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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 22nd November, 2024

\+ W.P.(C) 7516/2022

SMT. NURAISHA KHATOON .....Petitioner

versus

IFFCO TOKIO GENERAL INSURANCE CO. LTD. AND ORS.

.....Respondents

With

W.P.(C) 7552/2022, W.P.(C) 11074/2023, W.P.(C) 14529/2023, W.P.(C) 14533/2023 & W.P.(C) 14863/2023

For Petitioner: Mr. Navneet Goyal, Advocate

For Respondents: Mr. Shivam Singh, Mr. Shaswati Parhi, Mr. Shubham Janghu, Advocates in items no. 42, 43 & 44
Mr. Avnish Singh, SPC for UOI with Mr. Vishal Kr. Yadav, Ms. Kanchan Kumari, Advocates in item no. 45
Mr. Vikas Kumar Sharma, SPC with Mr. Rajat Choudhary, Advocate for R-3 in item no. 42
Mr. Ajay Jain, SPC with Ms. Bijay Lakshmi, Mr. M.N. Mishra, Mr. Manoj Kumar Gautam, Advocates for R-3 in item no. 43
Ms. Uma Prasuna Bachu, SPC for R-3 in item no. 44
Mr. Haseeb, CGSC for R-3 in item no. 46
Mr. Raj Kumar Yadav, Advocate for UOI in item no. 47

Ms. Devika Mohan, Mr. Karan Seth, Advocates for IFFCO in item nos. 45, 46 & 47

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

1. The present writ petitions raise common grounds of challenge and emerge from similar set of facts. Accordingly, the same are being disposed of by way of a common order.

2. Notwithstanding the commonalities, the specific details of each case warrant individual attention, as the claims of each Petitioner arise from separate insurance policies and involve distinct facts, such as the duration of the policy, the date of the accident and the date of claim intimation. These specific facts, are tabulated below as follows:

Relevant Facts	W.P. (C) No. 7552 of 2022 Aisha Khatoon v. ITGI & Ors.	W.P. (C) No. 7516 of 2022 Nuraisha Khatoon v. ITGI & Ors.	W.P. (C) 11074 of 2023 Smt. Lutfa Bibi v. ITGI & Ors.
PBBY Policy No.	1431648	30165210	30134291
Duration of Policy	27.11.2013 to 26.11.2015	08.01.2015 to 07.01.2017	30.12.2014 to 29.12.2016
Date of Accident	11.06.2015	29.01.2016	29.02.2016
Date of Claim Intimation	07.04.2018	12.12.2018	10.09.2018
Delay in Claim	2 years 10	2 years 11	2 years 7 months

Intimation	months	months	
Date of Claim Repudiation	15.06.2018	28.03.2019	17.09.2018
Date of institution of Writ Petition	06.05.2022	06.05.2022	16.08.2023
Delay in Petition institution	4 years	3 years	5 years
Date of condonation of delay by Embassy / Union	22.06.2022	21.06.2022	-

Relevant Facts	**W.P. (C) No. 14863/2023 Sh. Mohmmad Husen v. ITGI & Ors.**	**W.P. (C) No. 14529/2023 Smt. Rashida Begum v. ITGI & Ors.**	**W.P. (C) No. 14533/2023 Smt. Hashnehar Bibi @ Hosnehara Bibi v. ITGI & Ors.**
PBBY Policy No.	30107646	1496190	1427526
Duration of Policy	20.12.2014 to 19.12.2016	26.02.2014 to 25.02.2016	22.11.2013 to 21.11.2015
Date of Accident	17.11.2016	08.07.2015	23.05.2015
Date of Claim Intimation	09.01.2019	11.07.2019	10.09.2018
Delay in Claim Intimation	2 years and 2 months	4 years	3 years 4 months
Date of Claim Repudiation	22.01.2019	31.07.2019	17.09.2018
Date of institution of Writ Petition	2.11.2023	02.11.2023	02.11.203

Delay in Petition institution	Almost 5 years (4 years and 10 months)	4 years 3 months	5 years 2 months

3. To contextualize the controversy, the facts narrated in W.P.(C) 7552/2022 — ***Aisha Khatoon v. Iffco Tokio General Insurance Co. Ltd. & Ors.*** — are being extensively noted and discussed below.

3.1 The Petitioner – Ms. Aisha Khatoon, is a citizen of India represented through a Special Power Attorney holder, Mr. Sandeep Kumar Srivastava.

3.2 Respondent No. 1 – IFFCO-TOKIO General Insurance Co. Ltd., is a general insurance company duly registered with Respondent No. 2 – Insurance Regulatory and Development Authority of India[1]. Respondent No. 3 is the Protector of Emigrants, Ministry of External Affairs[2], Government of India. Respondent No. 1 provides insurance benefits to persons under the policy issued by the MEA, Government of India, named - Pravasi Bharatiya Bima Yojana, 2017, which is an insurance scheme for Indian emigrants going abroad for employment.

