IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.01.2023

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

WP.No.21116 of 2014

OPG Power Generation P. Ltd.,
Rep. by its Joint Managing Director,
Mr.T.Chandramoulee
No.6, Sardar Patel Road, Guindy,
Chennai 600 032. ... Petitioner

Vs

The Oriental Insurance Company Limited,
Rep. by the Chief Regional Manager,
Corporate Business Regional Office,
'Rosy Tower' 2nd Floor,
No.7, Nungambakkam High Road,
Chennai 600 034. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the order dated 30.04.2014 of the Respondent in respect of Insurance claim No.520000/11/2014/000005/IAR under Policy No.520000/11/2013/101 for Spontaneous Combustion to Coal Stocks in Unit II and quash the same and consequently direct the Respondent to settle the insurance claim as estimated by the petitioner.

For Petitioner : Mr.S.S.Swaminathan
For Respondent : Mr.N.Venkateswara
for M/s.Nageswaran & Narichania

ORDER

The petitioner is engaged in the business of power generation and manages three Coal based Thermal Power Plants at Gummidipoondi. Unit-I and Unit-III of the Thermal Plants are stated to be insured with M/s.United India Insurance Company Limited and Unit-II with the respondent herein, being the Oriental Insurance Company Limited. A Fire Industrial All Risks Policy had been taken bearing No.520000/11/2013/101 dated 04.09.2012 for the period 04.09.2012 to 03.09.2013 for a sum insured of Rs.2,74,05,00,000/-. The policy covered building, furniture, fittings, plant and machinery and omission to insure.

2.Apart from loss of profit for Fire and Machinery breakdown, an endorsement was made to the policy on 07.12.2012 to include the stock of Coal covering a value of Rs.15 crores with spontaneous combustian risk/cover. The period of insurance was amended to read 01.09.2012 to 31.08.2013 by way of an endorsement made on 07.09.2012. The lending bank interests were also suitably amended on 18.12. 2012.

3.The petitioner intimated the respondent that 'hotspot' had been observed on 31.05.2013 at 15.00 hours and the same commenced burning at 19.30 hours on 03.06.2013. One M/s.L.S.Surveyors had been appointed on 03.06.2013, who had witnessed the fire and the loss of the coal in Unit-II. The fire was brought under control following the standard operation procedure. The petitioner estimated the loss at a sum of

Rs.6,37,72,508/- and made a claim before the respondent.

4.One Mr.Dakshinamoorthy was appointed as a Surveyor on 04.06.2013 and a final survey report had been filed on 10.10.2013. The petitioner thereafter made enquiries commencing from 2013 through subsequent letters and remainders, the last of which was sent on 24.01.2014, seeking the status of its claim. By letter dated 13.03.2014, the respondent wrote to the petitioner indicating its inclination to repudiate the claim and calling for an explanation. On 24.03.2014 and 29.04.2014, detailed letters and explanations were putforth by the petitioner responding to the notice received. A specific objection was raised pointing out that the survey or selected had not been of the category required under the Insurance Regulatory Development Authority (IRDA Regulations).

5.Despite the objection raised, the impugned order has come to be passed on 30.04.2013 pointing out various alleged defeciencies/lacuna in the protocols followed in Unit-II and, in conclusion, repudiating the claim made.

6.Learned counsel for the respondent would straightaway raise a preliminary objection on the maintainability of this writ petition pointing out that the proper course of action would have been for the petitioner to have approached the civil court. The impugned order touches upon the factual aspects of maintenance of Unit-II as well as various deficiencies that were noticed in the course of survey itself. Thus, this Court sitting in Article 226 would not be the proper forum to decide an issue of this nature, particularly, seeing as the prayer of the petitioner is for the order of repudiation to be set aside and a direction issued to the respondent to honour the policy.

7.Per contra, learned counsel for the petitioner would submit that the impugned order is vitiated by virtue of two factors. Firstly, the procedure followed by the respondent is in violation of that stipulated under the Insurance Regulatory and Development Authority (Protection of Policyholders Interest) Regulations, 2002.

8.My attention is specifically drawn to the procedure for dealing with the claim in respect of general insurance policy that would cover fire insurance policy as well, under Article 9 of the 2002 Regulations. This article specifically stipulates the procedure for dealing with such claims and requires the report of the assessor to be communicated to the insurer within thirty (30) days of his appointment, with a copy of the same being furnished to the insurer.

9. Thereafter, an additional report could be filed and it is upon receipt of the survey report/additional survey report that an offer of settlement of claim is to be made by the insurer to the insured. Learned counsel appearing for the respondent would concede to the position that the aforesaid procedure has not been followed in this case.

10.The second objection that is raised by the petitioner relates to the classification of the surveyor. My attention is drawn to the IRDA regulations which classifies surveyor into three categories, A, B and C.

11.Mr.Dakshinamoorthy, the surveyor appointed in the present case, admittedly falls under category B and the annexure to notice dated 19.09.2021 would establish this position. The IRDA also mandates that category B surveyors shall not be eligible to deal with policies that fall under the pecuniary limits of category A. In such circumstances, the appointment of a category B surveyor to assess a claim that is in the region of Rs.6 crores, is seen to be contrary to the Regulations.

12.The respondent, for its part, makes reference to a circular issued by the IRDA bearing No.026/IRDA/SUR/CIR/DEC-08 dated 22.12.2008 whereunder the Executive Director of the IRDA has permitted Insurance Companies to form their own classifications for categorising assessors. The respondent company, as on 03.06.2009 fixed categories in terms of which also, the present survey/assessment ought to have been carried out by a category A surveyor.

13. In the above communication, the Deputy General Manager of the respondent company has stated that after appointment of surveyor, the competent authority holding jurisdiction of the claim can either decide to continue with the same surveyor, asking him to submit a prelimiary report, or to appoint another surveyor, to obtain a second opinion. This may well be so. However, this does not mean that the appointment of surveyor can be in violation of the pecuniary limits that have been fixed.

14.The stipulation in communication dated 03.06.2009 only means that more than one surveyor can be appointed to assess the claim though all such surveyors should fall within the prescribed category/classification. This argument of the respondent is thus rejected and the appointment of the surveyor is found to be contrary to, not just the Regulations of the IRDA, but the Regulations fixed by the respondent company itself.

15.Though both the grounds have been answered in favour of the petitioner, the victory is only pyrrhic or academic. This is for the reason that the findings of fact in the impugned order cannot be addressed or reversed by this Court. A direction for settlement of a policy would ultimately depend on the assessment of the claim and on the determination of various factual parameters that is best left to the civil courts.

16. Seeing as this writ petition has been filed as early as on 05.08.2014, and there being no objection to the following direction that is issued by the respondent, the petitoner is permitted to approach the civil courts for appropriate remedy and Suit, if filed within a period of eight (8) weeks from date of receipt of copy of this order, shall be decided by the learned Judge without reference to limitation and on merits. This writ petition is ordered in the aforesaid terms. No costs.

05.01.2023

vs
Index : Yes
Speaking Order

To

The Oriental Insurance Company Limited,
Rep. by the Chief Regional Manager,
Corporate Business Regional Office,
'Rosy Tower' 2nd Floor,
No.7, Nungambakkam High Road,
Chennai 600 034.

Dr.ANITA SUMANTH,J.

vs

WP.No.21116 of 2014

05.01.2023