

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 30.08.2019	PRONOUNCED ON: 01.06.2020
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CORAM

THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 10230 of 2019

A. Venkatesan

... Petitioner

-vs-

1. The State Information Commissioner,
Tamil Nadu Information Commission,
No. 2, Sir Thiagarayar Road,
Eldams Road Junction,
Theynampet,
Chennai - 600 018.
2. The Superintendent of Police/1st Appellate Authority,
Tiruppur District.
3. The Public Information Officer/Additional Superintendent of
Police,
Police Head Office,
Tiruppur District.
4. The Deputy Superintendent of Police,
Udumalpet Sub-Division,
Tiruppur District.
5. The Inspector of Police,
Thali Police Station,
Tiruppur District.
6. The Branch Manager,
New India Assurance Company Ltd.,
Amman Complex,
Erode - 11.

... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the Second Respondent vide his office Proceedings No. Na. Ka. No. 02-AP/Tha.A.U.Sa/Me.Mu.A.thi/18

dated 15.03.2019 by enclosing letter of the Third Respondent vide his office Proceedings No. C. No. 02/RTI/SDO-Udt/2019 dated 11.03.2019 who in turn enclosing the letter of the Fifth Respondent vide his office proceedings No. C. No. 18/RTI/UDT PS/19 dated 10.03.2019 rejecting the appeal filed by the Petitioner dated 19.02.2019 and confirming the impugned order passed by the Third Respondent vide his office Proceedings No. Na. Ka. No. 71-19 Tha.A.U.Sa/Po.Tha.A.Thi.Ma/19 dated 13.02.2019 and quash the same and consequently direct the Second to Fifth Respondents to furnish the documents as per the application of the Petitioner dated 28.01.2019 to the Petitioner within the time fixed by this Court.

For Petitioner: Mr. I.C. Vasudevan

For Respondents: Mr. Niranjan Rajagopalan (for R1)

Mr. R. Venkatesh,
Government Advocate (for R2 to R5)

Mr. K.Thirunavukkarasu (for R6)

O R D E R

Heard Mr. I.C.Vasudevan, Learned Counsel appearing for the Petitioner, Mr. Niranjan Rajagopal Learned Standing Counsel appearing for the First Respondent, Mr. R.Venkatesh, Learned Government Advocate appearing for the Second to Fifth Respondents and Mr. K.Thirunavukkarasu, Learned Counsel appearing for the Sixth Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Sixth Respondent, viz., New India Assurance Co., Ltd., had received notice in a proceeding before the Motor Accidents Claims Tribunal claiming compensation for the victim in an accident involving the vehicle bearing Registration No. TN-07-A5 6214 said to have been insured with it. The services of the Petitioner was engaged as 'investigator' by the Sixth Respondent to collect copies of the documents relating that accident and the vehicle involved from the concerned persons including the police authorities. The erstwhile practice followed had been that such investigators engaged by the insurers would collect copies of the required documents from the concerned persons and police authorities and submit their investigation report for enabling the insurers to effectively conduct the proceedings before the Motor Accident Claims Tribunal. However, after the advent of the Detailed Accident Report (DAR) regime from 01.03.2017 onwards in the State of Tamil Nadu, as approved by this Court in Cholamandalam MS General Insurance Co., Ltd., -vs- Inspector of Police, Cuddalore (Order dated 12.09.2017 in

CrI.O.P. No. 18110 of 2016), following the directions issued by the Hon'ble Supreme Court of India in *Jai Prakash -vs- National Insurance Co., Ltd.*, (Order dated 13.05.2016 in S.L.P. (Civil) No. 11801-11804 of 2005), the practice of furnishing manual copies of the documents by the Police Authorities has been dispensed with, as the stake-holders can download copies of those documents from the Crime and Criminal Tracking Network System (CCTNS) portal of the Police Department in the internet. According to the Petitioner, most of the documents required by the Sixth Respondent had not been hosted in the CCTNS portal of the Police Department in the internet, which necessitated the Petitioner to make application dated 28.01.2019 to the police authorities, who are the Second to Fifth Respondents in this Writ Petition, under the provisions of the Right to Information Act, 2005, for furnishing manual copies of the required documents, but that request has been declined. Claiming to be aggrieved thereby, the Petitioner has filed this Writ Petition challenging those orders of refusal and has sought for consequential direction to the police authorities to furnish copies of those documents.

