L.I.C. Of India & Anr vs Consumer Education & Research Centre & ... on 10 May, 1995

Equivalent citations: 1995 AIR 1811, 1995 SCC (5) 482

Author: K. Ramaswamy

Bench: K. Ramaswamy, B.L Hansaria

PETITIONER:
L.I.C. OF INDIA & ANR.

Vs.

RESPONDENT:
CONSUMER EDUCATION & RESEARCH CENTRE & ORS.ETC.

DATE OF JUDGMENT10/05/1995

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
HANSARIA B.L. (J)

CITATION:
1995 AIR 1811 1995 SCC (5) 482
JT 1995 (4) 366 1995 SCALE (3)627

ACT:

HEADNOTE:

JUDGMENT:

THE 10TH DAY OF MAY, 1995 Present:

Hon'ble Mr.Justice K.Ramaswamy Hon'ble Mr.Justice N.Venkatachala Mr.Harish Salve, Sr.Adv. Mr.Rajiv Mehta, Mr.Kailash Vasdev and Ms.Meenakshi Grover, Advs. with him for the Appellants Mr.Rajiv Dhawan, Sr.Adv. Mr.Arvind Kr.Sharma and Mr.P.H.Parekh, Advs. with him for the Respondents.

JUDGMENT The following Judgment of the Court was delivered:

IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION CIVIL APPEAL NO.7711 OF 1994 L.I.C. of India & Anr.

Verus.

Consumer Education & Research Centre & Ors.

WITH JUDGMENT K.RAMASWAMY.J.:

Leave granted. Delay condoned.

The appeal and cross appeal arise from the Division Bench judgment of Gujarat High Court dated January 31, 1994 in Spl. Civil Application No.2614 of 1980. On August 25, 1980 one Prof. Manubhai Shah Executive Trustee of Respondent No.1 and Mr.D.N.Dalal sought policies under Table 58. Similarly in December,1978 Respondent Nos.2, to 4 sought similar policies for convertible term insurance plans for different amounts. In September, 1980 Respondent Nos.6 and 7 agents of the appellants when presented proposals to the LIC under Table 58 on behalf of individual respondents and promised to cover under Table 58 other 9 crores uninsured households, the LIC turned them down. Consequently, after issuance of a notice through counsel on September 14, 1980, the respondents filed the above writ petition. The conditions imposed and denial to accept policies sought under Table 58 were assailed as arbitrary, discriminatory violating Articles 14, 19(1)(g) and right to life in Article 21 of the Constitution. The High Court while upholding that prescription of conditions for 1st class lives as eligibility and other criteria laid down in the policy under Table 58 are neither unjust nor arbitrary, declared a part of the conditions, namely, "Further, proposals for assurance under the plan will be entertained only from persons in Government or Quasi-Government organisation or a reputed commercial firm which can furnish details of leave taken during the preceding year under Table 58" as subversive of equality and, therefore, constitutionally invalid.

Accordingly, it was struck down. The Corporation filed the appeal against the portion that was struck down and the respondents filed the cross appeal against the findings that went against them.

Sri Harish Salve, learned Senior counsel for LIC contended that on acceptance of the proposals by the insurer in Life Insurance business, the policy holders gets rights in the policy. As the proposals of respondents 2 to 5 were rejected as not being in conformity with the conditions prescribed in Table 58, they cannot enforce any right flowing from Table 58 under Article 226. They cannot use Judicial process to create rights in their favour unless a binding contract emerged by acceptance of the proposal of insurance and acted upon. No rights would flow to any party to the proposal to challenge the policy, its terms and plan of insurance. The writ petition under Article 226 of the constitution is not maintainable to enforce constitutional obligations. It is next contended that Life Insurance policies are framed on Actuarial considerations and worked out as per the needs of the

policy to suit the interests of all those interested in obtaining a particular policy and their viability. The High Court was not justified in interfering with matters based on economic criteria and commercial contracts, in particular, after having recorded findings referred to hereinbefore in favour of the corporation, the High Court committed error of law in declaring the offending portion of the policy as arbitrary and violative of Articles 14, 19 and 21 of the Constitution.

The actuarial principles are the calculations made by actuaries taking into consideration:

a) present condition of health and physical build of the life to be insured;

b) personal and family history, occupation, likelihood of any change in the occupation etc. The premium to be charged in a particular policy is calculated by actuarial method. These conditions have been imposed taking into consideration risk to be covered to see that the plan is successfully operated. The afore-stated conditions are necessary to forecast mortality among insured lives within a relatively narrow margin of error, depending upon general population statistics based on insured lives. The tables were framed to cover the risk of all classes of people to suit all the classes. There are several policies like endowment policy, annuity policy and whole life policy.

These are again sub-divided into various plans of insurance. All policy holders under Table 58 have been trated as a class. Several conditions in the policy do disclose that they have been formulated to effectuate the policy under Table 58. Taking into consideration the minimum and maximum age enumerated therein, all the policy holders under Table 58 are treated as a class. Restrictions imposed or the terms and conditions contained therein are reasonable. There is no invidious discrimination meted out to the respondents. It is open to the policy holders to have term policy converted into endowment or whole life policy. The policy of denying convetible risk, policy to female lives before the expiry of two years of the term policy, all eligible persons are entitled to convert them into whole life policy or endowment policy before expiry of two years. The premium payable on the term policy is very marginal to benefit such of those persons at the threshold of their career. In the event of the said conversion, there is no need for fresh medical report. Since the policy is commercial contract, the High Court has no power or jurisdiction to interfere with contractual relations declaring them as invalid and unconstitutional.

Shri Dhawan, learned Senior counsel for the respondents resisted these contentions on the anvil of Article 25 of the Declaration of Human Rights, Article 7 of the International Covenant on Economic and Social Rights and, in particular, on the provisions of Part III and the Directive Principles of the Constitution which assure livelihood. This Court interpreted the word "life" under Article 21 broadly so as to render them socio-economic justice. Policy under Table 58 is cheaper. Having issued the policy, the appellant has to formulate its scheme in such a way that it is not inconsistent with the egalitarian social order which the Constitution seeks to achieve and the court must be give effect to them. The interpretation sought to put up by the LIC depletes practical content of human rights in Part IV. Initially females were excluded to have insurance policy. By sustained public pressure, females were made eligible to have policy including term policy. Age was extended from 45 to 50 years. Similarly the respondent, though is doing life insurance business, its policies must be in

conformity with the rights in Parts III and IV of the Constitution. It has no power to impose any unconstitutional conditions in the contract, no classification much less valid classification has been made between salaried employees in Government, Semigovernment, organised sectors or reputed commercial organisations, self-employed or unorganised sectors. The term insurance policy being cheaper premium helps large segments of poor and lower middle class persons. Sezhivan Committee on improvement of Insurance, the LIC recommended popularisation in urban and rural areas policies under Table

58. The whole life or endowment policies are not easily accessible to the poorer segments of the society. Only term insurance under Table 58 policy is more attractive and easily accessible to those segments of the society. Imposition of conditions including the one struck down by the High Court are, therefore, unconstitutional and impermissible.

