IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)

Writ Petition No. 1746 of 2021

In the matter of:

An application under article 102 of the Constitution of the People's Republic of Bangladesh.

AND

In the matter of:

Peoples Insurance Company Limited, represented by its Chief Executive Officer (In charge) and another

... **Petitioners**.

-Versus-

Bangladesh, represented by the Secretary, Ministry of Finance, Bank and Financial Institutions Division, Bangladesh Secretariat, Segunbagicha, Ramna, Dhaka and others,

... **Respondents**.

Mr. M.A. Hannan, Advocate with
Mr. Abdus Samad Azad, Advocate and
Mr. Md. Tafsirul Islam, Advocate,

...For the **petitioners.**

Ms. Rimi Nahreen, Advocate

...For **respondent Nos.2 and 3**.

Mr. Mohammad Mehadi Hasan Chowdhury, Advocate, with
Mr. Imtiaz Uddin Ahmed Asif, Advocate with
Mr. Anwar Parvez, Advocate with
Mr. Md. Golam Rabbani Sharif, Advocate with
Mr. Asifur Rahman, Advocate and
Mr. Leingshua Das, Advocate

..For **respondent No.4**.

Judgment on: 20.02.2024

Present:

Mr. Justice Md. Khasruzzaman
and
Mr. Justice K M Zahid Sarwar

Md. Khasruzzmaman, J.

In the application under article 102 of the Constitution, on 09.02.2021 the *Rule Nisi* under adjudication was issued in the following terms:

"Let a Rule Nisi be issued calling upon the respondents to show cause as to why the Memo No. 53. 03. 0000.072. 56.030.20.22 dated 21.01.2021 issued by the respondent No.3 at the instruction of respondent No.2 directing the petitioners to pay the entire insurance claim in favour of the respondent No.4 (Annexure-G to the writ petition) should not be declared to have been issued without lawful authority and is of no legal effect and / or pass such other or further order or orders as to this Court may seem fit and proper."

At the time of issuance of the *Rule Nisi*, the operation of the impugned memo vide Annexure-G was stayed for a period of 03 (three) months. Subsequently, the order of stay was extended from time to time and lastly, on 05.02.2023 it was extended for another period of 01(one) year.

Facts necessary for disposal of the *Rule Nisi,* in short, are that petitioner No.1 is the Peoples Insurance Company Limited (hereinafter referred to as "the petitioner-company") and petitioner No. 2 is the Managing Director and Chief Executive Officer (In-charge) of the petitioner-company. The petitioner-company is a non-life general insurance company and it was incorporated as a public limited company in 1985 under the Companies Act, 1913. In course of its business, an insurance contract in the form of policy was executed between the petitioner-company (insurer) and respondent No.4 (policy holder) namely Kader Compact Spinning Limited vide IAR Policy No. PIC/HO/LOC/IAR/POL-06/03/2018 dated 01.03.2018 incorporating certain terms and conditions

(Annexure-A). The parties to the policy are bound to act as per the terms and conditions with regard to make demand and payment against such demand.

On 06.03.2018 the policy holder company i.e. M/S. Kader Compact Spinning Limited (respondent No.4) lodged a claim No. PIC/LOC/F/IAR/CLAIM-13/2018 under the aforesaid policy dated 01.03.2018 to the petitioner company (insurer) demanding TK.188,06,94,726.00 (One hundred eighty eight crore six lac ninety four thousand seven hundred and twenty six) and asking for settlement of fire insurance claim due to a fire incident occurred at the factory premises of policy holder company on 05.03.2018.

After receiving claim of the policy holder, the petitioner-company (insurer) appointed three Surveyors licenced by the Authority for conducting survey with regard to assessment and adjustment of the loss caused due to fire accident at the factory of the policy holder-company. Since the loss was in big volume, the appointed Surveyors engaged BUET experts to assist the Surveyors to issue actual comprehensive report upon determining the loss of machinery, building, cause of loss, cause of fire and to determine the precautionary measures against prevention of the fire and also to determine whether the measures of the factory were adequate as per the rules.

Accordingly, the BUET experts on the technical point issued their report after assessment on 08.09.2019. Thereafter, on 15.01.2020 the appointed Surveyors submitted their report including the report of BUET experts to the petitioner-company.

Then the report was also sent to respondent No. 4 policy holder. In the report, it was recommended to pay TK.111,37,29,129.00 (One hundred eleven crore thirty seven lac twenty nine thousand one hundred and twenty nine) to the policy holder (respondent No.4) in settlement of their claimed money. It is stated that apart from giving such recommendation of payment of money, the Surveyors on consideration of the findings of the report of BUET Experts, report of the investigation committee headed by the learned District Magistrate, Gazipur and findings from other sources came to a definite opinion with comments stating that fire incident was occurred at the factory of the policy holder due to willful negligence and not taking adequate precautions any measure for prevention of fire incident (Annexures-B, B-1 and B-2 respectively).