3. The Fifth Respondent has filed counter-affidavit dated 26.07.2019 stating that all documents sought relating to the accident and vehicle in question have been uploaded on 05.12.2018 in the CCTNS portal of the Police Department in the internet, which could be downloaded by the Sixth Respondent on payment of prescribed fees.

4. During the course of hearing, it is highlighted by the Learned Counsel for the Petitioner that though the police authorities now claim to have made available the required documents in their website in the internet in the present case, the undeniable reality is that in respect of most of the accidents, documents are leisurely uploaded on piece-meal basis in the respective police stations as a result of which the insurers are not able to provide timely instructions to their Advocates to prepare Counters so as to effectively conduct the cases before the Motor Accident Claims Tribunals where it is found difficult to seek extension of time to file the same beyond the stipulated period. It is further explained that on account of reduction of staff strength to curtail operational costs coupled with time constraints, there has been severe dearth of manpower for the insurers to even download the required documents and in that piquant situation, the engagement of investigators, like the Petitioner, for the purpose of collecting manual copies of the required documents from the concerned police stations continues to be inevitable and no exception could be taken to the same, especially when such practice is still prevalent in the neighbouring States of Kerala and Karnataka. In this scenario, it is implored that when there

is no facilitating option for the investigators, like the Petitioner, to download the required documents from the CCTNS portal of the Police Department in the internet, their availing of the machinery endowed under the beneficent provisions of the Right to Information Act, 2005, for that purpose cannot be denied, much less faulted, by the police authorities.

5. On careful consideration of the aforesaid rival contentions of the parties, which has bearing on the rights and obligations of investigators, insurers and police officers, it would be appropriate to determine the following substantial questions of law of contemporary importance:-

- (i) Whether the provisions of the Right to Information Act, 2005, could be invoked for obtaining documents from police authorities in connection with defending a claim for compensation before the Motor Accidents Claims Tribunal constituted under the Motor Vehicles Act, 1988?
- (ii) Whether an 'investigator' appointed by an insurer is empowered to correspond with public authorities and/or prosecute litigation relating to furnishing of documents in connection with an accident involving a vehicle said to be insured with that insurer?
- (iii) What is the legal remedy available to an insurer when documents required from police authorities in connection with an accident involving a vehicle said to be insured with it have not been furnished?

6. At the outset, it must also be recapitulated here that the liability of an insurer to meet a claim for compensation made by a third party arising out of an accident caused by use of a motor vehicle insured with it emanates from the Motor Vehicles Act, 1988, which law has also created the exclusive forum of Motor Accidents Claims Tribunal to adjudicate the same. In that statute, Chapter XI containing Sections 145 to 164 relates to 'Insurance of Motor Vehicles against Third Party Risks' and Chapter XII containing Sections 165 to 176 relates to 'Claims Tribunal'. It could be inferred from Sections 158(6) and 160 of that enactment read with Rule 150 of the Central Motor Vehicles Rules, 1989, that there is an entitlement, as of right, conferred on the insurer to be furnished with particulars required of the vehicle said to have been insured with it and of the accident in which it is reported to be involved, by the concerned police authorities, and that would necessarily also mean supplying copies of relevant documents in proof thereof. The Hon'ble Supreme Court of India in General Insurance Council -vs- State of Andhra Pradesh [(2007) 12 SCC 354] and the Division Bench of this Court in United India Insurance Co., Ltd., -vs- R.Venkatesan (2003-1-L.W. 31) have reiterated that the statutory obligations on the police authorities in terms of the said provisions is mandatory and has to be forthwith

complied on occurrence of accident involving the motor vehicle without brooking any delay. This Court in Cholamandalam MS General Insurance Co., Ltd., -vs- Inspector of Police, Cuddalore (Order dated 12.09.2017 in Crl.O.P. No. 18110 of 2016) has declared that that the hosting of the required documents in the CCTNS portal of the Police Department in the internet is the online version of carrying out that statutory obligation by the police authorities in the State of Tamil Nadu and it is precisely for that reason, the requirement of furnishing manual copies of those documents to the Motor Accidents Claims Tribunals and insurers has been done away, upon having meticulously verified that access to that facility has been made available to them, and that aspect has also been expressly recorded in that decision. In other words, it follows that there is definitely a functional system in place as on date in the digitalized mode for the police authorities to discharge their obligations to the insurers in terms of Sections 158(6) and 160 of the Motor Vehicles Act, 1988.

