IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2024

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. Nos.20456 and 20457 of 2018
and
W.M.P. Nos.24025 and 24026 of 2018

Sri Shakthi Institute of Engineering
and Technology
represented by its Chairman
Dr. S. Thangavelu ... Petitioner in W.P. No.20456 of 2018

The Association Management of Coimbatore,
Anna University Affiliated Colleges,
represented by its President Mr. K. Paramasivam
... Petitioner in W.P. No.20457 of 2018

Vs.

1. The Union of India,
Ministry of Finance,
Department of Financial Services,
represented by its authorized Officer,
3rd Floor, Jeevan Deep Building,
Sansad Marg, New Delhi – 110 001.

2. Insurance Regulatory and Development Authority of India,
represented by its Authorized Officer,
No.115/1, Financial District,
Nanakramguda, Gochibowli,
Hyderabad – 500 032.

3. United India Insurance Company,
represented by its authorized officer,
24, Whites Road, Chennai-600 014.

4. The Oriental Insurance Company Limited,
represented by its authorized officer,
Oriental House, A-25/27, Asaf Ali Road,
New Delhi – 110 002.

5. New India Assurance Company,
represented by its authorized officer,
New India Assurance Building,
87, MG Road, Fort, Mumbai – 400 001.

6. National Insurance Company,
represented by its authorized officer,
No.3, Middleton Street,
Prafulla Chandra Sen Sarani,
Kolkata – 700 071.

7. IFFCO – TOKIO General Insurance Company,
represented by its authorized officer,
Corporate Office, IFFCO Tower,
Plot No.3, Sector 29, Gurgaon – 122 001.

8. HDFC ERGO General Insurance Company,
represented by its authorized officer,
1st Floor, HDFC House,
165-166, Back bay Reclamation,
H.T. Parekh Marg, Church Gate,
Mumbai – 400 020. ..... Respondents
[common in both W.Ps.]

COMMON PRAYER: Writ Petitions are filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the respondents 1 to 6 to consider the representation of the petitioners dated 17.03.2018 and 07.03.2018 respectively, for reducing the Premium payable for Education Institution Vehicles of the petitioner institution by 75% in commensurate to the premium paid vis a vis the claims made by the Educational Institutions of the petitioner institution in the past three years (2014-15, 2015-16 and 2016-17).

For Petitioners [both W.Ps]	:	Mr. Kandhan Duraisami
For Respondents [both W.Ps]	:	Mr. J. Madanagopal Rao Senior Panel Counsel[for R1] Mr. M.B. Raghavan [for R2] Mr. C. Paranthaman [for R3] Mr. S. Arunkumar [for R6] Mr. N. Vijaya Raghavan [for R8] No appearance [for R4, R5 and R7]

COMMON ORDER

These Writ petitions have been instituted directing the respondents 1 to 6 to consider the representation of the petitioners dated 17.03.2018 and 07.03.2018 respectively, for reducing the Premium payable for Education Institution Vehicles of the petitioner institution by 75% in commensurate to the premium paid vis a vis the claims made by the Educational Institutions of the petitioner institution in the past three years (2014-15, 2015-16 and 2016-17) .

2. The petitioners are Sri Shakthi Institute of Engineering and Technology and the Association Management of Coimbatore. The claim of the petitioners is that the respondent Insurance Companies are collecting exorbitant premium towards the Motor Vehicle insurance policies. In this context, the petitioners submitted representations to the Insurance Companies to reduce the premium and the Insurance Regulatory and Development Authority of India vide letter dated 28.05.2018 sent a reply to the petitioners stating that the Authority has noted the points made by the petitioner and examining the same.

3. Mr. Kandan Duraisami, learned counsel for the petitioners relied on the statistics provided by the Insurance Company to establish that the number of policies, year after year, are increasing and the claims are reducing. Therefore, the Insurance Regulatory and Development Authority of India, shall consider for reducing the premium and issue necessary advices to the insurance companies. The learned counsel for the petitioners

would further submit that the Insurance Regulatory and Development Authority Act 1919 provided the powers and functions of the Authority. Section 14(2)(b)(g) and (i) of the Insurance Regulatory and Development Authority Act, 1999 enumerates as follows:-

> "14. Duties, Powers and functions of Authority:
>
> (2) Without prejudice to the generality of the provisions contained in sub-section(1), the powers and functions of the Authority shall include,-
>
> (b) protection of the interests of the policy-holders in matters concerning assigning of policy, nomination by policy-holders, insurable interest, settlement of insurance claim, surrender value of policy and other terms and conditions of contracts of insurance;
>
> (g) levying fees and other charges for carrying out the purposes of this Act;
>
> (i) control and regulation of the rates, advantages, terms and conditions that may be offered by insurers in respect of general insurance business not so controlled and regulated by the Tariff Advisory Committee under Section 64U of the Insurance Act, 1938 (4 of 1938)";

Relying on the above provisions, the learned counsel for the petitioners would submit that the Regulatory Authority is empowered to consider the premium charged by the Insurance Companies. When the Authority has power to issue directives to the Insurance Companies under the Act, the representations submitted by the petitioners must be considered for reducing the premium to be charged.

4. Question arises as to

(i) whether there is an absolute right to seek reduction of premium by the policy holder.

(ii) whether the High Court can issue any such direction to reduce the premium or to consider the representations if any submitted by the policy holders and

(iii) whether any such right is enforceable or not is also to be considered.

5. In the present case, the petitioners have submitted their representations to the Insurance Regulatory and Development Authority of India to reduce the premium on the basis of certain statistics. The petitioners claim that 75% of the premium is to be reduced.

6. This Court is of the considered opinion that mere direction to consider the representation would do no service to the cause to the justice. Contrarily, the litigants will be back before the Court by way of another litigation. Only when a legal right has been established, the Writ proceedings would be entertainable and direction to be issued to consider

positively or to issue positive directions. In the absence of any right, mere direction to consider the representations cannot be granted and the same would result in anomalous situation. It is not as if any and every such representation submitted by a person is directed to be considered.

7. Fixing of premium for Motor Vehicle policies are the policy decision to be taken by the Insurance Regulatory and Development Authority of India, if necessary, with the consultation of the Insurance Companies. Therefore, it is a co-ordinated policy decision to be taken and to be approved by the Insurance Regulatory and Development Authority of India. If any direction to consider the representation is issued, the process cannot be undertaken by the Insurance Regulatory and Development Authority of India and an effort is to be taken periodically based on certain reports, informations and statistics etc.,

8. In view of the amendment under Section 147 of Motor Vehicles Act with effect from 01.04.2022, all such policy decisions, fixation of third party premium is vested with the Government and therefore the Insurance Regulatory and Development Authority of India has no power to reduce the

premium fixed by the Government under Section 147 of the Act. In the event of any such direction, it will lead to an anomalous situation, in view of the amendment effected under Section 147 of the Motor Vehicles Act 2019. No doubt the petitioners are at liberty to submit their representations to the Authorities or to the Government or to the Insurance Companies. However, a policy decision is to be taken and the power of judicial review conferred under Article 226 of Constitution of India, cannot be expanded for the purpose of issuing a direction to dispose of the representation in the absence of any legal right to be established and it is a pre-condition for entertaining the Writ petitions.

9. Accordingly, these Writ petitions stand dismissed. No order as to costs.

09.01.2024

Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no
mjs

To

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S.M.SUBRAMANIAM, J.

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