Ultimately, the Board of Directors of the petitioner-company (insurer) perusing the survey report, finding, observation, opinion and comments made by experts of BUET, and the findings of the investigation committee headed by the learned District Magistrate, Gazipur, unanimously decided that the fire incident was caused due to willful negligence of policy holder namely M/S. Kader Compact Spinning Limited, such as intentional use of low capacity cable and electrical materials and failure of taking proper measure of detection, prevention and containment of fire, which are in violation of the terms and conditions of the policy and as such the insurer i.e. petitioner-company repudiated the claim of respondent No. 4 policy holder vide letter dated 24.09.2020 (Annexure-C).

Thereafter, on 19.11.2020 the policy holder (respondent No.4) filed an application to the Chairman of the Insurance Development and Regulatory Authority (in short, the IDRA) (respondent No. 2) praying for a direction upon the insurer-company to pay their claimed amount. On the basis of that application, respondent No.3 vide Memo No. 53.03.0000.072.56.030.20.35 dated 22.11.2020 directed the petitioner-company (insurer) to settle the insurance demand made by policy holder (respondent No. 4) [Annexure-D and D (1)]. Upon receipt of the memo dated 22.11.2020, the petitioner-company (insurer) submitted a written representation to the Chairman of the IDRA making the entire facts as per report of Joint Final Survey along with that of BUET experts and reasons for rejection of the insurance demand of respondent No.4 (Annexure-E). In reply, the petitioner-company made categorical statements that the demand is in violation of the terms and conditions of the policy, in 2015 they paid TK.41.00 crore due to fire incident in the factory premises of respondent No. 4 because the earlier incident was not occurred due to willful negligence of respondent No. 4 who agreed and duty bound to comply with recommendations made regarding installation and workmanship of electricity line so that fire shall not be caused due to short circuit. But the present incident being the result of gross negligence and willful non-compliance of the preventive measures in installation and use of the materials and equipment of electricity in the factory, the claim made by respondent No. 4 is in violation of the terms and conditions of the policy.

Thereafter, the respondent-IDRA issued notice vide memo dated 09.12.2020 asking the petitioner-company to appear at the hearing of the matter on 27.12.2020. Having received the notice, on 21.12.2020 the petitioner-company submitted its application praying for time to attend at the hearing. On the basis of that application of the petitioner-company, the respondent IDRA shifted the hearing of the matter fixing the date as on 12.01.2021 at 12.00 p.m. and the petitioner-company was directed to attend at the hearing vide Memo No. 53.03.0000.072.56.030.20.174 dated 22.12.2020 [Annexure-F and F(1)]. However, on 12.01.2021 hearing was conducted at the office of IDRA. The Insurer and the policy holder attended the hearing. At the hearing of the matter, petitioner No. 2 i.e. Managing Director and Chief Executive Officer of the petitioner-company submitted categorical reasons and grounds for rejection of the claim of the policy holder and thereby prayed for referring the matter to the Disputes Resolution Committee formed by the Authority as per the IRDA (Disputes Resolution Committee) Regulations, 2012 (in short, the Regulations, 2012). But without considering contractual and legal ground and without applying their judicial mind the IDRA issued the impugned decision vide Memo dated 21.01.2021(Annexure-G) directing the petitioner (insurer) to pay amount of claim of TK.111, 37,29,129.00 within 15.02.2021.

Challenging the decision dated 21.01.2021 passed by the respondent- IDRA (Annexure-G), the petitioner company filed the

instant writ petition and obtained the *Rule Nisi* and an interim order of stay.

Challenging the Rule issuing order dated 09.02.2021 so far it relates to interim order, respondent No.4 moved the Appellate Division in Civil Petition for Leave to Appeal No.1403 of 2021. The Appellate Division did not interfere with the interim order. But it was directed to dispose of the Rule on merit. Hence, the *Rule Nisi* was fixed by this Bench for hearing.

Respondent Nos. 2 and 3 filed an affidavit-in-opposition denying the material statements made in the writ petition contending *inter-alia* that petitioner No. 2 never prayed before the IDRA for referring the matter to the Disputes Resolution Committee under section 73 of the Insurance Act, 2010 by filling up the required form and depositing the fees. It is stated that whenever any claimant fills up the prescribed form and refers the matter to the Disputes Resolution Committee, the matter is automatically registered with the number and year. Petitioner No. 2 never submitted any such form before it. Respondent No. 4 being the claimant can still invoke that jurisdiction by following the required procedures. It is stated that the IDRA is empowered under the IDRA Act, 2010 to supervise of the insurance business, to protect the interest of the policy holders and beneficiaries under the policy and systematic development and control of insurance industry. According to section 15(p) of the IDRA Act, 2010 one of the duties of the IDRA is to adjudicate the disputes between the insurers, intermediaries and insurance intermediaries. As such respondent

Nos. 2 and 3 have rightly exercised its lawful power in adjudicating the matter in disputes. As such there is no illegality on the part of the respondent IDRA in passing the impugned decision and hence the *Rule Nisi* is liable to be discharged.

