IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP-11938-2019 (O&M)
Date of decision: 22.08.2024

Jai Veer Singh

...Petitioner

VERSUS

Insurance Regulatory and Development Authority and others

...Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Mr. A.K. Jain, Advocate for the petitioner.

Mr. Nitin Thatai, Advocate for respondents No.2 and 3

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VINOD S. BHARDWAJ, J. (Oral)

1. Challenge in the present petition is to the order dated 24.12.2018 passed by respondent No.2-Apollo Munich Health Insurance Company Limited and order dated 05.03.2019 passed by respondent No.3-the Appellate Authority, Apollo Munich Health Insurance Company Limited, whereby the agency of the petitioner has been terminated allegedly without conducting any enquiry or as per the procedure prescribed under Regulation 11 of the Insurance Regulatory and Development Authority of India (Appointment of Insurance Agents) Regulations, 2016 (herein after referred to as '**the Regulations of 2016**').

2. Learned counsel for the petitioner contends that the petitioner was issued license by respondent No.1 under the Insurance Regulatory and Development Authority (Licensing of Insurance Agent) Regulations, 2000 vide letter dated 10.02.2010 to act as Insurance Agent under Part-II of the

Insurance Act, 1938. Respondent No.2-Insurance Company appointed the petitioner as their agents vide letter dated 19.05.2010. Subsequently, the new appointment letter in compliance of the Regulations of 2016 was issued vide letter dated 22.06.2015 by respondent No.2. The petitioner was required to perform as an Insurance Agent on certain guidelines as contained in Clause-3 and to follow the Code of Conduct as contained in Clause-6 of the appointment letter. It is vehemently argued that the petitioner discharged his functions sincerely and to the best of his abilities and provided huge business and policies to the respondent and was also awarded certificates of excellence on several occasions. However, the petitioner was shocked on receiving a letter dated 20.11.2018 as a show cause notice for adverse claim performance issued by respondent No.2. The agency of the petitioner was de-activated by respondent No.2 immediately after issuance of show cause notice. A detailed reply to the said show cause notice was filed by the petitioner and a request was also made by the petitioner for re-activating the agency code so that he could further procure business. Instead of conducting enquiry as mandated by conditions No.7 to 9 of the appointment letter dated 22.06.2015 and as per the Regulations No.10 and 11 of the Regulation of 2016, respondent No.2 terminated the agency of the petitioner vide letter dated 24.12.2018.

3. Aggrieved thereof, an appeal was preferred by the petitioner before respondent No.3- the Appellate Authority, Apollo Munich Health Insurance Company Limited, but the said appeal was also dismissed vide order dated 05.03.2019 without affording any opportunity of hearing to the

petitioner.

4. A written statement had been filed on behalf of respondents No.2 and 3 wherein a specific objection has been taken that respondent No.2-Insurance Agency does not exist any further as the majority of the stakes of the company have also been acquired by the Housing Development Finance Corporation Ltd. An objection has also been taken with respect to the maintainability of writ petition as the respondent-Company is stated to be a private limited company having no connection whatsoever with the Government or Semi-Government Agency. Hence, it is not a State or Agency and Instrumentality of the State under Article 12 of the Constitution of India and accordingly would not be amenable to the jurisdiction of this Court.

5. Despite the above said response having been filed in April-2022, no rejoinder has been filed denying the specific assertion with respect to the maintainability of the writ petition against the private limited company.

6. Learned counsel for the petitioner has vehemently argued that the Insurance Regulatory and Development Authority had framed the Regulations of 2016 and that the appointment of the petitioner being governed under the same, hence, the illegal termination in violation of the above said Regulations would entitle the petitioner to invoke writ jurisdiction of this Court.

7. The above said contention has been responded to by the learned counsel for respondents contending that a mere Regulation would not bring

forth the private limited company within the ambit of agency and instrumentality of the State so as to be amenable to a writ jurisdiction. The tests as laid down by the Hon'ble Supreme Court in a number of judgments are required to be fulfilled before an entity can be brought within the ambit of writ jurisdiction of the High Court. It is further stated that the relationship between the petitioner and the respondent-Company was in the nature of an employer employee relationship and the same cannot be held to be in the nature of discharge of public duty. Thus, considering the either of the perspectives the writ petition in a contract of employment with a private entity was not maintainable.

8. I have heard the learned counsel for the respective parties and have gone through the documents appended with the present writ petition.

