

ITEM NO.1 Court 6 (Video Conferencing) SECTION X

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition(s)(Civil) No(s). 534/2020

BAJAJ ALLIANZ
GENERAL INSURANCE COMPANY PRIVATE LTD. Petitioner(s)

VERSUS

UNION OF INDIA & ORS. Respondent(s)

([FOR DIRECTIONS])

IA D. No. 11415/2022 - APPROPRIATE ORDERS/DIRECTIONS

IA D. No. 11126/2022 - APPROPRIATE ORDERS/DIRECTIONS

IA No. 52588/2020 - EX-PARTE AD-INTERIM RELIEF

IA No. 11414/2022 - INTERVENTION/IMPLEADMENT

IA No. 11124/2022 - INTERVENTION/IMPLEADMENT

IA D. NO.19360/2022- FOR INTERVENTION

Date : 10-02-2022 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE M.M. SUNDRESH

Mr. N. Vijayaraghavan, AC
Mr. Vipin Nair, AOR

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Mr. Amit Kumar Agrawal, Adv.

For Respondent(s) Mr. Jayant K. Sud, Ld. ASG
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Mr. Navanjay Mahapatra, Adv.
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Mr. Manish, Adv.
Mr. Sughosh Subramanyam, Adv.
Mr. Gurmeet Singh Makker, AOR
Mr. Amrish Kumar, AOR

Mr. Jayant K. Sud, ASG
Mr. Harish Pandey, Adv.
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Mr. Ajay Kumar Singh, Adv.
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Mr. Jayat K. Sud, Ld. ASG
 Mr. Harish Pandey, Adv.
 Mr. Ajay Kumar Singh, Adv.

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 Mr. Avnish Dave, Adv.

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 Mr. Shaik Mohamad Haneef, Adv.
 Mr. T. Vijaya Bhaskar Reddy, Adv.
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Mr. Manish Kumar, AOR

Mr. Arjun Garg, AOR
 Mr. Aakash Nandolia, Adv.

Mr. Sourav Roy, Adv/ DAG (Chhattisgarh)
 Mr. Mahesh Kumar, Adv.
 Mr. Vishal Sharma, Adv.
 Mr. Prabudh Singh, Adv.
 Ms. Devika Khanna, Adv.
 Mrs. V.D. Khanna, Adv.
 M/s Vmz Chambers, AOR

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 Dr. Abhishek Atrey, AOR
 Ms. Ambika Atrey, Adv.
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Ms. Deepanwita Priyanka, AOR

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Mr. Abhimanyu Tewari, AOR
Ms. Eliza Bar, Adv.

Mr. Raj Kamal, AOR

Mr. V. N. Raghupathy, AOR
Mr. Md. Apzal Ansari, Adv.

Mr. G. Prakash, AOR

Mr. Bharat Singh, AAG
Mr. Pashupathi Nath Razdan, AOR
Mr. Astik Gupta, Adv.
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Ms. Sneh Bairwa, Adv.

Mr. Rahul Chitnis, Adv.
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 Mr. Ishaan Borthakur, Adv.

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Ms. Kavita Jha, AOR
 Mr. Aditeya Bali, Adv.

Mr. Nishe Rajen Shonker, Adv.
 Ms. Anu K. Joy, Adv.

Mr. Alim Anvar, Adv.

Mr. Samir Ali Khan, Adv.

UPON hearing the counsel the Court made the following
O R D E R

IA D. No. 11415/2022 - APPROPRIATE ORDERS/DIRECTIONS

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IA D. NO.19360/2022- FOR INTERVENTION

We have heard learned counsel for parties.

Our attention has been drawn to the Central Government Motor Vehicle Rules, 1989. In the order dated 16.11.2021, we had dealt with the aspect discussed in earlier proceedings on the feasibility of withdrawing exemption given to vehicles of the State Corporations for insurance or in the alternative to create a mechanism to ensure that a sufficient fund pool was available with these Corporations for meeting their liability towards the claimants. Learned ASG had submitted that, on examination, it was not found feasible to withdraw the exemption. It is in that context we had noted that then the alternative must come into force to create a mechanism to ensure that sufficient fund pool is available with these Corporations.

Mr. N. Vijayaraghavan, learned Amicus Curiae had drawn our attention to Section 146(3) of the Motor Vehicles Act, 1988 which provided for appropriate Government to exempt from the operation of sub Section (1) any vehicle owned by the authorities enumerated therein which

included State Transport Undertakings. This was in the context of the stipulation under Section 146(1) of the necessity for insurance against third parties.

In the absence of the funds for requisite amount, we deemed it appropriate to direct that the funds may be created within three months by appropriate Government to create the funds to cover the requirement of disbursement to claimants and initially the funds should consist of at least as much as the liability which has arisen on account of determination for the last three financial years. We had in fact made a peremptory order that if this is not done, the exemption benefit shall not be made available nor will the authorities be able to claim such exemption. In the context of reading of sub-Section (1) of Section 146 which provided that no person shall be entitled to use the vehicle in the absence of the same and thus, non-compliance would amount to putting the vehicles on stand. In the aforesaid context, our attention has been drawn to the Central Government Motor Vehicle Rules, 1989 where Section 151 provides for establishment of a fund in pursuance to the aforesaid. The amount of fund as specified under Rule 152, sub clause (3) of the same provides that when the funds exceeds Rs.20 lakh or Rs.2,500/- per vehicle for the entire fleet, whichever is less, sub-Rule(2) shall cease provided that if thereafter the amount at the credit of the fund falls below Rs.20 lakhs or Rs.2,500/- per

vehicle for the entire fleet of vehicles, whichever is less such annual payment shall again be resumed.