Respondent No. 4 filed an affidavit-in-opposition denying all material statements made in the writ petition contending *inter-alia* that the statement made in the writ petition that fire incident occurred due to willful negligence of respondent No. 4 is contradictory to the survey report and the BUET experts report. It is stated that the fire incident occurred on 05.03.2018 and the claim for loss and damage was lodged formally to the petitioner-company on 06.03.2018 whereupon joint surveyors were appointed to assess the loss and damages and they submitted their report on 15.01.2020. Thereafter, the IDRA by the impugned decision directed the petitioner-company to pay the entire insurance claim to respondent No. 4. But without complying with the said decision of the respondent-IDRA, the petitioner filed the instant writ petition to frustrate payment of respondent No. 4. It is also stated that as per section 15(p) of the IDRA Act, 2010 the Authority is very much empowered to adjudicate any dispute comes before it. As such question of *coram non judice* does not arise at all. Accordingly, it is stated that the *Rule Nisi* is liable to be discharged.

Mr. M.A. Hannan appearing along with Mr. Abdus Samad Azad and Mr. Md. Tafsirul Islam, the learned Advocates for the petitioners submits that respondent Nos. 2 to 4 who passed the impugned order had no authority to entertain and dispose of the

dispute regarding payment of claim of respondent No. 4 and as such the impugned order suffers from *coram non judice*. Mr. M.A Hannan, the learned Advocate further submits that the Insurance Development and Regulatory Authority is a statutory Authority created and established under the Insurance Development and Regulatory Act, 2010 and it performs as a regulatory body as per section 15 of the Act. But the performance of such functions are always subjected to powers, functions, obligations and jurisdictions as expressly provided in other legislations in particular in the present case under sections 71 and 73 of the Insurance Act, 2010 read with the provisions of the IDRA (Disputes Resolution Committee) Regulations, 2012.

Referring to rule 6(2) of the Regulations, 2012, the learned Advocate also submits that claimant respondent No.4 ought to have referred the dispute under section 73 of the Insurance Act, 2010 to the Disputes Resolutions Committee of the IDRA in accordance with law for its adjudication. Without doing so, the respondent claimant has referred the dispute as to payment of his big claim much more than the amount of Tk. 5.00 (five) lac as fixed by the Regulations to respondent No. 2 IDRA under section 71 of the Insurance Act, 2010 and as such sitting over the dispute to adjudicate upon such a big claim by the respondent IDRA without having any jurisdiction is out and out illegal and without any lawful authority and hence the impugned order suffers from legal infirmity and *coram non judice*. In support of his submissions he has relied on the cases of **Government of the People's Republic**

of Bangladesh Vs. Dr. Neelima Ibrahim, 1 BCR(AD)175 and Md. Mahmudul Haque @ Muhammadul Haque Vs. Md. Shamsul Alam, 36 DLR (AD) 179.

Ms. Rimi Nahreen, the learned Advocate appearing on behalf of respondent Nos. 2 and 3 submits that the respondent IDRA has ample power under section 15(p) of the Insurance Development and Regulatory Authority Act, 2010 to adjudicate the disputes between insurers, intermediaries and insurance intermediaries and as such the respondent IDRA did not commit any illegality in dealing with the application dated 19.11.2020 filed by respondent No. 4 (policy holder) and passing the impugned order dated 21.01.2021. Referring to section 32 of the IDRA Act, 2010 she also submits that the petitioners have an alternative remedy of invoking review to the Authority but without availing that forum of review, filing of the writ petition is not maintainable and as such the *Rule Nisi* is liable to be discharged.

In reply, Mr. M.A. Hannan, the learned Advocate for the petitioners submits that there is a specific provision under sections 71 and 73 of the Insurance Act, 2010 for resolving dispute between the insurer and the policy holder with regard to small amount of claim and big amount of claim by the Authority and by the IDRA (Disputes Resolution Committee) Regulations, 2012 respectively. He further submits that since the claim of respondent No. 4 relating to payment of a big amount of TK. 188,06,94,726.00 and since there is a forum to refer the dispute of such a big amount of claim before the Disputes Resolution Committee constituted under

section 73 of the Insurance Act, 2010, the respondent IDRA has no jurisdiction to entertain the instant dispute and to pass the impugned order. He also submits that section 15 of the IDRA Act, 2010 is a general provision and if that section is applied in all respects, the provisions of sections 71 and 73 of the Insurance Act, 2010 with regard to adjudication of small amount of claim and big amount of claim of the policy holder shall be redundant and meaningless. He contends that as per the provision of section 73 of the Insurance Act, 2010 and the IDRA (Disputes Resolution Committee) Regulations, 2012 framed under section 73 of the Insurance Act, 2010 the IDRA has no power to deal with the dispute of such a big amount of claim and as such the impugned order is suffering from *coram non judice*. The IDRA while dealing with the same either could refers the dispute to the Disputes Resolution Committee or directs the claimant (respondent No. 4) to refer the dispute before the Disputes Resolution Committee for its adjudication. But the IDRA committed gross illegality in passing the impugned order. As such question of exhausting the alternative remedy by filing review under section 32 of the IDRA Act, 2010 does not arise at all, rather the same will not stand as a bar in invoking the writ jurisdiction under article 102 of the Constitution.

