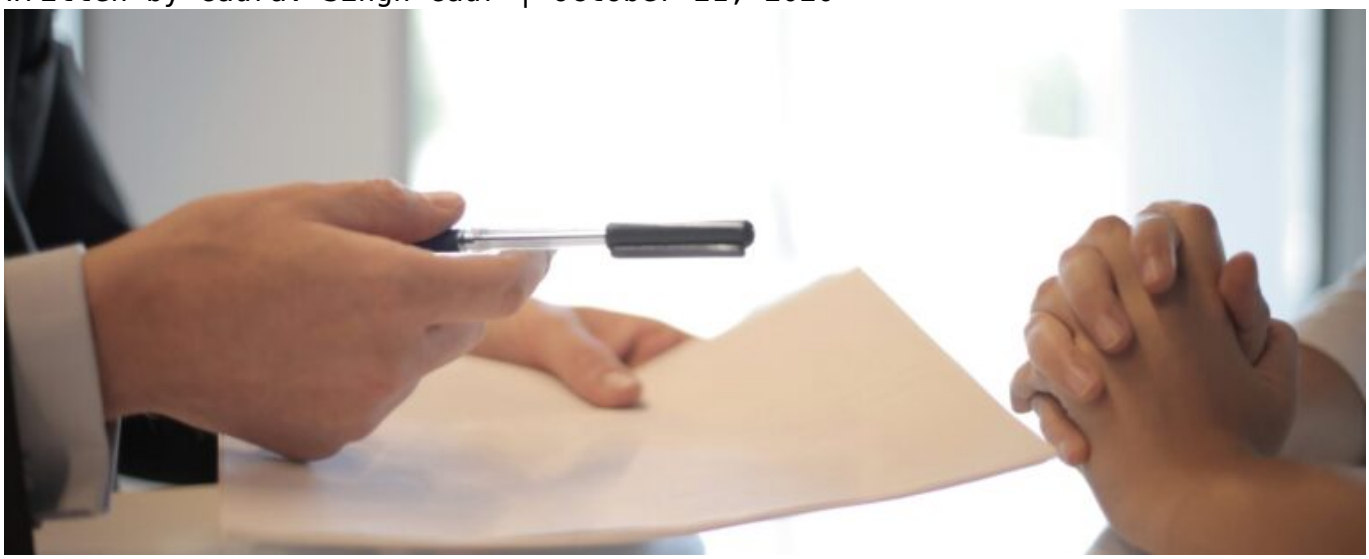
"Violation Of Principles Of Natural Justice By Insurers"

written by Gaurav Singh Gaur | October 21, 2020



Principles of Natural Justice: Its Violation by Insurers and its Significance in the Justice System

As per the traditional common law, the principles of natural justice can be narrowed down to two Latin maxims:

1. Nemo debet esse judex in propria causa (i.e. 'no one should be made a judge in his own cause' which is also popularly known as 'Rule against Bias'); and
2. Audi alteram partem (i.e. 'hear the other side' which is also popularly known as 'Rule of Fair Hearing')

In India, principles of natural justice are firmly rooted and guaranteed under Articles 14 & 21 of the Constitution. The major objective of these principles is that they aid to avert a miscarriage of justice by safeguarding the rights of an individual.  They further ensure that a judgment by the appropriate authority is just, fair and reasonable. The same could be seen from a recent judgment of the Hon'ble Bombay High Court. A Writ Petition was preferred by Astute Management Consultancy Pvt. Ltd. ('Petitioner') under Article 226 of the Constitution of India praying to quash a communication issued by the New Insurance Co. Ltd. ('Respondent No.1') seeking to terminate the group medi-claim policies issued to the Petitioner.