7. Having arrived at that conclusion, the query arises as to whether despite the availability of the aforesaid mechanism, is it not also permissible in law to obtain the required documents from the police authorities by invoking the provisions of the Right to Information Act, 2005. It would suffice for this purpose to refer to the binding ruling of the Hon'ble Supreme Court of India in Chief Information Commissioner -vs- High Court of Gujarat (Order dated 04.03.2020 in Civil Appeal Nos. 1966-1967 of 2020). It has been held therein that when a particular statute provides for access to information by prescribing a procedure in that regard, the provisions of the Right to Information Act, 2005, shall not be invoked for the same purpose and that the overriding effect in Section 31 of the Right to Information Act, 2005, cannot have any application in the absence of inherent inconsistency between that enactment and the other law. Another facet of the matter, which has relevance to the dispute involved in this case, as pointed out in that decision, is that Section 8(1)(j) of the Right to Information Act, 2005, excludes disclosure of personal information which (i) has no relationship to any public interest or activity; or (ii) would cause unwarranted invasion of the privacy of the individual. It is beyond cavil that the documents required by the insurer from the police authorities regarding the accident and the vehicle involved undoubtedly pertain to personal information either of the victim or the vehicle owner which would fall under that exception. It may also be remembered here that a Nine Judge Bench of the Hon'ble Supreme Court of India in K.S.Puttaswamy -vs- Union of India [(2017) 10 SCC 1] has in no unmistakable terms recognized that the right to privacy is protected as an intrinsic part of the right to life and personal

liberty under Article 21 and as a part of the freedoms guaranteed by Part III of the Constitution. Viewed from that perspective, it must be held that when the right has been created for the insurer to obtain the required documents from the police authorities in a certain way under the Motor Vehicles Act, 1988, such right must be exercised only in that way and that other modes (including invocation of the provisions of the Right to Information Act, 2005) for seeking that relief, stand necessarily forbidden.

8. The focus next turns to the locus standi of an investigator, like the Petitioner in this case, to correspond with police authorities and prosecute litigation relating to the documents required by the insurer. It is axiomatic that the relationship between an insurer and an investigator appointed by that insurer to collect documents and make enquiries regarding the accident involving the vehicle said to have been insured with that insurer, is simply that of principal and agent. It is an elementary principle of law that an agent, in his own personal capacity, cannot enforce the rights of his principal as against third persons and at best, he can act or represent on behalf of his principal for that purpose depending upon the extent of his authority in that regard, but that would not, by any stretch of imagination, entitle the agent to act independent of his disclosed principal. It cannot be forgotten here that the insurer collects funds from the public as vehicle owners in the form of insurance premia for meeting the claims for compensation arising out of motor accidents in pursuance of the requirement imposed by law. As a corollary, the role of the insurer in defending third party claims arising out of motor accidents is that of a trustee of public funds and as such, it is one of the essential duties required to be performed by the hierarchy of officials in the organizational structure of the insurer, which responsibility ought not to be abdicated by ingenious methods of outsourcing those functions to freelancers appointed as investigators under the ruse of lack of manpower. It is, no doubt, true that in the absence of any prohibition, the hiring of services of individuals on contract basis for carrying out specific tasks of a business entity due to exigencies would be permissible for supplementing the performance of work, but that arrangement cannot lead to absurd consequences of supplanting the essential functions of the insurer itself. It is probably in that factual backdrop, the right of access to the CCTNS portal has been thoughtfully restricted only to stakeholders (which undoubtedly includes the insurer) on payment of prescribed fee, and it cannot be carped that there is no provision for other intermeddlers, who are in no way connected with it, for using that facility, as it is likely to otherwise cause invasion of the privacy of the victims and the vehicle owners by misuse of their personal information. That being so, it is really

inconceivable as to how the Petitioner in this case could independently assert rights against the police authorities to produce documents required by the Sixth Respondent and further prosecute this Writ Petition in his personal capacity for such object.

