to refer to the judgment relied upon by the learned counsel for the petitioner.

In **JOSHI TECHNOLOGIES INTERNATIONAL INC. v. UNION OF INDIA AND OTHERS**¹. The Honourable Apex Court, while dealing with the maintainability of the Writ Petitions in contractual matters, at paragraphs 69 and 70, held as follows:

69. "The position thus summarized in the aforesaid principles has to be understood in the context of discussion that preceded which we have pointed out above. As per this, no doubt, there is no absolute bar to the maintainability of the writ petition even in contractual matters or where there are disputed questions of fact or even when monetary claim is raised. At the same time, discretion lies with the High Court which under certain circumstances, can refuse to exercise. It also follows that under the following circumstances, 'normally', the Court would not exercise such a discretion:

69.1 the Court may not examine the issue unless the action has some public law character attached to it.

69.2 Whenever a particular mode of settlement of dispute is provided in the contract, the High Court would refuse to exercise its discretion under Article 226 of the Constitution and relegate the party to the said mode of settlement, particularly when settlement of disputes is to be resorted to through the means of arbitration.

69.3 If there are very serious disputed questions of fact which are of complex nature and require oral evidence for their determination.

69.4 Money claims per se particularly arising out of contractual obligations are normally not to be entertained except in exceptional circumstances.

70. Further legal position which emerges from various judgments of this Court dealing with different situations/aspects relating to the contracts entered into by the State/public Authority with private parties, can be summarized as under:

¹ (2015) 7 SCC 728

(i) At the stage of entering into a contract, the State acts purely in its executive capacity and is bound by the obligations of fairness.

(ii) State in its executive capacity, even in the contractual field, is under obligation to act fairly and cannot practice some discriminations.

(iii) Even in cases where question is of choice or consideration of competing claims before entering into the field of contract, facts have to be investigated and found before the question of a violation of Article 14 could arise. If those facts are disputed and require assessment of evidence the correctness of which can only be tested satisfactorily by taking detailed evidence, Involving examination and cross-examination of witnesses, the case could not be conveniently or satisfactorily decided in proceedings under Article 226 of the Constitution. In such cases court can direct the aggrieved party to resort to alternate remedy of civil suit etc.

(iv) Writ jurisdiction of High Court under Article 226 was not intended to facilitate avoidance of obligation voluntarily incurred.

(v) Writ petition was not maintainable to avoid contractual obligation. Occurrence of commercial difficulty, inconvenience or hardship in performance of the conditions agreed to in the contract can provide no justification in not complying with the terms of contract which the parties had accepted with open eyes. It cannot ever be that a licensee can work out the license if he finds it profitable to do so; and he can challenge the conditions under which he agreed to take the license, if he finds it commercially inexpedient to conduct his business.

(vi) Ordinarily, where a breach of contract is complained of, the party complaining of such breach may sue for specific performance of the contract, if contract is capable of being specifically performed. Otherwise, the party may sue for damages.

(vii) Writ can be issued where there is executive action unsupported by law or even in respect of a corporation there is denial of equality before law or equal protection of law or if can be shown that action of the public authorities was without giving any hearing and violation of principles of natural justice after holding that action could not have been taken without observing principles of natural justice.

(viii) If the contract between private party and the State/instrumentality and/or agency of State is under the realm of a private law and there is no element of public law, the normal course for the aggrieved party, is to invoke the remedies provided under ordinary civil law rather than approaching the High Court under Article 226 of the Constitutional of India and invoking its extraordinary jurisdiction.

(ix) The distinction between public law and private law element in the contract with State is getting blurred. However, it has not been totally obliterated and where the matter falls purely in private field of contract. This Court has maintained the position that writ petition is not maintainable. Dichotomy between public law and private law, rights and remedies would depend on the factual matrix of each case and the distinction between public law remedies and private law, field cannot be demarcated with precision. In fact, each case has to be examined, on its facts whether the contractual relations between the parties bear insignia of public element. Once on the facts of a particular case it is found that nature of the activity or controversy involves public law element, then the matter can be examined by the High Court in writ petitions under Article 226 of the Constitution of India to see whether action of the State and/or instrumentality or agency of the State is fair, just and equitable or that relevant factors are taken into consideration and irrelevant factors have not gone into the decision making process or that the decision is not arbitrary.