Mr. Mohammad Mehadi Hasan Chowdhury, the learned Advocate appearing along with Mr. Golam Rabbani Sharif, the learned Advocate for respondent No. 4 (policy holder) submits that section 128 of the Insurance Act, 2010 provides for second survey but the petitioner company did not conduct second survey and as

such the loss caused due to fire at the factory of respondent No. 4 as assessed by the surveyors appointed by the petitioners is binding upon them. Mr. Chowdhury further submits that the petitioners participated at the hearing before the Authority but did not raise any objection at the first instance with regard to jurisdiction of the IDRA in dealing with the instant dispute and as such they cannot challenge the order passed by the Authority when it goes against the petitioner and as such the writ petition is not maintainable. Referring to section 32 of the IDRA Act, 2010 he also submits that if any person or organization is aggrieved by an order of the Chairman or any Member or any officer may apply for review of that order but the petitioners without availing that forum of review filed the instant writ petition and obtained the *Rule Nisi* which is liable to be discharged.

In reply, Mr. M.A. Hannan, the learned Advocate appearing on behalf of the petitioners submits that since petitioners do not make any objection about determination of loss under survey containing BUET experts report as to the claim of respondent No.4 is of TK. 188,06,94,726.00 as recommended subject to admittance of the liability under the terms and conditions of the policy and since the recommendation is subject to admittance of liability and since they have categorically made statements in their reply dated 24.09.2020 that the policy does not cover for entertaining the claim of respondent No. 4, the submission of respondent No. 4 that the petitioners did not conduct Second Survey is a misconceived one in view of section 128 of the Insurance Act. Rather it is the absolute

authority of the IDRA when it has reason to believe that surveyor has given a false report, or has grossly over assessed, or under assessed a loss, or has made an adjustment of loss in grossly unjust manner, in that case the Authority (the IDRA) may direct the insurer to arrange for another survey (i.e. Second Survey) of that loss through any other surveyor or surveyors approved by its. Thereafter, he also submits that under the principle of *coram non judice* when an act is initiated or performed by an Authority without having jurisdiction is barred by law and void *abinitio* if no objection is raised at first instance. In support of the above submissions, he has relied in the case of **Haji Mohammad Nuruddin Vs. Commissioner of Customs, Excise and VAT Commissionerate, Dhaka (North) and others (Civil Petition for Leave to Appeal No.142 of 2014, dated 05.09.2016) (unreported).**

We have considered the submissions of the learned Advocates, perused the writ petition, *affidavit-in-opposition* and other papers annexed thereto and the decisions referred by the parties.

There is no dispute about execution of Insurance Policy dated 01.03.2018 between petitioner-company and respondent No.4 vide IAR Policy No. PIC/HO/LOC/IAR/POL-06.03.2018 attaching certain terms and conditions with regard to make demand and payment against such demand (Annexure-A). Unfortunately, on 05.03.2018 a fire broke out in the factory of respondent No.4 at about 01.40 a.m. which is 1 hour 40 minutes later from the

commencing day i.e. 06.03.2018 of the policy and on the next following night of 05.03.2018 at about 1.40 hours.

However, following such fire incident took place on 05.03.2018 at the factory premises, respondent No. 4 policy holder lodged a claim being Claim No. PIC/LOC/F/IAR/CLAIM-13/2018 dated 06.03.2018 under the aforesaid policy to the petitioner company claiming TK.188,06,94,726.00 and thereby asked for settlement whereupon surveyors were appointed to determine and assess the loss caused from fire incident and then the surveyors also appointed some BUET experts to give technical support and eventually they submitted survey report assessing loss of TK.111,37,29,129.00 with recommendation to pay but subject to admittance of liability under the terms and conditions of the relevant policy (**underlined for emphasis).**

Thereafter, the petitioner-company has repudiated the claim of respondent No.4 on specified grounds with reference to survey report containing BUET expert report and breach of terms and conditions of the policy which was communicated to respondent No. 4 vide letter dated 24.09.2020 (Annexure-C).

Then on 19.11.2020 respondent No. 4 submitted an application before the Chairman of respondent No. 2 with a prayer for a direction upon the petitioner-company to pay the claimed money in his favour. Ultimately, respondent No. 3 i.e. Director (Law) of the IDRA issued the impugned order directing the petitioner-company to implement the decision of the meeting dated

12.01.2021 by paying the amount of loss estimated by the survey report within 15.02.2021 (Annexure-G).

