

**In The High Court at Calcutta
Constitutional Writ Jurisdiction
Original Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

WPO No. 629 of 2015

**S.B. Overseas Limited
Vs.**

National Insurance Company Limited and others

For the petitioner : Mr. Soumya Majumder

For the respondents : Mr. Soumyen Datta,
Ms. Dolon Dasgupta

Hearing concluded on : 23.08.2022

Judgment on : 13.09.2022

The Court:

1. The petitioner-Company insured its godowns with respondent no.1, the National Insurance Company Limited (hereinafter referred to as 'the NICL'). The respondent no.2 is the Divisional Manager of petitioner no.1 and respondent no.3, the surveyor appointed by petitioner no.1-Company in respect of the petitioner's claim.
2. The petitioner has been paying premiums regularly to the respondent no.1 in accordance with the insurance agreement between the two and produced from time to time the necessary documents in respect of the stock declarations of the petitioner's godowns.
3. On February 21, 2004, a fire broke out in the petitioner's Agarpara Jute Mill at 28, B.T. Road, Kolkata-700 058 at about 1:45 a.m. The petitioner had substantial stocks of material in the said godown, which was damaged by the fire.

4. M/s. PEC Limited, the financier of the petitioner, was informed by the surveyor (respondent no.3) about the said accident.
5. The surveyor duly visited the mill premises and made the necessary inspections. According to the petitioner all documents asked for by the Surveyor from time to time were handed over by the petitioner. However, the respondent no.1-Company/ NICL rejected the claim of the petitioner on December 12, 2008 for non-submission of documents. The said decision was challenged by the petitioner in WP No.633 of 2010. A co-ordinate Bench of this Court, *vide* order dated August 1, 2013, disposed of the said writ petition by directing the NICL to consider the documents that had been furnished and deal with the claim in accordance with the law.
6. Subsequently, there was ample communication between the parties. However, on December 8, 2014, it was again communicated by the NICL to the petitioner that its claim had been turned down in the light of the Policy Condition in terms of Condition No.6(i)(b) under the heading "General Conditions" of the Policy, namely "Standard Fire and Special Perils Policy".
7. Challenging the same, the petitioner has preferred the instant writ petition. Such repudiation of the Fire Claim No.101800/03/3400000026, made under Fire Policy No.101800/11/03/3400000516, has been specifically challenged, also claiming release of the amount assessed by the surveyor that is Rs.84,36,594/- with interest at the rate of eighteen per cent per annum from the date of assessment till the date of settlement of the claim.

8. The current chapter of the episode began with the direction of the Co-ordinate Bench on the NICL to reconsider the claim of the petitioner on merits.
9. It is contended by learned counsel for the petitioner that the writ petition is very much maintainable since the NICL is a subsidiary of the General Insurance Corporation of India and is a Government Company within the meaning of Section 2(45) of the Companies Act, 2013 and thus an authority under Article 12 of the Constitution.
10. It is contended that the State has a duty to act fairly and even in cases of contracts, the State cannot arbitrarily or unfairly repudiate the same. In respect of contracts of insurance, which has a public law element, the State has to meet the test of Article 14 of the Constitution, it is argued. In support of such submissions, learned counsel cites *AIR 1995 SC 1811 [L.I.C. of India and another Vs. Consumer Education and Research Centre and others]* and *AIR 1998 Cal 1 [Assambrook Exports Ltd. and another Vs. Export Credit Guarantee Corpn. of India Ltd. and others]*.
11. Learned counsel for the petitioner submits that full-fledged inspection was held on several dates by the official surveyor appointed by the NICL itself, that is, respondent no.3. It is argued that Clause 6(i)(a) of the General Conditions has not been considered by the NICL. It is sought to be highlighted that the said provision clearly stipulates that a claim in writing for the loss or damage, containing as particular an account as may be reasonably practicable of all the several articles or items of property damaged or destroyed and all the amount of loss or damage respectively, having regard to their value at the time of the

loss, not including profit, had to be furnished. It is argued that the expression “reasonably practicable” clearly indicates that the description provided by the insured has to be fairly accurate.