3.3 Respondents No. 2 and 3 are 'State' within the meaning of Article 12 of the Constitution of India, 1950.

3.4 On 27th November, 2013, M/s. Al-Babtain Recruitment Office, Riyadh (employer), purchased an insurance policy bearing No. 1431648 (P400 Policy No. 61469590) from Respondent No. 1 under the Pravasi Bharatiya Bima Yojana, 2017[3], for the husband of the Petitioner - Mr. Shahid Alam (emigrant) for the period covering 27th November, 2013 to 26th

[1] "IRDAI"
[2] "MEA"

November, 2015. The applicable premium for the policy was duly paid by the employer. This policy covered personal accident covering death and permanent total disability to the tune of INR 10 Lakhs. Subsequently, Mr. Shahid Alam obtained his Emigration Clearance and left for work to Saudi Arabia as an Assistant Vacuum Machine Operator for the employer - M/s. Al-Babtain Recruitment Office, Riyadh.

3.5 Unfortunately, on 11th June, 2015, the husband of the Petitioner, Mr. Shahid Alam passed away in a road accident in Shaqra, Kingdom of Saudi Arabia and intimation of his demise was received by the Petitioner.

3.6 On 15th June 2015, a medical report concerning the deceased was issued by the Ministry of Health, Kingdom of Saudi Arabia. This was followed by a communication from the Embassy of India, Riyadh, dated 14th July 2015, issuing a No Objection Certificate for the transportation of the mortal remains of the Petitioner's husband to India. The death certificate of Mr. Shahid Alam was subsequently issued on 22nd July 2015, by the Ministry of Health, Kingdom of Saudi Arabia.

3.7 On 29th July, 2015, the mortal remains were dispatched by a flight to Delhi. The Petitioner completed the requisite formalities, and the mortal remains of Late Mr. Shahid Alam were interred by their family members.

3.8 Once the necessary documents, including copies of the passport and death report, were received from the Embassy of India, Riyadh, on 07th April, 2018, the Petitioner, through her Authorized Representative Mr. Sandeep Kumar Srivastava, filed an insurance claim under the PBBY, 2017, with Respondent No. 1, for the death of Mr. Shahid Alam. However, this claim was rejected by Respondent No. 1 on 15th June 2018, in the following

[3] "PBBY, 2017"

terms:

> *"Mrs. Aisha Khatoon,* *15.06.2018*
> *W/o. Late Shahid Alam,*
> *Ward No 02, Gram, Sirkhindi P.O Chainpur, Bahuri,*
> *East Champaran, PIN 845433, Bihar.*
>
> *Respected Madam,*
> *Sub: PBBY Policy# 1431648, Passport # L3009848,(P400 Policy #61469590. Claim# 51010925) Death of Insured Mr. Shahid Alam on 11.06·2015 in KSA.*
>
> *Please accept our deepest condolences on the sad demise of your husband. This is with reference to the captioned claim lodged by you, for the reported death of your husband Late Mr. Shahid Alam. On verification of the documents submitted, we have the following observations:*
> ***• The insured Mr Shahid Alam is reported to have died on 11-06-2015, whereas the claim has been reported to us only on 17-04-2018.***
> ***• The Inordinate delay of more than 2Y, years in the claim intimation is a violation of the General Condition No. 8A (ii) of the subject Policy** which states that: An event, which might become o claim under the Policy, must be reported to Us as soon as possible. In case of death, written notice also of death must, unless reasonable cause is shown, be given before internment/cremation and In the event of Permanent Disability, written notice thereof must also be given within one calendar month after such disability. A written statement of the claim will be required and o Claim Form will be provided for completion.*
> ***• By not giving timely claim Intimation, we have been deprived of the valuable right to investigate the death claim.***
> *• It is also noted that, the following documents have not been submitted:*
>
> - *Claim form duly filled & signed by the Nominee*
> - *Original Cancelled Passport*
> - *Valid visa at the time of accident / IQAMA (Original/Attested copy)*
> - *Contract copy (all pages duly attested).*
> - *Death Certificate issued by the Govt. Authorities (Original)*
> - *Police Report (Original)*
> - *Post Mortem Report (Original)*
> - *Certificate/Report from Indian Embassy {Original)*
> - *Nominee's 10 proof & address proof*
> - *Certified copy of Bank passbook of the Nominee, along with cancelled cheque leaf.*
>
> *In view of the above facts, we regret to inform our inability to admit the liability under the Policy. The claim stands closed in our records & we are treating this as an opportunity missed to serve you."*

3.9 On 28th October, 2018, the Petitioner furnished all the requisite documents which were available with her and requested Respondent No. 1 to condone the delay in filing the claim. She explained that, being uneducated, she was unaware of the insurance policy and its terms until April 2018, when a person known to her advised her to initiate the insurance claim process. Thereafter, on 03rd March 2019, the Petitioner approached the grievance cell of Respondent No. 1, once again requesting them to reconsider her claim. However, this request was also declined.