The points involved in this *Rule Nisi* for adjudication by us are as follows:

(I) Whether respondent No. 4 (policy holder) has committed an illegality in referring the dispute before the Chairman of respondent No. 2 on the face of section 73 of the Insurance Act, 2010 and rule 6(2) of the IDRA (Dispute Resolution Committee) Rules, 2012 framed under section 73 of the Act, 2010,

(II) Whether the IDRA holds authority to entertain the dispute,

(III) Whether the IDRA has acted *coram non judice* in passing the impugned order,

(IV) Whether the non-raising objection regarding the jurisdiction at the earliest opportunity means that the petitioner has conceded to the jurisdiction of the IDRA, and

(V) Whether the writ petition is maintainable or not.

Let us take the first point for determination as to whether respondent No. 4 has misdirected itself in referring the dispute before the Chairman of respondent IDRA for its adjudication. In this aspect, it would be beneficial to appreciate and answer to the point if we go through the provision of sections 71 and 73 of the Insurance Act, 2010.

Section 71 of the Act, 2010 reads as follows:

*"**71. Dispute over claim under life and non-life policies of small amount.-** (1) Any dispute as to the sum of claim arising under a policy of life insurance assuring a sum(exclusive of any profit or bonus nor being a guaranteed profit or bonus) and under a policy of non-life insurance in respect of insurance business transacted in Bangladesh, up to a small amount as fixed by rules, may at the option of the claimant, be referred to the Authority for settlement and the Authority may after hearing the parties and taking such evidence as it may in its absolute discretion, consider necessary, settle the dispute.*

(2) The decision of the Authority under this section shall be final and shall not be called in question in any Court of law and shall be deemed to be a decree of a Court having competence to decide the dispute and would be effected accordingly.

*(3) The authority shall in respect of the duties performed by it for the purpose of this section charge and collect such fee whether by way of percentage or otherwise as may be prescribed. **(underlined for emphasis)**".*

On a plain reading of the provision of section 71 of the Insurance Act, 2010 it clearly reveals that the claimant, for the settlement of his dispute of a small sum of claim as fixed by the rules, will refer the same to the Authority i.e. IDRA.

Now section 73 of the Act, 2010 reads as follows:

"**73. Dispute Resolution Committee-** (1) *The Authority shall constitute one or more disputes resolution committees to resolve dispute arising between an insurer and a policy holder in respect of claim other than disputes under section 71.*

(2) The constitution of the committees under this section and the procedure shall be prescribed by regulations, and the Arbitration Act, 2001 or any rules made thereunder shall not apply to such committees.

(3) No person shall be appointed a member of the committee if he has any interest in the subject matter of the dispute.

(4) The committee shall have jurisdiction in respect of the life insurance policies not being group life policies and non-life insurance policies in respect of claims.

(5) Any party aggrieved by a decision of the Committee may prefer an appeal to the Court within a period of 30(thirty) days from the date of notification of such decision. ***(Underlined for emphasis).***"

The Insurance Act, 2010 has made it clear in the above quoted section 73 that other than disputes relating to small sum of claim under life and non-life insurance policy, all other disputes arising between an insurer and a policy holder in respect of claim shall be resolved by the Disputes Resolution Committee to be constituted by the Authority under section 73 of the Insurance Act, 2010. In sub section (4) of section 73 it has been provided that the committee shall have jurisdiction in respect of the life insurance

policies not being group life policies and non-life insurance policies in respect of claims.

On perusal of sections 71 and 73, it is clear that save and except the disputes with regard to small sum of claim as fixed by the Regulations under life and non-life insurance policy, the Disputes Resolution Committee has jurisdiction to entertain and adjudicate the disputes as to any claim under life and non-life insurance policy.

So, there are two forums for adjudication of the dispute of claim of any claimant. The forums are that one is before the Authority i.e. IDRA, and the another one is before the Disputes Resolution Committee constituted under section 73 of the Insurance Act, 2010. If the claim is a small amount, the claimant is to refer his dispute to the Authority and if the claim is a big amount other than fixed by the Regulations, the claimant is to refer his dispute before the Disputes Resolution Committee for its adjudication.

To appreciate that which one is small sum of claim as well as pecuniary jurisdiction of the Disputes Resolution Committee, we need to go through the বীমা উন্নয়ন ও নিয়ন্ত্রণ কর্তৃপক্ষ (বিরোধ নিষ্পত্তি কমিটি) প্রবিধানমালা, ২০১২ which has been framed under section 148 read with section 73 of the Insurance Act, 2010. The power, function and procedure of the committee have been provided in rule 6 (1) and (2) of the Regulations, 2012.

