

Judgements - (2)  
High Court - Patna

Ashok Prasad vs The Life Insurance Corporation Of ... on 27 November, 2017

Patna High Court

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IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7035 of 2015

Ashok Prasad Son of Sri Radha Krishna Prasad presently residing at Mohalla - Shivaji Nagar, House No. JKS -E-114, Chandpur Bela Road, Police Station - Jakkanpur, District - Patna.

..... Petitioner/s Versus

1. The Life Insurance Corporation of India through its Chairman, Yogachhem, Jeevan Bema Marg, Post Box No. 19953, Mumbai - 400021.
2. The Zonal Manager, East Central Zone, Live Insurance Corporation of India, Jeevan Deep Building, Exhibition Road, Patna.
3. Senior Divisional Manager, Life Insurance Corporation of India, Patna Division  
- 1, Jeevan Prakash Building, Frazer Road, Patna.
4. Senior Branch Manager, Life Insurance Corporation of India, Patna Branch - IV, Jeevan Prakash Building, Frazer Road, Patna.
5. Sri A.M. Sahay, Manager (CLIA) - cum - Investigation Officer, Life Insurance Corporation of India, Patna Division - 1, Jeevan Prakash Building, Frazer Road.

. . . . . R e s p o n d e n t / s  
===== Appearance :

For the Petitioner/s : Mr. Krishna Kant Singh, Adv. For the Respondent/s : Mr. Nilanjan Chatterjee, Adv.

Mr. Rajni Kant Singh, Adv.

===== CORAM:  
HONOURABLE MR. JUSTICE SHIVAJI PANDEY ORAL JUDGMENT Date: 27-11-2017 Heard learned counsel for the parties.

In the present case, the petitioner is making a prayer for quashing the order dated 14.10.2014 passed by the Zonal Manager, Life Insurance Corporation of India, whereby and whereunder, upheld the order dated 27.9.2011 passed by the Senior Divisional Manager, LIC of India, Patna terminating the agency code no. 867/550 of the petitioner in exercise of power under Rule 16(1)(b) of the LIC of India (Agents) Rule, 1972 and made a prayer to direct the respondent concerned to restore agency of

the petitioner. Patna High Court CWJC No.7035 of 2015 dt.27-11-2017 2 During pendency of this writ application, the memorial filed by the petitioner has been rejected by the Chairman vide order dated 8.7.2017 which has been challenged by filing the present I.A.

No. 5344 of 2017.

The short fact of this case is that the petitioner was duly recruited as agent in the Life Insurance Corporation of India on 6.3.1998, was allotted Agency Code of 867/550, started collecting business for and on behalf of L.I.C. The license was renewed by I.R.D.A. which was valid till 5.3.2013. The petitioner had taken strenuous endeavour for promoting the business of Life Insurance Corporation of India, on the basis of his performance, he was made member of the zonal club and, in the interest of business, was nominated as President of Agents Association, Patna Branch-IV.

On the fateful day, as per claim of the petitioner, he had a conversation with the Assistant Branch Manager, namely, Arun Kumar Verma narrated owes, only two days left to end the financial year of 2010-11 but till date the promotional gift had not been distributed, whereupon, Mr. Verma replied, this is the duty of the Division, had gone along with petitioner to the Chamber of Senior Branch Manager. He had enquired from Senior Branch Manager that the commission for diary and calendar had been deducted but, the same had not been handed over to them, on that account, agents were Patna High Court CWJC No.7035 of 2015 dt.27-11-2017 3 facing the problem. He had cordial conversation with Mr. Verma, in the meantime, the Senior Manager, Ansuman Sinha and Sharda Nand Jna, representative of agent, entered into the Chamber, one by one.

Sharda Nand Jha said, he had not applied for promotional materials, even then, deduction of commission had been effected, when the commission had been deducted for diary and calendar but, the same had not been given to them, requested for return of the money, whereupon, the Branch Head namely Mr. Anshuman Sinha lost his control, addressed in a high pitch and stated that you could not dictate him, whether on your dictate, he would wash the toilet, whereupon, as per petitioner, he had requested to cool down, thereafter, he stood up and addressed in a high pitch threatened for a dire consequences, also said that he would call the police, would get him arrested. Eleven employees were there. They were/are witnesses to the conversation/incident. On account of that incident, the Divisional Manager of Patna Division Office issued a show-cause to the petitioner, wherein, made allegation that the petitioner had made high pitch conversation with the Branch Head and made a demeaning reaction against the Branch that (^ ^;g fxjk gqvk vkneh gS] buls ckr djuk csdkj gS] ;g rks czkap dks /kalk fn;k gS\*\*) alleged that the petitioner had humiliated the top chair of the Branch Office in presence of others. The act of petitioner was/is utter indiscipline in the Patna High Court CWJC No.7035 of 2015 dt.27-11-2017 4 branch premises during business hour. The petitioner had/have acted in a manner prejudicial to good conduct and detrimental to the interest of Corporation and, in exercise of power under Rule 16(1)(b) of the L.I.C. of India (Agents) Rules, 1972, the Sr. Divisional Manager issued show-cause why his agency be not terminated under that Rule and also proposed to forfeit the commission of the petitioner under Rule 10(6) read with Sub Rule (1) of Rule 19 of the L.I.C. of India (Agents) Rule, 1972 and directed to file show-cause within a period of fifteen days. The petitioner filed show-cause giving full description of incident that had taken place in the chambers, thereafter, the Senior Divisional Manager vide letter dated

