

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11083 of 2016

M/s Surendra Prasad Singh, through its Partner Surendra Prasad Singh, Son of Late Ram Sagar Singh Resident of Mohalla - Sarvodaya Nagar, Police station-Town, District-Begusarai.

... .. Petitioner

Versus

1. The Union Of India through Secretary Ministry of Rural Development (Pradhan Mantri Gram Sandak Yojana), Government of India, New Delhi.
2. The Chief Engineer, (EZ-II) Central Public Works Department, 6th Floor Pant Bhawan, Bailey Road, Patna.
3. The Executive Engineer, Pradhan Mantri Gram Sandak Yojana Project Division, Muzaffarpur at Patna Central Division-II, C.P.W.D., Pant Bhawan Bailey Road, Patna.
4. The Executive Engineer, Pradhan Mantri Gram Sandak Yojana Project Division, Darbhanga, C.P.W.D., 6th Floor Pant Bhawan, Bailey Road, Patna.
5. The Executive Engineer, Pradhan Mantri Gram Sandak Yojana Project Division, Samastipur, C.P.W.D., 6th Floor Pant Bhawan, Bailey Road, Patna.
6. The Chief Regional Manager, United India Insurance Company Ltd., 5th Floor Chanakya Complex, R-Block, Patna.
7. The Branch Manager, United India Insurance Company Ltd. Branch Office Begusara, Kapasiya Chowk, P.O – Barauni Refinery Township, District – Begusarai.

... .. Respondents

With

Civil Writ Jurisdiction Case No. 10667 of 2016

M/s Surendra Prasad Singh through its Partner Surendra Prasad Singh, Son of Late Ram Sagar Singh Resident of Mohalla - Sarvodaya Nagar, Police station-Town, District-Begusarai.

... .. Petitioner

Versus

1. The Union Of India through Secretary Ministry of Rural Development (Pradhan Mantri Gram Sandak Yojana), Government of India, New Delhi.
2. The Chief Engineer EZ-II Central Public Works Department, 6th Floor Pant Bhawan, Baily Road, Patna.
3. The Executive Engineer, Pradhan Manti Gram Sandak Yojana Project Division, Muzaffarpur at Patna Central Division-II, C.P.W.D., Pant Bhawan Bailey Road, Patna.
4. The Executive Engineer, Pradhan Manti Gram Sandak Yojana Project Division, Darbhanga, C.P.W.D., 6th Floor Pant Bhawan, Bailey Road, Patna.
5. The Executive Engineer, Pradhan Manti Gram Sandak Yojana Project Division, Samastipur C.P.W.D., 6th Floor Pant Bhawan, Bailey Road, Patna.
6. The Chief Regional Manager, United India Insurance Company Ltd. 5th



Floor Chanakya Complex, R- Block, Patna.

7. The Branch Manager, United India Insurance Company Ltd. Branch Office Begusarai, Kapasiya Chowk, P. O. Barauni Refinery Township, District – Begusarai.

... .. Respondents

Appearance :

For the Petitioner(s) : Mr.Aditya Narayan Singh, Advocate
For the Insurance Comp. : Mr.Durgesh Kumar Singh, Advocate

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT**

Date : 13-08-2019

Heard Sri Aditya Narayan Singh, learned counsel for the petitioner and Sri Durgesh Kumar Singh, learned counsel representing the Insurance Company in both the writ applications.

Since both the writ applications are raising a common question for consideration, as prayed by learned counsel for the parties, both are being heard and disposed of together by this common order.

