



W.P.(MD)No.67 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :19.12.2022

CORAM

THE HONOURABLE MR.JUSTICE K. KUMARESH BABU

W.P.(MD)No.67 of 2014

Dr.A.Selvam

... Petitioner

Vs.

Senior Divisional Manager,
M/s National Insurance Co.Ltd.,
Divisional Office,
37, CSN High Road, Tirunelveli

... Respondent

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the proceedings in Order vide Ref:651200/UW/2013 dated 24.12.2013 on the file of the Respondent and quash the same and further directing the respondent to pay reasonable compensation to the petitioner.

For Petitioner :Mr.R.Maheswaran

For Respondents :Mr.S.Srinivasa Raghavan



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ORDER

This writ petition is challenging the proceedings of the respondent dated 24.12.2013, whereunder, he had issued an order cancelling the various insurance policies held by the petitioner in the respondent insurance company and also for a consequential direction to pay a reasonable compensation to the petitioner for the arbitrary cancellation by the petitioner, this writ petition has been filed.

2. The learned counsel for the petitioner would vehemently contend that the respondent had unilaterally repudiated the policies of the petitioner and had cancelled the policies, for which he had paid the demanded premium by the respondent. He would further submit that no reason whatsoever has been assigned by the respondent in the impugned order. On that ground alone, he would submit that the impugned order is liable to be quashed.

3. Countering his arguments, Mr.S.Srinivasa Raghavan, learned counsel for the respondent, would submit that the writ petition itself is not



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maintainable, as it is contract between the petitioner and the respondent. He would further plead that if at all the petitioner has any grievance, he has to approach the appropriate forum for redressal of his grievances. He would also rely upon the judgment of the Apex Court, reported in **AIR 1966 SC 1644** in the case of *General Assurance Society Vs. Chandmull Jain and another* and reported in **1997 (3) (Law weekly) 190** in the case of *State of Orissa Vs United India Insurance Company Ltd.(sc).*, to support his contention that the contract entered into between the petitioner and the respondent is a contract of indemnity and in case of any breach, appropriate civil suit is to be instituted and the prayer in the writ petition seeking specific performance of such contract cannot be entertained.

4.In reply Mr.R.Maheswaran, learned counsel appearing for the petitioner, would place reliance upon judgment reported in **2006 (10) SCC 236** in the case of *Noble Resources Limited Vs. State of Orissa and another* and **2019 (16) SCC 794** in the case of *Surya Constructions Vs. State of Uttra Pradesh* to contend that even in a dispute arising out of a contractual application, this Court can exercise the power under Article 226



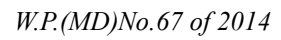
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of the Constitution of India, when it is found while exercising contractual powers also the Government bodies may be subjected to judicial review in order to prevent arbitrariness or unreasonableness in their part. He would also rely upon a judgment of this Court reported in 2008 (3) L.W.139 to contend that the writ petition has been entertained by the Courts, wherein an order refusing to renew the hospitalization and domicile hospitalization of policy was set aside and the respondent insurance company therein was directed to renew the policy.

5.I have considered the rival submission made by the learned counsel appearing on either side.

6.The order impugned in this writ petition has been passed by the insurance company, wherein, it had decided to cancel the existing policies invoking the cancellation conditions of the policies at the expiry of a specific period as stated in the notice. These policies of individual have been held to be a contract arising out of indemnity, for which, a premium is being paid by the owner of the machinery/vehicles. When a disputed



7.While that be so, any dispute that has been arisen under the commercial transaction cannot be made as a subject matter of a writ petition under Article 226 of Constitution of India. However, the judgments relied upon by the learned counsel for the petitioner are all cases of contract between a private individual and State under Article 12 of Constitution of India.

8. In the present case, the respondent cannot be termed to be an authority under Article 12 of the Constitution of India. The service of providing insurance is being carried on by various persons and whenever



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there is dispute between the parties they are bound by the individual policies which arises out of a contract of indemnity and on that ground also the writ petition as prayed for cannot be entertained. For these reasons, this Court, will not exercise its power under Article 226 of the Constitution of India to grant the relief as prayed for.

9.In the result, this writ petition fails and is dismissed. However, liberty is granted to the petitioner to approach a appropriate forum if so advised. When the petitioner approaches such a forum, the period from the date of filing this writ petition till the date of disposal shall be excluded while reckoning limitation, in view of Section 14 of the Limitation Act 1963. There shall be no order as to costs.

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Index : Yes / No
Speaking Order/Non Speaking Order
sbm



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K.KUMARESH BABU, J.

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