Universal Paper Mills Limited Vs Union of India and Others

Court: Calcutta High Court

Date of Decision: April 10, 1997

Acts Referred: Constitution of India, 1950 â€" Article 14, 226
Insurance Act, 1938 â€" Section 64, 64(2)

Citation: (1998) 1 CALLT 155

Hon'ble Judges: Bijitendra Mohan Mitra, J

Bench: Single Bench

Advocate: Mr. P.K. Das and Mr. M.S. Tiwari, for the Appellant; Mr. S. Pal, Mr. Shyamal Sarkar, Mr. Debdutta Sen, Mr. S.S. Roy, Mr. Soumen Sen and Mr. Prabhat Sil, for the Respondent

Judgement

B.M. Mitra, J.
The petitioner No.1 is a Limited Company under the provisions of the Companies Act and having a Paper Mill at

Jhargram, Midnapore, West Bengal. The petitioner No. 1 had insured the respondent No.2 Insurance Company an insurance to the tune of Rs.

5.39 Crores in respect of raw materials, spares stores and finished goods lying at the Paper Mill. The Fire policy in favour of the petitioner No.1

was issued on 11.11.92 bearing Policy No. 31120/34/0/F/584/98 vide annexure "A" appended to the writ petition. As per the case made out by

the petitioners as averred in the writ petition, a disastrous fire broke out around 10.00 p.m. on 16.2.93 in the Mill premises. Inspite of immediate

steps being taken to extinguish the fire, the same could be extinguished only on 22.2.93 after six days of continuous fire-fighting by the Fire Brigade

and Fire Brigade report is appended to the writ petition vide annexure "B". The entire stock of the raw materials lying at the petitioners" factory

had been gutted in the said fire resulting in loss of Rs. 4,90,65,590,00/-. Claim in respect of the said loss was lodged for the said sum on 15.3.93

by Claim No. F/37/93 vide annexure "F" to the writ petition. Prior to lodging of the aforesaid claim on 17.2.93, the petitioner company intimated

in writing the Insurance Company about the accident on account of fire and on receipt of said information the respondent No.2 had appointed two

surveyors, Mr. S.K. Das on 17.2.93 itself and M/s. Bhadra & Associates to survey and assess the loss caused by the accident of the fire in

respect of raw materials covered by the aforesaid Insurance Policy. The Surveyors thereafter conducted investigation and recommended to the

Insurance Company for considering the petitioner company''s claim on an interim basts. The said report was submitted on 9.8.93 to the responds

with a recommendation of ad-hoc payment of Rs. 1,72,56,555/- rounded off. Thereafter the said Joint Surveyors had finished their final report to

the Insurance Company sometime in the month of September, 1994. During the period of interregnum between publication of the interim report

and the final report inspite of recommendations being made about the interim payment, nothing was paid to the petitioners. In the meantime, some

C.B.I investigation was made about the alleged accident of fire and C.B.I, reported to the Insurance Company that it has closed the secret

Investigation and they had closed the file. The petitioners are alleged to have made repeated persuasions as per letters annexed as annexure ''G'' to

the writ petition and the petitioners were informed on 10.1.96 by a letter from the respondent No. 2 conveying an information that Regional Office,

Calcutta is advised to process the claim and do the further needful in the matter. The petitioners intimated the concerned respondents by their

Lawyer''s letter that the writ petition would be moved before Altamas Kabir, J. on 20.2.96 as ''Unlisted Motion''.

2. The petitioner No. 1 is a sick company and case for its revival is pending with the BIFR. The said BIFR has appointed IDBI as operating

Agency for preparing a scheme for the revival of the petitioner company. The IDBI had also requested the respondent No. 2 for early settlement

of the petitioners'' claim. In the connected writ proceeding the petitioners have prayed for issuance of a Writ of Mandamus commanding the

respondents No.2 and 3 to give effect to the Survey Report of the Joint Surveyors made to the respondent No.2 and to release the amount in

favour of the petitioners assessed and/or recommended or payable therein and a further Writ of Cerllorari has been prayed for with a view for

transmission relating to records of the proceedings for the adjudication of the pending controversy. There has been further directions sought for

release of the amount under the Insurance Policy to the petitioners in respect of their claim and to release consequential loss and damages for the

respondents No''s.2 and 3 suffered by the petitioner company due to payment of loss in time.

