

proper execution of the Will rather such circumstances give credence to the execution of the Will in August, 1983 at Ambala instead of during the intervening period from February, 1983 when the testator was admittedly at Bombay with the so called beneficiaries of the Will. Minor discrepancies in the statement of Shri B. N. Sehgal, Mr. Baljit Singh and Ms. Avtar Kaur are infact a guarantee of their true depositions and cannot be made a basis for holding that they had not seen or attested the Will. The testimony of Shri B. N. Sehgal, Baljit Singh and Avtar Kaur, PWs., has not been relied upon by the learned Single Judge merely on the basis of hypothesis and imaginative falsehood attributed to such witnesses which in fact do not exist. The defect noted in the endorsement of the Notary Public cannot in any way be held to be a proof of the non-execution of the Will or to be a suspicion requiring the rejection of the Will in toto. The statement of the relations of the respondents made after the death of the testator could not be made basis for coming to the conclusion as has been done by the learned Single Judge.

(26) In view of what has been discussed herein above and in the light of the judicial pronouncement, it is held that the learned Single Judge had not properly appreciated the evidence while deciding Issue No. 1. The finding on Issue No. 1, is therefore, reversed and it is held that Shri Amar Nath Jain had legally and validly executed the Will Ex. P.1 of his free Will and accord at a time when he had disposing mind.

(27) In view of our finding on Issue No. 1, no judgment is required to be delivered on Issue No. 2.

(28) Under the circumstances while accepting the appeal, the judgment of the learned Single Judge is set aside and letters of administration of the Will Ex. P1 is directed to be issued to the appellants to have effect throughout India and in the form prescribed in Schedule VII of the Act. The parties are left to bear their own costs.

S.C.K.

Before Hon'ble Chief Justice S. P. Kurdukar & N. K. Sodhi, J.

UNITED INDIA INSURANCE COMPANY LTD.,—Appellant.

versus

NARINDER MOHAN ARYA,—Respondent.

Letters Patent Appeal No. 344 of 1991

March 16, 1994.

Constitution of India, 1950—Art. 12 & 226—Insurance Company registered under Companies Act—Such company whether a State

within the meaning of Art. 12—Maintainability of writ petition against such Company—Finding recorded in Civil proceedings—Binding nature of such findings.

Held, that the various tests laid down by the Supreme Court, clearly apply to the Insurance Company in question. The United India Insurance Company is a State within the meaning of Article 12 of the Constitution of India and is, therefore, amenable to writ jurisdiction.

(Para 18)

*Further held, that the findings recorded in civil proceedings will operate on principles analagous to *res-judicata* and at any rate it must operate against the Insurance Company by way of an issue estoppel. Moreover, findings recorded by the Civil court after full dressed trial should ordinarily hold the field.*

(Para 22)

R. C. Dogra, Senior Advocate with Sushil Dogra, Advocate, for the Appellant.

Surya Kant, Advocate, for the Respondent.

JUDGMENT

S. P. Kurdukar, C.J.

(1) This Letters Patent Appeal has been filed by the United India Insurance Company Limited (hereinafter referred to as 'the Insurance Company') challenging the correctness of the judgment and order dated February 21, 1991, passed by the learned Single Judge in Civil Writ Petition No. 3232 of 1981.

(2) Narinder Mohan Arya, respondent (the writ petitioner), in the year 1976 was working as Inspector Grade-II with the Insurance Company, the appellant. He filed Civil Writ Petition No. 3232 of 1981, challenging the legality and correctness of the order of removal from service made by the Insurance Company after holding disciplinary enquiry against him. The appellate and the revisional Authorities confirmed the order of removal of the petitioner from service.

(3) The disciplinary proceedings were taken up against the petitioner pursuant to the charge-sheet dated 11th January, 1978 (Annexure 'A') to Annexure P3 to the writ petition. Articles of charges read thus :—

(4) "M/s Aman Singh Munshi Lal of Hansi despatched a consignment of 50 bales of cotton from Hansi to Phulwari Sharif through Hansi Public Carriers Union, Hansi on 21st October, 1976.

(5) While the aforesaid bales of cotton were lying at Delhi-Ghaziabad border in the compound of M/s Milap Transport Roadways in transit to destination, on 22nd October, 1976, at about 11.45 A.M., a fire broke out in which the said bales were burnt.

(6) On being approached by or on behalf of M/s Aman Singh Munshi Lal to issue an insurance cover in respect of the aforesaid bales after fire had broken out and knowing that fire had broken out in which the said bales had been burnt, Narinder Mohan Arya, issued cover note No. 09643 covering a risk of Rs. one lac in respect of the aforesaid cotton bales purporting to show that the same had been issued on 21st October, 1976 even though the same had been issued after the fire broke out on 22nd October, 1976 at about 11.45 A.M."