In the context we may say so that sub-Rule(2) has been made subject to provision of sub-Rule(3) requiring the authority to pay to the fund at the beginning of each accounting year in respect of its vehicles in running condition a sum not less than rupees two hundred per vehicle. Sub-Rule (3) has also provided that if any authority other than the Central Government is of the opinion that the amount of Rs.20 lakh or Rs.2,500 per vehicle for the entire fleet of the vehicles, whichever is less, is inadequate, it may with the previous approval of the Central Government continue the annual payment beyond Rs.20 lakh or Rs.2,500/- per vehicle, as the case may be.

Mr. Vijayaraghavan, learned Amicus Curiae says relevant Section 94 of the Central Government Motor Vehicles Act, 1939 applied previously was equivalent to Section 146. The State provided for this very amount on 01.10.1982. Despite the lapse of 40 years, there has been no revision in the amount. In our perspective, the Central Government is required to re-visit the issue of revision of the figures provided in Rule 152. However, our directions cannot wait for the same as that will take its own time.

We may notice another aspect also i.e. earlier the burden did not lie on the Central Government to create

the pool. Rule 152 therefore, is a support by the Central Government and one can understand the hesitancy in increasing the commitment to State Corporations which are run largely for social purpose and are never a breakeven situation so far as their economic running is concerned. We may notice that when we had referred to the appropriate authority to maintain the requisite fund, the same will have to be in addition to this meagre amount which is specified under Rule 152(3) as the said is a commitment by the Central Government while our reference in order dated 16.11.2021 must be read as a reference to the funds to be provided by the State Government in support of these Public Corporations.

The gravity of the situation has to be appreciated in the context of the submissions of Mr. Vijayaraghavan giving the illustration of Tamil Nadu that in the Namakkal State Lok Adalat proceedings held on 20.10.2021, there was an amount of Rs.400 crore plus due alone in respect of Lok Adalat settled as compensation claims all over Tamil Nadu! This itself would show the gravity of the problem.

Learned ASG submits that though in terms of the order dated 16.11.2021 three months' time was granted, it appears that neither the State Governments nor the Corporations have in the correct perspective understood their obligations though the applicants before us were more vigilant about the same.

In view of the aforesaid, we are not inclined to accept the submission of learned counsel for the applicants to make an exception in respect of the Corporations in question but we are inclined to grant a reasonable period of time to create the requisite corpus by the State Government. We grant time till 30th April, 2022. We are also inclined to accept the suggestions of learned ASG that this time period should be extended for the other Corporations/State Governments also who may not have taken cognizance of their responsibility and accordingly extend the time even for those entities/State Governments. Learned ASG will ensure that the order is circulated to all the concerned State Governments and Corporations for necessary compliances and the State Governments and Corporations will inform the learned ASG under the mandate of this order of their compliances on or before 15th May, 2022 for the learned ASG to inform us of their compliances.

One of the suggestions which arose in these proceedings was that though the Central Government have not found it feasible to make an exemption, we see no reason why anything prevents the State Corporations from taking the burden of ensuring the vehicles are insured by making payment of insurance premium and thus, absolving themselves of the liability and responsibility of creating a corpus.

We thus, leave it to the Corporations/State

Governments to look into the feasibility of the same if that is a route they would like to follow instead of creating a separate fund for it under our directions in order dated 16.11.2021. However, this will not preclude them from the compliance of our directions initially to create corpus.

We would urge the learned ASG to once again re-examine the issue of exemption under Section 146(3) though he had submitted to the contrary earlier in view of much water having flowed and the complexity of the problem which we are faced with at present. Be that as it may, despite the direction, to meet the interregnum situation, we direct that if any State/Public Corporation is desirous of insuring its vehicles, the insurance companies will not decline to give insurance on the ground that an exemption has been provided under Section 146 and will work out an appropriate premium.

This aspect is also taken note of by the learned senior counsel, Mr. Atul Nanda who is present on behalf of the apex body of the insurance company, GIC.

Learned counsel for the UT of Puducherry stays that in fact insofar as the Puducherry is concerned, the Government Corporation vehicles are already ensured with the Government Insurance Corporation.

With the aforesaid directions, the applications stand disposed of.

However, Mr. Gaurab Banerjee can continue to assist us

in the matter as the orders passed are a continuing process.

Writ Petition(s)(Civil) No(s). 534/2020

The matter is listed on 31.03.2022.

Mr. Atul Nanda, learned senior counsel for GIC informs us that in compliance of our directions under the heading "Mobile App" at page 11 of the last order the Technical Officer has been appointed within the time stipulated by us.

(ASHA SUNDRIYAL)
ASTT. REGISTRAR-cum-PS

(POONAM VAID)
COURT MASTER (NSH)