IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5553 of 2022

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Kumari Anuradha Wife of Late Kumar Ashutosh Resident of 5A/3, Laxmi Narayan Path, In front of Amarkunj Apartment, Opposite A.N. College, Boring Road, P.S. S.K. Puri, Patna- 800013.

... ... Petitioner/s

Versus

1. The Union of India through the Joint Secretary, Department of Financial Services, Ministry of Finance, Government of India, New Delhi- 110001.
2. The Insurance Regulatory and Development Authority of India (IRDAI), St No. 115/1, Financial District, Nanakramcuda Gachibovti, Hyderabad- 500032.
3. The Branch Head, H.D.F.C. Bank Ltd., Exhibition Road, Patna.
4. The Managing Director and Chief Executive Officer, H.D.F.C. Life, Corporate Office- 12th Floor, Lodha Excelus Appolo Mills Compound, N.M. Joshi Road, Mahalaxmi, Mumbai- 400011.
5. The Branch Head, H.D.F.C. Life Branch Office, Ist Floor, Pushpanjali Place, Boring Road Crossing, Patna- 800001 (Bihar).

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Gyan Shankar, Advocate Mr. Vikash Kumar, Advocate Ms. Ruchika Raj, Advocate Mr. Asit Kumar, Advocate Mr. Lala S.N. Raes, Advocate
For the Respondent/s	:	Mr. Additional Solicitor General

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 18-05-2022

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s):-

"(i) An appropriate direction/directions may be given to the Respondents Nos. 4 and 5 to consider the claim of the petitioner particularly in the circumstances where the settled norms for benefit in loan insurance is given to all borrowers or only to the principal borrower and thereafter to pay/adjust the insured sum of Rs.66,91,639/- only against the outstanding dues arising since the date of death of the principal borrower (husband of the petitioner) under the Home Equity loan bearing Loan Account No.641552079 and 642100459 dated 21.05.2019 in which the husband of the petitioner Late Kumar Ashutosh was the principal borrower and the petitioner is the Co-borrower.

(ii) During the pendency of the writ application, the petitioner may be exempted from the premium charged by the Respondent HDFC Life Insurance as well as the loan installment to the HDFC Bank which is till now being regularly paid by the petitioner.

(iii) An appropriate direction/ directions may be given to the Respondent No. 2 (Insurance Regulatory and Development Authority of India) to finally decide her claim/ grievances pending before the competent authority since 25.01.2022.

(iv) During the pendency of the writ application, no coercive steps may be taken by the Respondent No. 3 (HDFC Bank Ltd.).

(v) And other relief/ reliefs in the facts and circumstances of the case as deem fit and proper by this Hon'ble court.

After the matter was heard for some time, finding the Bench not to be agreeable with the submissions made by learned counsel for the petitioner, learned counsel for the petitioner, under instructions, states that petitioner shall be content if a direction is issued to the authority concerned to consider and decide the representation which the petitioner shall be filing within a period of four weeks from today for redressal of the grievance(s).

Learned counsel for the respondents states that if such a representation is filed by the petitioner, the authority concerned shall consider and dispose it of expeditiously and preferably within a period of four months from the date of its filing along with a copy of this order.

Statement accepted and taken on record.

The Hon’ble Supreme Court in ***D. N. Jeevaraj Vs. Chief Secretary, Government of Karnataka & Ors, (2016) 2 SCC 653,*** paragraphs 34 to 38 observed as under:-

> “**34**. The learned counsel for the parties addressed us on the question of the bona fides of Nagalaxmi Bai in filing a public interest litigation. We leave this question open and do not express any opinion on the correctness or otherwise of the decision of the High Court in this regard.

35. However, we note that generally speaking, procedural technicalities ought to take a back seat in public interest litigation. This Court held in *Rural Litigation and Entitlement Kendra* v. *State of U.P.* [*Rural Litigation and Entitlement Kendra* v. *State of U.P.*, 1989 Supp (1) SCC 504] to this effect as follows: (SCC p. 515, para 16)

> "*16*. The writ petitions before us are not inter parties disputes and have been raised by way of public interest litigation and the controversy before the court is as to whether for social safety and for creating a hazardless environment for the people to live in, mining in the area should be permitted or stopped. We may not be taken to have said that for public interest litigations, procedural laws do not apply. At the same time it has to be remembered that every technicality in the procedural law is not available as a defence when a matter of grave public importance is for consideration before the court."