For better and easy understanding rule 6 of the Regulations, 2012 is quoted below:

> "৬। কমিটির ক্ষমতা, কাজ ও পদ্ধতি।-(১) কোন পলিসির অধীনে কোন দাবিদার ও উক্ত পলিসি ইস্যু করেছেন বা অন্য কোনভাবে উহার দায় সম্পর্কে আশ্বস্ত করিয়াছেন এমন বীমাকারীর মধ্যে **লাইফ বীমাকারী কর্তৃক ইস্যুকৃত ২৫,০০০(পঁচিশ হাজার) টাকা ও তদূর্ধ্ব** (গ্যারিন্টিযুক্ত নহে এমন কোন লাভ ও বোনাস ব্যতিরেকে) কোন লাইফ ইন্সুরেন্স পলিসির বিরোধের ক্ষেত্রে, দাবীদার ইচ্ছা করলে উক্ত বিরোধের বিষয়ে সিদ্ধান্ত প্রদানের নিমিত্ত কমিটির নিকট প্রেরণ করতে পারবে এবং কমিটি উভয়পক্ষকে শুনানীর সুযোগ প্রদান করিয়া ও প্রয়োজন মনে করলে, ক্ষেত্রমত, তদন্ত করে উক্ত বিরোধের নিষ্পত্তি করতে পারবে।
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> (২) কোন পলিসির অধীনে কোন দাবিদার ও উক্ত পলিসি ইস্যু করেছেন বা অন্য কোনভাবে উহার দায়্ব সম্পর্কে আশ্বস্ত করেছেন এমন বীমাকারীর মধ্যে **নন-লাইফ বীমাকারী কর্তৃক ইস্যুকৃত ৫,০০,০০০(পাঁচ লক্ষ) টাকার সমপরিমান না তদুর্ধ্ব পরিমানের কোন নন-লাইফ ইন্সুরেন্স পলিসির বিরোধের ক্ষেত্রে,** দাবীদার ইচ্ছা করলে উক্ত বিরোধের বিষয়ে সিদ্ধান্ত প্রদানের নিমিত্ব কমিটির নিকট প্রেরণ করতে পারবে এবং কমিটি উভয়পক্ষকে শুনানীর সুযোগ প্রদান করে ও প্রয়োজন মনে করলে, ক্ষেত্রমত, তদন্ত করে উক্ত বিরোধের নিষ্পত্তি করতে পারবে।

Rule 6(1) provides that if the dispute under life insurance policy as to sum of claim is TK. 25,000.00 or more than that amount, the claimant is to refer the dispute to the Disputes Resolution Committee for its adjudication.

Rule 6(2) provides that if the dispute under non-life insurance policy as to sum of claim is TK. 5,00,000.00 or more than that amount, the claimant is to refer the dispute to the Disputes Resolution Committee for its adjudication.

In the case in hand, the dispute as to claim of TK. 188,06,94,726.00 is under non-life insurance policy. Rule 6(2) of

the Regulations, 2012 is related to dispute of claim under non-life insurance policy wherein it has been specifically provided that if the dispute as to sum of claim is TK. 5,00,000.00 or more than that amount, the committee is empowered to entertain and dispose of the dispute upon hearing the parties and perusing the evidence.

Apart from above, there has a forum of appeal by any aggrieved party against the order of the Committee under rule 7 of the Regulations, 2012.

So, the claimant is not remediless against any action of the insurer over the dispute of claim. In the present case, respondent No. 4 claimant could have asked for remedy by referring the dispute to the Disputes Resolution Committee for adjudication. But the respondent claimant did not do that. Rather he has misdirected himself in referring the matter to the Authority IDRA for resolving the dispute in violation of section 73 of the Insurance Act and rule 6(2) of the IDRA (Disputes Resolution Committee) Regulations, 2012.

Now comes as to the question of jurisdiction of the respondent IDRA whether it has authority to sit over the dispute of the claimant.

Having considered the disputed sum of claim and on perusal of section 73 of the Insurance Act, 2010 read with rule 6(2) of the Regulations, 2012 the matter of dispute is within the jurisdiction of the Disputes Resolution Committee.

The Insurance Development and Regulatory Authority who framed the Regulations, 2012 in compliance of section 73 of the Insurance Act is well known and well conversant with the law and Regulations, the IDRA being the regulatory body and promulgator of the Regulations, 2012 is equally responsible to maintain and perform their duty by the Regulations, 2012. The rule of law is a basic feature of the Constitution of Bangladesh. To attain the fundamental aim of the State, the Constitution has made substantive provisions for the establishment of a policy where every functionary of the State must justify his action with reference to law. On reading of sections 71 and 73 of the Insurance Act, 2010 read with rules 6(1) and (2) of the Regulations, 2012 it is clear that the IDRA has jurisdiction to dispose of the dispute if the sum of the disputed claim is less than TK.25,000.00 in respect of the claim under life insurance policy and if the sum of the disputed claim is less than TK.5,00,000.00 in respect of claim under non-life insurance policy.

So, that being the legal position, the respondent IDRA has no jurisdiction to entertain and dispose of the dispute of the claimant (respondent No. 4). Despite the respondent Authority without having jurisdiction passed the impugned order and as such the impugned order suffers from legal infirmity and *coram non judice*. As such the same is void, illegal and without jurisdiction.