3.10 On 30th May, 2019, Respondent No. 1 sent an email to the Petitioner requesting her to seek the necessary approval from Respondent No. 3 – Protector of Emigrants, for condonation of delay in intimation of the subject claim. The email mentioned that upon receipt of confirmation from Respondent No. 3 and submission of the necessary documents, the matter would be forwarded to the competent authority for approval, after which the claim would be processed in accordance with the policy terms and conditions.

3.11 Accordingly, on 28th January, 2020, the Petitioner requested Respondent No. 3 to condone of delay. However, since no response was received, the Petitioner was compelled to institute the present writ petition, seeking directions to the Respondents to process and settle the insurance claim arising from the accidental death of her husband, Late Mr. Shahid Alam.

3.12 When the matter was listed for the first time on 17th May 2022, the counsel appearing for Respondent No. 3, who had received advance notice, was directed to obtain instructions in light of the prayers sought. Thereafter, Respondent No. 3 sent an email communication to the Embassy of India, Riyadh, requesting them to issue the requisite certificate under the PBBY, 2017, establishing that the circumstances leading to the non-submission of claim documents were beyond the control of the insured.

3.13 In response, the Embassy of India, Riyadh issued the requisite certificate on the same day - 22nd June, 2022 to Respondent No. 1 – insurance company, to the following effect:

> *"Madam/Sir,*
>
> *This has reference to the email request dated 22.06.2022 received from PoE, Mumbai regarding PBBY claim in respect of late Shri Shahid Alam (passport No. L3009848) who died in a traffic accident at Shagra, K.S.A on 11.06.2015*
>
> *We would like to inform that the Saudi authorities sometimes send death related documents including the detailed police report, forensic report, summary of investigation, death certificate etc, to the Embassy with lot of delay, which makes the process of forwarding these documents to the family of the deceased further late.*
>
> *Since, the circumstances were beyond the control of Embassy /dependents of the deceased, it is requested that the insurance claim of late Shahid Alam may please be processed again to alleviate the suffering of his family.*
>
> *With best regards"*

3.14 Despite furnishing the above certificate issued by the Indian Mission abroad, subsequent to the filing of the present writ petition, Respondent No. 1 continues to maintain their stand that the insurance claim has been rightly and validly repudiated on the grounds of delay in intimation of claim.

4. The Court has heard the counsel for the parties extensively. The objections raised by Respondent No. 1, both in their counter-affidavit and during oral arguments, can be encapsulated under three principal headings:

I. The writ petition is not maintainable, as it pertains to a purely contractual dispute and seeks monetary relief, which ought not to be entertained under writ jurisdiction. Additionally, Respondent No. 1 is not a 'State' within the meaning of Article 12 of the Constitution of India, 1950. There exists an alternative and efficacious remedy.

II. The claims are barred by delay and laches.

III. Questioning the Validity of the Petitioner's Representation through a Power of Attorney Holder.

I. QUESTION OF MAINTAINABILITY

A. THE PRESENT CASE INVOLVES A PURELY CONTRACTUAL DISPUTE SEEKING MONETARY RELIEF, WHICH SHOULD NOT BE ENTERTAINED UNDER WRIT JURISDICTION.

5. Mr. Shivam Singh and Ms. Devika Mohan, counsel for Respondent No. 1, contend that the present writ petition is not maintainable. They urge that the repudiation of the insurance claim of the Petitioners arises solely from a contractual dispute between private parties, and the Petitioners have failed to demonstrate any statutory violation or infringement of fundamental rights. They emphasize that the writ petition is an attempt to revive time-barred and contractually extinguished claims. They argue that the Petitioners have not provided a valid explanation for the inordinate and belated intimation of death of the insured to Respondent No. 1.

6. They further assert that it is well-established in law that writ courts must exercise restraint in interfering with purely contractual relationships between private entities. A writ of mandamus is a public law remedy and cannot be invoked to enforce private or contractual rights. In support of this proposition, they rely on precedents of the Supreme Court in ***Lakhiraj v. Dy Custodian,*** AIR 1966 SC 334; ***DFO v. Biswanath Tea Co Ltd.,*** AIR 1981

SC 1368; ***Banchhanidhi Rath v. The State of Orissa***, (1972) 4 SCC 781. Additionally, they submit that the present case arises from an insurance contract, which is purely a commercial transaction as held in ***Vikram Greentech India Limited v. New India Assurance Company Limited***[4]. Therefore, it constitutes a purely commercial relationship between two private entities. Consequently, they argue that the dispute is not amenable to the writ jurisdiction of this Court under Article 226 of the Constitution. Reliance in this regard is placed on the judgement of ***Rajasthan State Industrial Development & Investment Corpn. v. Diamond & Gem Development Corporation Limited.***[5]

7. The counsel further contend that the Petitioners' attempt to infuse the present proceedings with a public law element is misguided, misconceived, and untenable. They urge the Court to decline the exercise of its writ jurisdiction in matters concerning the enforcement of contractual obligations between private parties.