(x) Mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirements of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness.

(xi) The scope of judicial review in respect of disputes falling within the domain of contractual obligations may be more limited and in doubtful cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes.

In **ABL INTERNATIONAL LTD. AND ANOTHER v. EXPORT
CREDIT GUARANTEE CORPORATION OF INDIA LTD. AND**

OTHERS², at paragraphs 8, 10, 23, 27 and 53, the Honourable

Supreme Court held as follows:

8. As could be seen from the arguments addressed in this appeal and as also from the divergent views of the two courts below one of the questions that falls for our consideration is whether a writ petition under Article 226 of the Constitution of India is maintainable to enforce a contractual obligation of the State or its instrumentality, by an aggrieved party.

10. It is clear from the above observations of this Court in the said case though a writ was not issued on the facts of that case, this Court has held that on a given set of facts if a State acts in an arbitrary manner even in a matter of contract, an aggrieved party can approach the court by way of writ under Article 226 of the Constitution and the court depending on facts of the said case is empowered to grant the relief. This judgment in K.N. Guruswamy Vs. The State of Mysore and others was followed subsequently by this Court in the case of The D.F.O, South Kheri & Ors. Vs. Ram Sanehi Singh [1971 (3) SCC 864] wherein this Court held: "By that order he has deprived the respondent of a valuable right. We are unable to hold that merely because the source of the right which the respondent claims was initially in a contract, for obtaining relief against any arbitrary and unlawful action on the part of a public authority he must resort to a suit and not to a petition by way of a writ. In view of the judgment of this Court in K.N. Guruswamy's case (supra), there can be no doubt that the petition was maintainable, even if the right to relief arose out of an alleged breach of contract, where the action challenged was of a public authority invested with statutory power."

23. It is clear from the above observations of this Court, once State or an instrumentality of State is a party to the contract, it has an obligation in law to act fairly, justly and reasonably which is the requirement of Article 14 of the Constitution of India. Therefore, if by the impugned repudiation of the claim of the appellants the first respondent as an instrumentality of the State has acted in contravention of the above said requirement of Article 14 then we have no hesitation that a writ court can issue suitable directions to set right the arbitrary actions of the first respondent. In this

² (2004) 3 SCC 553

context, we may note that though the first respondent is a company registered under the Companies Act, it is wholly owned by the Government of India. The total subscribed share capital of this company is 2,50,000 shares out of which 2,49,998 shares are held by the President of India while one each share is held by the Joint Secretary, Ministry of Commerce and Industry and Officer on Special Duty, Ministry of Commerce and Industry respectively. The objects enumerated in the Memorandum of Association of the first respondent at Para 10 read :

"To undertake such functions as may be entrusted to it by Government from time to time, including grant of credits and guarantees in foreign currency for the purpose of facilitating the import of raw materials and semi-finished goods for manufacture or processing goods for export."
Para 11 of the said object reads thus:

"To act as agent of the Government, or with the sanction of the Government on its own account, to give the guarantees, undertake such responsibilities and discharge such functions as are considered by the Government as necessary in national interest."

27. From the above discussion of ours, following legal principles emerge as to the maintainability of a writ petition :-

(a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.

(b) Merely because some disputed questions of facts arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.

(c) A writ petition involving a consequential relief of monetary claim is also maintainable.

