

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2019

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.NO.13016 OF 2014

M/s.Super Auto Forge Private Limited,
Rep. by its Managing Director Mr.S.Seetharaman,
Registered Office at
TS - 82/2, Mettu Street,
Ganapathy Nagar,
Ekkattuthangal,
Chennai - 600 032.

...Petitioner

Versus

1. The Chief Electrical Inspector to Government
of Tamil Nadu,
Thiru.Vi.Ka Industrial Estate,
Guindy,
Chennai - 600 032.

2. The Oriental Insurance Company Limited,
Rep. by the Senior Divisional Manager,
Divisional Office - I,
Oriental House 1st Floor,
No.216/115, Prakasam Salai,
Broadway,
Chennai - 600 108.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the second respondent to settle the claim of the petitioner in respect of Insurance claim under Policy No.411104/48/2009/77 for Break down of Wind Mill Energy Generator situated at S.F.No.109 of Shinjuvadi Village, Pollachi Taluk, Coimbatore District.

For Petitioners : Mr.S.S.Swaminathan

For Respondent - 1 : Mr.B.Anand,
Government Advocate

Respondent - 2 : Mr.Nageswaran

O R D E R

The above Writ Petition has been filed seeking for issuance of Writ of Mandamus to direct the second respondent to settle the claim of the petitioner in respect of Insurance claim under Policy No.411104/48/2009/77 for Break down of Windmill Energy Generator situated at S.F.No.109 of Shinjuvadi Village, Pollachi Taluk, Coimbatore District.

2.1. It is the case of the petitioner/company that they are carrying on business operation in Wind Energy Generation and entered into an agreement with the Tamil Nadu Electricity Board on 31.07.2004 for installation of 1 No. Windmill capacity of 750 KW for power generation at S.F.No.109 of Shinjuvadi Village, Pollachi Taluk, Coimbatore District. The petitioner/company purchased the Windmill Generator having capacity of 750 KW bearing Serial No.504600-04015. After the erection of the installations at the Wind Farm project at S.F.No.109 of Shinjuvadi village and inspection carried out by the Electrical Inspector, Coimbatore on 27.07.2004, the first respondent permitted approval for commission of Electrical Installations at S.F.No.109 of Shinjuvadi village, Pollachi Taluk, Coimbatore District by Letter No.UDL374/CEIG/D5/2004-2 dated 28.07.2004.

2.2. Thereafter, the Tamil Nadu Electricity Board gave H.T.Supply in respect of the installed 750 KW NEG MICON make Windmill energy Generator at S.F.No.109 of Shinjuvadi village and started Special Contingency Insurance Policy from the second respondent in respect of 2 No.750 KW NEG MICON Wind Mill at S.F.Nos.142 & 109 of Shinjuvadi Village covering risks of Fire and allied perils, Burglary, Mechanical and Electrical Breakdown, Earth Quake, Terrorism etc., under Policy No.411104/48/2009/77 for a period from 21.05.2008 to 20.05.2009. The subject Windmill was covered under policy from time to time since the date of erection in July 2004. The Generator broke down on 17.05.2009 and the failure report was prepared. The Joint Managing Director of the petitioner/company brought the same to the knowledge of the second respondent immediately through M/s.Bharat Re-Insurance Brokers Pvt. Limited a Strategic Insurance facilitator on 19.05.2004 and requested the second respondent to appoint a Surveyor for conducting inspection, for which, the second respondent communicated the details of the surveyor Mr.R.L.Asawa of M/s.Asawa & Company through e-mail.

2.3. The Surveyor made an initial survey on 18.07.2009 and requested the petitioner/company to submit certain documents, informations, details etc., as listed out by letter dated 28.10.2009, and the petitioner/company had also submitted the claim form and all supporting documents and details etc., to the Surveyor through Insurance facilitator M/s.Bharat Re-Insurance

Brokers Pvt., Limited by letter dated 10.02.2010. But the Surveyor, without referring the said letter, again requested the petitioner/company to produce certain documents by letter dated 22.07.2011, and so, the petitioner/company had once again submitted all the documents and details along with the letter dated 29.09.2011 to the Surveyor. Then, the Surveyor by Letter dated 18.06.2012, requested the petitioner/company to clarify certain things regarding location of the Windmill, Insurance coverage and two invoices for labour charges and crane charges and on 08.02.2013, the aforesaid Insurance Facilitator, by e-mail, enclosed the letter dated 18.06.2012, sent by the Surveyor and requested the petitioner/company to send the details for the queries raised by the Surveyor, for which the petitioner/company had forwarded necessary documents to the Insurance Facilitator and also furnished the same to the Surveyor. Pursuant to this, the said Insurance Facilitator on 26.02.2013, through e-mail, requested the petitioner/company to send the details regarding the anomaly in the two copies of the invoices pertaining to labour and crane charges and also regarding other bills/invoices and the petitioner/company had also explained those details to the Insurance Facilitator in the personal discussion at Corporate Office of the petitioner/company.