8. The Court has carefully considered the objections raised by Respondent No. 1. While the broad legal propositions they rely upon are undeniably sound, their objection to the maintainability of the writ petition cannot be upheld in the present context. Although the dispute undoubtedly arises from the repudiation of an insurance policy, the Petitioners have raised significant and nuanced issues that warrant consideration under writ jurisdiction of this Court.

9. It is imperative to acknowledge that the insurance policy in question was issued under a scheme formulated by the Ministry of External Affairs,

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[4] (2009) 5 SCC 599

[5] (2013) 5 SCC 470

Government of India, through notification dated 10th July 2017. This scheme, named the **Pravasi Bharatiya Bima Yojana, 2017**[6], which came into effect from 1st August 2017, is specifically framed as an insurance scheme for Indian emigrants venturing abroad for employment. The scheme is not a mere contractual arrangement between private parties but a mandatory requirement for all citizens of India who apply for and obtain Emigration Clearance under the Emigration Act, 1983. It also extends to emigrants pursuing overseas employment in various professions falling under work categories covered under Section 2(o) of the Emigration Act, 1983, irrespective of the passport category.

10. Clause 4 of the PBBY, 2017 explicitly mandates that all citizens applying for Emigration Clearance must obtain an insurance policy which is valid for a minimum period of two or three years. The insured individual must be covered for a sum of INR 10 Lakhs in the event of accidental death or permanent disability leading to loss of employment while abroad. The intent behind this scheme is unequivocally welfare-oriented as it aims to provide a safety net for Indian workers abroad; ensuring that in the unfortunate event of death or disability, their families are not left destitute. In the present case, there is a palpable element of dereliction of a government-sponsored assurance. The PBBY, 2017 is not just an insurance policy; it is a statutory mechanism framed to fulfil the government's obligation towards its emigrant workers. Consequently, when analysing the repudiation of the insurance claim made by the Petitioner due to the death of her husband overseas, it becomes essential to consider the underlying purpose and spirit of the scheme. The issue is thus not merely a contractual

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[6] "PBBY, 2017"

dispute between private parties; it touches upon the potential failure of a government-mandated assurance intended to safeguard vulnerable citizens employed abroad. In light of the above, the Court is of the view that the matter cannot be strictly considered as a simple case of repudiation of a contractual claim.

11. Furthermore, it must be emphasized that Article 226 confers upon the High Courts the wide and expansive power to issue high prerogative writs for the enforcement of fundamental rights and for any other purpose. The Constitution places no fetters on the exercise of this power. While courts normally exercise restraint in matters which are purely contractual in nature, especially those involving private entities, this discretion is not absolute and must be exercised judiciously, based on the facts of each case.

12. In this regard, it is noted that in the case of ***Life Insurance Corporation of India and Ors. v. Asha Goel (Smt) and Anr.,*** [7] the Supreme Court has delved into this question and has emphasised that when an insurer has repudiated the claim, the High Court must consider the facts and circumstances, the nature of dispute raised, the nature of inquiry necessary to be made for determination of the questions raised as well as other relevant factors before taking a decision on whether the Court should entertain the writ petition or reject it as being non-maintainable. The Apex Court laid emphasis on the necessity for the writ court to carefully weigh the pros and cons of the matter within the specific context of the case. If the repudiation of the claim raises serious disputes of fact, and the Court finds such disputes to be *bona fide*, requiring oral and documentary evidence for their resolution, then, ordinarily the writ court should refrain from exercising its

jurisdiction under Article 226 of the Constitution of India.

13. Turning to the facts of the present case. As noted earlier, Respondent No. 1 repudiated the insured's claim primarily on the grounds of delayed intimation of the death of the insured and alleged deficiencies in the documentation provided by the Petitioner. It is significant that there is no dispute between the parties regarding the issuance of the insurance policy by Respondent No. 1, the payment of the insurance premium by the employer, the duration of the policy, or the death of the insured. Thus, in the opinion of the Court, the most essential facts necessary for making a claim are firmly established, and there is hardly any factual controversy. As for the objection concerning documentation, while certain documents have not been verified by the nominee and have been found lacking, the Petitioner can undoubtedly remedy this by furnishing the requisite verified documents. Moreover, there are no allegations of fraud, except for the doubt expressed concerning the writ petition being filed by a Special Power of Attorney[8] holder, which the Court will address in the subsequent paragraphs.