9. Be that as it may, for the sake of rendering substantive justice, the legal remedy available to an insurer when documents required from police authorities in connection with an accident involving a vehicle said to be insured with it have not been furnished, may be examined. The complaint that documents are not uploaded on time and there been inordinate delay in hosting them in the CCTNS portal of the Police Department in the internet has earlier been brought to the notice of this Court and in that regard, it has been ordered by this Court in Cholamandam MS General Insurance Company Limited -vs- Director General of Police, Tamil Nadu (Order dated 14.08.2019 in Crl. O. P. No. 5922 of 2018) as follows:-

"16. ... it is hereby directed that the State Crime Records Bureau, Chennai (SCRB) and all Police Stations shall carry out the implementation of the Detailed Accident Report (DAR) on Digital Platform without any let or hindrance. It is hereby directed that the SCRB and all Police Stations shall strictly upload the name and mobile number of the victim or claimant representing the victim as soon as possible, to enable the victims/claimants to access the records. The SCRB, Chennai and all Police Stations shall implement the DAR Regime in good order and condition by uploading all required documents relating to motor accidents claims for the benefit of all stakeholders, in an expeditious manner without delay and ensure that the uploaded documents are verified for authenticity and are legible for use, for the larger benefit of all the intended beneficiaries. It is hereby made clear that all Nodal Officers identified by the Office of the Director General of Police, Chennai shall duly redress the grievances raised by all stakeholders, within a reasonable timeline, to carry out the purpose of the DAR regime."

In addition to and not in derogation of the aforesaid directions issued by this Court to the police authorities to set right that shortcoming, it must be pointed out that an aggrieved insurer is also entitled to make an application to the Motor Accidents Claims Tribunal, where the claim petition for compensation is pending, seeking direction to the concerned police authorities to furnish the required documents in consonance with the mandate of Sections 158(6) and 160 of the Motor Vehicles Act, 1988, so as to enable that insurer to effectively contest the claim petition. Such power to the Motor Accidents Claims Tribunal

flows from Section 169 of the Motor Vehicles Act, 1988, read with Rule 1 of Order XVI of the Code of Civil Procedure, 1908. Even otherwise, as ruled by the Hon'ble Supreme Court of India in Chief Executive Officer & Vice-Chairman, Gujarat Maritime Board -vs- Haji Daud Haji Harun Abu [(1996) 11 SCC 23], it is well-settled that where a substantive power is conferred upon a court or tribunal, all incidental and ancillary powers necessary for an effective exercise of the substantive power have to be inferred, following the dictum laid down in Khyerbari Tea Company Limited -vs- State of Assam [AIR 1964 SC 925 at 935]. The rule quoted in Craies extracted below, has been referred with approval therein:-

"One of the first principles of law with regard to the effect of an enabling act is that a legislature enables something to be done, it gives power at the same time by necessary implication to do everything which is indispensable for the purpose of carrying out the purpose in view."

Again in Sakiri Vasu -vs- State of Uttar Pradesh [(2008) 2 SCC 409], the Hon'ble Supreme Court of India has restated that proposition of law as follows:-

"18. It is well-settled that when a power is given to an authority to do something it includes such incidental or implied powers which would ensure the proper doing of that thing. In other words, when any power is expressly granted by the statute, there is impliedly included in the grant, even without special mention, every power and every control the denial of which would render the grant itself ineffective. Thus where an Act confers jurisdiction it impliedly also grants the power of doing all such acts or employ such means as are essentially necessary to its execution.

19. The reason for the rule (doctrine of implied power) is quite apparent. Many matters of minor details are omitted from legislation. As Crawford observes in his Statutory Construction (3rd Edn., p. 267):-

"If these details could not be inserted by implication, the drafting of legislation would be an indeterminable process and the legislative intent would likely be defeated by a most insignificant omission."

20. In ascertaining a necessary implication, the Court simply determines the legislative will and makes it effective. What is necessarily implied is as much part of the statute as if it were specifically written therein.

21. An express grant of statutory powers carries with it by necessary implication the authority to use all reasonable means to make such grant effective. Thus in *Income Tax Officer, Cannanore -vs- M.K.Mohammad Kunhi* (AIR 1969 SC 430), this Court held that the income tax appellate tribunal has implied powers to grant stay, although no such power has been expressly granted to it by the Income Tax Act."