3. At the instances of the court the interim Survey Report of the Joint Surveyors was placed before this court. As per the said interim report the

probable cause of the fire was attributed by the insurer to electrical short-circuit and no evidence was found by the Surveyors of any malicious act.

It appears from the report of the Fire Brigade that the same is located it Kharagpur Fire Station and in view of distance involved and paucity of

safety measures to tackle the problem of fire in or around area of Jhargram, the same could not be controlled easily, as a result of which lot of time

was caused to be wasted as a result of which fire was allowed to spread over. As per column 13.4 in the Interim Report, the stock of raw

materials as per books and records Just before fire was assessed at Rs.4,98,78,214 It has been further observed tn column 13.4 of the said report

that in view of explanation offered being assessed with physical verification of inventory conducted by M/s. A.C. Dutta & Company, Cost

Accountants on 6.11.92 and on examination of records, stock holdings, the Surveyors accepted the same. As per concluding recommendations of

the interim report, there was a direction given by way of recommendation for making an ad-hoc payment of 50% of the total loss which was

quantified and the same comes to round about Rs. 1,72,56,550/- sometime on 9.8.93. Since then no effect has been given to the

recommendations contained in the interim report given by the Surveyors. It is salient to mention that the efficacy of publication of interim report

rotates round recommendations of interim payment on ad hoc basis expeditionsly and if the same is not given effect to, the entire exercise may not

only become illusory but it may pale into insignificance. Thereafter the final report saw light of the day as submitted by the Joint Surveyors

sometime in the month of September, 1994. As per the hint of the arguments of Mr. Pal, appearing on behalf of the contesting respondent namely,

the Insurance Company, the said interim report have merged with the final report and Mr. Pal has submitted that in terms of the same in the

connected writ petition the petitioners have prayed for giving effect to the said final report. In the said context Mr. Pal has taken pains to place the

salient portions of the final survey report and particularly a summary portion of the same. From the resume of the summary as contained in clause

17.00 of the Final Survey Report, it appears that the Surveyors'' are convinced about the authenticity of the fire and loss of raw materials and

Godown Shed. As per opinion of the Surveyors even in the Final Report there was reiteration of the opinion contained in the Interim Report that

the probable cause of fire may be attributed to electrical short-circuit or from thrown away of Bidis and Cigarettes. Even Fire Brigade could not

disclose the cause of the accident in terms of precision and the Police Report tends to suggest that the fire in question was accidental in nature. Mr.

Pal in no unambiguous terms has assailed the effect of the Joint Surveyors'' report and he has also submitted that in view of the observations made

in the relevant paragraphs conclusion in column 18.0 of Final Report by the Joint Surveyors though a tentative assessment has been made as to the

extent of loss in terms of material index but in view of the other pertinent observations contained therein the same was left open to the discretion of

the under-writer. In the wake of the conclusion of the said report Mr. Pal has submitted while appearing on behalf of the Insurance Company that

if any effect is to be given to the said report, the same is required to be relegated to the discretion of the under-writer and allowed that no further

effect can be given. This court is made to wonder about the efficacy of duplication of reports at interim stage and final stage where no effect of the

same can be given and in the background of the same it may be tated as exercise on paper work having no tangible results. The entire claim

appears from the submission of Mr. Pal is left in the large. According to Mr. Pal, no effect can be given to the said final report. This court has given

its anxious considerations to the submissions of Mr. Pal and if discretion is left to the under-writers then the same could not be allowed to be

clouded by certain observation and it becomes irreconcilable in the wake of such observation the recommendations made in terms of remedy

figures about the losses to be reimbursed to be insurer. The final report and the conclusion seems to be bristled with the Inherent element of

intrinsic direction as a result of which it can be deciphered that there is only procedural compliance without any effective or tangible results given to

the party. As per submissions of Mr. Pal, if no credence can be given to the Final Report given by the insurer in view of some of the observations

made in the concluding portions of the report that the Surveyors have strong observations about genuineness of the purchase and some reservation

was expressed about the stock pile of raw materials as alleged in terms of the record and even the same has been dubbed as unjudicious this court

is not oblivious about the fact of the submissions of Mr. Pal about the efficacy of the Final Report submitted by Joint Surveyors appointed by the

Insurance Company. In the background of the entire gamut of facts emanating from the storehouse of record this court is required to salvage the

main crux of the controversy and it is required to deal with specific submissions made by the respective parties with regard to different salient

points on law involved in the subject.