We have given our anxious and careful consideration to the respective contentions, since our answers to the questions involved are bound to have far reaching effect on the business of life insurance, we have minutely examined all the questions bearing in mind the larger public interest. Life insurance policies based on actuarial Tables and the Policy Holders' needs suited to their requirements. It appears that LIC has, in assessing the risk, taken into consideration the factors: (a) present condition of health and physical build of the person whose life has to be insured; (b) his/her personal history i.e., record of illness suffered in the past by the person whose life has to be insured, risks to be covered and the person's habits in general; (c) family history, i.e. record of health and longevity of members of the family of the person to be insured; (d) occupation and environment of the person whose life has to be insured; and (e) the likelihood of any change in the occupation of the person whose life has to be insured, calculated to increase the risk of his/her life. Based thereon, the amount of premium would be charged depending upon whether a particular policy is a term insurance or an endowment or whole life policy etc. based on actuarial method. The terms and conditions subject to which the risk is to be covered, undoubtedly, would play a vital role in deciding the amount of premium payable and the conditions on which the policy is to be issued. In that behalf, it would be necessary to foresee mortality among insured lives within a relatively narrow margin of error. The insurer, therefore would be entitled to devise its plans, relative terms and conditions, its advantages and other relevant factors. Therefore, the insurer would be entitled to specify eligibility criteria in various plans of life insurance. Each policy differ in its contents and conditions, the degree of risk, the amount of premium payable in that behalf and also mortality rate.

Sezhivan Committee Report after its elaborate study of the working of the LIC on insurance recommended in the year 1980 for improvement on several factors of the working system. It had recommended to make available policies to wider sections of the people. It analysed diverse life insurance policies in para 13.1(i) and concluded that the cost of providing life insurance through individual life insurance policies is high and beyond the means of a large section of the population both in urban and rural areas;

(ii) in pursuance of one of its basic objectives, namely, mobilisation of savings through life insurance, the LIC has been concentrating its efforts mainly on upper strata and employed sections of the population which has a regular income and saving potential. The obligatory linking of life

insurance to savings inherent in the conventional individual assurance plans and the LIC's concentration on this type of business together, had the effect of denying life insurance cover to the vast section of the people who do not have regular income and whose savings potential is low; (iii) as a result of the above, only about 10% of the insurable male lives in the country have been provided cover against death. That too on the salary earning classes and persons in the higher income groups who take out LIC mainly because of the tax relief available. The coverage of persons in rural areas and of those employed in the unorganised sector in the urban areas in meagre; (vi) Life insurance in India can still be a viable savings medium, as it is in U.K., provided the LIC is enabled to improve substantially the yield on its investment and to control effectively its expenses of management. In para 13.18, the report further states that "there is one other plan which the Committee feels the LIC ought to introduce and that is a level premium term insurance plan. The Committee has noted that the Committee of Actuaries had recommended introduction of such a plan..... Therefore, the term insurance policy introduced, though based on calculations of actuarial consideration, was intended to cover not only the elite and employed in government, semi-government and reputed commercial establishments but also need to cover wider public, self employed or those working in unorganised sectors. The term insurance policy under table 58 is beneficial to all sections and restricted to lives in specified area alone. The original clause in Table 58 reads thus:-

> "The rates of premium herein apply to male lives who, on the basis of the medical examiner's report, personal and family history etc. are considered by the Corporation as first class lives. Persons over 45 years nearer birthday at entry and those following hazardous occupation including persons in the Armed Forces will not be eligible for insurances under this plan. Proposals for policies under this scheme will be entertained only from persons in Government or quasi-government or the service of reputed commercial firms The medical examination of the proposer will be arranged only after the proposal is first submitted to the Divisional Office of the Corporation and its approval to proceedings with medical examination is obtained. The cost of the medical examination will have to be borne by the proposer.
>
> Minimum sum assured The minimum amount for which policy will be issued under this plan is Rs.5,000/-. Term of Assurance Policy under this plan will be issued for a term of 5, 6 and 7 years only."

During the course of the litigation, as stated earlier, by public pressure, (i) the appellant amended the clause and deleted "female" from disabled persons; (ii) increased the age from 45 years to 50 years; (iii) incorporated the term of five years to proposal in the age group of 46 to 50 years; and (iv) to furnish details of leave taken during the preceding three years.

During the course of the arguments the appellants furnished the comparative evolution of convertible term insurance, endowment with profits and endowment without profits, while life policy from which the following picture would emerge:-

> "PREMIUM PER THOUSAND PER YEAR FOR PROPONENT AGED 20 YEARS

TABLE	PREMIUM PAYING TERM PER 1000 YEAR		
	5 YEARS	6 YEARS	7 YEARS
58 (Convertible Term Assurance)	Rs.4.80	Rs.4.70	Rs.4.65
14 (Endowment with profit)	Rs.217.15	Rs.179.40	Rs.152.65
11 (Endowment without profit)"	Rs.188.90	Rs.152.00	Rs.126.00

The premium payable to the term insurance at the age of 20, 25, 30, 35, 40, 45 years is as disclosed in the Table given by the appellants thus:-

SPECIFIED TERM

Age nearer Birthday	5 years (In rupees and paise)	6 years	7 years
20	4.80	4.70	4.65
25	4.95	4.90	4.90
30	5.50	5.50	5.50
35	6.50	6.55	6.65
40	8.70	8.90	9.10
45	12.45	--	--
50	18.45	--	--

The term insurance policy under Table 58, therefore, appears to be the cheapest and most accessible policy which a large number of people in the country both in rural and in urban sectors can afford to take for the reason that the premium is low and within affordable limit. The policy is for a short term of 5 to 7 years. There is no return for the insured at the end of the policy. In the event of death of the insured, it purely provides insurance cover to the family as social security to support the dependents. Pursuant to the recommendation made by Sczhiyan Committee, the term insurance policy was brought into vogue. In fact, this policy appears to be very popular even in the United States of America as per the material furnished beofore us which would indicate that during the year 1985 to 1989 among all the policies, the term insurance policy was the most popular one, which covered large number of lives.

It is true that convertible whole life insurance was intended to meet the needs of a young person who is on the threshold of his career to provide maximum insurance with a minimum cost and at the same time intended to offer a flexible contract which can be altered into an endowment insurance without any need to pay premia after the age of 70 and without further medical examination. Convertible term insurance is designed to meet the needs of those who are initially unable to pay premium required for whole life or endowment insurance policy and hope to be able to pay for such a policy in the near future. Fixed term convertible is permissible except in the last two years without any further medical examination. As stated earlier at the end of the term, the assured will not get anything, if he survives. On his death, the nominee or the dependents will get the assured amount but it could be seen the capacity to pay the premium would also be a relevant factor.

