

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1048 of 2013

In

Civil Writ Jurisdiction Case No. 2478 of 2005

With

Interlocutory Application No.6060 of 2013

In

Letters Patent Appeal No.1048 of 2013



Md. Ashraf, son of Late Md. Rafique, Resident of 625/2, Haroon Nagar Colony, Phulwarisharif, Patna – 801505.

.... Petitioner- Appellant

Versus

1. The Union of India through the Secretary, Ministry of Finance, Government of India, New Delhi.
2. Insurance Regulatory and Development Authority, through its Chairman, Jeevan Bharati Building Tower No.1, Ground Floor, 124, Connaught Circus, New Delhi – 110001, at present at Parisrama Bhavanam, 3rd Floor, 5-9-58/B, Fateh Maidan Road, Basheerbagh, Hyderabad 500004.
3. Officer On Special Duty, Insurance Regulatory and Development Authority, 3rd Floor, Parisrama Bhavanam, 5-9-58/B, Fateh Maidan Road, Basheerbagh, Hyderabad -500004.

..... Respondents-Respondents

4. Mr. Prafulla Krishna Pf. Eyush, S/O Late D.K. Das, Resident of Bindhiya Kalamandir, Gate No. 16, Old Bypass Road, Kankarbagh, Patna 800020.
5. Mr. Arbind Prasad Choudhary, S/O Mr. Bisheshwar Prasad Choudhary, Resident of House of Late Bigu Singh, Bazar Samiti Road, Patna-800016.
6. Mr. Arun Kumar, S/O Late Bodhi Prasad, Resident of B-88 Biscomaun Colony, Gulzarbagh, Patna 800007.
7. Mr. Sudhir Kumar, S/O Mr. Raj Kishore Prasad, Resident Of Mundeshwary's Shibu Sharan Apartments, Flat No.104, Budha Colony Patna 800001.
8. Mr. Nutan Prasad, S/O Late Harilal, Resident of Flat No. B-403, Swaroop Complex, Bazar Samiti Road, Patna 800016.
9. Mr. Hanbansh Narayan, S/O - Mr. Ram Ashray Prasad Sinha, 3 SFA 3/IC

Bahadurpur Housing Colony, Bhutnath Road Patna -800020.

10. Syed Badre Hasan, S/O - Late Sayed Nasihuddin, resident of Mohalla Dargah Ghera, P.O. Mahendru, Patna- 800006.

11. Mr. Satya Narayan Prasad, S/O Late Mahabir Prasad, resident of B-308 Hope Mahendra Apartments, Chitragupta Nagar, Patna 800020.

12. Mr. Uma Shanker Singh, S/O Dip Lal Singh, resident of House of Mr. Mithilesh Prasad, North Mandiri Patna- 800001.

13. Mr. Dhruv Deo Narayan Sinha, S/O Late Kapildeo Narayan, C/38 Housing Colony, Kankarbagh, Patna -800020.

14. Mr. Abhay Kumar Dutt Verma, S/O Late Anirudh Kumar Dutt Verma, Resident of Ashok Nagar Road No. 1, Kankarbagh, Patna- 800020.

....Petitioners- Proforma Respondents

Appearance :

For the Appellant/s : Mr. Syed Quaisar Hasan, Advocate
Mr. Manoj Kumar Sinha, Advocate

For the Respondent/s : None

CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

7 08-08-2014

Interlocutory Application No.6060 of 2013

Delay of 2 years and 67 days occurred in filing the Letters Patent Appeal is condoned.

Interlocutory Application stands disposed of.

Letters Patent Appeal No.1048 of 2013

This Appeal under Clause 10 of the Letters Patent is preferred by the writ petitioner No.4 against the order dated 29th April 2011 passed by the learned single Judge in CWJC

No. 2478 of 2005.

The writ petitioners are the Surveyors and Loss Assessors licensed under the Insurance Act, 1938 (hereinafter referred to as 'the Act of 1938'). The petitioners are engaged by the insurers for assessment of loss in respect of the insurance claims made by the insured. The Government of India has enacted the Insurance Regulatory and Development Authority Act, 1999 (hereinafter referred to as 'the Act of 1999'). In exercise of power conferred by Sections 42D, 64UM and 114A of the Act of 1938 and Section 26 of the Act of 1999, the Authority has, in consultation with Insurance Advisory Committee, framed the Insurance Surveyors & Loss Assessors (Licensing, Professional Requirements and Code of Conduct) Regulations, 2000 (hereinafter referred to as 'the Regulations'). The Regulations provide for procedure for grant of and renewal of licence, constitution and functions of Surveyors and Loss Assessors Committee, duties and responsibilities of a Surveyor and Loss Assessor etc.