28.4.2011 passed two orders, inflicted two interim punishments firstly, he was put under suspension the agency of the petitioner and secondly, the petitioner was prohibited to enter into the Patna Branch-IV which the petitioner challenged in C.W.J.C. No. 12329 of 2011, this Court vide order dated 14.9.2011 directed to file representation for payment of his commission to the authority and directed to take decision within a period of two months from the date of receipt/production of a copy of the order. The second part of the order with respect to prohibiting the petitioner to enter in the Patna Branch-IV, this court said that there is no such provision in the Rule prohibiting the agent to enter into the Branch during suspension period and, accordingly, the Court quashed Patna High Court CWJC No.7035 of 2015 dt.27-11-2017 5 that part of the order, thereby lifted the order of prohibition to enter into the Branch No.IV till further orders. The Senior Branch Manager, vide order dated 27.9.2011 found the petitioner to be guilty of the charges mentioned in the show-cause, thereby imposed penalty terminating the agency without forfeiture of commission payable to the petitioner and held that the penalty was/is commensurate to the nature of misconduct, committed by the petitioner. Against this order, the petitioner filed appeal before the appellate authority and the appellate authority vide order dated 14.10.2014 rejected the appeal wherein it has been recorded some personal and disrespectful remarks in high tone in the office during business hour in presence of others without any provocation from Senior Branch Manager was addressed to him and, on that account, the petitioner was served the order of termination of agency. It has also been narrated, on careful examination of documents relating to incident, considering the case in entirety, the appellate authority rejected the claim of the petitioner and rejected the appeal, affirmed the order passed by the Senior Zonal Manger, Life Insurance Corporation of India, Patna. In the same tenor, the memorial filed by the petitioner before the Chairman has also been rejected, found the action of the petitioner prejudicial to the interest of the L.I.C. and it is completely serious charge the manner he had behaved with the Senior Branch Manager and, thereby, the Patna High Court CWJC No.7035 of 2015 dt.27-11-2017 6 memorial filed by the petitioner has also been rejected.

Learned counsel for the petitioner submits that the action of the respondent authority in passing the order of termination of agency is unwarranted, illegal, arbitrary and not sustainable in law.

He further submits that he had neither abused nor misbehaved nor assaulted rather he had a discussion with the Senior Branch Manager with respect to giving promotional material, whereupon, he had lost his temper and addressed him in a high pitch and he had never misbehaved with the Senior Branch Manager, it has further been said that when the authority has passed the order terminating agency on the charge of misconduct, the fairness was required, at least he should have been given proper hearing to the petitioner and, only then, the order of termination of agency could have been passed. It has further been said that no such type of enquiry was conducted in presence of the petitioner but, admittedly, in the chamber, the employees of the L.I.C. and other persons were also present, if any statement has been recorded from them, then the natural justice requires that the petitioner should be given an opportunity of cross-examination but, no such type of act has been done, merely it was an enquiry just unknown to the law and order, does not disclose any objective assessment and material findings with regard to misconduct, merely a vague statement has been made in all the three orders that he had Patna High Court CWJC No.7035 of 2015 dt.27-11-2017 7 committed misconduct of high order, for that, his agency has been terminated. It has further been argued that the termination of agency causes civil consequences and, in terms of

settled position of law, minimum requirement of fairness and transparency should have been maintained but, it has not been followed in the present case and orders have been passed behind the back of the petitioner. The nature of enquiry was clandestine which could not have been done in such manner but, it should have been done in presence of the petitioner because action has taken away his livelihood which is protected under Article 21 of the Constitution of India. He has further submitted that even if it is presumed but not accepted using any word in high tone to the Senior Branch Manager, does not constitute any nature of misconduct or misbehavior but, venting his anger against Branch Manager towards his attitude. The letter itself shows that he had not abused, not assaulted, not humiliated, only said that the Branch had gone down. Learned counsel for the petitioner further submits that provision 16(1)(b) of the Life Insurance Corporation of India (Agents) Rule, 1972 does not apply in the case of the petitioner.

Learned counsel for the L.I.C. submits that the action of the L.I.C. cannot be said to be wrong as the petitioner was not holding the civil post but, he is an agent, the full fledged enquiry was not required in the case of the petitioner but, the summary enquiry was to Patna High Court CWJC No.7035 of 2015 dt.27-11-2017 8 be followed to collect material to know what had happened in the Chamber, for that evidence of the persons present, were recorded, arrived to a conclusion that the petitioner has/had committed misconduct of serious nature, whereafter, the order of termination of agency has been passed. He has further submitted that all the three officers have applied their judicial mind and only then they have passed the order. He has further placed reliance in the case of Life Insurance Corporation of India Vs. Jay Kumar Pandey reported in 2011 (4) PLJR 129, submits that the judgment cover the field. He has further submitted that the agency is the nature of contract and contract can be terminated, for that, it does not require a departmental type of enquiry.