The premium for Rs.1000/- under the policy as per the Table furnished would indicate as under:- TABLE : SHOWING DIFFERENCES IN PREMIA (Premia per 1000) Age Convertible Life Whole Life Term Policy 5 years 6 years 7 years 15 Rs.10.80 10.75 -- -- --

20 Rs.11.65 11.65 4.80 4.70 4.65 25 Rs.13.05 12.95 4.95 4.90 4.90 35 Rs.18.25 17.95 6.50 6.55 6.65 It will thus be seen that the difference in premia is quite considerable. It should be noted that the rate is per Rs.1000. Thus, where the policy is Rs.50,000 the difference will be as shown below:

The Premia for Rs.50,000/- is as under :

Age Policy Convertible Whole Term Police Life Life 5 yrs 6 yrs 7 yrs 35 Rs.50,000 Rs.912.5 897.5 325 327.5 332.5 It will, thus, be clear that the Term Policy is a demonstrably cheap and efficacious short term policy and help those badly in need of it.

From this material matrix, the question emerges whether the appellant is justified in law in restricting the term policy only to the specified class, namely, salaried persons in Government, quasi-Government or reputed commercial firms. The Preamble, the arch of the Constitution, assures socio- economic justice to all the Indian citizens in matters of equality of status and of opportunity with assurance to dignity of the individual. Article 14 provides equality before law and its equal protection. Article 19 assures freedoms with right to residence and settlement in any part of the country and Article 21 by receiving expansive interpretation of right to life extends to right to livelihood. Article 38 in the Chapter of Directive Principles enjoins the State to promote the welfare of the people by securing and protecting effective social order in which socio-economic justice shall inform all the institutions of the national life. It enjoins to eliminate inequality in status, to provide facilities and opportunities among the individuals and groups of the people living in any part of the country and engaged in any avocation. Article 39 assures to secure the right to livelihood, health and strength of workers, men and women and the children of tender age. The material resources of the community are required to be so distributed as best to subserve the common good. Social security

has been assured under Article 41 and Article 47 imposes a positive duty on the State to raise the standard of living and to improve public health.

Article 25 of the Universal Declaration of Human Rights envisages that everyone has the right to standard of living adequate for the health and well-being of himself and of his family including food, clothing, housing and medical care and necessary social services and the right to security in the event of unemployment sickness, disability, widowhood, old age or other lack of livelihood in the circumstances beyond his control. Article 7 of the International Covenant on Economic Rights equally assures right to everyone to the enjoyment of just and favourable conditions of work which ensures not only adequate remuneration and fair wages but also decent living to the workers for themselves and their families in accordance with the provisions of the Covenant. Covenant on Right to development enjoins the State to provide facilities and opportunities to make rights a reality and truism, so as to make these rights meaningful.

A Constitution Bench of this Court in D.S. Nakara v. Union of India, 1983 (2) SCR 165 at p.185, held that pension ensures freedom from undeserved want. The basic framework of the Constitution is to provide a decent standard of living to the working people and especially provides security from cradle to grave. Every State action whenever taken must be directed and be so interpreted as to take society one step towards the goal of establishing a socialist welfare society. While examining the constitutional validity of legislative/administrative action, the touchstone of the Directive Principels of the State policy in the light of the Preamble provides yardstick to hold one way or the other. In Olga Tellis v. Bombay Municipal Corporation, 1985 Supp(2) SCR 51, another Constitution Bench of this Court held that the right to life inculdes right to livelihood because no person can live without the means of living i.e. means of livelihood. If the right to livelihood is not treated as part of constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live.

Interpreting Article 19(e) vis-a-vis Article 25(2) of the Universal Declaration of the Human Right and Article 7 of the International Convention of Economic, Social and Cultural Rights, one of us (K. Ramaswamy, J.) in C.E.S.C. Ltd. v. Subhash Chandra Bose, (1992)1 SCC 441 at p.462 in para 30, held that the right to social justice is a fundamental right. Right to livelihood springs from the right to life guaranteed under Article 21. The health and strength of a worker is an integral facet of right to life. Right to human dignity, development of personality, social protection, right to rest and leisure are fundamental human rights to a common man. Right to life and dignity of person and status without means are cosmetic rights. Socio-economic rights are, therefore, basic aspirators for meaningful right to life. Right to social security and protection of the family are integral part of the right to life. Right to social and economic justice is a fundamental right". In paragraph 32, it was further held that "right to medical care and health for protection against sickness are fundamental rights to the workmen". On this aspect, there was no disagreement by the majority members. In Consumer Education & Research Centre v. Union of India. Jt 1995(1) SC 637, it was unanimously held by a bench of three Judges that right to health to a worker is an integral facet of meaningful right to life and have not only a meaningful existance but also robust health and vigour without which worker would lead life of misery. Lack of health denudes his livelihood. Compelling economic

necessity to work in an industry exposed to health hazards due to indigence to bread-winning to himself and his dependents, should not be at the cost of the health and vigour of the workman. Facilities and opportunities, as enjoined in Article 38, should be provided to protect the health of the workman. Right to human dignity, development of personality, social protection are fundamental rights to the workmen. Medical facilities to protect the health of the workers are fundamental rights to workmen. It was, therefore, held that "the right to health, medical aid and to protect the health and the vigour of a worker while in service or post retirement is a fundamental right under Article 21 read with Articles 39(e), 41, 43, 48-A of the Constitution of India and fundamental human right to make the life of workmen meaningful and purposeful with dignity of persons". In Regional Director, ESI Corporation v. Francis De Costa, 1993 supp (4) SCC 100 at 105, the same view was stated. Security against sickness and disablement is fundamental right under Article 25 of the Universal Declaration of Human Rights and Article 7(b) of international Convention of Economic, Social and Cultural Rights and under Articles 39(e), 38 and 21 of the Constitution of India. Employees State Insurance Act seeks to provide seccour to maintain health of an injured workman and the interpretation should be so given as to give effect to right to medical benefit which is a fundamental right to the workman. In Murlidhar Dayandeo Kesekar v. Vishwanath Pandu Barde (C.A.No.952/77) on February 22, 1995, this Court held that right to economic empowerment to the poor, disadvantaged tribes and depressed and oppressed Dalits, is a fundamental right to make their right to life and dignity of person meaningful and worth living. It was also held that socio-economic democracy is sine qua non to make political democracy, a truly participatory democracy and a truism for unity and integrity of Bharat.

It would thus be well settled law that the Preamble Chapter of Fundamental Rights and Directive Principles accord right to livelihood as a meaningful life, social security and disablement benefits are integral schemes of socio-economic justice to the people in particular to the middle class and lower middle class and all offendable people. Life insurance coverage is against disablement or in the event of death of the insured economic support for the dependents, social security to livelihood to the insured or the dependents. The appropriate life insurance policy within the paying capacity and means of the insured to pay premia is one of thesocial security measures envisaged under the Constitution to make right to life meaningful, worth living and right to livelihood a means for sustenance.

