25th July, 2022
(AK)
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W.P.A 18360 of 2021

Samarendranath Das
Vs.
The Chairman HDFC Bank Ltd. and others

Mr. Mrinal Kanti Mukherjee
...for the petitioner.

Learned counsel appearing for the petitioner tries to contend that HDFC Life Insurance Company is an entity under Article 226 of the Constitution of India. There are no other respondents in the writ petition and the prayer pending before of the HDFC Bank is to disburse the death benefit together with interest accrued to the petitioner's son.

The respondent-HDFC Bank is not present.

Learned counsel relies on a single Bench judgment of the Madras High Court in *Jasmine Ebenezer Arthur Vs. HDFC Ergo General Insurance Company Limited* to contend that the present writ petition would lie against HDFC Life Insurance.

The Madras High Court, in the said judgment, was of the view that the question whether private bodies performing public duties can be brought within the purview of judicial review requires determination. The learned Judge opined that lack of effective control has made certain private bodies acquire more power similar to public authorities and that *“public monopoly power is replaced by private monopoly power”*. It was hence of the opinion that private bodies should be made accountable to judiciary and be amenable to judicial review. The writ petition was accordingly allowed and HDFC Bank was directed to honour the claim of the petitioner in respect of Health Insurance Policy.

This court is, however, of the view that for a person or for a private entity to be amenable to writ jurisdiction under Article 226 of the Constitution, the entity must

(a) be performing a public function and

(b) there must be an unmistakable element of public duty or obligation on the part of the respondent entity.

The other determining factor is whether there is an unmistakable and overarching presence of the State in the private body by way of governance or dissemination of functions or in any other manner.

In the present case, there is no evidence that the Government exercises deep or pervasive control over the respondent or that the respondent exercises functions which are unmistakably of a public nature. Life Insurance is simply a class of Insurance Policy which is sold by an Insurance Company and purchased by an individual. The present dispute is essentially a private dispute and the petitioner has recourse before an appropriate court for suitable relief. The writ court cannot intervene in cases where the dispute is purely of a private nature.

WPA 18360 of 2021 is dismissed without any order as to costs.

(Moushumi Bhattacharya, J.)