He has further submitted that for the nature of such type of misconduct proviso of 16(1)(b) only stipulates of giving a show-cause notice and, after considering the show-cause, the order could be passed. He has further submitted that the Regulation provides only one punishment which is termination of agency.

Before arriving to a final conclusion in the matter, this Court will have to examine the scope of judicial review in the contract matter. It will be appropriate in what circumstances the Court can interfere with the action of the State within the meaning of Article 12 of the Constitution of India as they are the repository of public trust, has to act in a fair and proper manner and arbitrary action has been Patna High Court CWJC No.7035 of 2015 dt.27-11-2017 9 held to be unsustainable and the Court has jurisdiction to set at right by removing the illegalities committed by the authority concerned.

This issue has come for consideration in the case of Kumari Shrilekha Vidyarthi & Ors. Vs. State of U.P. & Ors. reported in AIR 1991 SC 537, whereby, it has been held that executive action of the State is to be tested on the touchstone of Article 14 and same test is applicable in the contract matter as the State does not have unbridled and unfettered power de hors to Article 14 to the Constitution of India even in the sphere of the contractual matter. The modern trend is to examine the unreasonableness of the terms of contract where the bargaining power is unequal, contract can be procured on dictated terms, in standard form between two unequal. Whatever action is taken must

be aimed at achieving social, economic and political justice to every citizens which is basic goal enshrined in Part IV of Constitution contains "Directive Principles of State Policy" which are fundamental in governance of the country and are aimed at securing social and economic freedoms by appropriate State action which is complementary to individual fundamental rights guaranteed in Part-III for protection against the excesses of the State action. This being philosophy of the Constitution which contemplates exclusion of Article 14 non-arbitrariness which is basic to rule of law, is equally applicable in the contractual field, is meant for the public good and Patna High Court CWJC No.7035 of 2015 dt.27-11-2017 10 expected to be fair and just. Every State action would survive, must not be susceptible to vice of arbitrariness which is crux of Article 14 of the Constitution basic is the rule of law, the systems which governs us. Arbitrariness is the very negation of justice and antithesis of the rule of law, is the basic litmus test to every State action is sine quo non to its validity as the State cannot compare itself with the private individual even in the field of contract. The State action and the private action in the filed of contract has different spectrum, to my mind, private action can not be examined in the touch stone of Article 14 of the Constitution of India. It is relevant to quote paragraph nos.

21, 22, 26, 35, 37, 39 and 44 of the aforesaid judgment which reads as follows:-

"21. The Preamble of the Constitution of India resolves to secure to all its citizens Justice, social, economic and political;

and Equality of status and opportunity. Every State action must be aimed at achieving this goal. Part IV of the Constitution contains 'Directive Principles of State Policy' which are fundamental in the governance of the country and are aimed at securing social and economic freedoms by appropriate State action which is complementary to individual fundamental rights guaranteed in Part III for protection against excesses of State action, to realise the vision in the Preamble. This being the philosophy of the Constitution, can it be said that it contemplates exclusion of Article 14 -- non-arbitrariness which is basic to rule of law -- from State actions in contractual field when all actions of the State are meant for public good and expected to be fair and just? We have no doubt that the Constitution does not envisage or permit Patna High Court CWJC No.7035 of 2015 dt.27-11-2017 11 unfairness or unreasonableness in State actions in any sphere of its activity contrary to the professed ideals in the Preamble. In our opinion, it would be alien to the Constitutional Scheme to accept the argument of exclusion of Article 14 in contractual matters. The scope and permissible grounds of judicial review in such matters and the relief which may be available are different matters but that does not justify the view of its total exclusion. This is more so when the modern trend is also to examine the unreasonableness of a term in such contracts where the bargaining power is unequal so that these are not negotiated contracts but standard form contracts between unequals.

22. There is an obvious difference in the contracts between private parties and contracts to which the State is a party. Private parties are concerned only with their personal interest whereas the State while exercising its powers and discharging its functions, acts indubitably, as is expected of it, for public good and in public interest. The impact of every State action is also on public interest. This factor alone is sufficient to import at least the minimal requirements of public law obligations and