The question, therefore, is whether the appellant is free to incorporate as a part of its business principles, any term of its choice. It is true that the appellant is entitled to accept insurance policy from a person possessed of health with first class life and before acceptance of the policy the insured is required to undergo medical examination as per policy at his expense to satisfy his condition of health. The question is whether the term policy needs to be restricted only to the employees of Govt., quasi-government or reputed commercial firms and whether such condition is just, fair and reasonable or based on reasonable classification consistent with Articles 14 and 21 of the Constitution. The contention of the appellants is that life insurance policy being a contract of insurance becomes a binding contract on appellants' acceptance. Until a contract is entered into, the proposed insured does not acquire any right in insurance policy. The terms of the contract under Table 58 cannot be declared ultra vires before a concluded contract emerged. Contract of insurance operates in the arena of contractual relations. Refusal to enter into contract does not infringe any

fundamental right or a legal right nor the respondents are entitled to compel the appellants to enter into favourable relations when they did not fulfill the essential terms of the proposal. Therefore, writ petition is not maintainable to enforce such rights in embryo nor they be entitled to declaration in their favour.

It is true that life insurance business as defined under s.2(11) of the Insurance Act, 1938, is business of effecting contracts of insurance upon human life, including any contract whereby the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, and any contract which subject to payment of premiums for a term dependent on human life including those enumerated in clause (a) to (c) thereof. Thereby, the contract of insurance is hedged with bilateral agreement on human life upon payment of premia subject to the convenants contained thereunder. But as stated earlier, is the insurer entitled to impose unconstitutional conditions including that which denied the right of entering into the contract, limiting only to a class of persons under a particular policy? We make it clear at this juncture that the insurer is free to evolve a policy based on business principles and conditions before floating the policy to the general public offering on insurance of the life of the insured but as seen earlier, the insurance being a social security measure, it should be consistent with the constitutional animation and conscience of socioeconomic justice adumbrated in the Constitution as elucidated hereinbefore.

In M/s Erusian Equipment & Chemicals Ltd. v. State of West Bengal. 1975(1) SCC 70 at 75 in para 17, this Court held that neither the petitioner nor the respondent has any right to enter into a contract but they are entitled to equal treatment with others who offer tender or quotations for the purchase of the goods services etc.. This privilege arises it is the Government which trading with the public and the democratic form of Government demands equality and absence of arbitrariness and discrimination in such transactions. Privilege is a form of liberty as opposed to a duty. When public element is involved in the activities of the Government, then there should be fairness and equality. If the State does enter into a contract, it must do so fairly without discrimination and without unfair procedure. Exclusion of a member of the public from dealing, prevents him from entering into lawful contractual relations and discriminates him in favour of other people. Though the State is entitled to impose reasonable conditions but arbitrary conditions prevents entering into contractual relations with the State. The individual is entitled to fair and equal treatment with others. A duty to act fairly can be interpreted as meaning a duty to observe certain aspects of rules of natural justice. The legitimate expectation cannot be denied without fair procedure. In that case black listing, without an opportunity was held to be an unfair procedure offending Article 14.

In Saghir Ahmad v. State of U.P., 1955(1) SCR 707, the Constitution Bench at the earliest buried fathom deep that the State is free to carry on trade or business in the same position as a private trader. In A. Sanjeevi Naidu v. State of Madras, 1970(3) SCR 505, another Constitution Bench held that the acts of the authorised officers are the acts of the State itself and not as the delegates of the Government. In Ramana Dayaram Shetty v. International Airport Authority of India, 1979(3) SCR 1014, another Constitution Bench held that in a welfare State in regulating and dispensing special services including contracts, the citizen derives rights or privileges by entering into favourable relations with the Government. The Government, therefore, cannot anchor its role as a private

person. The exercise of the power or discrimination to award contract etc. must be structured by rational, relevant and non-discriminatory standards or norms. In Kasturi Lal Lakshmi Reddy v. State of J & K, 1980(3) SCR 1338, it was further held that every activity of the government has a public element in it and it must, therefore, be informed with reason guided by public interest. It cannot act in a manner which would benefit a private party at the cost of the State. In M.C. Mehta v. Union of India, (1987)1 SCC 395, another Constitution Bench held that it is dangerous to exonerate corporations from the need to have constitutional conscience which makes governmental agencies what their mien amenable to constituional limitations, the Court must adopt such standards "as against the alternative of permitting them to flourish as an imperium in imperio". It was further held that law has to grow in order to satisfy the needs of the fast changing society and keep abreast with the economic developments taking place in the country. As new situations arise the law has to be evolved in order to meet the challenge of such new situations. Law cannot afford to remain static. The Court has to evolve new principles and lay down new norms which arise in a highly industrialised economy. Therefore, when new changes are thrown open, the law must grow as a social engineering to meet the challenges and every endeavour should be made to cope with the contemporary demands to meet socio-economic challenges under rule of law and have to be met either by discarding the old and unsuitable or adjusting legal system to the changing socio-economic scenario. Banjaman Cardozo has stated in his "Judicial Process" at p.168, that "the great tides and currents which engulf the rest of men do not turn aside in their course and pass the Judges idle by".

Every action of the public authority or the person acting in public interest or its acts give rise to public element, should be guided by public interest. It is the exercise of the public power or action hedged with public element becomes open to challenge. If it is shown that the exercise of the power is arbitrary unjust and unfair, it should be no answer for the State its instrumentality, public authority or person whose acts have the insignia of public element to say that their actions are in the field of private law and they are free to prescribe any conditions or limitations in their actions as private citizens, simplicitor, do in the field of private law. Its actions must be based on some rational and relevant principles. It must not be guided by irrational or irrelevant considerations. Every administrative decision must be hedged by reasons. The Administrative Law by Wade, 5th Ed. at p.513 in Chapter 16, Part IV dealing with remedies and liabilities, stated thus:-

> "Until a short time ago anomalies used to be caused by the fact that the remedies employed in Administrative Law belong to two different families. There is the family of ordinary private law remedies such as damages, injunction and declaration and there is a special family of public law remedies particularly Certiorari, Prohibition and Mandamus, collectively known as prerogative remedies. Within each family, the various remedies can be sought separately or together or in the alternative. But each family had its own distinct procedure".

At page 514 it was elaborated that "this difficulty was removed in 1977 by the provision of a comprehensive, "application for judicial review", under which remedies in both facilities became interchangeable." At page 573 with the heading `Application for Judicial Review' in Chapter 17, it is stated thus:-

> "All the remedies mentioned are then made interchangeable by being made available `as an alternative or in addition' to any of them. In addition the Court may award damages, if they are claimed at the outset and if they could have been awarded in an ordinary action."

The distinction between private law and public law remedy is now settled by this Court in LIC v. Escorts Ltd., 1985 Supp. (3) SCR 909. by a Constitution Bench thus:-

> "If the action of the State is related to contractual obligations arising out of the Court (contract sic) the Court may not ordinarily examine unless the action has some public law character attached to it. The Court will examine actions of State if they pertain to the public law domain and refrain from examining them if they pertain to the private law field. The difficulty will lie in demarcating the frontier between the public law domain and the private law field. This is impossible to draw the line with precession and we do not want to attempt it. The question must be decided in each case with reference to the particular action, the activity in which the State or the instrumentality of the State is engaged when performing the action, the public law or private law character of the action and a host of other relevant circumstances."