(7) In the opinion of the Senior Divisional Manager of the Insurance Company, the appellant, the above act of Narinder Mohan Arya, is an act of misconduct which falls under sub-rule (1), (5) and (20) of Rule 4 of the General Insurance (Conduct, Discipline and Appeal) Rules, 1975, (hereinafter referred to as 'the 1975 Rules').

(8) Narinder Mohan Arya denied the charges. He filed a detailed written statement on 25th January, 1978, in which he has stated that he issued the insurance cover note on 21st October, 1976, and he had not either ante-dated or prepared the same after fire was broken out.

(9) On the basis of the above charges, Inquiry Officer conducted the enquiry and after examining the oral and documentary evidence adduced by the parties.—*vide* his report dated 5th May, 1979, Annexure P5, held that the insurance cover note was actually issued on 22nd October, 1976, that is, after it was known to the insured that his goods had been damaged by fire. Hence, the charges levelled against Narinder Mohan Arya were proved and, accordingly, the Inquiry Officer held him guilty of the charge of ante-dating the cover note in question. The Divisional Manager thereafter gave opportunity to the writ petitioner to give his written explanation as regards the finding recorded by the inquiry Officer. The Divisional Manager.—*vide* his communication dated 24th July, 1979, Annexure P6, accepted the findings given by the Inquiry Officer, and in view of seriousness of the misconduct of Narinder Mohan Arya, awarded the punishment of removal from service. (see Annexure P6).

(10) On 28th August, 1979, the petitioner preferred an appeal to the Appellate Authority but the same was dismissed on 15th October, 1980. Thereafter, Narinder Mohan Arya preferred memorial, which was also rejected on 23rd April, 1981. It is this action of the Insurance Company, which was sought to be challenged in the writ petition filed sometime in February 1981.

(11) The learned Single Judge,—*vide* his impugned judgment and order dated February 21, 1991, allowed the writ petition and set aside the order of removal Narinder Mohan Arya from service. It is this judgment and order of the learned Single Judge, which is subject matter of challenge in the present Letters Patent Appeal.

(12) The learned Single Judge has mainly relied upon a finding recorded in suit No. 59 of 1978, filed by M/s Aman Singh Munshi Lal against the Insurance Company, Narinder Mohan Arya and two others. In that suit, Aman Singh Munshi Lal have prayed for a decree for Rs. 1,22,795.64, on the basis of insurance cover note dated 21st October, 1976. In that suit an issue was framed as to 'whether the insurance cover note dated 21st October, 1976 was ante-dated in collusion with Narinder Mohan Arya, or it was executed on 21st October, 1976.' The learned Sub-Judge,—*vide* his judgment dated 7th October, 1980 held that the insurance cover note was issued by Narinder Mohan Arya on 21st October, 1976 and it was not ante-dated. The learned Sub-Judge decreed the suit partly to the extent of a sum of Rs. 98,550.16, with 6 per cent interest from the date of decree till realization. The Insurance Company carried appeal to the District Court Hissar. M/s Aman Singh Munshi Lal also filed cross-objections as they were not satisfied with the rate of interest. The District Judge by his judgment dated 4th October, 1982 dismissed the appeal as well as the cross-objections. The Insurance Company preferred second appeal No. RSA 2530 of 1982 in this Court, in which M/s Aman Singh Munshi Lal also preferred cross-objections. The second appeal as well as the present LPA were heard one after the other and by our judgment and order dated 16th March, 1994, who dismissed the second appeal as well as the cross-objections. Thus, the net result in the civil proceedings, which were in essence collateral, a finding is recorded between the parties, to which the Insurance Company as well as Narinder Mohan Arya were also parties, that the Insurance cover note dated 21st October, 1976 was not ante-dated but it was in fact issued in favour of M/s Aman Singh Munshi Lal (plaintiff in the suit) on 21st October, 1976. As stated earlier, the learned Single Judge while disposing of C.W.P. No. 3232 of 1981, mainly relied upon the findings recorded by the learned Sub Judge and the learned District Judge that the

insurance cover note dated 21st October, 1976 was not ante-dated and it is a genuine document. In view of this finding in the civil proceedings, the learned Single Judge opined that there could not be any inconsistent finding especially when the Civil Court has adjudicated the issue as regards the correctness of the insurance cover note. The finding of the Civil Court must be given effect to, and accordingly, he allowed the writ petition, set aside the orders of the authorities of the Insurance Company removing Narinder Mohan Arya from service. This is how, the present LPA has been filed, challenging the legality and correctness of the judgment passed by the learned Single Judge.