impress with this character the contracts made by the State or its instrumentality. It is a different matter that the scope of judicial review in respect of disputes falling within the domain of contractual obligations may be more limited and in doubtful cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes. However, to the extent, challenge is made on the ground of violation of Article 14 by alleging that the impugned act is arbitrary, unfair or unreasonable, the fact that the dispute also falls within the domain of contractual obligations would not relieve the State of its obligation to comply with the basic requirements of Article 14. To this extent, the obligation is of a public character invariably in every case irrespective of there being any other right or obligation in addition thereto. An additional contractual Patna High Court CWJC No.7035 of 2015 dt.27-11-2017 12 obligation cannot divest the claimant of the guarantee under Article 14 of non-arbitrariness at the hands of the State in any of its actions.<sup>26</sup> A useful treatment of the subject is to be found in (1990) 106 LQR 277 in an article 'Judicial Review and Contractual Powers of Public Authorities'. The conclusion drawn in the article on the basis of recent English decisions is that 'public law principles designed to protect the citizens should apply because of the public nature of the body, and they may have some role in protecting the public interest'. The trend now is towards judicial review of contractual powers and the other activities of the Government. Reference is made also to the recent decision of the Court of Appeal in *Jones v. Swansea City Council* (1990) 1 WLR 54, where the Court's clear inclination to the view that contractual powers should generally be reviewable is indicated, even though the Court of Appeal faltered at the last step and refrained from saying so. It is significant to note that emphasis now is on review ability of every State action because it stems not from the nature of function, but from the public nature of the body exercising that function; and all powers possessed by a public authority, howsoever conferred, are possessed 'solely in order that it may use them for the public good'. The only exception limiting the same is to be found in specific cases where such exclusion may be desirable for strong reasons of public policy. This, however, does not justify exclusion of review ability in the contractual field involving the State since it is no longer a mere private activity to be excluded from public view or scrutiny.<sup>35</sup> It is now too well settled that every State action, in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of Article 14 of the Constitution and basic to the rule of law, the system which governs us. Arbitrariness is the very negation of the rule of law. Satisfaction of this basic test in every State action is sine qua non to its validity and in this respect, the State cannot claim comparison with a private individual even in the field of contract. This distinction Patna High Court CWJC No.7035 of 2015 dt.27-11-2017 13 between the State and a private individual in the field of contract has to be borne in the mind.<sup>37</sup> Almost a quarter century back, this Court in *S.G. Jaisinghani v. Union of India*: (1967) 2 SCR 703 at pp. 718-19: (AIR 1967 SC 1427 at p. 1434), indicated the test of arbitrariness and the pitfalls to be avoided in all State actions to prevent that vice, in a passage as under:

"In this context it is important to emphasize that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the

citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law. (See Dicey -- "Law of the Constitution" -- Tenth Edn., Introduction cx). "Law has reached its finest moments", stated Douglas, J. in *United States v. Wunderlick* 1951 342 US 98 : 96 Law Ed 113, "When it has freed man from the unlimited discretion of some ruler.... Where discretion is absolute, man has always suffered". It is in this sense that the rule of law may be said to be the sworn enemy of caprice. Discretion, as Lord Mansfield stated it in classic terms in the case of *John Wilkes* 1770 98 ER 327, "means sound discretion guided by law. It must be governed by rule, not humour: it must not be arbitrary, vague and fanciful."

39. No doubt, it is for the person alleging arbitrariness who has to prove it. This can be done by showing in the first instance that the impugned State action is uninformed by Patna High Court CWJC No.7035 of 2015 dt.27-11-2017 14 reason inasmuch as there is no discernible principle on which it is based or it is contrary to the prescribed mode of exercise of the power or is unreasonable. If this is shown, then the burden is shifted to the State to repeal the attack by disclosing the material and reasons which led to the action being taken in order to show that it was an informed decision which was reasonable. If after a prima facie case of arbitrariness is made out, the State is unable to show that the decision is an informed action which is reasonable, the State action must perish as arbitrary.

44. Conferment of the power together with the discretion which goes with it to enable proper exercise of the power is coupled with the duty to shun arbitrariness in its exercise and to promote the object for which the power is conferred, which undoubtedly is public interest and not individual or private gain, whim or caprice of any individual. All persons entrusted with any such power have to bear in mind its necessary concomitant which alone justifies conferment of power under the rule of law. This was apparently lost sight of in the present case while issuing the impugned circular."

So the basic thrust has been given in the judgment, the action of State must be proper, has followed rule of law and it should not be incoherent on the face of it, such exercise of power by the authority goes to the root of the matter, easily discernible that it does not satisfy the guideline of Article 14 of the Constitution of India.

The interference in State action is permissible in exercise of judicial review even in the contract matter where the State action is arbitrary, has been decided by the Hon'ble Apex Court in the case of *ABL International Ltd. & Anr. Vs. Export Credit Guarantee Corporation of India & Ors.* reported in 2004 (3) SCC 553 wherein the test Patna High Court CWJC No.7035 of 2015 dt.27-11-2017 15 of interference has been delineated and has held that the Court can interfere when the State has exercised the power in arbitrary and improper manner. It has further been held that if the State's action relating to breach of contractual obligations failed to discharge the obligations, the Court would ask the litigant to settle the score in civil suit, writ will not be attracted. In this case, in paragraph no.19, the Hon'ble Apex Court has held that in appropriate case, the Court has jurisdiction to entertain a writ application involving the disputed question of fact and there is no absolute bar for entertaining the writ petition even if the same arises out of the contractual

obligation or involves some disputed questions of fact. It is relevant to quote paragraph nos. 10, 19 and 22 which reads as follows:-