In Dwarkadas Marfatia & Sons v. Board of Trustees of the Port of Bombay, 1989(2) SCR 751, it was held that the Corporation must act in accordance with certain constitutional conscience and whether they have so acted must be discernible from the conduct of such Corporations. Every activity of public authority must be informed by reasons and guided by the public interest. All exercise of discretion or power by public authority must be judged by that standard. In that case when the building owned by the port trust was exempted from the Rent Act, on terminating the tenancy for development when possession was sought to be taken, it was challenged under Article 226 that the action of the port trust was arbitrary and no public interest would be served by terminating the tenancy. In that context, this Court held that even in contractual relations the Court cannot ignore that the public authority must have constitutional conscience so that any interpretation put up must be to avoid arbitrary action, lest the authority would be permitted to flourish as imperium a imperia. Whatever be the activity of the public authority, it must meet the test of Article 14 and judicial review strikes an arbitrary action.

In Mahabir Auto Stores v. India Oil Corporation, AIR 1990 SC 1031, it was held that the State when acting in its executive power, enters into contractual relations with the individual, Article 14 would be applicable to the exercise of the power. The action of the State or its instrumentality can be checked under Article 14. Their action must be subject to rule of law. If the governmental action even in the matter of entering or not entering into contracts, fails to satisfy the test of reasonableness, the same would be unreasonable. Rule of reason and rule against arbitrariness and discrimination, rules of fair play, natural justice are part of the rule of law applicable in situation or action by State/instrumentality in dealing with citizens. Even though the rights of the citizens, therefore, are in the nature of contractual rights, the manner, the method and motive of a decision of entering or not entering into a contract, are subject to judicial review on the touchstone of relevance and reasonableness, fair play and natural justice, equality and non-discrimination. It is

well settled that there can be "malice in law". It was also further held that whatever be the act of the public authority in such monopoly or semi- monopoly, it must be subject to rule of law and must be supported by reasons and it should meet the test of Article

14. This Court has rejected the contention of an instrumentality or the State that its action is in the private law field and would be immuned from satisfying the tests laid under Article 14. The dichotomy between public law and private law rights and remedies, though may not be obliterated by any straight jacket formula, it would depend upon the factual matrix. The adjudication of the dispute arising out of a contract would, therefore, depend upon facts and circumstances in a given case. The distinction between public law remedy and private law field cannot be demarcated with precision. Each case will be examined on its facts and circumstances to find out the nature of the activity, scope and nature of the controversy. The distinction between public law and private law remedy has now become too thin and practicably obliterated.

In the sphere of contractual relations the State, its instrumentality, public authorities or those whose acts bear insignia of public element, action to public duty or obligation are enjoined to act in a manner i.e. fair, just and equitable, after taking objectively all the relevant options into consideration and in a manner that is reasonable, relevant and germane to effectuate the purpose for public good and in general public interest and it must not take any irrelevant or irrational factors into consideration or arbitrary in its decision. Duty to act fairly is part of fair procedure envisaged under Articles 14 and 21. Every activity of the public authority or those under public duty or obligation must be informed by reason and guided by the public interest.

In Kumari Shrilekha Vidyarthi v. State of U.P., (1991)1 SCC 212, this Court in paragraph 22 pointed out that the private parties are concerned only with their personal interest but the public authority are expected to act for public good and in public interest. The impact of every action is also on public interest. It imposes public law obligation and impress with that character, the contracts made by the State or its instrumentality. "It is a different matter that the scope of judicial review in respect of disputes falling within the domain of contractual obligations may be more limited and in doubtful cases the parties may be relegated to the adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes. However, to the extent, challenge is made on the ground of violation of Article 14 by alleging that the impugned act is arbitrary, unfair or unreasonable, the fact that the dispute also falls within the domain of contractual obligations would not relieve the State of its obligation to comply with the basic requirements of Article

14. To this extent, the obligation is of a public character invariably in every case irrespective of there being any other right or obligation in addition thereto. An additional contractual obligation cannot divest the claimant of the guarantee under Article 14 of nonarbitrariness at the hands of the State in any of its actions". In Food Corporation of India v. M/s Kamdhenu Cattle Feed Industries, (1993)1 SCC 71 at p. 76 in para 8, this Court held that "the mere reasonable or legitimate expectation of a citizen may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair

decision-making process". In Sterling Computers Ltd. v. M & N Publications Ltd.,(1993)1 SCC 445 at page 464 para 28, it was held that even in commercial contracts where there is a public element, it is necessary that relevant considerations are taken into account and the irrelevant consideration discarded. In Union of India v. M/s Graphic Industries Co., (1994)5 SCC 398, this Court held that even in contractual matters public authorities have to act fairly; and if they fail to do so approach under Article 226 would always be permissible because that would amount to violation of Article 14 of the Constitution. The ratio in General Assurance Society Ltd. v. Chandumull Jain, 1966(3) SCR 500, relied on by the appellants that tests laid therein to construe the terms of insurance contracts bears no relevance to determine the constitutional conscience of the appellant in fixing the terms and conditions in Table 58 and of their justness and fairness on the touch stone of public element. The arms of the High Court is not shackled with technical rules or of procedure. The actions of the State, its instrumentality, any public authority or person whose actions bear insignia of public law element or public character are amendable to judicial review and the validity of such an action would be tasted on the anvil of Article

14. While exercising the power under Article 226 the Court would be circumspect to adjudicate the disputes arising out of the contract depending on the facts and circumstances in a given case. The distinction between the public law remedy and private law field cannot be demarcated with precision. Each case has to be examined on its own facts and circumstances to find out the nature of the activity or scope and nature of the controversy. The distinction between public law and private law remedy is now narrowed down. The actions of the appellants bears public character with an imprint of public interest element in their offers with terms and conditions mentioned in the appropriate table inviting the public to enter into contract of life insurance. It is not a pure and simple private law dispute without any insignia of public element. Therefore, we have no hesitation to hold that the writ petition is maintainable to test the validity of the conditions laid in Table 58 term policy and the party need not be relegated to a civil action.