In this respect it would be profitable if we rely on some decisions of the Appellate Division.

In the case of **Government of Bangladesh Vs. Dr. Neelima Ibrahim, 1 BCR (AD) 175,** the Appellate Division held as follows:

> *"Whatever action the Government may take touching the rights of the Citizen must be authorized by law. Since the authority of law as claimed by the Government in passing the impugned order, namely, Article 3 of the order, is not available the action taken is unlawful and void and cannot, therefore, be sustained."*

In the case of **Md. Mahmudul Haque @ Muhammadul Haque Vs. Md. Shamsul Alam, 36 DLR (AD) 179,** the Appellate Division held (at paragraph-4) as follows:

> *"………… This is not a technical point but a point that touches the jurisdiction of a Court. When the law has conferred jurisdiction expressly, no amount of consent by the parties invest a Court with jurisdiction which is not given by law. The exercise of jurisdiction by Rajshahi Labour Court was clearly illegal and therefore, the entire proceeding directing the reinstatement of the respondent under section 25 and non-implementation of the said direction having given rise to a Criminal Proceeding entertained by the said Court was also illegal."*

Since the impugned order is affected by the principle of *coram non judice* and without jurisdiction, whether non availing the forum of review as raised by the respondents would stand as a bar for filing the writ petition.

In this regard, it would be beneficial if we rely on some decisions of this Court.

In the case of **Tasmina Chowdhury and 12 others Vs. Deputy Commissioner, Dhaka and others, 49 DLR 29,** it has been held as follows:

"The rule as to alternative remedy is not a rule of law but a rule by which court regulates its own proceeding and does not generally entertain any such proceeding which can be more appropriately investigated in an alternative forum but <u>in a case where order is absolutely without jurisdiction</u> and does not involve any investigation of facts or consideration of evidence the necessary relief can be more appropriately and expeditiously given in writ jurisdiction."

In the case of **Jobon Nahar and others Vs. Bangladesh, through the Secretary, Ministry of Housing and Public Works Department, Government of the People's Republic of Bangladesh and others, 49 DLR 108,** it has been held as follows:

"Ordinarily the High Court Division under Article 102 of the Constitution will not interfere where there is equally effective and efficacious remedy available to a petitioner. Yet the existence of another remedy is not in every case a bar to the exercise of powers of the High Court Division under Article 102 of the Constitution and the court can interfere if the circumstances demand such interference."

In the said case, the High Court Division also held:

"The right to enforce a fundamental right is another fundamental right which gives the petitioner right to move this Court even though his application was rejected by settlement Court on the ground of limitation."

In the case of **Jahangir Alam Vs. Commissioner, Customs Excise and VAT, Commissionerate and others, 72 DLR 55,** it has been held as follows:

"When an illegality is apparent on the face of record and the respondents performing the function of the Republic have acted totally without jurisdiction, invoking forum as provided under Article 102 of the Constitution is not a bar. The fixation of minimum value by the Commissioner of Customs, Excise and VAT, without publishing in the gazette notification and assessment thereafter pursuant to the said value is without jurisdiction."

In the case of **Abu Bakar Siddique Vs. Justice Shahabuddin Ahmed and others, 1 BLC 483,** it has been held (in paragraph No. 19) as follows:

"*Article 102 of the Constitution provides that a person who is aggrieved may file an application under Article 102(2) of the Constitution. But it does not provide that a person should be personally aggrieved. If the Constitution provides personal aggrievement, then the scope of Article 102 would be narrower. But in the instant case both Mr. Rafiq-ul Huq and Mr. Mainul Hosein submit that the scope of interpretation of this provision*

> *of Article 102(2)(a)(ii) of the Constitution should be wider. It is submitted that a person may be personally aggrieved or mentally aggrieved or constitutionally or economically or politically or socially aggrieved and this aggrievement of any kind for a citizen has given him the right to take shelter under Article 102 of the Constitution. We find substance of the above views expressed by the two learned Advocates aforesaid."*

Since there is a glaring blatant violation of section 73 of the Insurance Act, 2010 and rule 6(2) of the IDRA (Disputes Resolution Committee) Regulations, 2012, the respondent IDRA has acted *coram non judice* and thereby deprived the petitioner company from getting equal protection of law and Regulations in passing the impugned order. As such we have no option but to subscribe the views taken by this Court in the above mentioned cases. Every citizen including the petitioner has a right to have equal protection of law as guaranteed under article 31 of the Constitution. Right to have equal protection is also a fundamental right under the Constitution. The Authority without having any jurisdiction passed the impugned order in violation of the fundamental right of the petitioner which should not be overlooked in the eye of law. As such we are of the view that the writ petition is maintainable under article 102 of the Constitution for enforcement of fundamental right of getting protection under section 73 of the Insurance Act and rule 6(2) of the Regulations, 2012 as guaranteed under article 31 of the Constitution.