9. Even though an argument has been made by the learned counsel for the petitioner that he would be deemed to discharge a public duty/public function because of being associated with a chain of hospitals for which the Insurance Policies were obtained, however, I find that the above said argument is sans objectivity and rationality. The actual relationship of the petitioner with the Insurance Company has to be seen as that of a contract of employment between the Insurance Service Provider and employed Agent. The function of the hospital is entirely different from that of a person securing insurance policies for the individuals to be extended insurance cover in the health sector. Accordingly, the job of an insurance Agent cannot be deemed as performance of public duty equal to the duty being performed by hospital. Even in relationship to hospital duties, the contract of

employment *per se* is not in the domain of a public function/public duty. It is the core function of a hospital i.e. the extension of medical treatment which is a public function being discharged. The argument thus fails on the primary test of a public function/public duty which has been defined by the Hon'ble Supreme Court in the judgment passed in the matter of '**VST Industries Ltd. Vs. VST Industries Workers' Union',** reported as **2001(1) SCC 298**. Further, the Hon'ble Supreme Court has held in the matter of ***Raman Dayaram Shetty Vs. The International Airport Authority of India and Others***, reported as ***(1979 AIR 1628)*** that a writ petition with respect to the contract of an employment between a private agency is not amenable to the writ jurisdiction. The damages/enforcement such contract of employment cannot be sought through the public law remedy and the remedy if any lies before the Civil Court for claiming damages and/or any other ancillary benefits that may accrue in favour of the person aggrieved. Further, the specific plea raised by the learned counsel for the respondents in the preliminary objections that there is no deep and pervasive control or supervisory managerial or financial control of the State in the affairs of respondent No.2-Hospital, hence, it is not a State or instrumentality of State within the meaning of the Article 12 of the Constitution of India and as laid down by the Hon'ble Supreme Court in the matter of **Ajay Hasia and others Vs. Khalid Mujib Sehravardi and others** reported as **(1981) 1 SCC 722,** the relevant extract of which reads thus:-

> ***"9. The tests for determining as to when a corporation can be said to be an instrumentality or agency of***

Government may now be culled out from the judgment in the International Airport Authority case. These tests are not conclusive or clinching, but they are merely indicative indicia which have to be used with care and caution, because while stressing the necessity of a wide meaning to be placed on the expression "other authorities", it must be realised that it should not be stretched so far as to bring in every autonomous body which has some nexus with the Government within the sweep of the expression. A wide enlargement of the meaning must be tempered by a wise limitation. We may summarise the relevant tests gathered from the decision in the International Airport Authority's case as follows:

(1) One thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government (SCC P.507 Para 14).

(2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character (SCC P.508 Para 15).

(3) It may also be a relevant factor ....whether the corporation enjoys monopoly status which is the State conferred or State protected. (SCC P.508 Para 15)

(4) Existence of deep and pervasive State control may afford an indication that the Corporation is a State agency or instrumentality. (SCC P.508, Para 15)

(5) If the functions of the corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government. (SCC P.509, Para 16)

(6) "Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference" of the corporation being an instrumentality or agency of Government. (SCC P.510 Para 18).

If on a consideration of these relevant factors it is found that the corporation is an instrumentality or agency of government, it would, as pointed out in the International Airport Authority case, be an 'authority' and, therefore, 'State' within the meaning of the expression in Article 12.

10. ***We find that the same view has been taken by Chinnappa Reddy, J. in a subsequent decision of this court in the U. P. Warehousing Corporation v. Vijay Narain and the observations made by the learned Judge in that case strongly reinforced the view we are taking particularly in the matrix of our constitutional system.*** ".

11. The proposition of law having been well settled that a writ petition is maintainable against an agency or instrumentality of State and/or a person who is discharging public functions/public duties, I find that the termination of a contract of insurance between a private limited company as well as the petitioner would not fall within the domain of a public function merely on the strength that certain regulations pertaining to govern the service conditions have been notified by Insurance Regulatory and Development Authority. The governing body which lays down certain rules and/or a statutory framework having been provided is only a regulatory framework and does not change the basic nature of the employment and/or status of the juristic entity against whom the claim is being lodged. For the foregoing reasons and in view of the settled proposition of law, I find that the present writ petition is not maintainable.

12. Since the present writ petition is being dismissed on the ground of the maintainability, the merits of the claim are not being adverted to lest the same may cause any prejudice to the respective rights of the contesting parties. The petitioner shall be at liberty to pursue his alternative remedy in accordance with law.

13. The period spent in pursuing the present writ petition before this Court would be exempted while computing the limitation for initiation of any private action claim against the respondent-Company.

14. **Ordered accordingly**.

(VINOD S. BHARDWAJ)
22.08.2024 **JUDGE**

Mangal Singh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No