The contention of the appellants is that the offending clause is a valid classification. The salaried group of lives from the government, semi-government or reputed commercial institutions from a class with a view to identify the health conditions, the policy was applied to that class of lives. No mandamus would be issued to declare the classification as unconstitutional when it bears reasonable nexus to the object and there is intelligible differentia between the salaried lives and the rest. The High Court, therefore, was wrong in declaring the offending clause as arbitrary violating Article 14. It is true that the appellant is entitled to issue the policy applicable to a particular group or class of lives entitled to avail contract of insurance with the appellant but a class or a group does mean that the classification meets the demand of equality, fairness and justness. The doctrine of classification is only a subsidiary rule evolved by the courts to give practical contend to the doctrine of equality, over-emphasis on the doctrine of classification or anxious or sustained attempt to discover some basis for classification may gradually and imperceptly erode the profound potency of the glorious content of equality enshrined in Article 14 of the Constitution. The over- emphasis on classification would inevitably would result in substitution of the doctrine of classification to the doctrine of equality and the Preamble of the Constitution which is an integral part and scheme of the Constitution. Menaka Gandhi ratio extricated it from this moribund and put its elasticity for egalitarian path finder. Lest, the classification would deny equality to the larger segments of the

society. The classification based on employment in government, semi-government and reputed commercial firms has the insidious and inevitable effect of excluding lives in vast rural and urban areas engaged in unorganised or self- employed sectors to have life insurance offending Article 14 of the Constitution and socio-economic justice.

It is true that the appellants have to successfully operate the life insurance plan need to forecast mortality among the insured lives within a relatively narrow margin of error and are entitled to scrutinize the medical history of the lives to be covered under the appropriate policy including Table 58. It is seen that the term policy under Table 58 is the cheapest and accessible policy to the people and that the life of the policy is 5 to 7 years and the insurable lives are upto 50 years. Before acceptance of the policy the appellants also have the medical report submitted by the proposed policy holder at his expense. Though leave record of the government employees or those working in semi- government or reputed commercial firms has been introduced at a later stage, it may not by itself be a fool proof of the good health of the concerned proposed policy holders. It would appear that the appellants have adopted a soft and easy course. The class of the employees sought to be covered under policy would, by and large generally be those already insured under whole life policy or endowment policy. Extending the Table 58 policy again to 10% of such a class from total population may not always be more successful apart, extending the benefit to other people who can afford to take the policy and continue to pay the premium would ensure social security. It would percolate not only to the salaried class to whom other policies stood extended but also larger segments not only in urban areas and also in the rural areas would reap the benefit. Though assured employment sources of income may be easily tapable source, policy being volitious it may not be difficult for the people in other private sector, unorganised sector etc, or people in self-employed sector to take policy under Table

58. Sezhivan Committee itself had recommended and it would be obvious that pursuant thereto Table 58 also was introduced into the market to benefit those lives in rural areas or in the unorganised sectors. Confining the policy under Table 58 to already covered salaried sections would, therefore, be unreasonable and arbitrary and would deprive large segments in the rural areas or unorganised or self- employed would be unjust and irrational and unfair.

An unfair and untenable or irrational clause in a contract is also unjust amenable to judicial review. In common law a party was relieved from such contract. In Gillespie Brothers & Co. Ltd. v. Roy Bowles Transport Ltd., 1973 (1) Q.B. 400, Lord Denning for the first time construing the indemnity clause in a contract stated that the court to permit party to enforce his unreasonable clause, even when it is so unreasonable, or applied so unreasoably, would be unconscionable, it was stated :

> "When it gets to this point, I would say, as I said many years ago.
>
> There is the vigilance of the common law which while allowing freedom of contract, watches to see that it is not abused. It will not allow a party to exempt himself from his liability at common law when it would be quite unconscionable for him to do so". In Lloyds Bank Ltd. v. Bundy, 1973(3) All E.R. 757, inequality of the bargaining power was enunciated by Lord Denning M.R. and held that one who enters into a

contract on terms which are very unfair or transfers property for a consideration which is grossly inadequate, when his bargaining power is grievously impaired by reason of his own needs or desires, or by his own ignorance or infirmity..... the one who stipulates for an unfair advantage may be moved solely by his own self- interest, unconscious of the distress he is bringing to the other..... One who is in extreme need may knowingly consent to a most improvident bargain, solely to relieve the strains in which he finds himself. It would not be meant to suggest that every transaction is saved by independent advice. But the absence of it may be fatal. In A. Schroeder Music Publishing Co. Ltd. V. Macaulay (Formerly Instone), 1974(1) W..L.R. 1308, House of Lords considered and held that a party to a contract would be relieved from the terms of the contract.

In the course of his speech learned Lord Deplock outlined the theory of unreasonableness or unfaairness of the bargain to relieve a party from the contract when the relative bargaining power of the parties was not equal. In that case the song writer had contracted with the publisher the terms more onerous to him and favourable to the publisher. The song writer was relieved from the bargain of the contract on the theory of restraint trade opposed to public policy. The distinction was made even in respect of standard forms of contract emphasising that when the parties in a commercial transaction having equal bargaining power have adopted the standard form of contract, it was intended to be binding on the parties. The court would not relieve the party from such a contract but the contracts are between the parties to it, or approved by any organisation representing the interests of the weaker party, they have been directed by that party whose bargaining power, either exercised alone or in conjunction with others providing similar goods or services, enables him to say: "If you want these goods or services at all, these are the only terms on which they are obtainable. Take it or leave it." In Levison and Anr. v. Steam Carpet Co. Ltd., 1978 (1) Q.B. 69, Lord Denning M.R. reiterated the unreasonable clause in the contract would be applied to the standard from of contract where there was inequality of bargaining power. In Photo Production Ltd. v. Securicor Transport Ltd, 1980 A.C. 827, considering the Unfair Contract Terms Act, 1977, Lord Wilberforce during the course of his speech emphasised the unequal bargaining power as an invalidating factor upheld the contract in that case since it was commercial bargain between two competent party to enter into a contract on equal bargaining power. Lord Deplock also reiterated his earlier view. Lord Scarman agreeing with Lord Wilberforce described that a commercial dispute between the parties well able to look after themselves, in such a situation what the parties have agreed expressly or impliedly is what matters; and the duty of the courts is to construe their contract according to their tenor. It was held that in that case that parties have equal bargaining power and intervention of the court to relieve the party from the contract was not called for. The Civil code of Germany in s.138(2) thereof release a person from the contract when the party has no equal bargaining power.

In Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguly, 1986 (2) SCR 278 at 369-70, Madan, J. speaking for a bench of two judges considered the development of law, held that an instrumentality of the State cannot impose unconstitutional conditions in statutory rules vis-a-vis its employee to terminate the service of a permanent employee in terms of the rules and held thus:

"Should then our courts not advance with the times? Should they still continue to cling to outmoded concepts and outworn ideologies? Should we not adjust our thinking caps to match the fashion of the day? Should all jurisprudential development pass us by, leaving us floundering in the sloughs of nineteenth-century theories? Should the strong be permitted to push the weak to the wall? Should they be allowed to ride roughshod over the weak? Should the courts sit back and watch supinely while the strong trample under 5 foot the rights of the weak? We have a Constitution for our country. Our judges are bound by their oath to "uphold the Constitution and the laws". The Constitution was enacted to secure to all the citizens of this country social and economic justice. Article 14 of the Constitution guarantees to all persons equality before the law and the equal protection of the laws. The principle deducible from the above discussions on this part of the case is in consonance with right and reason, intended to secure social and economic justice and conforms to the mandate of the great equality clause in article 14. This principle is that the courts will not enforce and will, when called upon to do so, strike an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can visualize the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the speaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. This principle, however, will not apply where the bargaining power of contracting parties is equal or almost equal. This principle may not apply where both parties are businessmen and the contract is a commercial transaction. In today's complex world of giant corporations with their vast infra-structural organizations and with the State through its instrumentalities and agencies entering into almost every branch of industry and commerce, there can be myriad situations which result in unfair and unreasonable bargains between parties possessing wholly disproportionate and unequal bargaining power. These cases can neither be enumerated nor fully illustrated. The court must judge each case on its own facts and circumstances."