4. Mr. Pal, the learned Counsel appearing on behalf of the Insurance Company, has submitted that the findings and conclusions contained in the

Final Report are clarified and conditional. According to him, the Surveyors did not and could not make recommendations regarding settlement of

the claim of the petitioner company and left the aspect of settlement to the discretion of the respondent No.2. In this context a reference may be

made to the provisions of section 64UM of the Insurance Act. In aid of the contention that Insurance Company has the right to pay or settle any

claim at any loss different from the amount assessed by the approved Surveyor or Loss Assessor. Some amount of stress has been given in the

proviso to this section and it has been contended on behalf of the petitioners by Mr. Das that section 64UM. of the Insurance Act stipulates that in

the event the Surveyors'' report is not accepted the matter has to be determined by the Controller upon appointing another approved Surveyor. As

the Final Report has left the matter for settlement with the Insurance Company in terms of the proviso to section 64UM. of the Insurance Act and if

the assessment made by the Surveyor is to be rejected, the same has to be done within a period of maximum two months and procedure for re-

assessment by the Controller is envisaged by appointing another Surveyor. The Insurance Company Itself has not initiated any step to re-verify the

quantum of loss as assessed by the Surveyors. In this context a reference was made to the reported decision of United India Insurance Company

Limited v. M.K.J Corporation reported in 1996(7) Supreme Court Cases that reasonable time of two months would be justified for Insurance

Company to take a decision whether the claim was required to be settled or rejected. It becomes difficult for this court to reconcile the

irreconcilability of the stand taken by the learned counsel appearing on behalf of the Insurance Company as he is under very much vociferous in

driving home his point that the Surveyors did not and could not make recommendations regarding settlement of the claim of the petitioner company

and in view of the dimension added to the report that its conclusion is inconclusive and therefore it should be left to the settlement of the discretion

of the respondent No.2. Even the report is inconclusive and no opinion has been formed by the Surveyors, then entire exercise is a redundant one

and the Insurance Company ought to have referred the same to the appropriate authorities for cancelling the existing report and Inviting fresh

report. In absence of requisition being made in terms of the provisions of the Act for setting aside the report and calling for a fresh report from an

authorised Surveyor as a third Surveyor, it is doubtful as to whether the report in question namely its conclusion can be assailed. At best it can be

convered that the recommendations as contained in the final report in its summary portion and the conclusion arrived at assessing the loss at a

certain figure and if the same is inconclusive and cannot be given effect to, then the conclusion of the recommendation is vitiated. The

recommendations contained in the final report will have to be assessed in terms of its results but exercise made at the peripheral region of the

report cannot give any credence to the sustainibility of the recommendations about quantification of the loss. If the same quantification is required to

be set aside, then the entire report has to be given a go-bye. If the final report is on a ram-shackle basis and no effect can be given to the same and

if Mr. Pal"s contention is to be accepted, then interim report revives and its recommendations are required to be implemented for the time being as

otherwise all the exercise will be exercise by way of empty formality by way of paper transaction. If this court is to accept Mr. Pal"s contention

that no effect can be given to the assessment made in the final report submitted by the Surveyors, then interim report creeps its head and at least

that interim relief can be given as per the interim report for the time being as otherwise the interim report inspite of being revived will not only be

shelved in the cold storage but it will be regarded as an exercise in futility. This court does not lean in favour of giving indulgence to paper exercises

by way of procedural ranglings and to invite a net result of nothing tangible and insurer"s claim and interim benefits would cease to be interim in

nature. In the modern age where dlmencities is there, time has an important dimenstion and in the field of social welfare where insurance is likely to

play key role in rejuveniting the society with a risk free world, the entire purpose will be frustrated if the end result is not achieved. In this context,

this court tends to rely in one of the decisions of the Supreme Court reported in the case of LIC of India and Another Vs. Consumer Education

and Research center and Others, where the apex court has elongated the principle by ascertaining the scope of jurisdiction of the High Court under

