United India Insurance Co. Ltd vs Manubhai Dharmasinhbhai Gajera & Ors on 16 May, 2008

Equivalent citations: AIR 2009 SUPREME COURT 446, 2008 AIR SCW 7532

Bench: V.S. Sirpurkar, S.B. Sinha

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 4113-4115 OF 2008
(Arising out of SLP (C) No. 9876-9878 of 2004)

United India Insurance Company Limited .... Appellant

Versus

Manubhai Dharmasinhbhai Gajera & Ors. .... Respondents

WITH

CIVIL APPEAL NOS. 4116 OF 2008
(Arising out of SLP (C) No. 10205 of 2004)

New India Assurance Company Limited .... Appellant

Versus

Consumer Education and Research Society & Ors. .... Respondents

AND

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CIVIL APPEAL NOS. 3633 OF 2008
(Arising out of SLP (C) No. 1534 of 2006)

United India Insurance Company Limited .... Appellant

Versus

Mukat Lal Duggal & Anr. .... Respondents

JUDGMENT

S,B, SINHA, J.

1. Leave granted in all the matters.

INTRODUCTION

2. Whether renewal of a mediclaim policy on payment of the amount of premium would be automatic, is the question involved herein. BACKGROUND FACTS

3. The Parliament enacted the General Insurance Business (Nationalisation) Act 1972 (for short 1972 Act) to provide for the acquisition and transfer of shares of Insurance Companies and undertakings of other insurers in order to serve better the need of the economy by securing the development of general insurance business in the best interest of the community and to ensure that the operation of the economic system does not result in the concentration of wealth to the common detriment, for the regulation and control of such business and for other matters connected therewith or incidental thereto.

4. Appellants are the two subsidiary insurance companies of General Insurance Corporation of India, carrying on the insurance business in terms of the 1972 Act. The General Insurance Companies had a monopoly over the business of general insurance whereas Life Insurance Corporation of India constituted under the Life Insurance Corporation Act, 1956 enjoyed the monopoly in respect of the business of life insurance.

5. The business activities of the insurance companies are governed by the Insurance Act, 1938 (for short the 1938 Act). In terms of the provisions of the said Act, an authority known as Insurance Regulatory and Development Authority (the Authority) was constituted by the Central Government in exercise of its power conferred upon it by clause 2(c) of Section 114 of the 1938 Act.

The Parliament also enacted the Insurance Regulatory and Development Authority Act, 1999. By the 1999 Act the Parliament inserted Section 24A in the 1972 Act directing cessation of the exclusive privilege of the Corporation and the acquiring companies in relation thereto. In exercise of the powers conferred by clause 2(c) of sub-section (2) of Section 114A of the 1938 Act read with sections 14 and 26 of the 1999 Act, the Authority made Regulations known as Insurance Regulatory and Development Authority (Protection of Policyholders' Interest) Regulations, 2002 (for short the

2002 Regulations). FACTUAL MATRIX

6. We may at the outset, briefly notice the facts involved in one of the matters Facts of Civil Appeal @ SLP (C) 1534/2006

7. Respondents No.1 obtained the mediclaim policy from the appellant in April, 1995 and renewed annually upon payment of the requisite amount of premium. After over three years namely, in July, 1998, Respondent No.1 suffered a coronary disease and was admitted in the Escorts Heart Institute and Research Centre where he underwent `Angioplasty'. A claim made by him was paid by the appellant. In January, 2001 he was once again admitted to the Escorts Heart Institute and Research Centre and once again underwent `Angioplasty'. The amount claimed was duly reimbursed by the appellant to the respondent. In May, 2002 he was hospitalized in Holy Family Hospital for a minor operation and the medical expenses claimed to that effect were reimbursed by the appellant. In April, 2002 he underwent a bye-pass surgery. Respondent No.1 submitted his claim which, however, was not paid.

8. On 3rd April, 2003, the respondent approached the appellant for renewal of the policy and issued a cheque towards payment of the premium for the purpose of renewal of the policy w.e.f. 6th April, 2003, which was refused on the purported ground of `high claim ratio'. After serving notice, the said respondents filed a writ petition which was allowed by the learned Single Judge of the Delhi High Court by his order dated 7th January, 2005 directing the appellant to renew his mediclaim insurance policy.

9. An intra court appeal filed by the appellant was dismissed by reason of the impugned judgment and order dated 15th July, 2005.

We would notice the factual matrix involved in other matters at a later stage.

