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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.NO.34273 OF 2013

AND

M.P.NO.1 OF 2013

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

.Vs.

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

PRAYER:-

Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, to call for the records relating to the orders dt.05.04.2012 and 04.06.2013 of the 2nd Respondent in respect of Insurance claim under Policy No.411104/48/2009/74 for Break down of Wind Mill Energy Generator and quash the same and consequently direct the 2nd Respondent to settle the insurance claim as estimated by M/s.Vestas.

For Petitioner : Dr.S.S.Swaminathan



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For Respondents : Mr.M.Rajendran
Additional Government Pleader
[For R1]

Mr.Guruswaminathan
For M/s.Nageswaran and Narichania
[For R2]

O R D E R

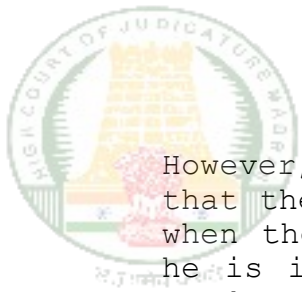
The order of Repudiation, repudiating the claim of the writ petitioner as per the terms and conditions of the Insurance Policy for breakdown of Wind Mill Energy Generator is sought to be quashed.

2. The petitioner is a company carrying on business of operation of Wind energy generation and entered into an agreement with the Tamil Nadu Electricity Board on 03.09.2005 for installation of 1 No.Wind Mill Capacity of 1650 KW for power generation at S.F.No.100/A1A, 101/A1 of Mookudujalipatti Village, Udumalpet Taluk, Coimbatore District.

3. The grievances of the writ petitioner is that there was a failure of Wind Mill Energy Generator, which is covered under the Insurance policy. The petitioner submitted a claim application and inspection was conducted. The respondents found that there were certain discrepancies in the Serial Number found in the Wind Mill Energy Generator. In view of the discrepancies, the claim application was rejected by invoking the terms and conditions of the Insurance policy.

4. The learned counsel for the petitioner made a submission that there was no discrepancy at all and the Wind Mill Energy Generator Number was mistakenly noted down in the approval given by the 1st respondent, for which, the petitioner cannot be made to suffer. This apart, the petitioner has stated that it was only a mistake in number and the petitioner is in possession of all original documents, which would reveal the correct number of the Generator and based on that, the respondent ought to have taken a decision. Merely seeing the mistaken number, they have repudiated the claim, which is unjust and in violation of the principles of natural justice. The petitioner had produced the original certificate and in spite of that, the case of the petitioner was not considered.

5. This Court is of the considered opinion that the terms and conditions and the contractual obligations in normal circumstances cannot be adjudicated by the High Court in a writ proceedings under Article 226 of the Constitution of India.



However, if a claim application is rejected merely on the ground that there was a mistake in noting down the Generator Number and when the petitioner is brought to the notice of this Court that he is in possession of all the original documents and ready to produce the same before the competent authorities, this Court thought fit that it is suffice to provide an opportunity to the petitioner as well as to the respondents to look into the issues and take a fresh decision on merits and in accordance with law.

6. It is brought to the notice of this Court that the mistake pointed out by the petitioner had been already rectified by the 1st respondent and such rectification was also communicated to the second respondent. In spite of that, the 2nd respondent/Insurance company has rejected the claim relying on the original mistake and without considering the rectification made.

7. This being the facts and circumstances, the petitioner is at liberty to submit all the original documents as well as pointed out the rectification of mistake by the first respondent along with his explanations or representations within a period of four (4) weeks from the date of receipt of a copy of this order. On receipt of such an application from the petitioner along with the documents, the 2nd respondent is directed to conduct an enquiry by affording opportunity to the writ petitioner including a personal hearing and thereafter, take a decision on merits and in accordance with law and based on the terms and conditions of the policy within a period of four (4) months from the date of receipt of a copy of this order.

8. With this direction, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

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



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2. The Senior Divisional Manager,
The Oriental Insurance Company Limited,
Divisional Office - I,
Oriental House 1st Floor,
No.216/115, prakasam salai,
Broadway, Chennai - 600 108.

+1cc to Dr.S.S.Swaminathan, Advocate, S.R.No.63218
+1cc to M/s.Nageswaran and Narichania, Advocate, S.R.No.63075
+1cc to the Government Pleader, S.R.No.63813

W.P.NO.34273 OF 2013

NMI (CO)
PBS/15/12/2021