14. Therefore, the Court finds that the claims of the Petitioners are not merely a matter of enforcing private contractual rights but involves the enforcement of a statutory scheme designed to protect the welfare of Indian emigrant workers. The PBBY, 2017 is a social welfare initiative mandated by the Government of India, which aims to provide financial security to emigrants and their families in unfortunate circumstances. Denying the Petitioners access to judicial review in such a scenario would defeat the very purpose of the scheme and undermine the government's efforts to safeguard

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[7] (2001) 2 SCC 160
[8] "SPA"

citizens who are working abroad. Thus, Respondent No. 1's objections on the maintainability of the instant writ petition on the ground that it is a purely contractual dispute, is not sustainable. Moreover, in the facts of the present case, the mere existence of an alternative remedy does not oust the writ jurisdiction of the Court, especially when the matter involves allegations of arbitrariness or violation of fundamental rights.

B. RESPONDENT NO. 1 IS NOT A 'STATE' WITHIN THE MEANING OF ARTICLE 12 OF THE CONSTITUTION OF INDIA.

15. Counsel for Respondent No. 1 contend that the Petitioner has failed to demonstrate how Respondent No. 1 qualifies as an authority performing public functions under Article 12 of the Constitution. They assert that Respondent No. 1 is a private entity engaged in the commercial business of selling insurance products and, as such, it does not fall within the ambit of 'State' or 'other authorities' as envisaged by the Constitution. They further argue that the Petitioner's request for judicial intervention does not align with the jurisdiction of this Court under Article 226 of the Constitution. In support of this contention, they rely on the decision in ***Federal Bank Ltd. v. Sagar Thomas & Ors.,***[9] wherein the Apex Court cautioned writ courts against adopting a liberal interpretation in terms of private companies being amenable to writ jurisdiction.

16. Alternatively, in terms of W.P.(C) 7552/2022 and W.P.(C) 7516/2022, counsel for Respondent No. 1 argue that the relief sought in the present writ petitions, pertaining to the government's role for condonation of delay under the PBBY 2017, has already been redressed by the Embassy of India, Riyadh, through their communication dated 22nd June 2022 and 21st

June, 2022 respectively. As such, the writ petitions stand infructuous against the State entities, and any further relief sought against Respondent No. 1 falls outside the purview of this Court's writ jurisdiction.

17. It is undeniable that Respondent No. 1 is a private insurance company operating in the commercial sector. Ordinarily, such entities are not considered 'State' or 'other authorities' within the meaning of Article 12 and therefore, they are not directly amenable to writ jurisdiction. However, the matter does not rest there. The crucial question is whether Respondent No. 1, despite being a private entity, is performing a public function or discharging public duties under the aegis of a governmental scheme. The **PBBY, 2017** is a welfare scheme formulated by the Ministry of External Affairs, Government of India. It mandates that all Indian citizens seeking emigration clearance for employment abroad obtain mandatory insurance coverage as specified under the scheme. Thus, by providing insurance policies under this government-mandated scheme, Respondent No. 1 is effectively participating in the implementation of a public welfare program. The role of Respondent No. 1 thus is not that of a conventional private insurer; it becomes an instrumentality facilitating the State's objective of protecting its citizens working overseas. In this capacity, Respondent No. 1 performs functions that are imbued with public interest. The Supreme Court, in ***Zee Telefilms Ltd. v. Union of India,***[10] elucidated that even if an entity is not 'State' under Article 12, it can still be subject to writ jurisdiction if it performs public duties or functions of a public nature. In the present case, the Petitioners' grievance pertains to the alleged arbitrary and unjust

[9] (2003) 10 SCC 733
[10] (2005) 4 SCC 649

repudiation of an insurance claim under a statutory scheme intended for the welfare of Indian emigrant workers. The denial of such a claim impacts the Petitioners' legal rights and undermines the purpose of the government scheme. Therefore, since the insurance company has issued the subject insurance policies under the specific scheme of the Government of India, the policies attain a character of discharging public function. Reliance in this regard is also placed on the case of ***Binny Ltd. v. V. Sadasivan & Ors.***[11] wherein it has as follows:

> *"11. Judicial review is designed to prevent the cases of abuse of power and neglect of duty by public authorities. However, under our Constitution, Article 226 is couched in such a way that a writ of mandamus could be issued even against a private authority. However, such private authority must be discharging a public function and the decision sought to be corrected or enforced must be in discharge of a public function. The role of the State expanded enormously and attempts have been made to create various agencies to perform the governmental functions. Several corporations and companies have also been formed by the Government to run industries and to carry on trading activities. These have come to be known as public sector undertakings. However, in the interpretation given to Article 12 of the Constitution, this Court took the view that many of these companies and corporations could come within the sweep of Article 12 of the Constitution.* ***At the same time, there are private bodies also which may be discharging public functions. It is difficult to draw a line between public functions and private functions when they are being discharged by a purely private authority****.* ***<u>A body is performing a "public function" when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so</u>****. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest…"*
>
> *[Emphasis added]*

18. Therefore, in this context, the actions of Respondent No. 1 are

[11] (2005) 6 SCC 657

amenable to scrutiny under the writ jurisdiction of this Court. ***Federal Bank Ltd. v. Sagar Thomas & Ors.,***[12] relied upon by Respondent No. 1 is distinguishable on facts. In that case, the Supreme Court dealt with internal employment matters of a private bank, where no public function was involved. In contrast, the present case involves the implementation of a government welfare scheme, wherein Respondent No. 1 performs a public duty.