"10. It is clear from the above observations of this Court in the said case though a writ was not issued on the facts of that case, this Court has held that on a given set of facts if a State acts in an arbitrary manner even in a matter of contract, an aggrieved party can approach the court by way of writ under Article 226 of the Constitution and the court depending on facts of the said case is empowered to grant the relief. This judgment in *K.N. Guruswamy v. The State of Mysore and Ors.* was followed subsequently by this Court in the case of *The D.F.O, South Kheri and Ors. v. Ram Sanahi Singh* AIR 1973 SC 205 wherein this Court held:

"By that order he has deprived the respondent of a valuable right. We are unable to hold that merely because the source of the right which the respondent claims was Patna High Court CWJC No.7035 of 2015 dt.27-11-2017 16 initially in a contract for obtaining relief against any arbitrary and unlawful action on the part of a public authority he must resort to a suit and not to a petition by way of a writ. In view of the judgment of this Court in *K.N. Guruswamy's* case (supra), there can be no doubt that the petition was maintainable, even if the right to relief arose out of an alleged breach of contract, where the action challenged was of a public authority invested with statutory power."

(Emphasis supplied)

19. Therefore, it is clear from the above enunciation of law that merely because one of the parties to the litigation raises a dispute in regard to the facts of the case, the court entertaining such petition under Article 226 of the Constitution is not always bound to relegate the parties to a suit. In the above case of *Smt. Gunwant Kaur* (supra), this Court even went to the extent of holding that in a writ petition, if facts required, even oral evidence can be taken. This clearly shows that in an appropriate case, the writ court has the jurisdiction to entertain a writ petition involving disputed questions of fact and there is no absolute bar for entertaining a writ petition even if the same arises out of a contractual obligation and or involves some disputed questions of fact.

22. We do not think the above judgment in *VST Industries Ltd.* (supra) supports the argument of the learned counsel on the question of maintainability of the present writ petition. It is to be noted that *VST Industries Ltd.* against whom the writ petition was filed was not a State or an instrumentality of a State as contemplated under Article 12 of the Constitution, hence, in the normal course, no writ could have been issued against the said industry. But it was the contention of the writ petitioner in that case that the Patna High Court CWJC No.7035 of 2015 dt.27-11-2017 17 said industry was obligated under the concerned statute to perform certain public functions, failure to do so would give rise to a complaint under Article 226 against a private body. While considering such argument, this Court held that when an authority has to perform a public function or a public duty if there is a failure a writ petition under Article 226 of the Constitution is maintainable. In the instant case, as to the fact that the respondent is an instrumentality of a State, there is no dispute but the question is: Was first respondent discharging a public duty or a public function while repudiating the claim of the appellants arising out of a contract? Answer to this question, in our opinion, is found in the



judgment of this Court in the case of Kumari Shri Lekha Vidyarthi and Ors. v. State of U.P. and Ors.: AIR 1991 SC 537 wherein this Court held :

"The impact of every State action is also on public interest. It is really the nature of its personality as State which is significant and must characterize all its actions, in whatever Held, and not the nature of function contractual or otherwise which is decisive of the nature of scrutiny permitted for examining the validity of its act. The requirement of Article 14 being the duty to act fairly, justly and reasonably, there is nothing which militates against the concept of requiring the State always to so act, even in contractual matters."

The same principle has been reiterated in the case of Zonal Manager, Central Bank of India Vs. Devi Ispat Ltd. & Ors. reported in 2010 (11) SCC 186. That case is based on the judgment of ABL Patna High Court CWJC No.7035 of 2015 dt.27-11-2017 18 International Ltd. (supra). It is relevant to quote paragraph nos. 25 and 26 which reads as follows:-

"25. The following discussion and conclusion are apt and relevant for our purpose. They are:(ABL International Ltd. case, SSC pp. 564-69, paras 9-19).

9. In our opinion this question is no more res integra and is settled by a large number of judicial pronouncements of this Court. In K.N. Guruswamy v. State of Mysore this Court held: (AIR pp. 595-96, para 20)

20. The next question is whether the appellant can complain of this by way of a writ. In our opinion, he could have done so in an ordinary case. The appellant is interested in these contracts and has a right under the laws of the State to receive the same treatment and be given the same chance as anybody else....

We would therefore in the ordinary course have given the appellant the writ he seeks. But, owing to the time which this matter has taken to reach us (a consequence for which the appellant is in no way to blame, for he has done all he could to have an early hearing), there is barely a fortnight of the contract left to go.... A writ would therefore be ineffective and as it is not our practice to issue meaningless writs we must dismiss this appeal and leave the appellant content with an enunciation of the law.

10. It is clear from the above observations of this Court in the said case, though a writ was not issued on the facts of that case, this Court has held that on a given set of facts if a State acts in an arbitrary manner even in a matter of contract, an aggrieved party can approach the court by way of writ under Article 226 of the Constitution and the court Patna High Court CWJC No.7035 of 2015 dt.27-11-2017 19 depending on facts of the said case is empowered to grant the relief. This judgment in K.N. Guruswamy v. State of Mysore was followed subsequently by this Court in the case of D.F.O. v. Ram Sanehi Singh wherein this Court held: (SCC p. 865, para 4) „4. ... By that order he has deprived the respondent of a valuable right. We are unable to hold that merely because the source of the right

which the respondent claims was initially in a contract, for obtaining relief against any arbitrary and unlawful action on the part of a public authority he must resort to a suit and not to a petition by way of a writ. In view of the judgment of this Court in K.N.

