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Court : Allahabad

Decided On : Jan-04-1985

Reported in : AIR1985All183

Judge : N.D. Ojha and ;Om Prakash, JJ.

Acts : [Insurance Act, 1938](#) - Sections 64UC; [Constitution of India](#) - Articles 14, 19(1) and 226

Appeal No. : Civil Misc. Writ Petn. No. 882 (T) and etc of 1982

Appellant : Bhashir Kumar Agarwal and ors.

Respondent : Union of India (Uoi) and ors.

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : Sudama Ji Shandilya, Adv.

Disposition : Petition dismissed

Judgement :

Om Prakash, J.

1. All these writ petitions filed by various transporters, whose vehicles have been insured by the Nationalised Insurantee Companies, raise a common question : whether the tariff rates revised with effect from 1-2-1982 by the Tariff Advisory

Committee (for short the T.A.C.) are valid. Involving common points, all the writ petitions are connected and are being disposed of by a common order. Writ petition No. 882 of 1082 is treated as leading one. By the General Insurance Business (Nationalisation Act 1972) passed by the Parliament, all the Insurance Companies located all over the country were nationalised by the Government of India. After nationalisation the entire business of general /' insurance was entrusted to the four major Insurance Companies, namely :

1. United Insurance Company Ltd.
2. India Insurance Company Ltd.
3. National Insurance Company Ltd., and
4. Oriental Fire and General Insurance Company Ltd.

2. The case of the petitioners is that the revised rates that came into force with effect from 1-2-1982 are wholly arbitrary; unjust and discriminatory and they are violative of the provisions of Articles 14 and 19(1)(g) of the [Constitution of India](#). In the counter affidavit filed on behalf of the T.A.C. the case of the petitioners has been denied.

3. We have heard Sri Sudamaji Shandilya, Sri Murlidhar, Shri Kazmi and Sri Saunders for and on behalf of different sets of petitioners and Sri A. B. Saran, learned counsel for the respondent No. 2, at considerable length. The Chief question for consideration is : whether the rates revised by the T.A.C. are arbitrary, unjust and discriminatory. The contentions of Sri Shandilya are as follows :

- a) The decision of the T.A.C. revising the rates is violative of Articles 14 and 19(1)(g) of the Constution of India.
- b) No opportunity of being heard was afforded to the petitioners by the T.A.C. before revising the rates and hence the principles of natural justice were violated.

4. So far as Article 14 is concerned, Sri Shandilya simply urged that the revised rates are arbitrary and unjust, in as much as the increase has been made beyond proportion, having no relationship with the increase in the liability of the Insurance

Companies. He does not contend that the decision of the T.A.C. in revising the rates is discriminatory to the petitioners. Sri Saran repelled the contention of Sri Shandilya saying that the liability of the insurer has increased by more than 250 per cent, and, therefore, revision of rates is just, proper and reasonable, Sri Saran argued that there was no revision of the tariff from 1958 to 1982 except a nominal increase in Passenger rate in the year 1970, when the said rate was increased from Rs. 250 per passenger to Rs. 6/-(sic) per passenger 'under Act only Policy'. He submitted that with effect from 2nd March 1970 various liabilities under the Motor Vehicles Act, 1939 (briefly Act 1939) had been increased. In para 10-11 of the Counter-Affidavit the contentions are : that Third Party death or bodily injury liability for alt commercial vehicles was increased from Rs. 20,000/- to Rs. 50,000/- per accident; Passenger liability was increased from Rs. 4,000/- per passenger to Rs. 10,000/-per passenger in respect of motor cabs and from Rs. 2,000/- per passenger to Rs. 5,000/-per passenger for all other passenger vehicles; that under the Workmen Compensation Act, the limit of liabilities was revised upwards and that administrative and claims cost of motor insurance business had gone up considerably due to several factors, e.g. increase in claim consciousness among victims or heirs of victims of motor accidents; settlement of more Third Party claims by compromise or in satisfaction of the awards by Motor Accident Claims Tribunals, steep increase in repair costs due to increase in the cost of spare parts and rate of labour, increase in vehicle costs and false and exaggerated claims resulting in higher administrative expenses. Referring to the chart as given on page 8 of the counter affidavit, Sri Saran urged that the price of car had increased by 114 per cent in 1981, as compared to 1976 and the increase in the cost of spares and rate of labours ranged from 123 to 200 per cent. His submission was, whereas the price of the vehicle increased considerably in the past few years, there was no increase in the premia rate in thesame proportion. On page 13 of the counter affidavit, the respondent has shown in the chart that the claim ratio has increased from 56.9 per cent in the year 1976 to 95.3 per cent in the year 1980. For better appreciation we reproduce the chart as under :