It was held that rule giving power to terminate the services of the permanent employee with one month's notice or salary in lieu thereof was unconstitutional. The above ratio was upheld, per majority, in D.T.C. v. D.T.C. Mazdoor congress, 1990 (1) Supp. SCR 142, one of us K.R.S., J. considered similar contract of service whether consistent with the Constitution. Approving the statement of law by, Chitti on Contract, 25th Edn., Vol.I and is Anson's Law of Contract, p.6-7, held that the freedom of contract must be founded on equality of bargaining power between contracting parties. Though ad idem is assumed, the standard form contract is the rule. The consent or consensus ad idem of a weaker party be totally absent. He must assent to it in terms of the dotted line contract or to forgo the goods or services. The freedom of equal bargaining power is largely an illusion. It was also further held that in paragraph 22 at p.308 that in today's complex world of giant corporations with their vast infrastructural organisations and with the State, through its instrumentalities and agencies has been entering into almost every branch of industry and commerce and field of service. There can be myriad situations which result in unfair and unreasonable bargain between parties possess wholly disproportionate and unequal bargaining power. The court must judge each case on its own facts and circumstances. While approving the ratio in Brojonath's case per majority, it was held that Regulation 9 was unconstitutional.

In USA, the standard forms of contracts are called 'Contracts of Adhesion". Assistant Professor Todd D. Rakoff of Harvard University in his Contracts of Adhesion 1982-83, 95 Harvard Law Review p.1174 surveyed the development of the standard form of contracts. The social phenomenon and the legal effect of the standard form of contracts is stated at page 1191 that if the presumption of enforceability is retained, it threatens to continue generate undesirable results, thus :

> "This expansion is made manifest by the explanatory comment, which states that reason to believe that the adherent would not knowingly have singed may be inferred from the fact that the term is bizarre or oppressive, from the fact that it eviscerates the non-standard terms explicitly agreed to or from the fact that it eliminates the dominant purpose of the transaction."

At page 1193, it was further stated that :

> "In the last decade or two, courts analyzing contracts of adhesion have applied the categories of public interest and superior bargaining power to a substantially broader set of situations than would fit within the analogous doctrines of ordinary contract law concerning business affected with a public interest and transactions tainted by economic duress.
>
> At page 1215, he further stated:
>
> "The problems in Leff's and Slawson's analyses are fundamental, and indeed would seem to inhere in any attempt to justify from a public law perspective the proposition that form terms have some initial, yet often defensible, validity. The public law model focuses on the aggregate ordering of standardized transaction; but once the existence of a "public" issue can be found in the mere presence of a mass transaction, there

> appears to be no reason to let a private party stipulate any form term. Efforts to overcome this problem by some notion of delegated authority of delegated authority are forced. The supposed delegation is not based on any actual event, and considering would run counter to basic public law notions : legitimate governmental bodies should be disinterested in fact and should also be subject to role-defining rules and rituals that encourage consideration of the public interest."

In Chapter IV, "Toward the Development of New Doctrine", at page 1249 he states that there exists :

> "Gross inequality of bargaining power" or the like (in the usual sense of a wide disparity of economic resources) ought not to be a prerequisite to finding a contract of adhesion. Put simply, the practice of standard form contracting is not based on the exercise of pre-existing market power."

All that is necessary is whether the presence of the correlative social role of the drafting party and adherent is available in equal terms is the test. The doctrine of unequal bargaining power, the doctrine of unconscionability "unjust in some sense", etc., were considered and formulated doctrines for applying the amended 211 Restatement (second) of contracts.

In his "The Bargain Principle And Its Limits" published in (1982) 95 Har. L.R. page 441, Prof. M.A. Eisenberg quotes Prof. Arthur Leff from the latter's article "Unconscionability of the Code" published in 1967) 115 U.Pen. Law Review 485 at 494 stating that:

> "The purpose of contract law is not simply to create conditions of liability, but also to respond to the social process of promising."

He stated that since the law does not enforce a promise as such, a legal analysis of bargain of promise must start with a question whether such promise is enforceable at all. He further quoted Aurthor Leff analysing the distinction between procedural and substantive unconscionability. Procedural unconscionability is fault on unfairness in the bargaining process and substantive unconscionability is fault or unfairness in the bargaining outcome-that is, unfairness of terms. Quoting S.208 of the Restatement (second) of Contracts, he stated at page 752 that :

> "Over the last fifteen years, however, there have been strong indications that the principle of unconscionability authorises a review of elements well beyond unfair surprise, including, in appropriate cases, fairness of terms."

He further states that :

> "Theoretically it is possible for a contract to be oppressive taken as a whole, even though there is no weakness in the bargaining process."

Professor Eisenberg propounds the basic test thus:

> "Whether the clause involved are so one-sided as to be unconscionable under the circumstances existing at the time of making of the contract - The principle is one of the prevention of oppression and unfair surprise - and not of distrubance of allocation of the risks because of superior bargaining power."

He further stated at page 799 that :

> "Over the past thirty years a new paradigmatic principle -
>
> unconscionability - has emerged. This principle expalins and justifies the limits that should be placed upon the bargain principle on the basis of the equality of a bargain."

At page 800, he stated that :

> "The paradigma (unconscionability) must be articulated and extended through the development of more specific norms to guide the resolution of specific cases, provide affirmative relief to exploited parties, and channel the discretion of administrators and legislators. In accomplishing this task, it now appears that the distinction between procedural and substantive unconscionability, which may have served a useful purpose at an earlier stage, does not provide much help once the relatively obvious norms of unconscionability, such as unfair surprise, have been articulated. Development of more specific norms must, instead, proceed by the identification of classes of cases in which neither fairness nor efficiency supports the application of the bargain principle - an effort that can be guided in part by the reconstruction and extension of existing contract doctrines."

He concluded that :

> "Increase in the complexity of some areas of law may be desirable, if it accurately mirrors the increased complexity of social and economic life. Placing limits on the bargain principle involves costs of administration. Failure to place such limits, however, involves still greater costs to the system of justice."

M.P. Ellinghaus, Senior Law Lecturer of University of Melbourne in his "In defence of Unconscionability"

> (1968_1969) 78 Yale Law Journal page 757 at 766 stats that -
>
> "The relevance of the respective bargaining positions of the parties to the issue of unconscionability is beyond dispute, although to ask the draftsman for a comprehensive statement of precise nature and scope of this relevance."