Guruswamy case there can be no doubt that the petition was maintainable, even if the right to relief arose out of an alleged breach of contract, where the action challenged was of a public authority invested with statutory power.

(Emphasis supplied)

11. In the case of Gujarat State Financial Corporation v. Lotus Hotels (P) Ltd. this Court following an earlier judgment in Ramana Dayaram Shetty v. International Airport Authority of India held: (SCC pp. 385-86, paras 9 &

11) „The instrumentality of the State which would be 'other authority' under Article 12 cannot commit breach of a solemn undertaking to the prejudice of the other party which acted on that undertaking or promise and put itself in a disadvantageous position. The appellant Corporation, created under the State Financial Corporations Act, falls within the expression of 'other authority' in Article 12 and if it backs out from such a promise, it cannot be said that the only remedy for the aggrieved party would be Patna High Court CWJC No.7035 of 2015 dt.27-11-2017 20 suing for damages for breach and that it could not compel the Corporation for specific performance of the contract under Article 226.

12. The learned Counsel appearing for the first respondent, however, submitted that this Court has taken a different view in the case of LIC of India v. Escorts Ltd. wherein this Court held: (SCC p. 344, para 102) „102. --- If the action of the State is related to contractual obligations or obligations arising out of the tort, the court may not ordinarily examine it unless the action has some public law character attached to it. Broadly speaking, the court will examine actions of State if they pertain to the public law domain and refrain from examining them if they pertain to the private law field. The difficulty will lie in demarcating the frontier between the public law domain and the private law field. It is impossible to draw the line with precision and we do not want to attempt it. The question must be decided in each case with reference to the particular action, the activity in which the State or the instrumentality of the State is engaged when performing the action, the public law or private law character of the action and a host of other relevant circumstances. When the State or an instrumentality of the State ventures into the corporate world and purchases the shares of a company, it assumes to itself the ordinary role of a shareholder, and dons the robes of a shareholder, with all the rights available to such a shareholder. There is no reason why the State as a shareholder should be expected to state its reasons when it seeks to change the management, by a resolution of the company, like any other shareholder.

(emphasis supplied)

13. We do not think this Court in the above case has, in Patna High Court CWJC No.7035 of 2015 dt.27-11-2017 21 any manner, departed from the view expressed in the earlier judgments in the case

cited hereinabove. This Court in the case of LIC of India proceeded on the facts of that case and held that a relief by way of a writ petition may not ordinarily be an appropriate remedy. This judgment does not lay down that as a rule in matters of contract the court's jurisdiction under Article 226 of the Constitution is ousted. On the contrary, the use of the words "court may not ordinarily examine it unless the action has some public law character attached to it" itself indicates that in a given case, on the existence of the required factual matrix a remedy under Article 226 of the Constitution will be available. The learned Counsel then relied on another judgment of this Court in the case of State of U.P. v. Bridge & Roof Co. (India) Ltd. wherein this Court held: (SCC p. 31, para 21) 21. --- Further, the contract in question contains a clause providing inter alia for settlement of disputes by reference to arbitration. The arbitrators can decide both questions of fact as well as questions of law. When the contract itself provides for a mode of settlement of disputes arising from the contract, there is no reason why the parties should not follow and adopt that remedy and invoke the extraordinary jurisdiction of the High Court under Article 226. The existence of an effective alternative remedy -- in this case, provided in the contract itself -- is a good ground for the court to decline to exercise its extraordinary jurisdiction under Article 226.

14. This judgment again, in our opinion, does not help the first respondent in the argument advanced on its behalf that in contractual matters remedy under Article 226 of the Constitution does not lie. It is seen from the above extract that in that case because of an arbitration clause in the contract, the Court refused to invoke the remedy under Article 226 of the Constitution. We have specifically inquired Patna High Court CWJC No.7035 of 2015 dt.27-11-2017 22 from the parties to the present appeal before us and we have been told that there is no such arbitration clause in the contract in question. It is well known that if the parties to a dispute had agreed to settle their dispute by arbitration and if there is an agreement in that regard, the courts will not permit recourse to any other remedy without invoking the remedy by way of arbitration, unless of course both the parties to the dispute agree on another mode of dispute resolution. Since that is not the case in the instant appeal, the observations of this Court in the said case of Bridge & Roof Co. are of no assistance to the first respondent in its contention that in contractual matters, writ petition is not maintainable.

15. The learned Counsel then contending that this Court will not entertain a writ petition involving disputed questions of fact relied on a judgment of this Court in the case of State of Bihar v. Jain Plastics and Chemicals Ltd. wherein this Court held: (SCC p. 218, para 7) „7. In our view, it is apparent that the order passed by the High Court is, on the face of it, illegal and erroneous. It is true that many matters could be decided after referring to the contentions raised in the affidavits and counter-affidavits, but that would hardly be a ground for exercise of extraordinary jurisdiction under Article 226 of the Constitution in case of alleged breach of contract. Whether the alleged non-supply of road permits by the appellants would justify breach of contract by the respondent would depend upon facts and evidence and is not required to be decided or dealt with in a writ petition. Such seriously disputed questions or rival claims of the parties with regard to breach of contract are to be investigated and determined on the basis of evidence which may be led by the parties in a properly instituted civil suit rather than by a court Patna High Court CWJC No.7035 of 2015 dt.27-11-2017 23 exercising prerogative of issuing writs.