(Figures in Lakhs of rupees)

Year

EarnedPremium

IncurredClaim

ClaimRatio

1976

5394

3067

56.9%

1977

5708

4177

73.2%

1978

6238

5263

84.2%

1979

7280

7277

99.9%

1980

8750

8352

95.3%

Over and above the claim ratio, the respondent contended that the Companies had to incur expenditure equal to 10 per cent by way of agency commission and at least 20 per cent by way of administrative cost. Then the argument of Sri Saran is that even the revision made in February 1982 by the T.A.C., cannot meet out the liability, increased by the Motor Vehicles (Amendment) Act, 1982 (Act No. 47 of 1982), 'for short Act 1982'. By this amendment, Sri Saran pointed out that the minimum liability which was increased from Rs. 20,000/- to Rs. 50,000/- in the year 1970 was again increased to Rs. 1,50,000/-. So far as the liability for death and for injury to the individual passenger is concerned, it has been raised from Rs. 5,000/- to Rs. 15,000/-. In regard to third party liability, increase has been made from Rs. 2,000/- to Rs. 6,000/-. So the amendment made in the year 1970 shows that there was increase in liability by 250 per cent without making corresponding increase in the tariff rate. In the light of these materials, Sri Saran contended that the revisions made by the T.A.C. in February 1982, could not be said to be unjust, arbitrary and unreasonable.

5. It is further contended by Sri Saran that increase in liability far exceeds the increase made in the premia rate. In paragraph 10-V of the counter-affidavit, it has been stated that the premium payable in respect of Comprehensive Insurance covering unlimited liability for a vehicle having a capacity of 50 passengers and valued at Rs. 3,00,000/- under the old tariff was Rs. 426/- plus 1/2 per cent of the insured estimated value (for short I.E.V.) i.e. Rs. 1500/- plus liability to passenger at the rate of Rs. 6/- per passenger i.e. Rs. 354/- for 59 passengers totalling to Rs. 2280/-. Under the revised tariff the corresponding premium will be as under :

Fixed component

Rs. 440.00

+70% of the Insured Estimated value of Rs. 3 lacs

Rs. 2100.00

+Liability of third party including liability under the Motor Vehicles Act

Rs. 240.00

+ Risk to passenger @ Rs. 12/-perpassenger (59 X 12)

Rs. 708.00

Total

Rs. 3488.00

These figures clearly show, whereas liability increased by 250 per cent, increase in premia rate was much less.

6. Adverting to AIR 1981 SC 2059 Motor Owners Insurance Co. Ltd. v. Jadavji Keshavji Modi, Sri Saran submitted that the expression 'Any one Accident' occurring in Section 95(2) of the Act 1939 was interpreted so as to enhance the liability of the insurer. The Suprme Court held that if the matter is looked at subjectively, as it ought to be, the insurer's liability will extend to a sum of Rs. 20,000/- in respect of the injuries suffered by each of the five persons, since each met with an accident, though during the course of the same transaction. The consideration of preponderating importance in a matter of this nature is not, whether there was one transaction which resulted in injuries to many, but whether more than one person was injured giving rise to more than one claim or cause of action, even if the injuries were caused in the course of one single transaction. The effect of this decision was that all the victims of the accident could prefer a claim, though they suffered from a single accident. The argument of Sri Saran, therefore, is that the liability was multiplied by the number of the people who met with one and the same accident.

7. It was also argued that the T.A.C. took sufficient care in analysing the matter and wherever it was necessary, the premium rate was reduced. For example. Fire Tarif rates were reduced in January 1979 after rationalization by an over all 20 per cent to 25 per cent at the time of formulation of All India Tariff. This involved

reduction of premium by Rs. 30 Crores annually. Though not relevant for the purpose of this case, but it is pointed out that Workmen's Compensation Policy rates have also been downwards revised with effect from 1-5-1982 by about 20 per cent. In paragraphs 10-III(a) of the counter-affidavit, it is stated that the T.A.C. had constituted a subgroup in February 1972 to consider rationalisation and revision of the Motor Tariff. Various different proposals were made and considered over a period of two years and after taking into account relevant factors, including projected loss ratio in respect of each category of vehicle based on past experience, sample surveys and actuarial study, the T.A.C. revised the tariff rates in respect of each category of vehicle. The T.A.C. studied the trend of Motor Loss Ratio likely to be experienced in future. Also the T.A.C. made a detailed study of past loss experience of various categories of vehicle, the current level of repair costs, the trend of third party claims settlement, the relevant risk factors of each class of vehicle in relation to various components of the Insurance cover and the trend of various types of loss ratio and estimates of prospective claims experience and having considered all the relevant factors, the tariff rates were revised. It is, therefore, said that the T.A.C. fully kept in view the provisions of Sub-section (2) of Section 64UC of the Insurance Act 1938 inasmuch as, in revising the rates it took maximum care to ensure that there was no unfair discrimination between risks of essentially the same hazard and also that consideration was given to past and prospective loss experience. In the rejoinder affidavit, the petitioners have not denied the increase of liabilities as stated by the T.A.C. in the counter-affidavit.