The facts of the case are not much in dispute. The petitioner is a partnership firm carrying on the business of ‘contractors’. The petitioner had earlier moved this court in CWJC No. 17027/2008 when it’s claim raised for the alleged loss and damages caused to the road which were covered under the Insurance Policy were not being considered and despite submission of the surveyor’s report



on or about 19.11.2007, the Insurance Company had been delaying the settlement of the claim and payment thereunder. This court vide order dated 12.08.2009 directed the Insurance Company to consider the representation of the petitioner, settle the amount and make payment within three months to the petitioner. The Insurance Company then preferred a review application. The petitioner preferred a contempt petition and during pendency of the contempt petition the respondent Insurance Company took a decision on 18.03.2010 whereunder Insurance company reduced the assessment of loss to the tune of Rs. 115622/- in respect of the matter covered under CWJC No. 11083/2016. The Insurance Company sought to rely upon an another Surveyor report dated 23.10.2009 by the same Surveyor. The order dated 18.03.2010 of the Insurance Company was sought to be challenged in CWJC No. 6395/2010 which was dismissed by this court on 28.02.2012 but on a challenge made to the said order in LPA No. 455/2012, the respondent Insurance Company was directed to pay the assessed loss of Rs. 5400564/- within three months from the date of receipt/production of copy of the order. It is worth



mentioning here that in respect of the second case as well the claim was reduced to the extent of Rs. 17,75,684/- even as the Surveyor had in their preliminary report had found the loss at Rs. 1,27,60,183/-. The petitioner had filed CWJC No. 6065/2010 which was dismissed by learned Single Judge but in LPA No. 468/2012 which was tagged with LPA No. 455/2012 the petitioner succeeded. The challenge to the common order dated 19.05.2015 passed by the Hon'ble Division Bench of this court in LPA No. 455/2012 and LPA No. 468/2012 before the Hon'ble Supreme Court of India failed as the Special Leave to Appeal came to be dismissed on 11.12.2015. This was the first round of litigation between the parties.

The petitioner has further stated that when the Insurance Company was not making payment of the amount as per direction of the Hon'ble Division Bench the Contempt Application was preferred and it is only when the personal appearance of the Managing Director was called for the Insurance Company issued a cheque of Rs. 51,48,883/- in the first case and a cheque of Rs. 1,08,44,341/- in the second case after deducting Rs.



17,75,684/- which was earlier paid. Both the payments were made on 25.04.2016. The petitioner accepted those payments with objection because according to the petitioner the Insurance Company had deducted some amount without there being any reason for the same and had not paid any interest on the amount which were paid to the petitioner with a huge delay of over eight years.

The petitioner represented before the Insurance company for payment of the statutory interest. In this connection, the petitioner relied on the provisions of the Insurance Regulation and Development Authority (Protection of Policy Holders Interest) Regulation, 2002 (hereinafter referred to as the “Regulation of 2002”) whereunder for delayed payment of the insurance claim over and above the given period the Insurance Company is liable to pay interest @ 2% over and above the bank rate.

It is the case of the petitioner that as the Insurance Company was not paying the statutory interest. The petitioner moved this court in MJC No. 2399/2015 arising out of LPA No. 468/2012. The Hon’ble Division Bench of this court considered the said aspect of the matter and vide



it's judgment dated 03.08.2016 made certain observations whereunder the court recorded it's expectations that the Insurance Company shall pay the interest as contemplated by the regulations and indicated in the order, which, according to the Hon'ble Division Bench, was a statutory liability upon the petitioner and for meeting the said liability if order had to be passed by the court as it automatically followed the claim.

It is further stated that when the payment was not made by the Insurance Company pursuant to the judgment of the Hon'ble Division Bench in the contempt application arising out of LPA No. 468/2012, the petitioner had been compelled to file another contempt application being MJC No. 3095/2016. During pendency of this contempt application, the Insurance Company considered the claim towards payment of the insurance amount to the petitioner and finally decided to pay interest at the bank rate i.e. 6% + 2% in terms of the Regulations of 2002. It is this payment as per 'bank rate' which is the matter of dispute and discussion in the present writ applications.

Mr. Aditya Narayan Singh, learned counsel for the



petitioner in both the writ applications has submitted before this court that prior to coming into force of the (Protection of Policyholders' Interest) Regulations, 2017 (hereinafter referred to as the "Regulations of 2017") there was no clarity on the 'bank rate'. It is submitted that in "Regulations of 2017" in the definition clause Regulation 4 provides the definition of 'bank rate' which means "*Bank rate fixed by the Reserve Bank of India (RBI) at the beginning of the financial year in which claim has fallen due*". It is submitted that in the present case the Bank has derived the meaning of 'bank rate' from Section 49 of the Reserve Bank of India Act, 1934 (hereinafter referred to as the "Act of 1934") which would not be a correct approach on the part of the Insurance Company. So far as Section 49 of the Act of 1934 is concerned, it reads as under:-

"49. Publication of bank rate – the bank shall make public from time to time the standard rate at which it is prepared to buy or re-discount bills of exchange or other commercial paper eligible for purchase under this Act."