Article 226 of the Constitution of India by holding, inter alia, that the action of the State. Its instrumentality in public or persons where actions bear

insignia of public law element or of public character which are amendable to judicial review and validity of such an action would be tested on the

anvil of Article 14. It has been further observed that the distinction between the public law remedy and private law field cannot be demarcated with

precision as the distinction has now been narrowed down. The actions of the State which bear the imprint of public interest element in their offers

with terms and conditions invite public to enter into such agreement and it has been held that in such case Writ court can come in aid of the

aggrieved party. Further action of the State authority must be subject to rule of law and must be informed by respondents. Rule of reason and the

rule against arbitrariness in consonance with the doctrine of fair play and natural justice are subject to the Judicial review. Such Judicial review has

to be exercised on the touchstone of relevance and reasonableness. The situation does not envisage nor permit unfairness or unreasonableness in

its action in any sphere of its activity contrary to the professed ideals in the preamble to the situation. A pointed reference may be made to the case

of Premji Bhai Parmar and Others Vs. Delhi Development Authority and Others, thereof and it has been pointed out in the said decision that

reciprocal rights and obligations arising out of agreement do not depend on further enforceability upon whether a contracting party finds it prudent

to abide by the terms of contract. The Jurisdiction of the High Court is not intended to facilitate avoid some obligations as enjoined under the

Statute.

5. Mr. Pal. the learned Counsel for the respondents No. 2 and 3 the Insurance Company, has submitted that the prayers as they are couched in

the body of the writ petitioner are futile in nature as a mandate is sought for giving effect to the survey report of the Joint Surveyors forthwith by

releasing the amount in favour of the petitioners as mentioned in the report. In the wake of the background of the same, attention of this court has

been drawn by Mr. Pal to the concluding portion of the final report as per column 18.5 wherein the Surveyors on an in depth verification have

assessed the loss at Rs. 3.12,61,587.00 (Rupees Three crores Twelve Lacs Sixty-one Thousand and Five Hundred Eighty Seven) and in view of

the observations made therein the aspect of settlement is left to the discretion of the underwriter. The observations inter alia are couched in a

manner which tends to suggest that holding of stock of raw materials in the opinion of the Joint Surveyors was unjudicious and it has been further

observed that they have strong observations about the genuineness of purchase. Even it has been observed in column 17.7 of the final report that

this led to the apprehension of the Joint Surveyors about existence of highly exaggerated stock in the records, the said comments contained in the

final report as taken together constitute a threat and though loss has been assessed at certain figure on the basis of the books and records made

available but the said figure arrived at appears to be in a proper finding because of the doubts clasterlng around such finding. In the wake of the

same it has been contended that apart from provisions of section 64UM. of the Insurance Act which authorises the Insurance Company in view of

sub-section (2) thereto to pay or settle any claim at any amount different from the amount assessed by the approved Surveyor or Loss Assessor.

According to specific contentions of Mr- Pal the Survey Report does not assess the loss nor does it make any recommendation. If the said

submission of Mr. Pal is accepted, then the question of arriving at a different figure by the Insurance Company from that which is assessed by the

Surveyor in terms of section 64UM. of the Insurance Act does not and cannot arise. The pre-requisite condition to be fulfilled in arriving at an

inference where sub-section (2) of section 64UM. of the Insurance Act given effect to only when an amount has been assessed by the approved

Surveyors. As per Mr. Pal''s contention if any proper amount has been assessed by the approved Surveyor because of some observations made

therein striking at the root of the figure arrived at by way of quantification of the loss, then in absence of any proper assessment made by the

