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Court : Karnataka

Decided On : Nov-27-2015

Judge : Anand Byrareddy

Appeal No. : Writ Petition Nos. 4333-334 of 2009 (GM-RES) c/w Writ Petition Nos. 11115-11116 of 2009

Appellant : Infosys Technologies Ltd., and Others

Respondent : Insurance Regulatory Development Authority, Parisrama Bhavan, Hyderabad and Others

Advocate for Pet/Ap. : Sri. Aditya Sondhi

Judgement :

(Prayers: This Writ Petition is filed under Articles 226 and 227 of the Constitution of India, praying to quash the circular dated 07.04.2003 issued by the Tariff Advisory Committee [R2] under Section 64 UC of the Insurance Act, 1938 amending the All India Fire Tariff by substituting the entry Electronic Software Park with Electronic Software Units[at Annexure-H].

This Writ Petition is filed under Articles 226 and 227 of the Constitution of India, praying to quash the circular dated 07.04.2003 issued by the Tariff Advisory Committee [R2] under Section 64 UC of the Insurance Act, 1938 amending the All

India Fire Tariff by substituting the entry Electronic Software Park with Electronic Software Units[at Annexure-K] so far as Petitioner is concerned.)

1. Heard the learned Senior Advocate Sri Aditya Sondhi appearing for the counsel for the petitioners and the learned counsel appearing for the respondents.

2. These petitions are disposed of by this common order having regard to the fact that the challenge is to the very same circular in both these cases. The first petitioner in the first and second of these petitions are Software Companies with several thousand employees worldwide. It transpires that both these companies have taken out Fire Insurance Policies and Loss of Profit Insurance Policies from various insurers, since their inception. They are paying a sum of 50 paise per mille as premium under those policies, since the year 2000. However, in the month of April 2001, the Tariff Advisory Committee (herein after referred to as TAC, for brevity) formed under Section 64 of the Insurance Act, 1938, had amended The All India Fire Tariff by inserting an entry in Section IV of the said Tariff under the classification Industrial/Manufacturing Risks and included Electronic Software Park in the said classification. By this amendment, the Software Companies which were hitherto being charged as office premises have been brought under a different classification altogether and were charged at the rate of Rs.1.25 paise per mille. However, the respondents after deliberations continued to charge the petitioner at the rate of 50 paise per mille.

3. The petitioner claims that TAC has arbitrarily issued a circular dated 07.04.2003 replacing the entry Electronic Software Park under Section IV of the All India Fire Tariff with the entry Electronic Software Development Units ?, solely with a view to expand the scope of its applicability. It is the allegation of the petitioner that due to the callousness of the respondents and due to their failure to address the grievances of the petitioner, despite numerous representations, the petitioner was constrained to file a Writ Petition before this court questioning the validity of the said amendment. During the pendency of the petition there was an interim order. The petitioners undertook to deposit a sum of Rs.1 crore in the first of these petitions, with the third respondent, subject to the result of the petition and without prejudice to their contentions. This court by its order dated 12.02.2008 permitted

the petitioners to file a detailed representation before the respondent and directed the respondents to reconsider the entire matter with reference to such representation. The petitioners did make such a representation and also to substantiate the same drew attention to various facts and the legal aspects, which the respondents stoutly refused to reconsider and abruptly issued a non-speaking order, according to the petitioner, without assigning any reasons and confirmed the tariff as per the impugned circular, dated 07.04.2003. It is that which is under challenge in the present petitions.

4. The learned Senior Advocate Shri Aditya Sondhi point outs that the circular dated 07.04.2003 and the order dated 23.12.2008 are summary in nature and they did not take into account the contentions raised by the petitioners and the order over reaches the direction issued by this court, specifically to reconsider the representation of the petitioners, strictly in accordance with law. The learned counsel would submit that the circular is issued in utter violation of Section 64 UC of the Insurance Act. And that the TAC has failed to comply with the conditions prescribed in sub-section (2) thereof. Section 64 UC and the sub-section (2) makes it mandatory for the committee to ensure that there is no unfair discrimination between risks essentially of the same hazard; Secondly to consider past and prospective loss experience. There is no attempt to categorize the risk as is mandated by Section 64U(2) and it has arbitrarily fixed the tariff. It seeks to treat similarly placed entities differently by charging them under different sections. It is pointed out that though the units such as petitioners and other similar units such as banks, call centres, FMCG companies etc., suffer almost identical risks and use as much insured property (computers in particular) such as software companies, the petitioner is now sought to be charged at a higher tariff as an Electronic Software Development Unit pursuant to the said circular while other entities referred to above are charged at 50 paise per mille as Office Premises ?.

