

AIR 2011 AP 163

Andhra Pradesh High Court

Case No: Writ Petition No. 23161 of 2010

Startegic Insurance
Broking Services
Private Limited

APPELLANT

Vs

Insurance Regulatory
and Development
Authority,
IFFCO-TOKIO General
Insurance Company
Limited and Lanco
Amarkantak Power
Private Limited

RESPONDENT

Date of Decision: March 22, 2011

Acts Referred:

- Insurance Regulatory and Development Authority Act, 1999 - Section 14, 14(2), 2
- Insurance Regulatory and Development Authority Regulation - Regulation 41

Citation: AIR 2011 AP 163

Hon'ble Judges: L. Narasimha Reddy, J

Bench: Single Bench

Advocate: E. Madan Mohan Rao, for the Appellant; M.S. Ramachandra Rao and K.L.N. Rao, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

L. Narasimha Reddy, J.

The Petitioner is a company incorporated under the Companies Act with an objective of rendering brokerage services for insurance coverages and other related activities. The 3rd Respondent is a Private Limited Company. It constructed 300 MW Unit-I power plant

at Pathadi Village, Korba District, of Chhatisgarh State. It wanted to get an insurance coverage for its plant. The Regulations, framed by the Insurance Regulatory and Development Authority, the 1st Respondent herein, mandate that such coverages can be obtained only through brokers, recognized by it. The 3rd Respondent availed the services of the Petitioner and the insurance coverage was obtained from the 2nd Respondent, the insurer. The policy covered the period from April 2006 to 31.01.2009.

2. The Petitioner states that, it sent a timely reminder to the 3rd Respondent, indicating the necessity to obtain renewal of the policy well in advance. The 2nd Respondent has also addressed letters to the 3rd Respondent explaining the legal aspects and to obtain renewal of the policy. In the relevant columns, the name of the Petitioner was mentioned as the broker. The 3rd Respondent remitted the requisite amount for renewal, without any reference to the Petitioner. The amount included the commission, which is required to be paid to a broker. When the Petitioner made a demand for payment of the commission, the 2nd Respondent declined, by stating that the 3rd Respondent did not avail the services of the Petitioner. The Petitioner approached the 1st Respondent, complaining that the 2nd Respondent did not pay its commission. Through letter, dated 26.08.2010, the 1st Respondent informed that the dispute between a policy holder on the one hand and a broker on the other, does not fall within its purview; and left it open to the Petitioner to institute proceedings before an appropriate forum. The Petitioner feels aggrieved by the refusal by the 1st Respondent to entertain the dispute, for resolution.

3. The Petitioner contends that one of the important functions assigned to the 1st Respondent is the resolution of the disputes pertaining to insurance policies and that there was no justification for it to deny the exercise of jurisdiction.

4. Respondents 1 and 2 filed separate counter-affidavits. The 1st Respondent has taken the view that the jurisdiction conferred upon it u/s 14(2)(m) of the Insurance Regulatory and Development Authority Act, 1999 (for short "the Act) does not deal with the disputes between insurers and their intermediaries. Reference is also made to the relevant provisions of the Act and the Rules made thereunder.

5. In its counter-affidavit, the 2nd Respondent stated that the 3rd Respondent has addressed a letter, clearly stating that it has cancelled its agreement with the Petitioner and that the brokering services were not availed by it at all, for renewal. It is contended that though the premium must include the component of brokerage commission also, the commission cannot be paid to the Petitioner, unless the insured has availed its services.

6. Sri E. Madan Mohan Rao, learned Counsel for the Petitioner, submits that the jurisdiction conferred upon the 1st Respondent is comprehensive in nature and it ought to have entertained the complaint. Learned counsel pleads that the Regulations framed by the 1st Respondent prohibit taking out of any insurance policies or renewal thereof, without the assistance of a broker, and once it is not disputed that the insurance coverage in favour of the 3rd Respondent, with the 2nd Respondent, was brokered by the Petitioner

and the brokerage fee for renewal was remitted, the 2nd Respondent ought to have paid the same to the Petitioner.

7. Sri M.S. Rama Chandra Rao, learned Counsel for the 1st Respondent, submits that the jurisdiction conferred upon by the 1st Respondent u/s 14(2)(m) of the Act is confined to the one, between an insurer and an intermediary, and it does not cover the dispute between an insured and his intermediary .

8. Sri K.L.N. Rao, learned Counsel for the 2nd Respondent, submits that his client received a communication from the 3rd Respondent about renewal stating that it did not avail the services of the Petitioner, and in that view of the matter, the request of the Petitioner cannot be acceded to. He further submits that the dispute as it stands now, is the one between the Petitioner on the one hand and the 3rd Respondent, on the other hand, and that the same cannot be resolved by the 1st Respondent or by this Court.