- 12.** It is further submitted that Sections 7 and 9 of the Insurance Regulatory and Development Authority (Protection of Policy Holders’ Interests) Regulations, 2002 mandate the statutory role of the surveyor, which has been overlooked by the NICL.
- 13.** It is submitted that the NICL has clearly replied to the petitioner that its claim was admissible and approved in principle. The alleged lack of insurable interest was never a ground for rejection or repudiation of the claim. Such new case has been sought to be made out in the affidavit of the NICL, which cannot be argued for the first time in the writ petition, having never been taken previously.
- 14.** It is reiterated by learned counsel for the petitioner that the petitioner all along paid hefty insurance premium and the NICL acted patently beyond the insurance agreement terms and in violation of the fundamental right of equality of the petitioner under Article 14 of the Constitution in discriminating unreasonably against the petitioner.
- 15.** Inasmuch as the argument of non-joinder of PEC Limited, the financier, is concerned, it is argued that, all along, the petitioner was the insured party and the respondent no.1 was the insurer. PEC Limited could, as financier, at best be a beneficiary of the claim; however, it is neither a necessary nor a proper party to the writ petition.
- 16.** The writ petition, it is contended, is not a pure money claim requiring adjudication of disputed questions of facts which require trial. All

necessary documents were produced all along by the petitioner, it is submitted.

17. Learned counsel for the petitioner further argues that the repudiation is not on any intelligible ground but on disputes raised merely for the purpose of raising disputes. A mere denial is not sufficient to oust the jurisdiction under Article 226 of the Constitution of India.
18. In such context, learned counsel refers to *(2004) 3 SCC 553 [ABL International Ltd. and another Vs. Export Credit Guarantee Corporation of India and others]* and *(2020) 9 SCC 356 [Hari Krishna Mandir Trust Vs. State of Maharashtra and others]*.
19. Learned counsel appearing for the respondent no.1 contends that as per the contemplation of insurance policy, the godown-wise stock statement was required to be furnished by the petitioner, which was not done despite repeated requests by the NICL. Month-wise stock statement was also not supplied to the NICL and the PEC Limited. Only some invoices were supplied.
20. It is argued that by a letter dated May 22, 2009, the PEC Limited disclosed the stock of two godowns lying with them as on February 20, 2004. Such documents do not satisfy the requirement of respondent no.1 for month-wise stock statements of all the godowns as sought by the surveyor. Sufficient time was given to the petitioner to comply with such request and, on the failure of the petitioner to do so, the claim has been repudiated.
21. Only a Floater Declaration Policy was entered into and the petitioner no.1 disclosed at the time of entering into the policy that it was for all the godowns.

- 22.** However, it is argued that unless the true declaration and *pro rata* apportionment of stock in each individual godown of the petitioner is furnished, the valuation of the stock, which might increase the sum insured, was not given.
- 23.** It is contended that the petitioner has fourteen godowns but the stocks of only seven were disclosed.
- 24.** Since the PEC Limited is a necessary party, it is submitted that non-joinder of the said entity vitiates the writ petition.
- 25.** That apart, the writ petition is not maintainable, being a pure money claim where the quantum is neither crystallized nor there is any admission on the part of the respondent no.1, thus involving serious disputed questions of fact requiring trial.
- 26.** Moreover, a writ petition does not lie for enforcement of a private contract in the nature of the insurance policy entered into in the present case.
- 27.** It is submitted that the facts of the decisions cited by the petitioner are entirely distinguishable from the instant case. Since the petitioner's stocks were hypothecated to the PEC Limited, the insurable interest of the claimant was due, if at all, to the PEC Limited. Since the PEC Limited never transferred its accountable claim and/or assigned the policy to the petitioner, it is submitted that the reliance placed by the petitioner on Clause 6(i)(a) of the General Conditions does not come to the aid of the petitioner.
- 28.** It is submitted that the report of the surveyor is neither sacrosanct nor conclusive and/or binding upon the insurer or the insured. For such proposition, the learned counsel for the respondent no.1 cites

the *New India Assurance Company Limited Vs Pradeep Kumar*, reported at (2009) 7 SCC 787. The stock statements of the other godowns were required to be furnished by the petitioner to come to any conclusion as to the *pro rata* basis of calculating the insured sum. The same, however, was not done in the present case, it is argued.

29. Certain specific documents were asked for, which could be obtained from the PEC Limited by the petitioner but the petitioner failed to do so, thereby exposing itself to the refusal of its claim. Certain documents are relied on by the petitioner, the existence of which are denied and the petitioner failed to remove the doubt regarding those.
30. Learned counsel relies on *Joshi Technologies International Inc. Vs. Union of India and others*, reported at (2015) 7 SCC 728, in the said context.
31. Learned counsel for the petitioner refutes the contentions of the respondent no.1 and submits that further reasons having been given for repudiation of the claim only in the affidavit filed in connection with the writ petition, the same ought not be looked into by this Court as it goes against the principle of *Mahinder Singh Gill's* case, reported at AIR 1978 SC 851.
32. It is submitted that reliance the *Joshi (supra)* is misplaced and there is no disputed question of fact to be adjudicated here.
33. It is submitted that the procedure for settlement of claim and the provisions of Sections 7 and 9 of the IRDA (Protection of Policy Holders' Interest) Regulations, 2002 have been contravened.
34. Upon considering the arguments of the parties, certain documents acquire relevance for the present adjudication. The NICL, *vide* its

letter dated September 27, 2013 (annexed at page 145 of the writ petition), communicated that the claim was admissible.