Argument has been advanced by the learned Advocate for the respondent IDRA that since the IDRDA is empowered under section 15(p) of the IDRA Act, 2010 to adjudicate the dispute between insurers, intermediaries and insurance intermediaries, it has lawfully adjudicated the dispute and issued the impugned order dated 12.01.2021. But the submission of the learned Advocate is misconceived in law because in the instant case the dispute is in between the insurer and the policy holder with regard to adjudication as to whether the claim is lawful or not. Intermediaries or insurance intermediaries has been defined in section 2 of the IDRA Act that মধ্যস্থতাকারী বা বীমা মধ্যস্থতাকারী অর্থ বীমা এজেন্ট, এজেন্ট নিয়োগকারী, বীমা ও পুন:বীমার ব্রোকার এবং বীমা জরিপকারী। However, the functions and duties of the Authority as provided in section 15 of the IDRA Act, 2010 has to be exercised subject to Insurance Act, 2010. In the instant case, the IDRA (Disputes Resolution Committee) Regulations, 2012 has been framed under section 73 of the Insurance Act, 2010 which makes it specific on the jurisdiction of IDRA with limitation that if the claim is lesser than amount of TK. 25,000.00 in case of life insurance policy, the IDRA is very much empowered to entertain and dispose of the dispute. And if the sum of claim is lesser than the amount of TK. 5,00,000.00 in case of non-life insurance policy, the IDRA will entertain and adjudicate the dispute in accordance with law.

But the instant dispute does not invest the respondent IDRA with jurisdiction to dispose of the same. As such when respondent No. 4 referred the dispute to the respondent IDRA, the IDRA could

have asked respondent No. 4 to adjudicate the dispute by the Disputes Resolution Committee or asked the claimant to take steps under section 73 of the Insurance Act, 2010 read with rule 6(2) of the Regulations, 2012. But the respondent IDRA acted beyond its jurisdiction sitting over the dispute and issued the impugned order.

The learned Advocate for respondent No. 4 submits that the question of jurisdiction has to be raised at the earliest opportunity. Since the petitioner did not raise such question of jurisdiction at the hearing of the dispute, now he cannot raise the same before this Court which is not permissible in law. In this respect, he has relied in the case of Christian Service Society (CSS) Vs. First Labour Court, Chittagong and others, 63 DLR (2011) 125.

In reply, the learned Advocate for the petitioner very candidly submits that the jurisdiction of the Authority is a matter of law. There is a series of decisions of this Court on that point of law i.e. the jurisdiction in the present case being involved with question of law and Regulations, the same can at any time be raised before the Court in accordance with law.

In this respect, the Appellate Division in the case of **Haji Mohammad Nuruddin Vs. Commissioner of Customs, Excise and VAT Commissionerate, Dhaka (North) and others (In CPLA No. 142 of 2014, judgment delivered on 05.09.2016)** held as follows:

> *"Under such circumstances it is immaterial whether the writ petitioner submitted to the jurisdiction of the Bureau of Anti-*

> *Corruption by filing reply to the notice inasmuch as when the Bureau of Anti-Corruption had no jurisdiction to interfere with such offence it cannot be said that 'since the writ petitioner submitted reply to the said notice he conceded to the jurisdiction of the Bureau of Anti-Corruption'. The age old principle that any act done or initiated by an authority who had/has no jurisdiction is barred by law under the principle of corum non judice."*

So, on the face of the views taken by our Appellate Division as mentioned above we cannot accept the decision of the High Court Division as referred by the learned Advocate for respondent No.4.

In view of the facts and circumstances of the case and the decisions as discussed hereinabove, we find force in the submissions of the learned Advocate for the writ petitioners and merit in the *Rule Nisi.* Resultantly, the *Rule Nisi* is liable to be made absolute and the impugned order is also liable to be declared without lawful authority. In such circumstances, we are of the view that ends of justice would be met and no one would be prejudiced if we direct the IDRA, the claimant and the petitioner to take necessary steps to get the dispute resolved by the Disputes Resolution Committee in accordance with law.

However, since the claimant-respondent referred the dispute to the respondent-IDRA and since all papers are in the record with the IDRA, the claimant respondent would move to the IDRA to refer his dispute to the Disputes Resolution Committee for adjudication upon hearing the parties to the dispute and by legal evidence in

accordance with rule 6(2) of the IDRA (Disputes Resolution Committee) Regulations, 2012 for resolving the dispute once and for all.

In the result, the *Rule Nisi* is made absolute with the above observation and direction.

Thus the impugned Memo No. 53. 03. 0000.072. 56.030.20.22 dated 21.01.2021 issued by respondent No. 3 at the instruction of respondent No. 2 directing the petitioners to pay the entire claim in favour of respondent No. 4 (Annexure-G) is declared to have been issued without lawful authority and is of no legal effect.

Communicate the order.

K M Zahid Sarwar, J.

I agree.