W.P.No.31804 of 2024
& W.M.P.Nos.34568 and 34569 of 2024

D.BHARATHA CHAKRAVARTHY, J.

This matter is listed under the caption 'For being mentioned'.

2. In paragraph No.8 of the order, dated 13.02.2025, the paragraph number of the extraction should be changed as '4' instead of '2'.

3. In paragraph Nos.9 and 10 of the said order, the word 'estimation' should be corrected as 'inspection' wherever it occurs.

4. Registry is directed to issue fresh order copy.

27.02.2025

grs

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2025

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.31804 of 2024
and W.M.P.Nos.34568 & 34569 of 2024

1 V.G.SELVA RAJA
S/O.LATE K.GANAPATHY FLAT NO.205 ANAND
BLOCK 2ND FLOOR 9 CHOOLAIMEDU HIGH ROAD
CHOOLAIMEDU CHENNAI-600 094.

2 THE ASSOCIATION OF PRACTISING
INSURANCE SURVEYORS AND LOSS ASSESSORS-
APISLA 6, RA BUILDING, 1ST FLOOR, 3,
CHOOLAIMEDU HIGH ROAD, CHOOLAIMEDU,
CHENNAI- 600 094 REP. BY ITS PRESIDENT
- MR.V.G.SELVA RAJA
APPEARING AS PARTY-IN-PERSON .. **Petitioner**

Vs.

1. UNITED INDIA INSURANCE CO. LTD
A SUBSIDIARY OWNED BY GOVERNMENT OF INDIA
REGD. & HEAD OFFICE, 14, WHITES ROAD
CHENNAI – 600 014.
2.INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY OF INDIA
REP.BY ITS CHAIRMAN
SURVEY NO.115/1, FINANCIAL DISTRICT,
NANAKRAMGUDA
GACHIBOWLI, HYDERABAD – 500 032.
STATE OF TELANGANA.
(2nd respondent impleaded as per the order of this Court
dated 13.02.2025 in W.M.P.No.36491 of 2024) .. **Respondents**

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus, calling for the records of the respondent pertaining to the Web Advertisement published in the Website of M/s.United India Insurance Company Limited for "Expression of Interest for Empanelment of Loss Assessment Agency for assessment of Motor Own Damage Lossess up to Rs.50,000/- using App Based Methodology" Web Advertisement published on 10.08.2024 and quash the same and consequently forbear the respondent from engaging the services of 3rd parties under the category of "Outsourcing of Core Activities under Contract basis" for the Motor Own Damage loss up to Rs. 50,000/- using the App based methodology, under the guise of Empanelment of "Loss Assessment Agencies" detrimental to the interest of the petitioner Association viz., "The Association of Practising Insurance Surveyors and Loss Assessors – APISLA" and pass such further or other orders.

For the Petitioners	:	Mr.V.G.Selva Raja, P-in-P
For the Respondents	:	Mr.M.Keerthikiran Murali for R1 Mr.M.B.Raghavan for R2

ORDER

This Writ Petition is filed for a Certiorarified Mandamus calling for the records pertaining to the website advertisement published by the 1st respondent viz., United India Insurance Company in respect of expression of interest for empanelment of loss assessment agency for assessment of motor own damage losses upto Rs.50,000/-, using App based methodology, by their advertisement dated 10.08.2024.

2. Heard, *Mr.Selvaraja,* Party-in-Person, *Mr.M.Keerthikiran Murali,* the learned counsel appearing on behalf of the 1st respondent and *Mr.M.B.Raghavan,* the learned counsel appearing on behalf of the 2nd respondent.

3. *Mr.Selvaraja,* Party-in-Person, appearing on behalf of the petitioners taking this Court through the impugned order would submit that by the impugned order they are calling for expression of interest for outsourcing the underwriting and claim processing jobs. Originally, the Insurance Company is supposed to engage licensed surveyors and complete the work. Now, suddenly for the first time, the 1st respondent being a public sector insurance organization is indulging in outsourcing of the said activity. According to him, firstly, the 2nd respondent viz., the Insurance Regulatory and Development Authority of India has framed the regulations known as IRDAI (Outsourcing of Activities by Indian Insurers) Regulations, 2017. The regulation No.5 enumerates the activities that are prohibited from outsourcing. Regulation No.5 clearly prohibits decision making in underwriting and claim functions excluding procedural activities related to payment of survival benefits claims in life insurance. He would submit that in

view thereof, this activity is prohibited by the said regulations as such ought not to have been outsourced. He would further submit that the said action also directly visits the license surveyors with adverse consequences. Already, there are number of licensed surveyors, who are not getting enough work, there has even been suicides on account of not having adequate professional income and many a times, the surveyors take great risk by leaving their families during festivals and on important occasions, so that they can undertake the survey work. In such a scenario, the exercise of the 1st respondent is totally uncalled for.

4. Thirdly, by this sophisticated methods and App etc., are only going to enhance the cost involved in the entire exercise and ultimately this will be mulcted on the general public who are the premium payers. Further, while calling for expressions of interest, it is not even specified that the interest must come from qualified individuals; instead, it is made clear that having qualified consultants are sufficient. There are clear cut qualifications that are prescribed under the regulations, which include engineering degree etc., to become a licensed surveyor. Now, the entire exercise, even though it may be a small claim, is going to be conducted by an unprofessional manner by unqualified persons. Therefore, on all these grounds, he submits that this Court should interfere with

the impugned order.