He stated further at page 767 that bargains "Struck between seeming equals which, on closer investigation, turn out lopsided because of particular circumstances of the case."

He further expressed the view that the test of a reasonable or average man is to be applied in preventing exploitation of the under-privileged (vide pages 768 to

774). He ends up his discussion at page 814 that the doctrine of "unconscionability is a residual category of shifting content and expansible nature."

In v. Raghunadha Rao vs. State of A.P. and others, 1988 (1) Andhra law Times 461, the Andhra pradesh High Court considered the constitutionality of Clauses 11, 29, 59, 62(b) and 73, the A.P. Standard Specifications on the anvil of Articles 14, 19(1) (g), the dotted lines contract entered by the petitioner therein under Article 298 and declared clause 73 an arbitration clause of reference to officers that dealt with the contract as arbitrary and ultravirus of the Constitution.

It is, therefore, the settled law that if a contract or a clause in a contract is found unreasonable or unfair or irrational one must look to the relative bargaining power of the contracting parties. In dotted line contracts there would be no occasion for a weaker party to bargain or to assume to have equal bargaining power. He has either to accept or leave the services or goods in terms of the dotted line contract. His option would be either to accept the unreasonable or unfair terms or forego the service forever. With a view to have the services of the goods, the party enters into a contract with unreasonable or unfair terms contained therein and he would be left with no option but to sign the contract.

In National Textiles Workers' Union etc. V. P.R. Ramkrishnan, 1983 (1) SCR 922, the constitution bench per majority held that the socio-economic objections set down in the directive principles of the Constitution should guide and shape the new corporate philosophy. The management of the private company should show profound concern for the workers. The socio-economic justice will inform all the institutions of textiles in the nation to promote fraternity and dignity of the individuals. In Workmen of Meenakshi Mills Ltd v. Meenakshi Mills Ltd., 1992 (3) SCC, 336, the right of the management to declare lay off under s.25-N of the Industrial Disputes Act, 1984 under Article 19(1)(g) of the Constitution are subject to the mandates containing Arts.38, 39A, 41 and 43. Therefore, right under Article 19(1)(g) was held to be subject to the directive principles. In Consumer Education & Research Centre v. Union of India, JT 1995 (1) SC 637, the right of the management in Asbestos industry to carry on its business is subject to their obligation to protect the health of the workmen and to preserve pollution free atmosphere and to provide safety and healthy conditions of the workmen.

The authorities or a private persons or industry are bound by the directives contained in part IV, Part III and the Preamble of the Constitution. It would thus be clear that the right to carry on trade is subject to the directives containing the Constitution the Universal Declaration of Human Rights, European Convention of Social Economic and Cultural right and the Convention on Right to development for socio-economic justice. Social security is a facet of socio-economic justice to the people and a means to livelihood.

Since medical report is admittedly a condition precedent for acceptance of the proposal, it would be open to the appellants to have the medical report from its recognised or accredited doctors. On its

satisfaction of the health condition of the proposed life to be insured, it would be open to the appellants to accept or reject, as the case may be, of the proposal. The question then is whether a clause in the contract is severable by an order of the court. It is settled law that the arms of the court are long enough to reach injustice wherever it is found and the court would mould the relief appropriately to meet the peculiar and complicated requirements of the country vide Dwarkanath v. Income Tax Officer, Kanpur, 1965 (3) SCR 536 at 540, Andi Mukta Trust v. V.R. Rudani, 1989(2) SCC 691 at 699-700, Unni Krishnan v. State of A.P., 1993 (1) SCC 645 at 693-97 and Hochitief Gammon v. State of Orissa, 1975 (2) SCC 649 at

656. In M.J. Sivani and others v. State of Karnataka, S.L.P. No.11012/1991 etc. dated April 17, 1995, it was contended that since the High Court held that a part of the notification was inapplicable to the licence for Video games, it was not severable from the rest of the notification and the whole notification must be declared to be ultra vires or inapplicable to video games. Rejecting the contention of the licensees on that ground, this Court held that the entire order did not become invalid due to inapplicability of a particular provision or a clause in the general order unless the invalid part is inextricably interconnected with the valid part. The court would be entitled to consider whether the rule as a whole or in part is valid or becomes invalid or inapplicable. On finding that to the extent of the rule was not relevant or invalid, the court is entitled to set aside or direct to disregard the invalid or inapplicable part leaving the rest intact and operative. In that case Para 3(2) of the notification for licencing public places or the places of public resort or amusement for conducting video in gaming house though was held to be inapplicable to video games the rest of the notification was declared valid.

In Praga Tools Corpn. v. C.A. Imanual, 1969 (1) SCC 585 at 589, this Court held that mandamus may be issued to enforce duties and positive obligation of a public nature even though the persons or the authorities are not public officials or authorities. The same view was laid in Anadi Mukta v. V.R. Rudani, (1989)2 SCC 691, and Unnikrishnan v. State of A.P., (1993)1 SCC 645. In Comptroller & Auditor General of India v. K.S. Jagannathan, 1986 (2) SCR 17 at 36- 40, this Court held that a mandamus would be issued to implement directive principles when Government have adopted them. They are of public obligations to give preferential treatment implementing the rule of reservation under Arts.14 and 16(1) and (4) of the Constitution.

It is seen that the respondents are not seeking any direction in their favour to call upon the appellants to enter into a contractual relations of term policy in Table

58. Their privilege and legitimate expectation to seek acceptance of policy of life insurance are their freedom. Instead they sought for a declaration that the policy confining to only salaried class from government, semi- government or reputed commercial firms is discriminatory offending Article 14. Denial thereof to larger segments violates their constitutional rights. We are of the considered view that they are right. They are not seeking any mandamus to direct the appellants to enter into contract of life insurance with them. The rest of the conditions age etc are valid and do not call for interference. The offending clause extending the benefit only to the salaried class in Government, semi-Government and reputed firms is unconstitutional. Subject to compliance with other terms and conditions, the appellant is free to enforce Table 58 policy with all eligible lives. The declaration

given, therefore, is perfectly valid. The offending part is severable from the rest of the conditions.

We have, therefore, no hesitation to hold that in issuing a general life insurance policy of any type, public element is inherent in prescription of terms and conditions therein. The appellants or any person or authority in the field of insurance owe a public duty to evolve their policies subject to such reasonable, just and fair terms and conditions accessible to all the segments of the society for insuring the lives of eligible persons. The eligibility conditions must be conformable to the Preamble, fundamental rights and the directive principles of the Constitution. The term policy under Table 58 is declared to be accessible and beneficial to the large segments of the Indian society. The rates of premium must also be reasonable and accessible. Accordingly, we hold that the declaration given by the High Court is not vitiated by any manifest error of law warranting interference. It may be made clear that with a view to make the policy viable and easily available to the general public, it may be open to the appellants to revise the premium in the light of the law declared in this judgment but it must not be arbitrary, unjust, excessive and oppressive. Both the appeals are accordingly dismissed but in the circumstances parties are directed to bear their own costs.