35. Again, on October 30, 2013, the 'in principle' decision to admit liability was reiterated (at page 165 of the writ petition) by the NICL. On October 9, 2013 (at page 151 of the writ petition), the NICL sought godown-wise stock and on December 18, 2013 (at page 171 of the writ petition), the respondent communicated in writing asking for the value of stocks from the petitioners.
36. The details of the stock which was lying in the Agarpara Godown at the relevant period, including the quantity and value thereof, were informed by the petitioner to the respondent no.1 *vide* its letter dated April 19, 2007 (at page 156 of the writ petition). Again, in the reply dated October 17, 2013 (at page 152 of the writ petition) to the letter dated October 9, 2013 of the respondent no.1, the petitioner reiterated the quantity and value of the separate godowns, including that of Agarpara. In its reply dated November 7, 2013 (at page 166 of the writ petition) the petitioner enclosed a letter given by the PEC Limited dated May 22, 2009, which specifies the number of bales of jute lying in the Agarpara godown at the relevant period to be 7,154.
37. In its letter dated December 30, 2013 (at page 172 of the writ petition), the content of the letter dated April 19, 2007 was reiterated by the petitioner.
38. However, the respondent no.1 repudiated the claim finally for the second time *vide* communication dated December 8, 2014 (at page of the 199 of the writ petition). The said repudiation is challenged in the present writ petition.

- 39.** At the outset, the relevant clause of the general contract between the parties, that is, Clause 6(i) of the General Conditions is required to be looked into. The said Clause is reproduced below:-

“6.i) On the happening of any loss or damage the Insured shall forthwith give notice thereof to the Company and shall within 15 days after the loss or damage, or such further time as the Company may in writing allow in that behalf, deliver to the Company.

a) A claim in writing for the loss or damage containing as particular an account as may be reasonably properly damaged or destroyed, and of the amount of the loss or damage thereto respectively, having regard to their value at the time of the loss or damage not including profit of any kind.

b) Particulars of all other insurances, if any
The Insured shall also at all times at his own expense, produce, procure and give to the Company all such further particulars, plans, specification books, vouchers, invoices, duplicates or copies thereof, documents investigation reports (internal-external), proofs and information with respect to the claim and the origin and cause of the loss and the circumstances under which the loss or damage occurred, and any matter touching the liability or the amount of the liability of the Company as may be reasonably required by or on behalf of the Company together with a declaration on oath or in other legal form of the truth of the claim and of any matters connected therewith.

No claim under this policy shall be payable unless terms of this condition have been complied with.”

- 40.** Learned counsel for respondent no.1 has insinuated in the passing that Clause (b) specifies that particulars of all other insurances, if any, are also to be furnished, which was apparently not done in the present case.

- 41.** The special conditions for declaration policies, in Clause nos. 2 and 3 thereof, *inter alia*, indicate that if other policies on a declaration basis covered the insured stocks, the declaration shall be made so as to apportion to each policy a share of the value of the stocks insured *pro rata* to the respective amounts mentioned in the policies and that the present policy shall apply only to the excess of the value of such stocks at the time of loss over the sum insured by other insurance or insurances.
- 42.** However, the said provisions have not been relied on at any stage by the respondents and it is discovered only upon a perusal of the said conditions by the Court.
- 43.** More importantly, in the impugned letter of repudiation dated December 8, 2014, the relevant portion of General Condition Clause 6(i)(b), on which the respondent no.1 relied to reject the claim, was quoted. The same only mentions the latter portion of sub-clause (b) of Clause 6(i), no further. Hence, the insinuation in respect of violation of the first part of Clause 6(i)(b) regarding particulars of all other insurances, if any, did not find place in the grounds of repudiation of the claim at any point of time, nor are a part of the present pleadings. Hence, as rightly pointed out by the petitioner, taking aid of the principle laid down in *Mahinder Singh Gill's* case (supra), such subsequent grounds taken by the respondent no.1 cannot be taken into consideration at all.
- 44.** Clause 6(i)(a) of the General Conditions provides that the details to be given by the insured is to be as reasonably practicable as possible.