Surveyor the question of play of discretion of the under-writer to settle the matter does not and cannot arise. It is imperative on the Surveyors to

arrive at a positive figure without making the same shielded under the hazy coverage of clouds of suspicion percolating into the domain of arriving

at the finding of the figures. If the report cannot be considered to be a basis, then the parties should be relegated either to a civil suit or to an

adjudication before National Commission for quantifying the losses and damages sustained due to the occurance of the fire. The prayers as they

stand may be moulded appropriately and as it has been Indicated before the Writ court in exercise of its jurisdiction under Article 226 of the

Constitution considers it to be a fit case where the recommendations of interim payment as reflected in the Interim Report dated 9.8.93 with a

recommendation of adhoc payment of Rs. 1,72,56,555/- should be given effect to and the said respondents are required to be directed for ends of

Justice to pay the petitioner company the said amount by way of adhoc payment together with interest at the rate of 18% from 9.8.93 upto date till

the date of payment. The remaining claims and center-contentions of the residuary balance with regard to the amount of losses and damages owing

to the occurance of fire should be decided either in a properly framed civil suit or before the National Commission.

6. There has been a debate as to the maintainability of the writ petition with regard to the question as to whether money claimed on account of any

insurance and the amount can be assessed by the Writ court and adequate direction may be given for payment of the said amount of

compensation. In this context, a reference may be made to the case of Life Insurance Corporation of India & Ors. v. Smt. Kiran Sinha reported in

AIR 1985, SCC 1265 wherein it has been observed that the High Court could not have in the facts and circumstances of the case direct the

payment of the money claimed under the insurance policies in question in a petition filed under Article 226 of the Constitution. The only remedy

available to the respondents in this case was by way of regular suit before a Civil Court and now alternatively as insurance service is considered to

be a consumer service, therefore, an appropriate proceeding can be initiated before the National Commission. Therefore, leave is granted to the

petitioners to explore their remedy by way of a regular suit in Civil Court or by way of an appropriate proceeding before National Commission

under the Consumers Protect Act and the same should be settled in accordance with law on merits in accordance with the records of the

proceeding. Though other points have been attempted to be raised but this court wants to limit the range of controversy in a restricted compass by

granting leave to the petitioners to go in either for a suit or for proper remedy under the Consumer''s protection Act for full and final determination

of their Claim in respect of losses and damages suffered by them and by way of affixation of the liability of Insurance Company to pay the insured

sum equivalent to total quantum of loss and damages. This court in view of acceptance of the argument of Mr. Pal appearing for the concerned

respondents No.2 and 3 representing the Insurance Company that recommendations contained cannot be given effect to as neither any loss is

properly assessed nor any appropriate recommendation has been made, as pointed out earlier that in terms of the provisions contained in section

64UM. of the Act, the Insurance Company has a right to settle any claim at any amount different from the amount assessed by the approved

Surveyor and when there is no assessment made other than that by way of reference from records on in depth verification, then the pre-requlsite

condition of section 64UM. of the Insurance Act is not fulfilled and there cannot be any play of discretion at the instance of the under-writer for

settlement of the claim. Therefore, this court feels that the recommendations contained in the interim report should be given effect to by way of

interim relief and directs payment as per interim report submitted by the Surveyors on 9.8.93 on an adhoc basis at Rs. 1,72,56,556/- together with

interest payable from 9.8.93 the date of submission of the report upto the present date subject to adjustment against the total claim as assessed by

a competent court or adjudicating forum which can make a fact-finding scrutiny for the reasons as indicated above. If the said amount as directed

will be required to be paid within a period of 4(four) weeks from the date of the communication of this order and the same is required to be

Invested against raw materials and material goods as before the fire when it took place and the said stock was replenished will remain charged with

the UCO Bank who is a party respondent in the instant proceeding. The writ petition stands disposed of subject to have directions. At this juncture

the question of disbursement of the amount directed to be paid as per Interim report on an adhoc basis under the insurance policy in favour of the

UCO Bank does not and cannot arise as it is by way of a bid to replenish the stocks of the company which is a sick unit under BIFR and the said

stocks will remain charged with the Bank for the protection of the Bank. The other claims of the Banks against the petitioner company does not

and cannot arise in this proceeding for which there may be other avenues for the Bank to explore their remedy at an appropriate point of time after

offering an opportunity to the petitioner company to survive and salvage it out of the calamity of an accidental fire.

7. Petition disposed of