(13) Mr. R. C. Dogra, learned counsel appearing in support of this appeal, contended that the Insurance Company is a company registered under the Companies Act, and, therefore, it is not amenable to the writ jurisdiction under Article 226/227 of the Constitution of India. In support of the submission, he relied upon the decision of this Court in *M. L. Nohria v. General Insurance Corporation of India* (1). It is undoubtedly true that a Division Bench of this Court in a detailed judgment has held that the National Insurance Company Ltd. is neither a State for the purposes of Article 12 of the Constitution of India, nor a statutory corporation, amenable to writ jurisdiction under Article 226 of the Constitution of India. In support of the said findings, the learned Division Bench draw support from the decisions of the Supreme Court in *Sabhajit Tewary v. Union of India* (2), *Paraga Tools Corporation v. C. V. Imanuel* (3), and *Executive Committee of Vaish Degree College, Sharni v. Lakshmi Narain* (4).

(14) Mr. Dogra also drew our attention to a Full Bench decision of this Court in *Pritam Singh Gill v. State of Punjab* (5). It was a case where the question that arose before the Full Bench was whether the society registered under the Punjab Co-operative Societies Act, is amenable to writ jurisdiction and whether it is the instrumentality of the State. The Full Bench partly modified the earlier decision of a Full Bench of this Court in *Ajmer Singh v. Registrar Co-operative Societies, Punjab* (6), in view of the decision

(1) A.I.R. 1979 P&H 183.

(2) A.I.R. 1975 S.C. 1329.

(3) A.I.R. 1969 S.C. 1306.

(4) A.I.R. 1976 S.C. 888.

(5) A.I.R. 1982 P&H 228.

(6) A.I.R. 1981 P&H 107.

of the Supreme Court in *Ajay Hasia v. Khalid Mujib* (7). The Full Bench in *Pritam Singh Gullis' case* (supra), held that the Society registered under the Punjab Co-operative Societies Act, is not instrumentality of the State nor an authority within Article 12 of the Constitution of India, and, therefore, not amenable to writ jurisdiction. The learned counsel Mr. Dogra also drew our attention to another Full Bench decision of this Court in *Gurpreet Singh Sidhu Ludhiana v. Punjab University* (8). Point involved in this case was as to whether privately owned and privately managed non-statutory institution was amenable to writ jurisdiction. This decision is based upon an earlier decision in *Pritam Singh Gill's case* (supra). Relying upon these decisions, the counsel urged that the Insurance Company being a Company registered under the Companies Act, is not amenable to writ jurisdiction, and, therefore, the learned Single Judge ought to have rejected the writ petition.

(15) While controverting the above contention, Mr. Surya Kant, the learned counsel appearing for Narinder Mohan Arya, argued that the Insurance Company cannot be permitted to raise this submission in appeal, as no such plea was taken before the learned Single Judge. He also drew our attention to the memo of appeal and urged that there is no such ground taken by the Insurance Company, in its appeal memo. In view of this factual position, the counsel urged that the Insurance Company should not be permitted to raise a new contention in this appeal.

(16) We have carefully gone through the memo of appeal and we find that there is no whisper whatsoever as regards the contention raised by the Mr. Dogra. In the written statement filed on behalf of the Insurance Company, a contention was taken that the Insurance Company being a limited company, not a State or Statutory Corporation, and, therefore, was not amenable to writ jurisdiction. After going through the judgment of the learned Single Judge and the appeal memo, we find that such contention was not argued on behalf of the Insurance Company, but on the contrary it appears that they have acquiesced in the jurisdiction and contested the writ petition on various other grounds.

(17) Mr. Surya Kant, Advocate, appearing for Narinder Mohan Arya, however, urged that assuming that a contention could be raised but the same is no more *res integra* in view of the latest decision of the Supreme Court in *Ajay Hasia's case* (supra). The counsel

(7) A.I.R. 1981 S.C. 407.

(8) A.I.R. 1983 P&H 70.