- 45.** The portion of sub-clause (b) quoted in its repudiation letter by the NICL indicates that the insured shall produce, *inter alia*, all other particulars, plans, documents, etc. with respect to the claim and the origin and the cause of the loss and the circumstances under which the loss or damage occurred and any matter touching on the liability or the amount of liability of the Company as may be “reasonably required” by or on behalf of the company, together with a declaration of truth of the claim, were also to be handed over. No claim under the policy shall be payable, it is further stipulated, unless terms of this condition have been complied with.
- 46.** In the present case, the only ground for repudiation sought to be made out by the NICL is the failure of the petitioner to furnish all required documents.
- 47.** It may be noted that the ‘Note’ appended at the end of the General Conditions specify that for legal interpretation, the English version (as opposed to the Hindi vernacular) of the policy will hold good.
- 48.** Keeping in view such stipulation, the English version of Clause 6(i) has been quoted hereinabove in its entirety.
- 49.** Upon a perusal of the various documents annexed to the writ petition, it is amply disclosed that at every stage, the petitioner had furnished all conceivable documents as asked for by NICL. The petitioner had, time and again, in writing reiterated the exact quantity and value of the stock lying at the relevant point of time in the Agarpara godown. Since the accidental fire broke out in the present case only in the said godown, the quantity and value of the stock lying therein at the

relevant juncture is the only consideration which can be taken into account by the insured. Moreover, it has been repeatedly communicated by the petitioner, as evident from the annexures to the writ petition, that the stock of the petitioner was concentrated only in seven of its godowns, the details of which were individually indicated, including the Agarpara Godown, which is the subject matter of the present claim.

- 50.** At Page 166 of the writ petition, it is also found that the petitioner forwarded a specific communication of the relevant letter given by the financier PEC Limited. Such communication of the PEC dated May 22, 2009, annexed at Page 169 of the writ petition, leaves no manner of doubt that it was certified by the said financier that on the relevant date (of the accidental fire) the goods as indicated therein were pledged with the PEC. The number of bales of raw jute in the Agarpara Jute Mills was stipulated to be 7154, which could not leave any manner of doubt as regards the quantity of the destroyed material.
- 51.** That apart, the petitioner had repeatedly, including *vide* communications dated October 17, 2013 (page 152 of the writ petition) and April 19, 2007 (page 106), clearly informed the respondent no.1-Company of the exact number of bales lying at the Agarpara Jute Mills at the relevant juncture and their value.
- 52.** The Surveyor filed an interim report initially, estimating the amounts and, subsequently, filed a final survey report. At every stage, the petitioner has provided all documents as required by the respondent no.1 as well as respondent no.3- Surveyor.

- 53.** Hence, the records merely show the delinquent attitude of the insurance company, contrary to the standards of fairness and impartiality which are to be maintained by a Government Company coming within the purview of Article 12 of the Constitution of India.
- 54.** The method and mode in which the NICL kept the matter pending for a considerable period and ultimately repeated its refusal of the claim is to be deprecated.
- 55.** Another important consideration here is that the respondent no.1- insurance company, *vide* its communications dated September 27, 2013 (page 145) and October 30, 2013 (page 165), indicated the admissibility of the claim of the petitioner and communicated its 'in-principle decision' to admit the liability.
- 56.** Despite the petitioner having clarified the exact quantity and value of the stocks, to which there was no contemporaneous denial, the respondent no.1 repeated the exercise of asking the same questions in respect of valuation and quantity over and over again.
- 57.** No conceivable reason can be figured out as to why the value of stock purportedly lying in other godowns, where no accident occurred and/or no stock was kept even as per the report of the surveyor appointed by the NICL itself, was insisted upon by the NICL. Such action on the part of the insurer, in fact, vitiates the repudiation of the petitioner's claim by the NICL.

- 58.** In view of the surveyor's report, a presumption of correctness is attached to the petitioner's claim, which has not been rebutted in any cogent manner by the NICL.
- 59.** The grounds cited for the second refusal were exactly similar to the first refusal which was set aside earlier by the co-ordinate bench of this Court.
- 60.** The NICL turned a blind eye to the relevant documents and materials produced by the petitioner both before the surveyor and the respondent no.1, as well as the report of the surveyor, which were comprehensive enough to vouchsafe for the veracity of the claim.
- 61.** In fact, the doctrine of gross inequality of bargaining power, which stands in favour of the Government Insurance Companies, as relied on in the decision of *LIC Vs. Consumer Detection and Research Centre* (supra), applies squarely to the present case. As held therein, the present petitioner does not ask any favour from the writ court to enforce contractual obligations but rely on their privilege and legitimate expectations to seek acceptance of their claim and repudiate the discriminatory attitude, offensive of Article 14 of the Constitution, which has been exhibited in respect of the petitioner by respondent no.1.
- 62.** The learned Co-ordinate Bench in *Assambrook Exports Ltd.* (supra) aptly laid down that writ petitions of the present nature do not involve a pure money claim but also a question as to how the insurance company altered its position by reason of the promise made to indemnify the petitioner in the case of any loss suffered by it, which