It is submitted that in absence of there being a definition clause provided in the definition of the word



‘bank rate’ under Regulation of 2002, the Insurance Company was required to apply the popularly understandable meaning of the word ‘bank rate’ which would necessarily mean that the rate applicable to a customer on his saving bank account be taken as ‘bank rate’ or fixed deposits or lending rate fixed by a bank for its customers be taken as ‘bank rate’. It is submitted that had the interest been rightly calculated taking the popular meaning of the word ‘bank rate’ in consideration, the petitioner would have been able to receive much more amount which would help him in liquidating the loss to the financial institutions which he had undertaken for carrying on the work in question.

On the other hand, Mr. Durgesh Kumar Singh, learned counsel for the Insurance Company has submitted that there is no question of any ambiguity in the meaning of the word “bank rate” because the word “bank rate” has been used only under the Act of 1934 and that may be found from Section 49 of the said Act.

It is submitted that what is being argued on behalf of the petitioner that the “bank rate” should be taken as it is



popularly understood is contrary to the statutory provisions, hence, such construction of the provision of the Act of 1934 would not only be contrary to the statutory intendment but also against the public policy. Learned counsel has submitted that the Insurance Company has rightly applied the 'bank rate' and has made the payment by taking into consideration the bank rate which was notified by the Reserve Bank of India at the relevant time, The Insurance Company has paid the amount 2% over and above the same to meet the requirement of Regulation of 2002.

Having heard learned counsel for the petitioner and learned counsel representing the Insurance Company, this court is of the considered opinion that the word 'bank rate' must derive it's meaning from Section 49 of the Act of 1934. The Regulation of 2002 talks of applicability of bank rate and had there been any intention on the part of the framers of Regulation of 2002 that the applicable rate should be that of a saving bank account, on the fixed deposit or it should be the lending rate of the bank fixed for their respected customers, they would have clearly spelt out their intention in the Regulation of 2002. It is also worth



taking note of that the different banks have over the period notified different rate of interest for their saving bank accounts, fixed deposits and even in respect of lending rates there are some differences. It depends upon the policy of the bank for that particular purpose and they are free to do acting under the Policy of the Banker of the banks. This strengthens the view of this court that the 'bank rate' is necessarily the rate which the Reserve Bank of India shall make public from time to time. It is the standard rate at which the Reserve Bank of India is prepared to buy or re-discount bills of exchange or other commercial paper eligible under the Act of 1934. Any attempt to give an interpretation so as to say that the 'bank rate' is popularly known as the rate applicable to the saving bank account or to the fixed deposit and/or to the lending rates notified by a bank for its customers would not only be incorrect understanding of the term 'bank rate' it would amount to reading the statutory provision contained in the Act of 1934 otherwise and *de hors* to its purpose and meaning.

Since the petitioner has already been paid the interest amount as per the bank rate + 2% over and above



the same and no other issue has been raised before this court this court finds no reason to issue a direction to the Insurance Company any further payment. At this stage learned counsel for the petitioner submits that the petitioner has not been made available the calculation chart showing the mode and manner in which the final interest amount has been calculated and paid to the petitioner. The court would only observe that it is open for the petitioner to approach the concerned branch of the Insurance company to make available the calculation chart of the interest payment to the petitioner and on such approach being made by the petitioner within 30 days from today, it is expected that the Branch Manager of the concerned Insurance Company shall make available the calculation chart showing the calculation of interest amount paid to the petitioner within another 30 days.

The writ applications is disposed of accordingly.

(Rajeev Ranjan Prasad, J)

Rajeev/-

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CAV DATE	
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