16. A perusal of this judgment though shows that a writ petition involving serious disputed questions of facts which requires consideration of evidence which is not on record, will not normally be entertained by a court in the exercise of its jurisdiction under Article 226 of the Constitution of India. This decision again, in our opinion, does not lay down an absolute rule that in all cases involving disputed questions of fact the parties should be relegated to a civil suit. In this view of ours, we are supported by a judgment of this Court in the case of Gunwant Kaur v. Municipal Committee, Bhatinda where dealing with such a situation of disputed questions of fact in a writ petition this Court held: (SCC p. 774, paras 14-

16) „14. The High Court observed that they will not determine disputed question of fact in a writ petition. But what facts were in dispute and what were admitted could only be determined after an affidavit- in-reply was filed by the State. The High Court, however, proceeded to dismiss the petition in limine. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right to relief questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is, it is true, discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises questions of fact of a complex nature, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute may not appropriately be tried in a writ petition, the High Court may decline to try a petition. Rejection of a petition in limine will normally be Patna High Court CWJC No.7035 of 2015 dt.27-11-2017 24 justified, where the High Court is of the view that the petition is frivolous or because of the nature of the claim made dispute sought to be agitated, or that the petition against the party against whom relief is claimed is not maintainable or that the dispute raised thereby is such that it would be inappropriate to try it in the writ jurisdiction, or for analogous reasons.

15. From the averments made in the petition filed by the appellants it is clear that in proof of a large number of allegations the appellants relied upon documentary evidence and the only matter in respect of which conflict of facts may possibly arise related to the due publication of the notification under Section 4 by the Collector.

16. In the present case, in our judgment, the High Court was not justified in dismissing the petition on the ground that it will not determine disputed question of fact. The High Court has jurisdiction to determine questions of fact, even if they are in dispute and the present, in our judgment, is a case in which in the interests of both the parties the High Court should have entertained the petition and called for an affidavit-in- reply from the respondents, and should have proceeded to try the petition instead of relegating the appellants to a separate suit.

17. The above judgment of Gunwant Kaur finds support from another judgment of this Court in the case of Century Spg. and Mfg. Co. Ltd. v. Ulhasnagar Municipal Council wherein this Court held: (SCC p. 587, para 13) 13. --- Merely because a question of fact is raised, the High Court will not be justified in requiring the party to seek relief by the somewhat lengthy, dilatory and expensive process by a civil suit against a public body. The questions of fact raised by the petition in this case are elementary.

18. This observation of the Court was made while negating a contention advanced on behalf of the respondent Patna High Court CWJC No.7035 of 2015 dt.27-11-2017 25 Municipality which contended that the petition filed by the appellant Company therein apparently raised questions of fact which argument of the Municipality was accepted by the High Court holding that such disputed questions of fact cannot be tried in the exercise of the extraordinary jurisdiction under Article 226 of the Constitution. But this Court held otherwise.

19. Therefore, it is clear from the above enunciation of law that merely because one of the parties to the litigation raises a dispute in regard to the facts of the case, the court entertaining such petition under Article 226 of the Constitution is not always bound to relegate the parties to a suit. In the above case of Gunwant Kaur this Court even went to the extent of holding that in a writ petition, if the facts require, even oral evidence can be taken. This clearly shows that in an appropriate case, the writ court has the jurisdiction to entertain a writ petition involving disputed questions of fact and there is no absolute bar for entertaining a writ petition even if the same arises out of a contractual obligation and/or involves some disputed questions of fact."

26. After holding so, this Court has concluded as under (ABL International Ltd. case, [(2004) 3 SC 769] SCC p. 580, para 53):

"53. From the above, it is clear that when an instrumentality of the State acts contrary to public good and public interest, unfairly, unjustly and unreasonably, in its contractual, constitutional or statutory obligations, it really acts contrary to the constitutional guarantee found in Article 14 of the Constitution. Thus if we apply the above principle of applicability of Article 14 to the facts of this case, then we notice that the first respondent being an instrumentality of the State and a monopoly body had to be approached by the appellants by compulsion to cover its export risk. The policy of insurance covering the risk of the appellants was issued by the first respondent after seeking all required information Patna High Court CWJC No.7035 of 2015 dt.27-11-2017 26 and after receiving huge sums of money as premium exceeding Rs. 16 lakhs. On facts we have found that the terms of the policy do not give room to any ambiguity as to the risk covered by the first respondent. We are also of the considered opinion that the liability of the first respondent under the policy arose when the default of the exporter occurred and thereafter when the Kazakhstan Government failed to fulfil its guarantee. There is no allegation that the contracts in question were obtained either by fraud or by misrepresentation. In such factual situation, we are of the opinion, the facts of this case do not and should not inhibit the High Court or this Court from granting the relief sought for by the petitioner."