The Petitioner further sought a direction to respondents to follow the due process including principles of natural justice before deciding the matter. The Hon'ble High Court of Judicature at Bombay while exercising Civil Appellate Jurisdiction vide its judgment and order dated 01-10-2020[1] directed the Petitioner to approach Insurance Regulatory Development Authority ('IRDA') and further directed IRDA to take an appropriate and considered decision thereon after giving reasonable opportunity of hearing to both the parties.

Material Facts Of The Case

The Petitioner, a Private Limited Company, engaged in the consultancy business including concessional holiday packages to its group members. To provide add-on benefits to its members for group insurance purposes, the Petitioner approached the Respondent on 29-01-2019 and submitted the medi-claim policies of 13 groups for the approval. According to the Petitioner, these 13 group medi-claim policies covered 2236 families and 9374 individuals. Post scrutiny of the documents, the Respondent No.1 granted approval to the policies vide email dated 08-02-2019. The Respondent No.1 after due verification and on being satisfied that the applications were as per the guidelines of IRDA, granted final approval to the Petitioner on 28-09-2019.

Thereafter, the Senior Divisional Manager of Respondent No.1 vide his email dated 12-06-2020 intimated that the policies which would fall due for renewal on 14-06-2020 cannot be renewed by the Respondents. On the same day, the Petitioner learnt it from its third-party administrators that they have received a mail from Respondent no.1 stating that the insurance policies stood terminated forthwith and the claims shall not be processed from 12-06-2020.

Aggrieved by the abrupt decision of Respondent No.1 regarding non-renewal and termination of the aforesaid policies, the Petitioner approached the Hon'ble High Court seeking quashing of the communication dated 12-06-2020 issued by the Respondent No.1.

Petitioner's Submissions

The Petitioners contended that due to the arbitrary decisions of the Respondent No.1 of not renewing the insurance policies and as well as the termination of the said policies would deny the cashless treatment to the individual members of Petitioner by the covered hospitals in case of a medical emergency.

The Petitioner further contended that there exists a specific cancellation clause in the said policy which clearly specifies that policy can be cancelled by providing 30 days' notice in which event the company shall be liable to refund the amount to the insurer at pro-rata premium for the unexpired period of the insurance, though the company shall remain liable for any claim made prior to the date of cancellation.

Respondent's Submissions

The Respondent raised a preliminary objection regarding the maintainability of the writ petition contending that the relationship between the Petitioner and the Respondents is purely contractual and a contractual relationship cannot be enforced by way of a writ petition.

The Respondent argued that the present case involves disputed questions of fact. The Respondent further contended that the Respondents No.1, 2 and 3 are governed by the regulations of IRDA- the Respondent No.4. According to the Respondent No.1, being the regulator of insurance business in India, IRDA is the competent authority for grievance redressal of the Petitioner and since the Petitioner has an efficacious alternative remedy, the Petitioner is barred to invoke the writ jurisdiction of the Hon'ble High Court.

Regarding the policy, the Respondent submitted that after issuance of the policies, multiple claims were received from the several individuals who were not the employees of the Petitioner and further who did not satisfy the definition of 'group' as per IRDA regulations. As per the Respondents, the approval was meant only for the employees of the Petitioners and not for any

other member. The Respondent also contended that several such anomalies were detected as morefully laid down in the investigation report dated 20-01-2020 submitted by Respondent No.1. The Respondent, on the aforesaid grounds and contentions, sought for dismissal of the writ petition.

Petitioner's Reply

In response to the preliminary objection of the respondent regarding maintainability, the Petitioner submitted that they are not seeking to enforce any contractual obligation but the Petitioner is only challenging the cancellation of medi-claim group insurance policies without notice and without providing any opportunity.

The Petitioner further referred to the email dated 13-12-2019 sent by the Petitioner to the Respondent No.1 as a means of abundant caution, clarifying the expression 'membership group' by quoting the necessary IRDA regulations and further rebutted the findings of the investigation report.

The learned counsel for the Petitioner also submitted that the impugned decision and communication of the Respondent No.1 is a blatant violation of the principles of natural justice and devoid of reasons.