5. *Per contra,* the learned counsel appearing on behalf of the 1st respondent would submit that firstly, under Section 64 UM (4) of the Insurance Act, 1938 (in short 'the Act'), only in respect of the claims that are more than Rs.50,000/-, the mandatory requirement of engaging a licensed surveyor is prescribed under the Act and the Rules framed thereunder. This expression of interest by the impugned order is only in respect of small claims that are less than Rs.50,000/- as such it is not necessary to engage a licensed surveyor. This will not in any manner affect the livelihood of the licensed surveyor as the Insurance Company will keep on engaging them in respect of all the claims that cross the limit of Rs.50,000/-. Further, when small claims are involved when the act itself does not prohibit assessing by any person and it need not be a licensed surveyor, the same can be resorted to. As far as the regulation framed by the 2nd respondent is concerned, he would submit that the relevant regulation which is relied upon by the party-in-person, which is pointed out supra only prohibits decision making in underwriting and claim functions. In this case, there will be absolutely no decision making process involved by the persons who are now sought to be inducted by way of outsourcing. They will only ascertain the facts and submit the

relevant evidence. Even though they will assess the amount, their assessment will never be binding and will not constitute decision-making process. It is the Insurance Company which retains all the decision making in underwriting and claim functions. Therefore, the impugned order need not be interfered by this Court.

6. The learned counsel appearing on behalf of the 2nd respondent would submit that already the question with reference to engaging of licensed surveyors even for small claims upto Rs.50,000/- has been decided by this Court in ***R.K.Ilango Vs. Insurance Regulatory and Development Authority (IRDA), Rep.by its Chairman and others***[1]. The challenge was also made to the constitutional validity of Section 64 UM (4) of the Act, on the ground that it is irrational and arbitrary in as much as allows unqualified persons to conduct a survey for a sum of Rs.50,000/-. The said challenge is also rejected by this Court in ***Indian Institute of Insurance Surveyors and Loss Assessors Tamilnadu Chaptors Vs. Government of India, Ministry of Finance and Ors.***[2].

7. I have considered the rival submissions made on either side and perused

1 (2019) SCC Online Mad 9054
2 MANU/TN/8613/2021

the material records of the case.

8. On perusal of the impugned order, paragraph No.2 explains the broad scope of work and the same is extracted hereunder:-

> "**2. Broad scope of the work:**
> The Regulation provides that Surveyors shall be appointed to assess loss under a policy of Insurance in respect of Motor Insurance for above Fifty Thousand rupees. Therefore, Insurer has the option to get assessment done with estimated loss up to Rs.50,000/- in Motor either through In-house Surveyor, Loss Assessment Agencies, IRDAI Licensed Surveyors or through any other means suited for assessment of Motor Vehicle damages.
> Since the volume of Motor Business has increased manifold, for Motor own damage loss assessment up to Rs.50,000/-, Agencies having the required infrastructure and qualified persons for assessment of such loss shall be empaneled as per the guidelines framed by IRDAI."

9. Thus on a perusal of the same, what is sought to be outsourced are assessment and the estimation of loss. The relevant regulation No.5 was extracted supra.

> "ACTIVITIES PROHIBITED FROM OUTSOURCING
>
> The Insurers are prohibited from outsourcing any of the following activities mentioned under (i to viii) in any manner:
>
> i. Investment and related functions
>
> ii. Fund Management Including NAV calculations

iii. Compliance with AML and KYC, provided, KYC verification through third-party service providers is allowed as per Clause 3.1.2 of IRDAI AML Master Circular dated 28th Sept 2015.

iv. Product designing, all actuarial functions and enterprise-wide risk management;

v. Decision-making in Underwriting and Claims functions excluding procedural activities related to payment of Survival Benefit claims in Life Insurance;

vi. Policyholders Grievances Redressal;

vii. Decision to appoint Insurance Agents, Surveyors and Loss Assessors;

viii. Approving Advertisements

Provided that nothing contained in these Regulations shall be deemed to be in contravention of the provisions of the Regulations, Guidelines issued by the Authority in respect of the above activities."

10. What is prohibited is decision making in underwriting and claims functions excluding procedural activities relating to payment of survival benefit claims in the life insurance. Therefore, the question is that when the estimation / assessment is outsourced, whether that would amount to decision making in underwriting and claims. It is stated that it is only a step preceding decision making and is not the decision making by itself. When the decision making is only with the Insurance Company and when it is not bound by the assessment or estimation, it cannot be said that the impugned order comes within the mischief

of Regulation 5.

11. As far as the second contention that is raised with reference to the livelihood of the surveyors is concerned, when the Insurance Act itself does not make any mandatory conditions, in respect of claims lessor than Rs.50,000/- as per Section 64 UM (4) of the Act, that submission cannot be accepted by this Court. The surveyors are there to assess in respect of the things that are mandated under the Act and they cannot claim any promissory estoppal in respect of the things which are not mandated under the Act. Therefore, the argument relating to livelihood cannot be accepted.

12. The further contention that the assessment was done by unprofessional people is concerned, when the constitutional validity of Section 64 UM of the Act has been upheld and when it does not mandate that it should be done by qualified licensed surveyors, then the same cannot be indirectly pleaded by the petitioner.

13. Therefore, I do not find any error whatsoever with reference to the impugned order and I am not able to come to the rescue of the petitioner in respect of the prayer. The submissions made by the Insurance Company that the

outsourcing is only with reference to the said work and all the decision with reference to the claim will be made only by the Insurance Company is recorded.

14. With the above observations, this Writ Petition stands disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

13.02.2025

Neutral Citation : Yes

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To
INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY OF INDIA
REP.BY ITS CHAIRMAN
SURVEY NO.115/1, FINANCIAL DISTRICT,
NANAKRAMGUDA
GACHIBOWLI, HYDERABAD – 500 032.
STATE OF TELANGANA.

D.BHARATHA CHAKRAVARTHY, J.

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W.P.No.31804 of 2024

13.02.2025