8. We find force in the submission of Sri Saran. Sri Shandilya simply reiterated before us that there was arbitrary increase in the rates of premiums, but no material, much less, substantial material, was shown by him to prove arbitrariness. The dates furnished by the respondents clearly justify the rates as revised by the T.A.C. Liabilities covering various situations having been increased by 250 per cent, cost of vehicles, spare parts and labour having been considerably increased in past years and the claim ratio having increased appreciably, we are of the view that there was fully justification for the T.A.C. to determine the revised rates. In our opinion, there was no violation of Article 14 of the Constitution, inasmuch as the revised rates are not arbitrary or unjust.

9. Then the question is : Whether the revision is violative of Article 19(1)(g). The contention is that insurance is almost monopolised business of the Government of India and exorbitant tariff fixed by the T.A.C., has to be paid by the petitioners against their will. He argues that the petitioners have no option but to pay the revised rates to run their business. We do not see any substance in the contention of Sri Shandilya that the right of the petitioners to carry on transport business has been adversely affected by the imposition of the revised rates. There is no serious dispute of the petitioners in regard to the third party Insurance, which is compulsory, because the same was increased marginally. The dispute mainly relates to the comprehensive premium. The argument of Sri Saran is that Comprehensive Insurance is a matter of contract, which cannot be challenged by the petitioners. The petitioners, having agreed to Comprehensive Insurance, cannot have the grievance that their right to carry on business was adversely affected by revised premium or the latter-constituted unreasonable restriction. Moreover, Comprehensive Insurance was voluntarily taken by the petitioners to ensure protection to their business interest and it cannot be accepted that revised premium infringed their rights in the transport business. We fully agree with Sri Saran that there is no violation of Article 19(1)(g) in these cases.

10. Then, we deal with the last contention of Sri Shandilya that there was violation of principles of natural justice. Composition of the T.A.C. has been stated in Section 64-UB of the [Insurance Act, 1938](#) (for short the Act of 1938). Section 64-UC of the Act of 1938 confers power on the T.A.C. to control and regulate the rates that may be offered by insurers in respect of any risk or of any class or category of risk and the decision of the T.A.C. in pursuance of the provisions of this section, shall be final. The provisions relating to the T.A.C. do not cast any obligation thereon to invite transporters to represent their viewpoint before revising the premium rate. The Supreme Court in AIR 1976 SC 1986 in the case of *S. Narayan Iyer v. Union of India*, held that telephone tariff is subordinate legislation and a legislative process under Indian Telegraph Act. The provisions relating to Tariff Inquiry Committee under the Indian Telegraph Act are in pari materia with the provisions relating to the T.A.C., constituted under Section 64-UB of the Act of 1938. Therefore, following the decision of the Supreme Court we hold that the tariff fixed by the T.A.C. is subordinate legislation and a legislative process. No

provision for inviting the representatives of the transporters having been made in the Act of 1938 and the tariff rates fixed by the T.A.C. being legislative process, we hold that the petitioners could not press for the right being heard and as such there is no violation of the principles of natural justice.

11. Sri Saunders, representing a different set of petitioners draw our attention to Section 64-UC Sub-section (3). Relying on that, he urged that the decision of the T.A.C. in revising the rates was invalid, inasmuch as, it was not ratified by the Controller. Sri Saran very apply argued that Section 35 of the General Insurance Business (Nationalisation) Act, 1972 lays down that the Act of 1938 shall apply to Corporation subject to the conditions laid by the Central Government. Then he pointed out that by the Notification dated 29th Dec. 1972, Section 64-UC Sub-section (3) was omitted. This being so Section 64-UC Sub-section (3) shall have no application to the instant case and, therefore, the revision made by the T.A.C'. will not become in valid for want of ratification by the Controller.

12. Lastly, We heard Sri Murlidhar for the respondents represented by him. He specifically drew our attention to page 16 of the 'Schedule of Rates'as contained in a booklet, which is a private publication and is strictly for the use of Agents. On page 16 thereof, there is a Schedule of premiums relating to Commercial Vehicles. These rates refer to passenger carrying Vehicles (Excluding Passenger Risk). The buses are categorised as under :

(a) Buses (including Tourist Buses)

(b) Hotel/School Omni Buses

(c) Airline Buses.