urged that the decision in *Ramana Dayaram Shetty v. The International Airport Authority of India* (9), was considered by the Supreme Court in *Ajay Hasia's case* (supra). On both these decisions, the Supreme Court has laid down various tests and in the light of these tests, counsel urged that the Insurance Company would be a State within the meaning of Article 12 of the Constitution of India. Learned counsel contended that the Insurance Company is one of the four Insurance Companies nationalised under the General Insurance Business (Nationalisation) Act, 1972. All the shares of the Company are transferred and vested in the Central Government free of trust and liabilities. The monopoly on insurance business is created in favour of the four companies. The officers and other employees of the Company are deemed to be public servants the indemnification by the Central Government of the acquiring companies etc. are some of the factors which would lead to an irresistible conclusion that the Insurance Company satisfies all the tests to hold it a 'state' as laid down by the Supreme Court in the case of *Ramana Dayaram Shetty's case* (supra). He also drew our attention to another decision of the Supreme Court in *Central Inland Water Transport Corporation Limited v. Brojo Nath Ganguly* (10). In view of this latest decision of the Supreme Court, it leaves no manner of doubt, counsel argued, that the Insurance Company is a State of amenable to writ jurisdiction of this Court. Mr. Surya Kant also relied upon the decision of a Division Bench of Allahabad High Court in *Harbhajan Singh v. New India Assurance Company, Bombay* (11). It was a direct case in which the Allahabad High Court after considering the various decisions of the Supreme Court has held that the New India Assurance Company is a State under Article 12 of the constitution of India and is amenable to writ jurisdiction.

(18) We have given very careful consideration to the rival contentions raised before us and after going through the recent decisions of the Supreme Court of which some are later to the Full Bench decision in *Pritam Singh Gill's case* (supra), we are of the opinion that the United India Insurance Company is a State within the meaning of Article 12 of the Constitution of India, and, is, therefore, amenable to the writ jurisdiction. The various tests laid down by the Supreme Court in *Ramana Dayaram Shetty's case*

(9) A.I.R. 1979 S.C. 1628.

(10) 1986 (2) S.L.R. 345.

(11) 1984 Labour and Industrial Cases, 1597.

(supra) and *Ajay Hassia's case* (supra), clearly apply to the Insurance Company before us and in view thereof we hold that the United India Insurance Company is amenable to writ jurisdiction.

(14) Incidentally, we may also refer to a ground taken in para 5 by the Insurance Company in their second appeal, which reads thus :—

“The appellant is a Government of India undertaking and no officer has any personal interest in the financial affairs of the appellant. “.....”

This admission on the part of the Insurance Company also unmistakably indicates that the parties went on trial in both the proceedings on the premise that the Insurance Company is a Government of India undertaking and if that is so, we do not see how the Insurance Company can find escape from the decision of the Supreme Court in *Ramana Dayaram Shetty's case* (supra) and *Ajay Hassia's case* (supra). The submission of Mr. Dogra that the Insurance Company is not amenable to writ jurisdiction must therefore fail.

(20) It was then argued by Mr. Dogra that all the authorities under the General Insurance (Conduct, Discipline and Appeal) Rules, 1975 concurrently held that Narinder Mohan Arya has ante-dated the insurance cover note to 21st October, 1976 with an object to benefit M/s Aman Singh Munshi Lal and the said conduct of Narinder Mohan Arya was found to be in collusion with the said firm. He further urged that the insurance cover note dated 21st October, 1976 is a fabricated document and this finding has been arrived at by the authorities on appreciation of oral and documentary evidence on record. The writ Court has a very limited jurisdiction in such matters. The writ Court can interfere with the findings only if it is shown that either the principles of natural justice were violated on contrary to law. Mr. Dogra also urged that once a finding is recorded that Narinder Mohan Arya has fabricated the insurance cover note, the only appropriate punishment would be that of removal from the service. The order of punishment is commensurate with the misconduct and the Writ Court ought not have interfered with the said order.

(21) As against this, Mr. Surya Kant appearing for Narinder Mohan Arya, argued that the finding of the Civil Court, between the parties and particularly between the defendants *inter se* that the insurance cover note being note antedated and it was executed on 21st October, 1976, must operate as *res-judicata* or principle analogous thereto. He also urged that at any rate the said finding must operate between the defendants *inter se* an issue estoppel and the Insurance Company cannot reagitate the same in writ proceeding

Mr. Dogra, however, argued that the said finding does not preclude the Insurance Company to reagitate since principle of *res-judicata* or issue estoppel does not apply. He, therefore urged that the Writ Court should have independently applied its mind to the facts and circumstances of the case and should have dismissed the writ petition.

(22) On careful scrutiny of the contentions raised before us by the learned counsel for the parties, we are of the opinion "that the findings recorded in civil proceedings will operate on principles analagous to *res-judicata* and at any rate it must operate against the Insurance Company by way of an issue estoppel. Moreover, findings recorded by the Civil Court after full dressed trial should ordinarily hold the field." In this view of the matter, we are of the opinion that the learned Single Judge was right in allowing the writ petition of Narinder Mohan Arya. The relief granted to the writ petitioner by the learned Single Judge is consistent. If we accept that contention of Mr. Dogra, it will lead to two inconsistent findings as regards the date of issuance of the insurance cover note by this Court. It is precisely for this reason, we uphold the decision of the learned Single Judge.

In the result, the LPA fails and the same is dismissed with costs.

S.C.K.