19. As for the alternative argument that the condonation of delay has already been granted by the Embassy of India, Riyadh and thus the writ petitions stand infructuous against State entities, the Court notes that this development does not render the writ petitions infructuous. The core issue remains Respondent No. 1's refusal to process and settle the insurance claim despite the condonation of delay by the competent authority.

The grounds of repudiation

20. At this juncture, the Court must take a note of the requirement of issuance of a certificate for condonation of delay in intimation of claims under Clause 4 (e) of the PBBY, 2017, which reads as follows:

> *"(e) The insurance company shall pay the sum insured in case of accidental death or permanent disability due to any accident/physical injury sustained while in employment abroad occurring within twelve months from the date of such accident provided it occurs during the currency of insurance policy and such death or permanent disability shall be attributed to the said accident. In such cases, intimation about the accident/physical injury will be sent to the Insurance Company within 30 days from the date of such accident/physical injury. Further, claim has to be filed within 90 days from the date of accidental death/permanent stability.* ***In case of non-submission of claim documents within 90 days, certificate from the Indian Mission/Post stating that the circumstances were beyond the control of the insured, will be accepted by the***

[12] (2003) 10 SCC 733

<u>Insurance Company. In case of accidental death/permanent disability in India, certificate from Protector of Emigrants will be accepted.</u>"

[Emphasis added]

21. A careful reading of the above provision reveals that if there is a delay in submitting the claim documents beyond the stipulated 90 days, the insurance company is obliged to accept a certificate from the Indian Mission/Post affirming that the delay was due to circumstances beyond the control of the insured. This clause emphasis the welfare-oriented object of the scheme, ensuring that genuine claims are not defeated by procedural delays, especially when such delays are attributable to factors outside the control of the claimants. Thus, through the present writ petitions, the Petitioners are seeking the implementation of Clause 4 (e) of PBBY, 2017 for enforcement of their claims. However, the Petitioners' quest for relief is not limited to obtaining condonation of delay, but extends to the enforcement of their rightful claims under the insurance policy, which was issued pursuant to a government scheme. Respondent No. 1's persistent refusal to honour the claim necessitates judicial intervention to ensure that the objectives of the welfare scheme are not defeated by procedural technicalities or unjustifiable repudiations.

22. In view of the foregoing analysis, the Court concludes that Respondent No. 1, while being a private entity, is performing public functions under the PBBY, 2017. Therefore, its actions are subject to judicial review under Article 226 of the Constitution of India. The objection regarding the maintainability of the writ petition on the ground that Respondent No. 1 is not a 'State' under Article 12 of the Constitution is accordingly rejected.

C. Writ Petition is not maintainable as there is alternate remedy available

23. Counsel for Respondent No. 1 have argued that in the facts of the case, the Petitioners have an equally efficacious and alternative remedy of filing a civil suit or complaint under the Consumer Protection Act, 2019, rather than filing the present writ petitions under Article 226 of the Constitution.

24. In the considered opinion of the Court, while the Consumer Protection Act, 2019, provides a specialized legislative framework for addressing deficiencies in service, including disputes arising from insurance claims, the mere existence of such remedies does not automatically preclude the invocation of writ jurisdiction. The availability of an alternative remedy is a factor for the Court to consider, but it is not an absolute bar on invocation of writ jurisdiction. The present writ petitions raise broader questions of public law, particularly concerning the implementation of the Pravasi Bharatiya Bima Yojana, 2017. The issues at hand are not confined to a simple dispute over service deficiency but involve the interpretation and enforcement of a statutory scheme intended to protect the welfare of Indian emigrant workers. Moreover, as previously noted, there is minimal factual controversy in the present case. The essential facts, such as the issuance of the insurance policy, payment of the premium, the policy's validity period, and the unfortunate death of the insured are undisputed. The primary dispute in the present cases revolves around the delay in claim intimation and the subsequent repudiation of the claim by the insurance company, despite the provision for condonation of delay under Clause 4 (e) of PBBY, 2017.

25. Additionally, effective adjudication of the Petitioners' claim

necessitates directions to be issued not only to the insurance company but also to government authorities involved in the administration of the scheme. The intertwining of private and public entities in the execution of the PBBY, 2017, is an appropriate cause for judicial review under Article 226 of the Constitution.