53. From the above, it is clear that when an instrumentality of the State acts contrary to public good and public interest, unfairly, unjustly and unreasonably, in its contractual, constitutional or statutory obligations, it really acts contrary to the constitutional guarantee found in Article 14 of the Constitution. Thus if we apply the above principle of applicability of Article 14 to the facts of this case, then we notice that the first respondent being an instrumentality of State and a monopoly body had to be approached by the appellants by compulsion to

cover its export risk. The policy of insurance covering the risk of the appellants was issued by the first respondent after seeking all required information and after receiving huge sums of money as premium exceeding Rs.16 lacs. On facts we have found that the terms of the policy does not give room to any ambiguity as to the risk covered by the first respondent. We are also of the considered opinion that the liability of the first respondent under the policy arose when the default of the exporter occurred and thereafter when Kazakhstan Government failed to fulfil its guarantee. There is no allegation that the contracts in question were obtained either by fraud or by misrepresentation. In such factual situation, we are of the opinion, the facts of this case do not and should not inhibit the High Court or this Court from granting the relief sought for by the petitioner.

In **MACKINNON MACKENZIE & COMPANY PRIVATE LIMITED v. RITTA FARNANDES³**, at paragraphs 3 & 4, the Honourable Supreme Court held as follows:

3. Section 3 of the Workmen's Compensation Act, 1923 reads as follows:

"(1) If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter: Provided that the employer shall not be so liable- (a) in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding three days; (b) in respect of any injury, not resulting in death, caused by an accident which is directly attributable (i) the workman having been at the time thereof under the influence of drink or drugs, or (ii) the wilful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, or (iii) the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen.

It is well established that under this Section there must be some casual connection between the death

³ 1969 Law Suits (SC) 272 Eq. 1969 ACJ 419

of the workman and his employment. If the workman dies as a natural result of the disease from which he was suffering or while suffering from a particular disease, he dies of that disease as a result of wear and tear of his employment, no liability would be fixed upon the employer. But if the employment is a contributory cause or has accelerated the death, or if the death was due not only to the disease but the disease coupled with the employment then it could be said that the death arose out of the employment and the employer would be liable.

22. Even if a workman dies from a pre-existing disease, if the disease is aggravated or accelerated under the circumstances which can be said to be accidental, his death results from injury by accident. This was clearly laid down by the House of Lords in *Clover Clayton & Co. v. Hughes* where the deceased, whilst tightening a nut with a spanner, fell back on his hand and died. A post mortem examination showed that there was a large aneurism of the aorta, and that death was caused by a rupture of the aorta. The aneurism was in such an advanced condition that it might have burst while the man was asleep, and very slight exertion or strain would have been sufficient to bring about a rupture. The County Court Judge found that the death was caused by a strain arising out of the ordinary work of the deceased operating upon a condition of body which was such as to render the strain fatal, and held upon the authorities that this was an accident within the meaning of the Act. His decision was upheld both the Court of Appeal and the House of Lords.

“No doubt the ordinary accident, “ said Lord Loreburn, L.C.” is associated with something external: the bursting of a boiler or an explosion in a mine, for example. But it may be merely from the man’s own miscalculation, such as tripping and falling. Or it may be due both to internal and external conditions, as if a seaman were to faint in the rigging and tumble into the sea I think it may also be something going wrong within the human frame itself, such as straining of muscle or the breaking of a blood vessel. If that occurred when he was lifting a weight, it would properly be described as an accident. So, I think, rupturing an aneurism when tightening a nut with a spanner may be regarded as an accident”.

With regard to Lord Macnaghtens definition of an accident being “an unlooked for mishap or untoward event which is not expected or designed” it was said that an event was unexpected if it was not

expected by the man who suffered it, even though everyman of commonsense who knew the circumstances would think it certain to happen.

Coming to the judgments cited by the learned Standing Counsel for the respondents-insurance company- in **LIFE INSURANCE CORPORATION OF INDIA AND OTHERS +v. KIRAN SINHA**⁴ the Honourable Supreme Court, at paragraph 2, held as under:

“We have heard the learned Attorney-General and Mr.A.K.Sen, learned counsel for the respondent. The High Court could not have in the circumstances of this case directed the payment of the money claimed under the insurance policies in question in a petition filed under Article 226 of the Constitution. The only remedy available to the respondent in this case was a suit before a civil Court”.

