

3rd March,
2023
(AK)
02

W.P.A 14929 of 2005

Ritesh Tradefin Private Limited and another
Vs.
The new India Insurance Limited and others

Mr. Pradip Kumar Tarafder
Mr. Sambuddha Dutta
Mr. Sourav Sengupta
...for the petitioners.

Mr. Soumalya Ganguli
...for the respondents.

Affidavit-of-service filed in court today be kept on
record.

Learned counsel for the respondents-Insurance
Company had mentioned the matter on March 2, 2023
after the judgment of such date was passed.

Since none appeared for the Insurance Company at
the time of call, the matter had been heard *ex parte* in the
absence of the respondents. Hence, for the ends of
justice, a hearing was chosen to be given to learned
counsel for the Insurance Company on counsel's oral
prayer and the matter is appearing today for such
purpose upon notice to the learned advocate for the
petitioners.

Learned counsel for the Insurance Company seeks
to place reliance on a communication purportedly made
by the Insurance Company to the petitioners, subsequent

to the filing of the writ petition, to the effect that the insurance-in-question is a third party insurance and does not cover the claim of the petitioners.

It is claimed that the same was the ground for refusal of grant of the claim to the petitioners.

Learned counsel for the petitioners, by placing reliance on the refusal of the Insurance Company annexed at page-51 (Annexure-P12) of the writ petition, submits that the same clearly mentioned that the ground of refusal was that the charge sheet of Asansol Police Station would not be treated as final police report and claim cannot be settled on that basis.

As such, the petitioners were requested by the Insurance Company to send the "Final Police Report" immediately along with the claim form duly filled in which was allegedly retained by the petitioners.

It is submitted that it is well-settled from *Mohinder Singh Gill and another vs, The Chief Election Commission* reported at (1978) 1 SCC 405 onwards that the legality or otherwise of an order passed by an authority must be judged on the face thereof and the reasons contained therein cannot be supplemented by a subsequent affidavit.

For such proposition, learned counsel also cites another judgment of the Supreme Court rendered in *Chandra Singh vs. State of Rajasthan and another*

reported at (2006) 6 SCC 545, which followed the proposition laid down in *Mohinder Singh Gill (supra)*.

Upon a perusal of the refusal of the Insurance Company, which has been relied on by the petitioners, it is clear that the only reason for such refusal, cited in such communication by the Insurance Company given contemporaneously with the claim, was that the charge sheet of the Asansol South Police Station which was produced by the petitioners would not be treated as final police report, for which reason the claim was refused.

In fact, the Insurance Company specifically insisted upon the petitioners sending such “Final Police Report” (whatever the same meant in the notion of the Insurance Company) immediately along with the claim form duly filled in.

As such, the communication squarely indicates that the only ground of refusal was as cited therein.

At present juncture, by seeking to place reliance on a post writ petition document, which was purportedly sent by the respondents to the petitioners, the Insurance Company is seeking to supplant/embellish its original ground of refusal.

It is well-settled, as held in the judgments indicated above, that the grounds of refusal with regard to a statutory or an administrative order cannot be improved subsequently by way of affidavit.

In such view of the matter, I do not find any reason whatsoever to differ from the order dated March 2, 2023, which was passed by taking into consideration the materials-on-record.

In such view of the matter, the order dated March 2, 2023 is retained.

The oral prayer made by learned counsel for the private respondents to recall the said order is hereby refused.

Accordingly, WPA 14929 of 2005 remains disposed of in terms of the previous order dated March 2, 2023.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)