II. THE PETITIONER'S CASE IS HIT BY DELAY AND LACHES

26. Counsel for Respondent No. 1 have vehemently argued that the tabulation laying out the details of the instant writ petitions, as extracted hereinabove, clearly indicate that firstly, there was a gross delay on the part of the Petitioners in intimation of the claim to Respondent No. 1 and secondly, there was also inordinate delay by their side in instituting of the present writ petitions. Thus, they argue that in light of the delay and laches on the part of the Petitioners, the Court should not grant any indulgence by issuing a prerogative writ in the instant matter.

27. While it is undisputed that there has been delay on the part of the Petitioners in filing their claims and the writ petitions, the Court cannot disregard the factual background and compelling reasons underlying this delay. The husband of the Petitioner in W.P.(C) 7552/2022 was employed as an Assistant Vacuum Machine Operator in Saudi Arabia, striving to support his family. Similarly, the Petitioners in the other connected cases are beneficiaries who have lost family members, all of whom were Indian emigrants engaged in modest occupations abroad, under similar circumstances. These Petitioners are individuals of limited means and education, who have endured the profound loss of their loved ones who ventured abroad in the hope of better prospects.

28. The doctrine of delay and laches is an equitable principle which requires the Court to not only consider the length of the delay but also the reasons for the same. In cases where the delay is attributable to factors such as poverty, illiteracy, or other compelling circumstances, courts have been inclined to exercise discretion in favour of the Petitioners. In the present case, the delay in gathering the requisite documents and resources to invoke the jurisdiction of this Court is a pertinent factor that cannot be ignored. The Petitioners faced significant obstacles due to their socio-economic status, lack of awareness of legal processes and the complexities involved in obtaining documentation from foreign jurisdictions. Thus, dismissing the present writ petitions solely on the ground of delay would defeat the ends of justice and perpetuate hardship upon individuals who are already vulnerable.

29. Furthermore, counsel for the Petitioners has explained that, due to these valid reasons, it is the SPA holder, Mr. Sandeep Kumar Srivastava, who has come forward to safeguard the interests of the Petitioners. His involvement further proves the difficulties faced by the Petitioners in navigating legal procedures and reinforces the need for the Court's compassionate consideration.

30. Moreover, it must also be noted that the scheme itself provides for such a situation where delay can be caused in submission of claim documents, not because of any fault of the insured or the beneficiaries, but for reasons outside their control. Clause 4 (e) of the PBBY, 2017 referred above, contemplates such a situation where there could be a delay on the part of the nominee to make a claim. This must be because the Government would have witnessed that claims under PBBY are being filed belatedly and are being repudiated by insurance companies on the grounds of delay. In

such circumstances, the Respondent No. 3 - Protector of Emigrants has been nominated to settle the issue of certificate in case of accidental death/permanent disability.

31. In fact, Respondent No. 3 in their counter affidavit have also highlighted that they were in communication with the Embassy of India, Riyadh regarding the required certificates, stating that the family of the emigrants are very poor and uneducated and did not possess the necessary documents required for their claim for the longest time. Therefore, Respondent No. 3 requested the Embassy to grant the requisite certificate expeditiously, which the Embassy complied with.

32. At this juncture, the Court must also take notice of a circular issued by Respondent No. 2 – IRDAI dated 20th September, 2011, to all life insurers and non-life insurers, which reads as follows:

> *"The Authority has been receiving several complaints that claims are being rejected on the ground of delayed submission of intimation and documents. The current contractual obligation imposing the condition that the claims shall be intimated to the insurer with prescribed documents within a specified number of days is necessary for insurers for effecting various post claim activities like investigation, loss assessment, provisioning, claim settlement etc. However, this condition should not prevent settlement of genuine claims, particularly when there is delay in intimation or in submission of documents due to unavoidable circumstances.*
>
> ***The insurers' decision to reject a claim shall be based on sound logic and valid grounds. It may be noted that such limitation clause does not work in isolation and is not absolute. One needs to see the merits and good spirit of the clause, without compromising on bad claims. Rejection of claims on purely technical grounds in a mechanical fashion will result in policyholders losing confidence in the insurance industry, giving rise to excessive litigation.***
>
> ***Therefore, it is advised that all insurers need to develop a sound mechanism of their own to handle such claims with utmost care and caution. <u>It is also advised that the insurers must not repudiate such</u>***

> ***claims unless and until the reasons of delay are specifically ascertained, recorded and the insurers should satisfy themselves that the delayed claims would have otherwise been rejected even if reported in time.***
>
> *The insurers are advised to incorporate additional wordings in the policy documents, suitably enunciating insurers' stand to condone delay on merit for delayed claims where the delay is proved to be for reasons beyond the control of the insured."*
>
> *[Emphasis added]*

33. The aforenoted circular issued by the regulatory authority for the insurance sector emphasises that insurers must develop a sound mechanism to handle such claims with care and caution. It has also been advised that "***the insurers must not repudiate such claims unless and until the reasons of delay are specifically ascertained, recorded and the insurers should satisfy themselves that the delayed claims would have otherwise been rejected even if reported in time***".