In **KULCHHINDER SINGH AND OTHERS v. HARDAYAL SINGH BRAR AND OTHERS**⁵ the Honourable Supreme Court, at paragraph 12, held as under:

“The controversy before us in substance will turn on the construction and scope of the agreement when the claim to a quota as founded cannot be decided in writ jurisdiction without going back on well-settled guidelines and even subverting the normal processual law-except perhaps in extreme cases which shock the conscience of the Court or other extra-ordinary situation, an aspect we are not called upon to explore here. We are aware of the wide amplitude of Art. 226 and its potent use to correct manifest injustice but cannot agree that contractual obligations in the ordinary course, without even statutory complexion, can be enforced by this short, though, wrong cut.

⁴ 1985 ACJ 657

⁵ AIR 1976 SC 2216

In **RELIABLE POWER SYSTEMS PRIVATE LIMITED, MALLAPUR, HYDERABAD v. GOVERNMENT OF INDIA, SECRETARY TO GOVERNMENT, DEPARTMENT OF TELEMOMMUNICATIONS, SANCHAR BHAVAN, NEW DELHI AND OTHERS**⁶, a Division Bench of this Court, at paragraph 20, held as under:

“In our considered opinion, the public law remedy available under Article 226 of the Constitution of India cannot be availed to get enforced the contractual rights and obligations voluntarily entered by and between the parties. Public law remedies are not available to change, annul or for modification of the terms and conditions of a contract mutually agreed by and between the parties. Nor this Court in exercise of its jurisdiction under Article 226 of the Constitution of India can undertake to resolve the disputes arising out of concluded contract.

In **N.VENKATESWARLU @ VENKANNA v. REGIONAL MANAGER, UNITED INDIA INSURANCE CO.LTD., HYDERABAD AND OTHERS**⁷, this Court, at paragraph 9, held as under:

“There is no dispute with regard to the jurisdiction of the civil Court to settle the claim. A reading of the above decision of the Supreme Court in LIC of India's case (supra) clearly indicates that the civil Court's jurisdiction is not excluded, even if there is a clause prohibiting a particular forum and Section 46 of the Insurance Act, in clear and categorical terms with non-obstante clause confers a right to issue any relief in respect of the policy in the Court of competent jurisdiction in India. In the facts and circumstances of the case, to resolve the controversy in question and following the dictum laid down by the Apex Court in LIC of India's case (supra), I am of the view that the writ petition is not the adequate and proper Forum and the only remedy

⁶ 2003 (6) ALT 49 (DB)

⁷ 2000 (4) ALT 531

available to the petitioner is to approach the civil Court, if he is so advised, for settling the claim.

In **G.PONMANI v. LIFE INSURANCE CORPORATION OF INDIA AND ANOTHER⁸**, the High Court of Chennai, at paragraph 5, held as under:

“In view of the above position of law it has to be held that the proper remedy for the petitioner is to file a civil suit and this court cannot go into the merits of the matter and find out whether the repudiation of the claim of the petitioner by the respondents is correct or not. In these circumstances the petitioner is not entitled to any relief in the writ petition and it is liable to be dismissed. However, the dismissal of the writ petition will not be a bar to the institution of a suit before the proper court by the petitioner for the recovery of the amount due under the policy insured in the name of the husband of the petitioner. Further, the plea of limitation in instituting such suit cannot be put against the petitioner, as the petitioner had filed the present writ petition and had been prosecuting the matter before this court from 1984. The period during which the writ petition is pending before this court has to be excluded for the purpose of calculating the period of limitation for filing the suit before the civil court for the recovery of the amount on the basis of the policy of insurance.

In **CH.NARASIMHULU v. UNITED INDIA INSURANCE COMPANY, CUDDAPAH AND ANOTHER⁹**, this Court, at paragraphs 3 & 6, held as under:

3. If the rejection of insurance claim by the insurer can be justiciable issue in a writ petition, the other question would fall for consideration. However, having regard to the binding precedents referred to hereinafter this Court is of the considered opinion that a writ petition for claiming insurance amount, as it involves disputed questions of fact, would not lie.