5. The circular is also discriminatory, in that, it treats dissimilar entities in a similar fashion without considering the distinction between the two. For instance, the petitioner falls under the same bracket or section as power projects, engineering workshops, hydro power stations etc., all of whom pay Rs.1.25 paise per mille. When the nature of risks faced by the latter are far in excess of the petitioner.

Intriguingly, salt crushing factories and refineries, stone quarries are charged at a lower rate of 75 paise per mille, despite considering the risk involved in such industries.

6. While issuing the circular in the year 2001 by introducing the Electronic Software Parks ?, the TAC has already brought software parks within the purview of Section IV of the All India Fir Tariff. There has been no change in the circumstances or in the loss experience or significantly, in terms of hazards between 2001 or 2003 to justify the impugned circular. The TAC has arbitrarily exercised its power without any basis. By issuing the impugned circular, the TAC has proposed to amend the existing entry, but in the process, the TAC has in fact enlarged the scope of the original tariff entry itself, which cannot be done by way of amendment. The contention that the impugned circular is explanatory in nature has been negative by this court earlier by its order dated 12.02.2008. The circular, particularly is not seem to have obtained the necessary ratification of the IRDA. It is pointed out, as a significant circumstance, that without such ratification the amendment would not have come into force and would be invalid, when there is no such ratification produced by the respondents since the year 2003 though this was raised as a contention as early as in the year 2003. It is in this vein that the challenge is brought to the circular to demonstrate the unreasonableness and the invalidity that the said circular and the amendment suffers from.

7. The respondents have entered appearance and have filed statement of objections to contend that the fixation of tariff is a legislative function and that the same is not amenable to judicial review, except on very limited and stringent grounds. It is therefore contended that no such grounds have been made out in this petition. It is highlighted and emphasized that the second respondent as a statutory body possessing the power to bring about such amendments and to issue such circular significantly to control and regulate the rates, advantages, terms and conditions that may be offered by insurers in respect of general insurance business, that the powers of the TAC in fixing or revising of tariffs are wide enough and every decision of the TAC shall be valid only after and to the extent it is ratified by the IRDA and therefore there are inbuilt checks and balances over the powers and functioning of TAC, as enshrined in the respective Acts of

Parliament and the respondents have categorically stated that the contention of the petitioners that the same has not been ratified is wholly incorrect and that it was in fact ratified as early as in 2003, at its very inception. This aspect of the matter was the bone of contention on which there was much argument back and forth. Therefore, the respondent was called upon to produce the ratification said to have been issued and the matter was adjourned in order to enable the respondents to produce the same.

8. It is now stated that since the ratification was issued as early as in the year 2003 there was much difficulty in tracing the same inspite of concerted efforts and if some more reasonable time is granted it may be possible for the respondents to produce the same before this court. Since there is no dispute that Sub-Section 3 of Section 64UC is categorical, in that, any and all, decisions of the Advisory Committee are valid only after and to the extent it is ratified by the IRDA, since the respondents are not in a position to demonstrate that the particular decision was ratified, and even now are seeking time to produce the same there is no difficulty in this court holding that without the ratification the decision of the Advisory Committee would not take effect. The contention that the document is of some vintage and cannot readily be traced also cannot be accepted. The dispute between the parties is hanging fire since 2003 and such a contention was raised as early as in 2003, it is expected that as a statutory body the respondents would maintain all relevant documents in order to sustain their stand and if the same is not made available, an adverse inference necessarily has to be drawn by this court. Accordingly, the petitioner shall have benefit of this lacuna, since the respondents are not in a position to substantiate that the circular and the amendment have been ratified as required in law.

9. Consequently the petitions are allowed. The impugned circular and the amendment stand quashed, as also the impugned order dated 23.02.2008.

10. In view of the writ petitions having been allowed and since the petitioner, in the first of these petitions, has deposited a sum of Rs.1 crore and there is an order of this court dated 15.04.2004 wherein it is held that the petitioner shall deposit a sum of Rs.1 crore with the third respondent, under protest, within three weeks

from that day and in the event the writ petitions are allowed by this court, the third respondent shall refund whatever amount that is deposited by the petitioner with interest, at the agreed rate. Since there is no agreed rate of interest, this court fixes the rate of interest at 8% p.a. from the date the amount was deposited till it is repaid to the petitioner in the first of these petitions. The respondents to repay the same with expedition, in any event within four weeks.

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