the insurance company is bound to give effect to, subsequently by resiling from the said position at the time of the claim. Such action is not only *de hors* the contract between the parties but is *ex facie* illegal and arbitrary and thus violative of Article 14 of the Constitution, borrowing the language of the said judgments.

63. Inasmuch as the objection as to non-joinder is concerned, the same does not hold good ground, since there was a jural relationship of insurer and insured between the respondent no.1 and the petitioner-Company respectively. The PEC Limited, being the financier and, at best, the beneficiary of the policy, is neither a necessary nor a proper party, since no question of seeking any relief against it or by it arise within the scope of the present writ petition.
64. The nature of the policy being a Floater Declaration Policy, as argued by the respondent no.1, does not aid the respondent no.1 in repudiating the claim, in view of the said respondent having never raised any objection whatsoever as regards non-compliance of any regulation and/or non-production of any required document by the petitioner and/or non-payment of premium at any point of time.
65. In fact, it is evident that the petitioner has been giving its written stock statements in respect of the specific godown involved in the fire throughout the relevant period, which would be a cardinal basis of assessing the premiums on every occasion by the insurance company. The insurer cannot do a *volte face* at the juncture when the claim is made, after the loss has occurred, in view of having acquiesced to compliance of all formalities by the petitioner at every juncture.

- 66.** Inasmuch as the objection as to non-maintainability of the writ is concerned, the cited judgments of the petitioner, as discussed above, clearly lay down a road map for interference by the writ court in insurance contract cases. Not only is the NICL a Government Company and 'State' discharging a public function within the contemplation of Article 12 of the Constitution of India by the very nature of its operation, it acted with patent arbitrariness and bias in discriminating against the petitioner, failing to honour the insurance policy between the parties. The utter lack of transparency in the *modus operandi* adopted by the insurer-respondent no.1 calls for interference with the repudiation of the petitioner's claim.
- 67.** As held by the Co-ordinate Bench in the cited judgment of *Assambrook Exports Ltd.* (supra), the present writ petition is not restricted merely to a money claim. The relief regarding payment of money is only a corollary of the primary relief, which is to quash the arbitrary refusal by the NICL of the petitioner's insurance claim subsequent to all premiums having been paid and all formalities having been complied with within the limits of reasonable practicability.
- 68.** Moreover, the respondent no.1 has also violated the principle enumerated in Clause 9 of the Insurance Regulatory and Development Authority Notification of the IRDA (Protection of Policy Holders' Interests) Regulations, 2002. Clause 9 of the same clearly stipulates the claim procedure in respect of a general insurance policy. The delay which may result in assessment of claim due to the inability of the

insured to furnish all particulars required by the surveyor or, when the surveyor does not receive full cooperation of the insured, the insurer or the surveyor at best justifies the delay of the surveyor in submission of his report.

- 69.** In the present case, the insured made its claim within time and complied with the matters to be stated in General Insurance Policy as per Clause 7 of the IRDA Regulation, 2002. Despite such disclosure, the impugned repudiation took place and, as such, the same has to be set aside.
- 70.** Accordingly, WPO No.629 of 2015 is allowed, thereby setting aside the impugned repudiation of the petitioner's Fire Claim No.101800/03/3400000026, made under Fire Policy No.101800/11/03/3400000516, as communicated *vide* letter dated December 12, 2008 by the respondent no.2 and directing the respondent no.1-Insurance Company to release the claim amount of Rs.84,36,594/-, as assessed by the surveyor-respondent no.3 with interest at the rate of six per cent per annum till the date of such actual disbursement in favour of the petitioner. The entire amount has to be paid to the petitioner by the respondent no.1-Company by November 30, 2022. In default of the payment of such entire amount, including interest of six per cent per annum, on and from December 1, 2022, the respondent shall pay such sum along with interest at the rate of twelve per cent on the entire amount then due to the petitioner on account of the insurance claim and the six per cent interest accrued up to November 30, 2022, till the date of recovery, as an

additional penal interest over and above the amount directed to be paid otherwise.

- 71.** There will be no order as to costs.
- 72.** Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)