⁸ 1994 ACJ 211

⁹ 2008 (6) ALD 350

6. From the above it is clear that to enforce the insurance contract i.e. policy, a writ petition would not lie. In view of this, this Court is not inclined to express any opinion as to whether the petitioner comes within clause (c) or clause (d) of policy. If so advised, the petitioner may institute a suit subject to law of limitation and claim insurance amount. The writ petition is misconceived and the same is accordingly dismissed. No costs.”

In **KERALA STATE ELECTRICITY BOARD AND ANOTHER**

v. KURIEN E.KALATHIL AND OTHERS¹⁰, the Honourable

Supreme Court, at paragraphs 9 to 12, held as under:

“On the other hand, it was contended for the contractor that the obligation of the Board arises as soon as the wages payable to the workmen get enhanced on account of Government notification revising minimum wages and it does not contemplate any investigation into the question whether enhanced payments were in fact made or not. The contention further is that under the Minimum Wages Act and under the industrial law, the authorities do oversee the payments and make sure that the workmen are not denied such benefits. It was further contended that the Board did not contend in the earlier writ petition before the High Court or even before the industrial tribunal that the payment as per the notification was not made by the contractor and, in fact, the award of the industrial tribunal which has become final records the factum of payment at the enhanced revised rate to the workmen and further that the memorandum between the union and the contractor witnessed by the Deputy Labour Officer also notices the factum of such payment. It was stressed that, in fact, the contractor had sought issue of Writ of Mandamus directing the Board to discharge its obligation under the notification issued under the Minimum Wages Act, the directions contained in the judgment dated 25th September, 1990 and the award dated 14th October, 1993 and to further issue a Writ of Mandamus to the Board directing it to pay to the petitioner the amount shown in the settlement between the contractor and the workmen through its union alongwith the interest.

¹⁰ AIR 2000 SC 2573

We find that there is a merit in the first contention of Mr. Rawal. Learned Counsel has rightly questioned the maintainability of the writ petition. The interpretation and implementation of a clause in a contract cannot be the subject matter of a writ petition. Whether the contract envisages actual payment or not is a question of construction of contract? If a term of a contract is violated, ordinarily the remedy is not the writ petition under Article 226. We are also unable to agree with the observations of the High Court that the contractor was seeking enforcement of a statutory contract. A contract would not become statutory simply because it is for construction of a public utility and it has been awarded by a statutory body. We are also unable to agree with the observation of the High Court that since the obligations imposed by the contract on the contracting parties come within the purview of the Contract Act, that would not make the contract statutory. Clearly, the High Court fell into an error in coming to the conclusion that the contract in question was statutory in nature.

A statute may expressly or impliedly confer power on a statutory body to enter into contracts in order to enable it to discharge its functions. Dispute arising out of the terms of such contracts or alleged breaches have to be settled by the ordinary principles of law of contract. The fact that one of the parties to the agreement is a statutory or public body will not of itself affect the principles to be applied. The disputes about the meaning of a covenant in a contract or its enforceability have to be determined according to the usual principles of the Contract Act. Every act of a statutory body need not necessarily involve an exercise of statutory power. Statutory bodies, like private parties, have power to contract or deal with property. Such activities may not raise any issue of public law. In the present case, it has not been shown how the contract is statutory. The contract between the parties is in the realm of private law. It is not a statutory contract. The disputes relating to interpretation of the terms and conditions of such a contract could not have been agitated in a petition under Article 226 of the Constitution of India. That is a matter for adjudication by a civil court or in arbitration if provided for in the contract. Whether any amount is due and if so, how much and refusal of the appellant to pay it is justified or not, are not the matters which could have been agitated and decided in a writ petition. The contractor should have been relegated to other remedies.