34. The above circular emphasises that the merits of the claims are paramount rather than just a mere delay. After all, the life insurance policies in the instant cases were only meant for a situation which unfortunate events have transpired in the lives of all the Petitioners before this Court. In such circumstances, the grounds of delay and laches is also being over-ruled.

III. APPREHENSION REGARDING THE PETITONERS NOT BEING REPRESENTATION BY THE ATTORNEY

35. Regarding the above captioned objection, counsel for Respondent No. 1, points out that all the Petitioners in the instant writ petitions are represented by the same SPA holder, Mr. Sandeep Kumar Srivastava. Therefore, they raise doubts on the genuineness of the SPA and the

authorization of Mr. Sandeep Kumar Srivastava.

36. Significantly, in W.P.(C) 7552/2022, Mr. Singh has produced a copy of an affidavit purportedly filed by Ms. Aisha Khatoon before Respondent No. 1. The English translation of this affidavit indicates that she has categorically stated that she is unaware of any proceedings ongoing in this High Court, regarding the insurance claim under the policy of her late husband with Respondent No. 1, bearing Policy No. 1431648 and Claim No. 61010925. Relying upon this document, Mr. Singh emphasizes that the apprehensions expressed by Respondent No. 1 in their counter-affidavit are further substantiated by this affidavit.

37. While the objections raised by the Respondents warrant careful consideration, they do not by themselves, justify the rejection of the writ petitions altogether. The primary concern raised in the writ petitions is to ensure that the rightful beneficiaries receive the insurance claim proceeds due to them. Further, the Court is well within its powers to issue appropriate directions to the Respondents to ensure that any claim amounts under the insurance policies are disbursed directly to the genuine beneficiaries or nominees, rather than to an allegedly unauthorized SPA holder. The insurance company can undertake a thorough verification of the identity and entitlement of the nominees or beneficiaries to alleviate any concerns regarding the authenticity of the Petitioners' claims.

38. It is also pertinent to acknowledge that the Petitioners, being individuals of limited means and education, may have faced significant challenges in dealing with the complexities of legal proceedings without assistance. The involvement of a common SPA holder does not necessarily imply fraud or misrepresentation; rather, it may reflect a practical approach

adopted by the Petitioners to collectively seek justice. Prematurely dismissing their writ petitions on the basis of such apprehensions could unjustly deprive them of their rightful claims and access to legal remedies.

39. In light of the foregoing discussion and analysis, all the writ petitions are disposed of with the following directions:

(a) The impugned letters issued by Respondent No. 1, repudiating the claims of the Petitioners, are hereby set aside.

(b) The Petitioners are directed to furnish all the requisite documents, as required under the policy and to the satisfaction of Respondent No. 1, for processing their claims under the insurance policies.

(c) In cases where the necessary certificate under Clause 4(e) of the Pravasi Bharatiya Bima Yojana, 2017, has already been issued by the Indian Mission abroad, Respondent No. 1 shall proceed forthwith to process the claims, subject to the Petitioners' compliance with direction (b) above. Respondent No. 1 shall verify the documents in light of the observations made hereinabove, process the claims expeditiously, and release the payments due to the Petitioners within a period of eight weeks from the date of furnishing the documents.

(d) In W.P.(C) 11074/2023, W.P.(C) 14529/2023, W.P.(C) 14533/2023 and W.P.(C) 14863/2023, where the necessary certificates/communications are yet to be issued, Respondent No. 3—the Protector of Emigrants—shall, in consultation with the Indian Missions abroad, provide the necessary certificates under Clause 4(e) of the Pravasi Bharatiya Bima Yojana, 2017, within a period of four weeks from the date of this order. Thereafter, Respondent No. 1 shall, within a period of eight weeks from the date of receipt of the certificates/communications, verify the documents, process the claims expeditiously and release the payments due to the Petitioners.

(e) In W.P.(C) 7552/2022, Respondent No. 1 shall directly inform Ms. Aisha Khatoon (the Petitioner) of the date and time when she is to visit the regional office of Respondent No. 1 closest to her residence, for verification of her identity.

(f) In order to address the concerns regarding representation through the Special Power of Attorney holder, it is directed that Respondent No. 1 shall disburse the claim amounts directly to the nominees or beneficiaries entitled under the policy.

(g) The Respondents are directed to ensure that the benefits under the Pravasi Bharatiya Bima Yojana, 2017, are extended to the Petitioners in a fair and prompt manner, considering the welfare objectives of the scheme and in accordance with law.

(h) Respondent No. 1 shall file a compliance report before this Court within two weeks after the disbursement of the claim amounts to the Petitioners.

40. The writ petitions are accordingly disposed of in the above terms along with pending application(s). There shall be no order as to costs.

SANJEEV NARULA, J

NOVEMBER 22, 2024/ab