PROCEEDINGS

10. Respondents in each of these matters entered into their respective contracts of insurance with the appellant company. They were not renewed. Contending that the appellant and other subsidiaries of the Corporation being `State' within the meaning of Article 12 of the Constitution of India, they must be fair and reasonable and keeping in view the principles enunciated in the Directive Principle of State policy as contained in Chapter IV of the Constitution of India, writ petitions were filed before the Gujarat High Court.

11. We need not notice the other details of the said proceedings save and except that the conclusions recorded by the Division Bench of the said Gujarat High Court were as under :-

> "39. For the foregoing reasons, we conclude as under :
>
> [1] The insured has an option under the existing mediclaim insurance policy to continue the cover by payment of renewal premium in time in respect of the sum

insured.

[2] In case of renewal without break in the period, the mediclaim insurance policy will be renewed without excluding any disease already covered under the existing policy which may have been contracted during the period of the expiring policy. Renewal of mediclaim insurance policy cannot be refused on the ground that the insured had contracted disease during the period of the expiring policy so far as the basic sum insured under the existing policy is concerned.

[3] In cases where the insured seeks an enhancement of the amount of sum insured at the time of renewal, the option to renew will not extend to the amount of such enhancement and renewal in respect thereof will depend upon the mutual consent of the contracting parties.

[4] Renewal of a medical claim insurance policy cannot be refused, despite timely payment of the renewal premium, on the ground that continuance of the cover would become more onerous or burdensome for the insurer due to the insured contracting a covered disease during the period of the existing policy.

[5] The insurer may refuse renewal, even in cases where the insured has an option to renew the policy on payment of the renewal premium in time, on the grounds, such as, misrepresentation, fraud or non-disclosure of material facts that existed at the inception of the contract and would have vitiated the insurance of the cover at its inception or non-fulfillment of obligations on the part of the insured or any other ground on which the performance of the promise under the contract is dispensed with or excused under the provisions of the Indian Contract Act or any other law or when the insurer has stopped doing business.

[6] The government insurance companies continue to be "State" within the meaning of Article 12 of the Constitution notwithstanding the entry of private companies in the field of general insurance, ending their monopoly by virtue of insertion of Section 24A in the Act of 1972, and they cannot arbitrarily cancel or refuse to renew an existing mediclaim policy."

It was directed :

"40. For the foregoing reasons, we find ourselves in agreement with the reasoning and conclusions of the learned Single Judge in the impugned order from which the Letters Patent Appeals No.1028 of 2003, No.1003 of 2003 and 1004 of 2003 arise, and there being no warrant for interference with the same, all the three appeals are, therefore, dismissed with costs.

40.1 For the foregoing reasons, since the grounds given for refusing to renew the mediclaim insurance policies of petitioners Nos. 2 and 3 are arbitrary and also

against the contractual terms, the Special Civil Application No.9425 of 2002 is partly allowed, by holding that the refusal of renewal of the mediclaim was arbitrary and illegal, and it is directed that the respondents insurance companies will renew their respective policies from the date on which they expired, on payment of the renewal premium payable by them under the Scheme, without excluding the diseases that may have been contracted by them during the period of their existing policies for the concerned year. Rule is made absolute accordingly with costs."

CONTENTIONS

12. Mr. G.E. Vahanvati, learned Solicitor General of India, appearing on behalf of the appellant, submits :-

1) The High Court committed a serious error in holding that the contract of insurance is no longer in the realm of contract.

2) The insurance companies must function having regard to `commercial expedience' consideration in view of Section 24A of the Act.

3) Assuming that the appellant is a `State' within the meaning of Article 12 of the Constitution of India, the same by itself would not mean that it cannot enter into a contract with the policy holder on its own terms, particularly when such terms have been approved by the Authority.

13. Mr. Sameer Parekh, and Mr. Sawhney, learned counsel, appearing on behalf of the respondents, on the other hand, contends :-

1) The insurance companies having regard to their obligations not only in terms of the constitutional provisions but also the provisions of the 1938 Act, 1972 Act and 1999 Act; the Regulations framed thereunder and the guidelines issued, are bound to renew mediclaim policies from time to time on the same terms and conditions.

2) Appellants, in view of the decision of this Court, in Biman K. Bose v. United India Insurance Co. Ltd. [(2001) 6 SCC 477] are bound to act fairly and reasonably in the matter of renewal of its policies and wrongful refusal on their part must be to be an act of mischief resorted to cause harm to the insured which must be remedied.