36. A considerable amount has been said about public interest litigation in *R&M Trust* [*R&M Trust* v. *Koramangala Residents Vigilance Group*, (2005) 3 SCC 91] and it is not necessary for us to dwell any further on this except to say that in issues pertaining to good governance, the courts ought to be somewhat more liberal in entertaining public interest litigation. However, in matters that may not be of moment or a litigation essentially directed against one organisation or individual (such as the present litigation which was directed only against Sadananda Gowda and later Jeevaraj was impleaded) ought not to be entertained or should be rarely entertained. Other remedies are also available to public spirited litigants and they should be encouraged to avail of such remedies.

37. In such cases, that might not strictly fall in the category of public interest litigation and for which other remedies are available, insofar as the issuance of a writ of mandamus is concerned, this Court held in *Union of India* v. *S.B. Vohra* [*Union of India* v. *S.B. Vohra*, (2004) 2 SCC 150: 2004 SCC (L&S) 363] that:

(SCC p. 160, paras 12-13)

> "*12*. Mandamus literally means a command. The essence of mandamus in England was that it was a royal command issued by the King's Bench (now Queen's Bench) directing performance of a public legal duty.
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> *13*. A writ of mandamus is issued in favour of a person who establishes a legal right in himself. A writ of mandamus is issued against a person who has a legal duty to perform but has failed and/or neglected to do so. Such a legal duty emanates from either in discharge of a public duty or by operation of law. The writ of mandamus is of a most extensive remedial nature. The object of mandamus is to prevent disorder from a failure of justice and is required to be granted in all cases where law has established no specific remedy and whether justice despite demanded has not been granted."

38. A salutary principle or a well-recognised rule that needs to be kept in mind before issuing a writ of mandamus was stated in *Saraswati Industrial Syndicate Ltd.* v. *Union of India* [*Saraswati Industrial Syndicate Ltd.* v. *Union of India*, (1974) 2 SCC 630] in the following words: (SCC pp. 641-42, paras 24-25)

> "*24*. … The powers of the High Court under Article 226 are not strictly confined to the limits to which proceedings for prerogative writs are subject in English practice. Nevertheless, the well-recognised rule that no writ or order in the nature of a mandamus would issue when there is no failure to perform a mandatory duty applies in this country as well. Even in cases of alleged breaches of mandatory duties, the salutary general rule, which is subject to certain exceptions, applied by us, as it is in England, when a writ of mandamus is asked for, could be stated as we find it set out in *Halsbury's Laws of England* (3rd Edn.), Vol. 11, p. 106:
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> '198. *Demand for performance*

> *must precede application*.—As a general rule the order will not be granted unless the party complained of has known what it was he was required to do, so that he had the means of considering whether or not he should comply, and it must be shown by evidence that there was a distinct demand of that which the party seeking the mandamus desires to enforce, and that that demand was met by a refusal.'
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> *25*. In the cases before us there was no such demand or refusal. Thus, no ground whatsoever is shown here for the issue of any writ, order, or direction under Article 226 of the Constitution."

As such, petition stands disposed of on the following terms:-

(a) Petitioner shall approach the authority concerned i.e. Respondent No. 2 namely, the Insurance Regulatory and Development Authority of India (IRDAI), St No. 115/1, Financial District, Nanakramcuda Gachibovti, Hyderabad- 500032, within a period of four weeks from today by filing a representation for redressal of the grievance(s);

(b) The authority concerned shall consider and dispose it of expeditiously by a reasoned and speaking order preferably within a period of four months from the date of its filing along with a copy of this order;

(c) The order assigning reasons shall be communicated to the petitioner;

(d) Needless to add, while considering such representation, principles of natural justice shall be followed and due opportunity of hearing afforded to the parties;

(e) Also, opportunity to place on record all relevant materials/documents shall be granted to the parties;

(f) Equally, liberty is reserved to the petitioner to take recourse to such alternative remedies as are otherwise available in accordance with law;

(g) We are hopeful that as and when petitioner takes recourse to such remedies, as are otherwise available in law, before the appropriate forum, the same shall be dealt with, in accordance with law and with reasonable dispatch;

(h) Liberty reserved to the petitioner to approach the appropriate forum/Court, should the need so arise subsequently on the same and subsequent cause of action;

(i) We have not expressed any opinion on merits. All issues are left open;

(j) The proceedings, during the time of current Pandemic- Covid-19 shall be conducted through digital mode, unless the parties otherwise mutually agree to meet in person i.e. physical mode;

The petition stands disposed of in the aforesaid terms.

Interlocutory Application(s), if any, stands disposed of.

(Sanjay Karol, CJ)

(Satyavrat Verma, J)

Rishi/Sujit-

AFR/NAFR	
CAV DATE	
Uploading Date	20.05.2022
Transmission Date	