Regulation 11 of the Regulations provides for **“constitution of a Committee to be called “Surveyors and Loss Assessors Committee” for assisting the Authority on the matters and affairs relating to Insurance Surveyors and Loss Assessors”**. Regulation 12 of the Regulations provides for **“functions of the Committee”**. Regulation 13 thereof provides for **“duties and responsibilities of a Surveyor and Loss Assessor”**.

It is the categorization made on 14th May 2002 under the advice of the Committee constituted under Regulation 11 of the Regulations which was the subject matter of challenge

in above CWJC No. 2478 of 2005.

According to the writ petitioners, the constitution of the Committee, under Regulation 11 of the Regulations, was defective. It was presided over by a Chief Judge in contravention of the Regulations that requires that the officer of the Insurance Regulatory and Development Authority (hereinafter referred to as 'the Authority') should preside over such Committee. Further, the categorization of Surveyors made on 14th May 2002 is arbitrary. The criteria set out by the Committee have no nexus with the object to be achieved and bears no rationale.

At the time of the hearing before the learned single Judge, it was pointed out that the similar issue is pending before the Madras High Court. The learned single Judge has disposed of the writ petition with observation that the writ petitioners may intervene in the matter pending before the Madras High Court and that the judgment of the Madras High Court shall be binding to the writ petitioners. Therefore, this Appeal.

Learned advocate Mr. Syed Qaisar Hasan has appeared for the appellant. He has taken us through the Regulations and the records of the matter. He has submitted that the appellant is in the profession for a long time. Having regard to the experience gained by him, he should not have been subjected to any restriction now imposed. Under the Regulations, the Surveyors and Loss Assessors are categorized in "A", "B", "C" categories depending upon the educational qualifications, experience, nature of training and any other criteria determined by the Committee. He has submitted that the Committee in question was presided by a Chief Judge who

cannot be an officer of the Authority. The very constitution of the Committee being defective, any decision taken on the recommendations of the Committee is illegal and invalid. He has submitted that the restriction now imposed abrogates the appellant's fundamental right to profession and contravenes Article 19 (1) (g) of the Constitution.

We do believe that the learned single Judge has manifestly erred in not deciding the writ petition on merits and in holding that the judgment of the Madras High Court in the matter pending before it should be binding to the writ petitioners.

We may note here that the writ petitioners are the residents of the State of Bihar and they carry on their profession in the State of Bihar. If aggrieved by the action of the State, the forum they can approach for redressal of their grievance will be in the State of Bihar. The forum in the State of Tamilnadu may not have the territorial jurisdiction to entertain the grievance of the writ petitioners. Hence, in our opinion, the order of the learned single Judge is erroneous and calls for interference. We, however, see no merit in the contentions raised before us.

At the outset, we may note that the phrase "officer of the Authority" occurring in Regulation 11 of the Regulations is not defined in the Act of 1999. Section 12 of the Act of 1999 provides for **"appointment of officers and other employees by the Authority"**.

In absence of anything further in the statute or in the Regulations or on the records of the Appeal, we are unable to hold that the "Chief Judge" referred to in the impugned decision was not an officer of the Authority.

The very object of the Act of 1999 is to protect the interests of holders of insurance policies, to regulate, promote and ensure orderly growth of the insurance industry. It is evident that the impugned categorization has been made in exercise of the power to regulate the insurance industry conferred by the Act of 1999. It is the very purpose of the enactment to constitute a regulatory authority to regulate the insurance business. The categorization of Surveyors and Loss Assessors made under the Regulations cannot be said to be arbitrary or discriminatory merely because it imposes certain restrictions on the profession of the appellant.

Regulation 14 of the Regulations provides for **“categorisation on the basis of professional qualifications, training undergone, experience as a surveyor and loss assessor and any other relevant professional experience”**. It is under the power conferred by the said Regulation 14, the impugned Circular has been issued on 14th May 2002. Under the impugned Circular, categorisation is made on the basis of the marks allotted under various heads viz academic qualification, insurance qualification and other experience. None of the aforesaid criteria can be said to be irrelevant, irrational or having no nexus with the object to be achieved.

Further, it is apparent that the pattern of marking is purely objective. No subjective satisfaction of the Committee is involved. The question of arbitrary action in exercise of power conferred by the said Circular does not arise. Merely because the appellant is classified in category “C”, the criteria laid down by the Authority cannot be vitiated on the grounds of arbitrary and discriminatory action. The appellant has failed to establish the

real prejudice. No other contention is raised before us.

We see no merit in this Appeal. Appeal is dismissed in limine.

(R.M. Doshit, CJ)

(Ashwani Kumar Singh, J)

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