IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :25.10.2018

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.4890 of 2013
M.P.No.2 of 2013

1. Janta Roadways Pvt. Ltd.,
Rep. by its Managing Director Mr.Rajinder Singh,
d-2, Thyagaraja complex, 853,
Poonamallee High Road,
Kilpauk, Chennai-10.

2. All India Inter State Lorry Owners Association,
Rep. by its President, Rajinder Singh,
New No.164, Old No.250,
First floor, Thambu Chetty Street,
Chennai-01. ...Petitioners

vs

1. The Union of India,
Rep. by its Secretary Ministry of Finance,
Bitta Bhavan, New Delhi -110 001.

2. Insurance Regulatory and Development Authority,
Rep. by its Chair Person, Parishram Bhavan,
3rd floor, Basheerbagh,
Hyderabad, Andhra pradesh.

3. Tariff Advisory Committee,
rep. by its Chairman, Ador House,
First floor, No.6-k, Dubash Marg,
Mumbai-400 023.

4. Royal Sundaram Alliance Insurance Company Ltd.,
Service through its Chairman at no.45 & 46,
Whites road, Chennai-14.

5. Bharti AXA General Insurance Company ltd.,
Service through its Chairman,
Metro Plaza, 2nd floor, No.162,
Anna salai, Chennai-600 002.

6. TATA AIG General Insurance Company Ltd.,
Service through its Chairman,
No.1, Commander-in-Chief Road,
(Ethiraj Salai), Egmore,
Chennai-8.

7. United India Insurance Company Ltd.,
Service through its Chairman,
No.24, Whites Road,
Chennai-600002.

8. Bajaj Allianz General Insurance Company Ltd.,
service through its Chairman,
No.25/26, Prince Tower, 4th floor,
College Road, Nungambakkam,
Chennai-6.

9. ICICI Lombard General Insurance Company Ltd.,
service through its Chairman,
ICICI Bank Towers, 6th floor,
East Wing, 93 Santhome High Road, Chennai-28.

10. The Oriental Insurance Company Ltd.,
service through its Chairman, No.8,
Esplanade, Chennai-600 008.

11. National Insurance Company Ltd.,
service through its Chairman,
No.751, Anna salai, Chennai-2.

12. The New India Assurance Company Ltd.,
service through its Chairman,
No.45, Moore Street, Chennai-1. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, Calling for the records relating to the impugned Notification No. IRDA/NL/NTFN/ MOTP/076/03/2012 dated 27.03.2012 passed by the 2nd respondent herein to quash the same as illegal and arbitrary and consequently direct the respondents herein not to collect additional premium from the petitioners.

For Petitioner : M/s.Joseph & Co.
For Respondents : Mr.M.B.Raghavan for R2

Mr.N.Vijaya Raghavan for R8 & R11

Mr.S.K.Krishnamurthy for R10

No appearance for R1, R4, R5, R7 & R12

Dismissed vide Court order dt. 01.09.2016 for R3, R6 & R9

O R D E R

The notification dated 27.03.2012 in respect of collection of increased premium is under challenge in this writ petition. The premium amount to be paid in respect of the third party insurance has been increased by way of notification issued in proceedings dated 27.03.2012.

2. The learned counsel appearing on behalf of the respondents brought to the notice of this Court that in respect of the earlier notification issued enhancing the premium amount was challenged before this Court and an elaborate order was passed on W.P.Nos.10908, 11844, 12262, 12267, 12332, 12388, 12626, 12632, 12633, 12634, 12656, 12657, 12658 of 2011, dated 14.06.2011. This Court passed an order as under, paragraph Nos.39 & 40 are extracted here under:

> "39.The scope of judicial review by courts in respect of premiums and coverage came to be considered by the Supreme Court in LIC of India v. Consumer Education & Research Centre reported in (1995) 5 SCC 482. In paragraphs 23,26,27 and 53 of the said judgment, the Supreme Court had observed as follows:
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> "23.Every action of the public authority or the person acting in public interest or any act that gives rise to public element, should be guided by public interest. It is the exercise of the public power or action hedged with public element (sic that) becomes open to challenge. If it is shown that the exercise of the power is arbitrary, unjust and unfair, it should be no answer for the State, its instrumentality, public authority or person whose acts have the insignia of public element to say that their actions are in the field of private law and they are free to prescribe any conditions or limitations in their actions as private citizens, simpliciter do in the field of private law. Its actions must be based on some rational and relevant principles. It must not be guided by irrational or irrelevant considerations. Every administrative decision must be hedged by reasons......
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> 26.This Court has rejected the contention of an instrumentality or the State that its action is in the private law field and would be immuned from satisfying the tests laid under Article 14. The dichotomy between public law and private law rights and remedies, though may not be obliterated by any strait-jacket formula, it would depend upon the factual matrix. The adjudication of the dispute arising out of a contract would, therefore, depend upon facts and circumstances in a given case. The distinction between public law remedy and private law field cannot be demarcated with

precision. Each case will be examined on its facts and circumstances to find out the nature of the activity, scope and nature of the controversy. The distinction between public law and private law remedy has now become too thin and practicably obliterated.

27.In the sphere of contractual relations the State, its instrumentality, public authorities or those whose acts bear insignia of public element, action to public duty or obligation are enjoined to act in a manner i.e. fair, just and equitable, after taking objectively all the relevant options into consideration and in a manner that is reasonable, relevant and germane to effectuate the purpose for public good and in general public interest and it must not take any irrelevant or irrational factors into consideration or appear arbitrary in its decision. Duty to act fairly is part of fair procedure envisaged under Articles 14 and 21. Every activity of the public authority or those under public duty or obligation must be informed by reason and guided by the public interest.

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...."

40.Even if the parameters shown by the Supreme Court are applied, the petitioners have not made out any case. The impugned order is based upon rational classification and subject to sound reasoning and evolved after public consultation with the stake holders. In view of the above, all the writ petitions will stand dismissed. The petitioners are given eight weeks time to pay the balance of the premium amounts to the respective insurers without fail. However, there will be no order as to costs. Consequently, connected miscellaneous petitions stand closed".

3. Challenging the said order an appeal was filed in Writ Appeal Nos.1103 & 1104 of 2011 and the Hon'ble Division Bench of this Court confirmed the order of the learned single Judge on 14.07.2011. Thus, the issues raised in the present writ petition was adjudicated and the claim for quashing of the notification was rejected. This being the factum of the case, the jurisdiction and the authority of the respondent for increasing the premium in respect of the third party insurance is approved by this Court.

4. Accordingly, the present writ petition is devoid of merits and stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
   Ministry of Finance,
   Union of India,
   Bitta Bhavan, New Delhi -110 001.

2. The Chair Person,
   Insurance Regulatory and Development Authority,
   Parishram Bhavan,
   3rd floor, Basheerbagh,
   Hyderabad, Andhra pradesh.

3. The Chairman,
   Tariff Advisory Committee,
   Ador House,
   First floor, No.6-k, Dubash Marg,
   Mumbai-400 023.

+1cc to Mr.K.Arul, Central Government Standing Counsel, sr.no.73335

+1cc to Mr.M.B.Raghavan, Advocate sr.no.74050

W.P.No.4890 of 2013
M.P.No.2 of 2013

ssd(co)
nr 26/11/2018