

AD. 97.
June 13, 2022.
MNS.

WPA No. 16723 of 2021

Sri Subrata Samanta
Vs.
State of West Bengal and others

Mr. Krishna Das Poddar

...for the petitioner.

Mr. Amal Kumar Sen,
Mr. L. M. Basu

...for the State.

Mr. Soumendranath Ganguly,
Mr. Siddhartha Goswami

...for the Insurance Company.

The grievance of the petitioner is that, despite the petitioner's truck being not responsible in any manner for an accident, in which the pillion rider of a two-wheeler met with demise, the Insurance Company arbitrarily refused the petitioner's claim for insurance.

Learned counsel for the petitioner, by placing reliance on a trade license of the petitioner annexed at page 17 of the writ petition, argues that the business of the petitioner is to trade in rice and other food-grains. By placing reliance on Annexure –P3 at page 18, it is contended that the same is a photocopy of a challan issued by one Mother India Rice Mill, from where the rice was purchased on the fateful day. It is argued that the said challan would clearly

reveal that the vehicle of the petitioner was not overloaded on the said date of accident.

It is contended that overloading was the primary ground on which the Insurance Company rejected the petitioner's claim, which was without any material basis.

It is further argued on behalf of the petitioner that two purported complaints, annexed at pages 50 and 51 of the affidavit-in-opposition of the Insurance Company, were manufactured at the instance of an agent of the Insurance Company subsequently. It is submitted that the petitioner and the driver of the vehicle were made to sign blank papers, which were later filled in and converted to purported complaints, thereby indicating that the load carried on the petitioner's truck was beyond the permissible load as per the registration certificate of the truck.

Learned counsel submits that, moreover, the police authorities illegally sought to extort Rs. 25,00,000/- from the petitioner when the petitioner went to get his vehicle released.

It is submitted the in view of the petitioner's truck not being responsible for the accident and/or for any negligence, the vehicle ought to have been handed over to the petitioner without asking for any further payment.

Learned counsel appearing for the State controverts the allegation of the petitioner and

submits, insofar as the State is concerned, that the amount of Rs. 25,00,000/- was the amount of the bond as directed by the Chief Judicial Magistrate, Howrah in connection with G. R. No. 5938 of 2020, pursuant to the order dated February 25, 2021 passed by the said Chief Judicial Magistrate as annexed to the present writ petition.

Hence, the allegation against the State-respondent is not tenable in the eye of law and on facts.

Learned counsel for the Insurance Company, at the outset, controverts the maintainability of the writ petition, insofar as the Insurance Company is not the 'State' as contemplated in Article 12 of the Constitution of India and/or any instrumentality of the State.

Although the Insurance Company, it is submitted, acts within the purview of the Government authorities, that *ipso facto* does not make the Insurance Company a State or an entity which can be termed as State for the purpose of Article 12 of the Constitution. Learned counsel further controverts the allegation regarding the complaints of the petitioner and his driver having been manufactured. It is submitted that, merely because the author of the said complaints was apparently neither the petitioner nor his driver, the petitioner cannot casually disown

the said complaints, which were signed respectively by the petitioner himself and his driver.

Since the petitioner signed in the English language, it is evident that the petitioner was conversant at least with the vernacular, which is his mother tongue, that is, Bengali, in which the complaint was written.

It is submitted that the challan produced by the petitioner, as annexed to the writ petition, is a manufactured document, which has been forged as an afterthought. Such challan, it is argued, does not find mention in any of the materials on record to indicate that the petitioner produced such document at any relevant point of time before the Investigating Authorities. It is further submitted that the complaints lodged against the truck of the petitioner, which are annexed at pages 23 and 24 of the writ petition, clearly show that, upon being hit by the petitioner's truck, the two-wheeler-in-question had met with the accident leading to the death of a person. As such, the allegation that the petitioner's vehicle was not responsible in any manner for the accident is also not acceptable.

Upon considering the submissions of learned counsel for the parties, it is evident that the allegations made by the petitioner are primarily an afterthought.

It is borne out by the photocopy of the certified copy of the order sheet in G.R. No. 5938 of 2020, passed by the Chief Judicial Magistrate, Howrah that the amount of Rs. 25,00,000/- was the specific sum, which was fixed by the Chief Judicial Magistrate in respect of execution of a bond by the petitioner for release of the vehicle. Hence, I do not find any illegality or irregularity in the demand for the said amount as a condition of release for the vehicle on the part of the police authorities.

The said order reveals clearly that the Magistrate directed that he was of the view that the seized vehicle be returned to the registered owner on execution of a bond of Rs. 25,00,000/-. Hence, such allegation of the petitioner cannot be accepted.

Insofar as the maintainability of the writ petition is concerned, since it is an established position of law that if an entity discharges the function of the State, it may be construed within the broader meaning of the expression 'State' within the purview of Article 12 of the Constitution of India taking a lenient view on such score, the writ petition can be entertained. However, insofar as the allegations against the Insurance Company are concerned, there is no material basis whatsoever for substantiating the same. The petitioner has entirely relied on proposed assumptions for the purpose of incriminating the

Insurance Company insofar as refusal of claim is concerned.

As far as the purported challan (Annexure P3 at page 18 of the writ petition) is concerned, the same is not a sacrosanct document, more so since it was not produced before any appropriate authority at any stage of the matter. Moreover, there is nothing on record to substantiate the petitioner's wild allegation that the complaints lodged with the Insurance Company, by the petitioner and the driver of the petitioner's truck, were manufactured subsequently. There is nothing in the said documents, copies of which are annexed to the affidavit-in-opposition of the respondents, to indicate that the same were manufactured. In both the complaints of the petitioner and his driver respectively, it was specifically admitted that ten metric tons of rice was being carried on the vehicle. The argument made by the learned Advocate for the petitioner as regards the said documents being manufactured, on the ground that the petitioner, despite knowing fully well the upper limit of load which can be carried on the vehicle, would not have disclosed the weight to be more than that the said permissible weight, is neither here nor there. Since there is nothing to discredit the documents-in-question, which were signed by the petitioner and the

driver of the recalcitrant truck, there is no scope of disbelieving the admission contained therein.

Moreover, it appears from the materials which are on record that the Insurance Company gave sufficient reasons disclosing a transparent decision-making process in refusing the petitioner's claim primarily on the ground of non compliance of law by the insured.

Since the vehicle was found by the Insurance Company, upon due investigation, to have been carrying at the relevant time load above the permissible capacity as per the registration certificate, the Insurance Company acted well within its authority to refuse the claim of the petitioner.

In the absence of any challenge to the veracity of the written complaints of the petitioner and the truck-driver before any criminal court and/or against the order of the Chief Judicial Magistrate, Howrah, in respect of the bond amount being Rs. 25,00,000/- before any appropriate forum, the respondent-authorities were justified in taking the actions which have been impugned by the petitioner in the present matter.

Hence, there is no scope of interference in the present writ petition.

Accordingly, WPA 16723 of 2021 is dismissed on contest without any order as to costs.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)