Ordinarily, in view of aforesaid conclusions on the first contention, we would have allowed the appeal

and directed dismissal of the writ petition (O.P.283 F 1995) without examining the second contention. However, despite holding that the disputes in question could not be agitated in a writ petition and thus the High Court wrongly assumed jurisdiction in the facts of the case, yet we are not inclined in the exercise of our power under Article 136 of the Constitution, to dismiss the writ petition of the contractor at this stage because that is likely to result in miscarriage of justice on account of lapse of time which may now result in the foreclosure of all other remedies which could otherwise be availed of by the contractor in the ordinary course. Those remedies are not efficacious at the present stage and, therefore, in view of peculiar circumstances of the case, we have examined the second contention and the factors which weighted with the High Court in granting relief”.

In **NATIONAL THERMAL POWER CORPORATION LIMITED v. M/S BHANU CONSTRUCTION COMPANY PRIVATE LIMITED, HYDERABAD AND OTHERS¹¹**, this Court, at paragraph 25, held as under:

“From the above decisions, it is clear beyond any doubt that merely because the Government, or an officer of the Government, or an agency or instrumentality of the State enters into a contract for execution of certain works with another person, it cannot be said to be acting in the public law field. Its rights and obligations are the same as those of any other person entering into a contract. The only limitation is that before entering into the contract, it must act consistent with the guarantee contained in Article 14; (vide E.E. & C. Ltd. v. State of West Bengal , and Ramana v. International Airport Authority of India). But once a contract is entered into, it is the terms of the contract that govern, and no question of Article 14, or arbitrary action, arises. The very concept of one party to the contract acting arbitrarily and thereby violating Article 14, is misplaced. The action may be wrongful; but it is not such an action as is amenable to writ jurisdiction on the ground that it is arbitrary. If a contract is terminated wrongfully, it cannot be questioned in a writ petition saying that the termination is arbitrary,

¹¹ AIR 1989 AP 140

or unreasonable. The concept of arbitrary or unreasonable action amenable to writ jurisdiction is relevant only where the State acts under a statute, or in exercise of its executive/administrative power. Taking any other view would not only be contrary to well established authority, but would also cast an uncalled for burden upon this Court. Not only this Court would be exercising its writ jurisdiction for determining the private rights of the parties arising from, or relating to a contract, but would also be obliged to enquire into disputed questions of fact, which it would not ordinarily undertake.

It is very much clear from the judgment of the Honourable Supreme Court in **JOSHI TECHNOLOGIES INTERNATIONAL INC.'s** case(first cited supra) that there is no absolute bar to the maintainability of the Writ Petition in contractual matters and the Supreme Court also held that the State, in its executive capacity, even in the contractual field, is under obligation to act fairly and cannot practice some discriminations.

In view of the law laid down in the judgments cited by the learned counsel for the petitioner, the judgments cited by the learned Standing Counsel for the respondents-insurance company would not render any assistance to the case of the respondents. There is also no factual controversy in the medical evidence. In the absence of the same, this Court does not find any merit in the contention of the learned counsel for the respondents as regards non-maintainability of the Writ Petition. In the circumstances, this Court has absolutely no shadow of doubt to hold that the order of the Ombudsman, confirming the

order of repudiation passed by the respondents-insurance company cannot stand for judicial scrutiny. In view of the evidence available on record, this Court does not find any justification on the part of the respondents in repudiating the claim of the petitioner.

For the aforesaid reasons, the Writ Petition is allowed setting aside the award No.I.O.(Hyd): G-81/2004-05 passed by the Ombudsman, Hyderabad dated 16.11.2004 in Complaint No.I.O.(Hyd)/G-11.003.0193 confirming the repudiation of the claim by the insurance company. The respondents-insurance company is directed to settle and pay the insurance claim vide Policy No.551801/42/01/8100047 within a period of three months from the date of receipt of a copy of this order with interest @ 6% p.a., from the date the same is due.

As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

19th July, 2017
Tsy

L.R. Copies to be marked.