2.4. The second respondent is bound by the Insurance Regulatory and Development Authority (Protection of Policy Holders' Interests) Regulations, 2002. As per the Regulation 9 of the aforesaid Regulations, the second respondent shall appoint a Surveyor within 72 hours of receipt of the intimation from the insured i.e., the petitioner herein. It is mandatory as per Regulation 9(5) of Insurance Regulatory and Development Authority (Protection of Policy Holders' Interests) Regulations, 2002 that within 30 days from the receipt of the survey report, the Insurer shall either offer settlement of the claim or communicate the decision to reject the claim to the insured. But the second respondent has neither offered any settlement of claim nor communicated any rejection of the claim made by the petitioner till date. Therefore, the petitioner has filed the present Writ Petition for the relief stated supra.

3.1. Per contra, the learned counsel for the respondent fairly submitted that in the counter affidavit filed by the second respondent, it is stated that there was no co-operation by the petitioner with the Surveyor, as the petitioner did not furnish the necessary documents and details which were called for by the Surveyor, which is the reason for the delay in issuance of the report. He also submitted that when the Surveyor and the second respondent had called upon the petitioner/company to give clarification for the queries, there was no answer from the petitioner/company and therefore, the claim was not considered for settlement by the second

respondent. He would further submit that based on the note submitted, the second respondent closed the claim of the petitioner as "No Claim". He further submitted that Writ Petition is not maintainable before this Court.

4. In reply, the learned counsel appearing for the petitioner/company submitted that the respondents have chosen to refute the petitioner's allegation and the claim was stated to be closed only before this Court, but the petitioner has not received any compensation from the respondents. He further argued that though the case has been periodically adjourned, no material has been placed before this Court and even now, only the petitioner submitted the said closure report before this Court. The learned counsel also argued that the claim of the petitioner has lapsed for more than fifteen years and therefore, the respondents are liable to compensate the delay in communicating the decision to the petitioner.

5.1. Considering the rival submissions of the parties, it is seen that on 19.05.2004, the petitioner made a claim before the second respondent/Insurance Company requesting to appoint a Surveyor for conducting inspection regarding the breakdown of Windmill Energy Generator, pursuant to which, the second respondent sent the details of the Surveyor to the petitioner and the Surveyor has also conducted an initial survey on 18.07.2009. Thereafter, the Surveyor requested the petitioner to furnish the details and particulars of the documents and the same were also submitted by the petitioner. But without referring the same, the Surveyor once again requested the petitioner to furnish all the documents and details, and so once again, the petitioner had submitted all the documents and details to the Surveyor by letter dated 29.09.2011. By letter dated 18.06.2012, the Surveyor requested the petitioner to clarify certain facts regarding location of the Windmill, Insurance coverage and two invoices for labour charges and crane charges for which, the petitioner's Insurance Facilitator had sent an e-mail on 18.06.2012 to the petitioner/company requesting to send the details for the queries raised by the Surveyor.

5.2. The petitioner's allegation is that even after receipt of the documents and details, no further decision was taken by the second respondent. Hence, the petitioner has filed the present petition. On the other hand, the second respondent/Insurance Company herein had filed the counter affidavit stating that the petitioner had not co-operated with the Surveyor while conducting survey, and as the petitioner company did not furnish the necessary documents and details which were called for by the Surveyor, the second respondent/Insurance Company has not considered the claim of the petitioner and closed the same as No

Claim.

5.3. As on today, no material has been placed before this Court communicating the said findings of the second respondent. Recording the statements made by the second respondent in the counter affidavit, this Court is not inclined to grant the relief sought for by the petitioner herein. However, the petitioner is granted liberty to seek his remedy before an appropriate forum, since the prayer sought for by the petitioner in this Writ Petition cannot be entertained by this Court under Article 226 of the Constitution of India. On the other hand, being a Public Sector Undertaking, the second respondent/ Insurance Company has responsibility to communicate its decision to the petitioner, but the second respondent/Insurance Company failed to do so. Therefore, considering the delay on the part of the second respondent in communicating the decision to the petitioner, the second respondent/Insurance Company is directed to pay a sum of Rs.10,000/- (Rupees Ten Thousand only) as compensation to the petitioner within a period of four weeks from the date of receipt of a copy of this order.

6. In the result, this Writ Petition is dismissed with costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mrr

To

1. The Chief Electrical Inspector to Government of Tamil Nadu, Thiru.Vi.Ka Industrial Estate, Guindy, Chennai - 600 032.
2. The Oriental Insurance Company Limited, Rep. by the Senior Divisional Manager, Divisional Office - I, Oriental House 1st Floor, No.216/115, Prakasam Salai, Broadway, Chennai - 600 108.

+1cc to Mr.Nageswaran, Advocate, S.R.No.35275

+1cc to the Government Pleader, S.R.No.35758

W.P.No.13016 of 2014

LN(CO)

CS/08/07/2019