Observations Of The Court

The Hon'ble Court by placing its reliance on the law laid down by the Hon'ble Supreme Court in *ABL International Limited v. Export Credit Guarantee Corporation of India Limited*[2] refuted the preliminary objection of the Respondents and reiterated that "*If a state acts in an arbitrary manner even in a matter of a contract, an aggrieved party can approach the court by way of a writ under Article 226 of Constitution and the courts depending on the facts of the case would gran the relief. Even in a matter arising out of contract on the existence of the required factual matrix, a remedy under Article 226 of the Constitution would be available*."

To further address the contention that a writ court would not entertain a writ petition involving the disputed question of facts, the Hon'ble Court further placed its reliance on the law laid down by the Supreme Court in *Guruwant Kaur v. Municipal Committee, Bhatinda*[3] wherein it was held that there is no absolute rule that in all cases involving disputed questions of fact, the parties should be relegated to a civil suit.

In response to the preliminary objection regarding the maintainability of the writ petition vis-à-vis availability of an adequate and efficacious alternative remedy, the Hon'ble Court observed that the law is well settled and that the plenary jurisdiction of the High Court under Article 226 of the Constitution of India cannot be restricted or limited merely on account of availability of an alternative remedy. To further buttress the point of observation, the Hon'ble Court mentioned the judgment of the Supreme Court in *Calcutta Discount Limited v. ITO*[4] and *Whirlpool Corporation Limited v. Registrar of Trade Marks*[5].

Judgment

Having considered the facts on the touchstone of the binding precedents and relevant statute, the Hon'ble Court held that no reasons have been assigned for non-renewal by Respondent No.1 and therefore, the impugned decision reflects an arbitrary exercise of power which infringes Article 14 of the Constitution of India.

On a careful and minute comparison of the powers and functions of both the authorities i.e. the 'insurance ombudsman' established under Rule 7(1) of the Insurance Ombudsman Rules, 2017 and the 'IRDA' established under Section 3(1)

of the Insurance Regulatory and Development Authority Act, 1999; the Hon'ble Court directed the Petitioner to file a detailed representation before the Respondent No.4 i.e. IRDA within a period of 15 days from the date of order and further directed IRDA to take an appropriate and considered decision thereon after giving reasonable opportunity of hearing to both the parties. The Court further directed IRDA to give the decision by way of a speaking order and to complete the exercise within a period of six weeks from the date of receipt of the representation. In light of the aforesaid directions, the writ petition was disposed-off.

Conclusion

The Hon'ble Court rightly placed its reliance on the judgments of the Hon'ble Supreme Court of India to clarify the standpoint on the preliminary objections raised by the respondents in the present case. As rightfully observed by the Hon'ble Court, the Respondent No.1 admittedly, is a creature of a statute and is certainly an authority within the meaning and ambit of Article 226 of the Constitution of India read with Article 12 thereof.

With regard to the principles of natural justice, in the light of the entire facts and documents on records, it was crystal clear that no notice or hearing was given to the petitioner before issuance of the communication dated 12-06-2020 and thus, the same is in violation of the principles of natural justice. The said communication indeed reflected the arbitrary decision of the Respondent No.1 which is in direct contradiction to the principles enumerated under Article 14 of the Constitution of India.

- [1] *Astute Management Consultancy Pvt. Ltd. v. New India Assurance Co. Ltd. and others*; WP-ASDB-LD-VC-137 of 2020.
- [2] (2004) 3 SCC 553
- [3] (1963) 3 SCC 769
- [4] 41 ITR 191
- [5] (1998) 8 SCC 1

Contributed by - Gaurav Singh Gaur
King Stubb & Kasiva,
Advocates & Attorneys
Click Here to Get in Touch
New Delhi | Mumbai | Bangalore | Chennai | Hyderabad | Kochi
Tel: +91 11 41032969 | Email: info@ksandk.com