The Schedule of rates is as under :

Maximum Licensed Passenger carrying capacity

OwnDamage

Liabilityto the public risk

Act onlyLiability

Notexceeding 18 sets

Rs. 280 + 0.70% on IEV

Rs. 240

Rs. 200

' ' 36 '

Rs. 360 + 0.70% on IEV

Rs. 240

Rs. 200

' ' 60 '

Rs. 440 + 0.70% on IEV

Rs. 240

Rs. 200

Exceeding 60 '

Rs. 545 + 1.40% on IEV

Rs. 240

Rs. 200

13. His precise argument is whereas in the ease of buses not having seals more than 60,0.70% on I.E.V. has been added to the amounts of Rs. 200/- Rs. 360/- and Rs. 440/- in the ease of a bus having more than 60 seats, this percentage has been doubled. Doubling of the percentage on I.E.V. is said to be wholly irrational and discriminatory. The argument is that under the old Commercial Vehiele Tariff,

this percentage was doubled only in the case of double decker buses- In his opinion, a double decker bus cannot be equaled with a bus having more than 60 seats. It was argued by him that such percentage could be doubled in the case of a double decker, because that involved more risk due to its abnormal height, but the same risk is not involved in the case of a bigger bus having more than 60 seats. He argued that the T.A.C. had furnished no data to support doubling of the percentage on I.E.V. and that showed that the tariff was revised by the T.A.C. arbitrarily and irrationally. We do not find any force in this contention. Under the old Tariff Scheme, a distinction was made between single decker buses and double decker buses. It was considered to be a reasonable classification. Under the revised Tariff Scheme distinction has been made looking to the risk involved in the buses carrying seats below 60 and above 60. A bigger bus having more than 60 seats involves more risk and, therefore; the classification made by the T.A.C. between the two classes of buses cannot be said to be an unreasonable classification. Article 14 of the Constitution prohibits only class legislation and not a reasonable classification. Sri Murlidhar pressed a point that why a bus having more than 60 seats has been differently treated from the buses having lesser seats. The risk involved in the smaller and the bigger buses was the basis of the classification and that cannot be said to be unjust, if the Legislature takes care to reasonably classify persons for legislative purposes and if it deals equally with all persons belonging to a well defined class, it is not open to the charge of denial of equal protection on the ground that the law does not apply to other persons. In order, however to pass a test of permissible classification two conditions must be fulfilled, namely :

- 1) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and,
- 2) that that differentia must have a rational relationship to the object sought to be achieved by the statute in question.

In the instant case, classification was based on the magnitude of the risk involved and the object of doubling the percentage 0.70% was to tax the owners of the

bigger buses involving a greater risk at a higher rate. No doubt, the demarcation line of 60 seats will cause a hardship to the owners of the buses having more than 60 seats, but such demarcation cannot be said to be unreal or irrational. Once the dividing line is found to be rational, it is immaterial that the petitioners owning larger buses having more than 60 seats will suffer more premium. We are fortified in taking this view by AIR 1974 SC 2349 (Union of India v. Parameswaran Match Works). In this case Notification No. 20.S of 1967 dated 4-9-1967 was issued. The purpose of this Notification, according to the Supreme Court, was to give relief to bona fide small manufacturers, was not estimated to be in excess of 75 million for the financial year 1967. The concessional rate of duty prescribed under the notification dated July 21, 1967 was superseded by the notification dated Sept. 4, 1967. The manufacturers who came to the field after Sept. 4, 1967 were entitled to concessional rate of duty if they satisfied the condition prescribed in Clause (d) of the aforesaid notification. The respondents in that case applied for a licence for manufacturing matches on Sept. 5, 1967. The concessional rate of duty was denied to the respondents, as no declaration was made by them on Sept. 4, 1967, as required by the Notification. The contention of the respondents before the High Court was that it has been denied the benefit of the concessional rate of duty on the ground that it applied for licence and filed a declaration only on Sept. 5, 1967, a day after the date mentioned in Clause (b) of the aforesaid notification and that was discriminatory. Towards the end of paragraph 8 on page 2352, the Supreme Court held 'There can be no doubt that any rate for the purpose would, to a certain extent, be arbitrary. That is inevitable.' We, therefore, reject the contention of Sri Murlidhar and Sri Kazai who adopted the argument of the former.

14. Having considered the rival submissions of the parties, we are of the view that there is no merit in these writ petitions. So all the writ petitions are dismissed. In the circumstances of the cases, there will be no order as to costs. The stay order, if any, shall stand vacated.