9. The Parliament enacted the Act for the purpose of regulating the insurance services. The 1st Respondent is created under the Act. It is conferred with the powers, and is endowed with the duties, to enforce the provisions of the Act. Section 14 reads as under:

Subject to the provisions of this Act and any other law for the time being in force, the Authority shall have the duty to regulate, promote and ensure orderly growth of the insurance business and re-insurance business.

10. Various powers and functions of the 1st Respondent are enlisted under Sub-section (2) thereof. Clause (m) of Section 14(2) of the Act deals with adjudication of disputes between the insurers and intermediaries or insurance intermediaries. The word "intermediary" and the expression "insurance intermediary" are defined together, u/s 2(f) of the Act as under:

Section 2(f)-Intermediary or insurance intermediary includes insurance brokers, re-insurance brokers, insurance consultants, surveyors and loss assessors.

11. The regulations framed by the 1st Respondent mandate that no insurance policy can be taken by recognized insurers, unless it is processed through a broker, who is recognized by the authority. The Petitioner is recognized as a broker, and the 2nd Respondent is an insurer. An insurance coverage for the 3rd Respondent, with the 2nd Respondent, was brokered by the Petitioner and the policy was in force, up to 31.01.2009.

12. As part of its activity, the Petitioner addressed letters to the 3rd Respondent, impressing upon it, to get the policy renewed by paying the premium. Similar letters were received by the 3rd Respondent from the 2nd Respondent also. The 3rd Respondent has remitted necessary premium to the 2nd Respondent. It has also addressed a letter to the effect that its contract with the Petitioner has been terminated. The premium to be paid by an insured, would include the broker's commission also. Had the transaction for obtaining

renewal of the policy taken place in the usual course, i.e. through the Petitioner, the Petitioner would have certainly been entitled to be paid, the brokerage commission.

13. It hardly needs any mention that the commission is a consideration for the services rendered to an insured," in this case, the 3rd Respondent. When the insured informs the insurer that it did not avail the services of the broker, the question of payment of brokerage fee, does not arise. It may be true that the 3rd Respondent may not be entitled to seek refund of the brokerage fee, nor the 2nd Respondent is under obligation to accede to such request, even if made.

14. Assuming that the very transaction or event of the renewal suffers from any legal infirmity, on account of the fact that it was not channelized through a broker, it may, at the most, have an impact upon the legal consequences, that flow from such transaction. However, it does not confer any right upon the Petitioner to claim the brokerage commission, de hors the categorical statement of the insured, that the services of the Petitioner were not availed. All this is being discussed only in the limited context of identifying the exact nature of the dispute.

15. Section 14(2)(m) of the Act is clear, in its purport, that the 1st Respondent can resolve the disputes between the insurer on the one hand and a broker on the other hand. Regulation 41 of the Regulations states the nature of disputes that can be resolved by the 1st Respondent. It reads:

Any disputes arising between an insurance broker and an insurer or any other person either in the course of his engagement as an insurance broker or otherwise may be referred to the Authority by the person so affected; and on receipt of the complaint or representation, the Authority may examine the complaint and if found necessary proceed to conduct an enquiry or an inspection or an investigation in terms of these regulations.

16. The emphasis is upon the disputes between the insurance broker, on the one hand, and insurer, on the other hand. The expression "any other person" is referable to the act of "his engagement an insurance broker". By no means, it would cover the insured. Admittedly, in the instant case, there is no dispute between the Petitioner and/the 2nd Respondent. The situation, referred to above, has come into existence on account a letter dated 31.01.2009, addressed by the 3rd Respondent, the insured, to the 2nd Respondent, the insurer. The letter reads, inter alia:

However, please be noted that we have replaced the insurance Broker M/s Strategic Insurance Brokers as we have not received any insurance services from them. We would also like to place on record the total lack of responsibility on the part of the above Broker. Therefore, we would not like you to consider any brokerage amount since they are no longer our broker on record.

17. Once the 2nd Respondent has received this communication, along with the cheques for premium, it cannot be expected to pay commission to the Petitioner. If it is so advised,

the Petitioner can seek resolution of dispute with the 3rd Respondent, by approaching a proper forum. The jurisdiction conferred upon the 1st Respondent does not cover the one between the broker and an insurer. Therefore, no exception can be taken to the view expressed by the 1st Respondent, through its communication dated 31.01.2009.

18. Hence, the writ petition is dismissed, leaving it open to the Petitioner to avail its remedy before the appropriate forum, in accordance with law.

19. There shall be no order as to costs.