The punishment should not be so outrageous in its defiance of logic as no reasonable person would accept such result, will easily reflects unfair and arbitrary exercise of power, when for cracking the nut, the sledge hammer is used instead of using knife which is sufficient, leads to conclusion that no reasonable person would arrive to such a conclusion and inflict a punishment shocking to the conscience of the person. In the case of Ranjit Thakur Vs. Union of India (UOI) & Ors. reported in 1987 (4) SCC 611 where an Army Officer did not obeyed the lawful command of his superior officer by not eating food offered to him, court martial was initiated and sentenced to rigorous imprisonment of one year and he was also dismissed from service with added disqualification that

he would be unfit for future employment. There the Hon'ble Apex Court has interfered in the matter applying doctrine of proportionality in exercise of judicial Patna High Court CWJC No.7035 of 2015 dt.27-11-2017 27 power. It has been held that if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognized grounds of judicial review. This principle has been reiterated in the case of Coimbatore District Central Cooperative Bank Vs. Coimbatore District Central Cooperative Bank Employees Assn. & Anr.

reported in 2007 (4) SCC 669.

Applying this principle, it has to be examined on its fact, it is an admitted fact that the petitioner is an agent, there was a deduction from the commission for materials of promotion of business i.e. calendar and diary which were not given to them, addressed to the Branch of Head as only three or four days left for ending the financial year, but materials were not given, even presuming that he has used the words mentioned in the charge-sheet apparently reflecting his disgustness, the manner he has been deprived of the material, venting his irritation, nowhere there is an allegation that he has abused or assaulted but, one thing is very important in this matter that in the present case, the show-cause was issued, called for the explanation as provided under Clause 16(1)(b) which stipulates that if he acts in a manner prejudicial to the interests of Corporation or to the interest of the policy holders, the show-cause was issued as it appears from the record that they have conducted the enquiry behind the back of the petitioner and, on that basis, the punishment of termination of agency Patna High Court CWJC No.7035 of 2015 dt.27-11-2017 28 has been affected. When an action has a civil consequence of whatever nature may be, led to termination of contract of the agency by the State or its instrumentality is expected that the same must be in consonance of following the fair procedure, must reflect transparency in action vis-à-vis giving reasonable opportunity even minimal amount is requirement of natural justice, in failure to follow the minimal requirement, the act will lead to arbitrariness in action violates Article 14 of the Constitution prescribes rule of law not the rule of Jangal as following the rule of law is sine quo non before taking action against the a person to be awarded termination of agreement/contract agency. Second aspect is that the applicability of Clause 16(1)(b) which stipulates as such if acts in a manner prejudicial to the interest of the Corporation or the interest of its policyholders. In the present case, the person who is an agent has only raised a grievance that he has not been provided with the calendar and diary which is necessary for promoting the business and, in course of discussion, he has used certain words not of abusiveness in nature rather making a grievance and showing his anger, cannot be led that it was, in any manner, prejudicial to the interest of the policyholder or the Insurance Corporation.

If the petitioner was given agency which is source of his livelihood, is a part of Article 21 of the Constitution of India and if Patna High Court CWJC No.7035 of 2015 dt.27-11-2017 29 any authority takes away the right of livelihood, he must follow the guideline of Article 14 of the Constitution of India.

Learned counsel for the LIC has placed reliance on the judgment in the case of Live Insurance Corporation of India Vs. Jay Kumar Pandey reported in 2011 (4) PLJR 129 wherein the allegation

was made that the person has entered into the Chamber and insisted that the proposal for insurance they had brought, should be accepted without proof of age, on refusal by the officer concerned, the agent had hurled abuses, threatened and assaulted functionaries of the Corporation from the Divisional Office who were present. So in that case, quite different circumstances where he was seeking acceptance of insurance without proof of age, cannot be said to be in the interest of Corporation rather it was prejudicial to the interest of the Corporation, inasmuch as, allegation was made to have assaulted and abused. In the present case, such allegation is not there whereas charges have been raised that (^^;g fxjk gqv k vkneh gS] buls ckr djuk csdkj gS] ;g rks czkap dks /kalk fn;k gS\*\*) termination of agency on raising his grievance, the action can be said to be an act of intolerance when the higher officer refused to hear the grievance of the Agent who is facing trouble on account of non-supply of promotional material which is necessary for his livelihood.

In view of the aforesaid discussion, order dated Patna High Court CWJC No.7035 of 2015 dt.27-11-2017 30 14.10.2014 passed by the Zonal Manager, Life Insurance Corporation of India and the order dated 27.9.2011 passed by the Senior Divisional Manager, Life Insurance Corporation of India, Patna and order dated 8.7.2017 passed by the Chairman, Life Insurance Corporation of India are quashed and the authority is directed to restore the agency of the petitioner.

With the aforementioned observation and direction, this writ application is allowed to the extent indicated above.

(Shivaji Pandey, J) Rishi/-

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