As such, when an application for that purpose is made by an insurer in a pending Claim Petition for compensation, it is incumbent upon that Motor Accidents Claims Tribunal to expeditiously consider the same and pass appropriate orders thereon in accordance with law. If found necessary, the Motor Accidents Claims Tribunal may by recording reasons in writing also extend time to the insurer to file counter or defer the conduct of trial till the required document is actually produced, on case to case basis, having due regard to its material nature and relevancy, bearing in mind the salutary intention that the ends of justice has to be secured for comprehensive and meaningful adjudication of the matter ultimately. The orders passed by the Motor Accidents Claims Tribunal on such application made by an insurer, would certainly be amenable to the superintending jurisdiction of this Court under Article 227 of the Constitution. When such efficacious mechanism exists in the statutory provisions, it is hard to believe that the insurer is helpless when the required documents are not uploaded in time in the CCTNS portal of the Police Department in the internet, as sought to be portrayed by the Petitioner in this case.

10. In the light of the foregoing discussion, the questions raised are answered as under:

- (i) The provisions of the Right to Information Act, 2005, cannot be invoked for obtaining documents from police authorities in connection with defending a claim for compensation before the Motor Accidents Claims Tribunal constituted under the Motor Vehicles Act, 1988.
- (ii) An investigator appointed by an insurer cannot, in his own personal capacity, correspond with public authorities, much less prosecute litigation, relating to furnishing of documents in connection with an accident involving a vehicle said to be insured with that insurer.
- (iii) When documents required by an insurer in terms of Sections 158(6) and 160 of the Motor Vehicles Act, 1988, are not uploaded on time in the CCTNS portal of the Police Department in the internet in the State of Tamil Nadu, the aggrieved insurer is entitled to make an application under Section 169 of the Motor Vehicles Act, 1988, read with Rule 1 of Order XVI of the Code of Civil Procedure, 1908, to the

Motor Accidents Claims Tribunal, where the claim petition for compensation is pending, seeking direction to the concerned police authorities to furnish the required documents, apart from seeking redressal of such grievance from the concerned Nodal Officer identified by the Office of the Director General of Police, Tamil Nadu as directed by this Court in Cholamandam MS General Insurance Company Limited -vs- Director General of Police, Tamil Nadu (at para 16 in Order dated 14.08.2019 in Crl. O. P. No. 5922 of 2018).

11. It is needless to add here that where the concerned police officer, without justifiable cause, fails to promptly comply with an order passed by the Motor Accidents Claims Tribunal to produce the document required by an insurer in terms of Sections 158(6) and 160 of the Motor Vehicles Act, 1988, or does not respond to the direction issued by the Nodal Officer for uploading such document in the CCTNS portal of the Police Department, he shall be liable for disciplinary action as per rules. Hence, the Director General of Police, Tamil Nadu, is directed to issue a circular in this regard along with a copy of this order to all the concerned Police Officers in the State of Tamil Nadu requiring strict compliance of their statutory obligations mentioned supra, and also send copies of the same to the insurance companies which have been registered with the CCTNS portal of the Police Department for availing the online facility for downloading required documents. The Registry of this Court, after obtaining necessary orders from the Hon'ble Chief Justice, shall also communicate copy of this order to all the Presiding Officers of the Motor Accidents Claims Tribunals in Tamil Nadu and Puducherry for apprising the legal position enunciated in this order.

12. In the upshot, the Writ Petition is dismissed with the aforesaid observations. No costs.

Sd/-

सत्यमेव जयते
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The State Information Commissioner,
Tamil Nadu Information Commission,
No. 2, Sir Thiyagarayar Road,
Eldams Road Junction,
Theynampet,
Chennai - 600 018.

2. The Superintendent of Police/1st Appellate Authority,
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Tiruppur District.
5. The Inspector of Police,
Thali Police Station,
Tiruppur District.
6. The Branch Manager,
New India Assurance Company Ltd.,
Amman Complex,
Erode - 11.

Copy to

1. The Director General of Police,
Tamil Nadu,
Kamarajar Salai,
Mylapore,
Chennai.
2. The Registrar (Judicial),
Madras High Court,
Chennai.
3. The section Officer,
'F' Section,
High Court, Madras.

(For follow up action Res. Instructions issued by this Court to
this Registry in para II)

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