3) Assuming that the insurance companies must address their business concern vis-a-vis the competition which they face from the other companies, the same does not mean that, despite being the `State' within the meaning of Article 12 of the Constitution of India, they would refuse to carry out their constitutional and statutory obligations, particularly in view of the fact that the insurance business was acquired by the 1972 Act to subserve the public purpose.

4) Renewal of insurance policy, for all intent and purport, should be held to be automatic, subject of course to tender of the amount of premium of insurance in time inasmuch as in terms of the guidelines issued by the Authority, the policy is to be a continuous one.

5) The right to cancel the policy and refusal to renew the same must be held to be confined only to the exclusionary clauses contained in the policy.

6) The functions of the appellant being regulated by statutory guidelines and circulars issued from time to time, any departure therefrom must be held to be wholly unfair and mala fide.

7) The insurance companies being `State' are not only bound to comply with the constitutional scheme contained in the preamble of the Constitution of India but also the provisions of Section 10A and other provisions of the Act.

8) In any event the policies must be construed in favour of the insured in view of the maxim - contra proferentum and uberrimae fidei.

STATUTORY PROVISIONS, GUIDELINES ETC.

14. Sections 10-A, 19(2) and 19(3) of 1972 Act, which are relevant for our purpose, read as under :-

"10-A. Transfer to Central Government of shares vested in Corporation.- All the shares in the capital of the acquiring companies, being--

(a) the National Insurance Company Limited;

(b) the New India Assurance Company Limited;

(c) the Oriental Insurance Company Limited;

(d) the United India Insurance Company Limited, and vested in the Corporation before the commencement of the General Insurance Business (Nationalisation) Amendment Act, 2002 shall, on such commencement, stand transferred to the Central Government.

Section 19 - Functions of acquiring companies (1) ....

(2) Each acquiring company shall so function under this Act as to secure that general insurance business is developed to the best advantage of the community.

(3) In the discharge of any of its functions, each acquiring company shall act so far as may be on business principles and where any directions have been issued by the Central Government or the Insurance Regulatory and Development Authority established under sub-section (1) of section 3 of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999) shall be guided by such directions.

(4) ...."

15. `Prospects' has been defined in the Regulation 2(1)(e) of the 2002 Regulations to mean a document issued by the insurer or in its behalf to the prospective buyers of insurance, and should contain such particulars as are mentioned in Rule 11 of Insurance Rules, 1939 and includes a brochure or leaflet serving the purpose. Such a document should also specify the type and character of riders on the main product indicating the nature of benefits flowing therefrom.

16. Regulation 6 provides for the matters to be stated in the insurance policy.

Regulation 7(1)(n) of 2002 Regulations read thus :-

> "7. Matters to be stated In general insurance policy.--
>
> (1) A general insurance policy shall clearly state:
>
> (n) provision for cancellation of the policy on grounds of misrepresentation, fraud, non-disclosure of material facts or non-cooperation of the insured;"

Regulation 11(4) reads as under :-

> 11. General.-

(4) Any breaches of the obligations cast on an insurer or insurance agent or insurance intermediary in terms of these regulations may enable the Authority to initiate action against each or all of them, jointly or severally, under the Act and/or the insurance Regulatory and Development Authority Act, 1999."

17. Indisputably the Authority also issued guidelines on "File and Use" requirements for general insurance products; clause 3 whereof relate to IRDA requirements for consideration and review of products meaning thereby the insurance policies. The requirements specified by the Authority are:-

> "(i) Design and rating of products must always be on sound and prudent underwriting basis. The contingencies insured under the product should be clear and provide transparent cover which is of value to the insured.
>
> (ii) All literature relating to the product should be in simple language and easily understandable to the public at large. As far as possible, a similar sequence of

presentation may be followed. All technical terms should be clarified in simple language for the benefit of the insured.

(iii) The product should be a genuine insurance product of an insurable risk with a real risk transfer.

"Alternate risk transfer" or "financial guarantee"

business in any form will not be accepted.

(iv) The insurance product should comply with all the requirements of the Protection of Policyholders' Interests Regulations 2002.

(v) Insurers should use as far as possible, similar wordings for describing the same cover or the same requirement across all their products. For example clauses on renewal of insurance, basis of insurance, due diligence, cancellation, arbitration etc., should have similar wordings across all products.

(vi) The pricing of products should be based on appropriate data and with technical justification.

(vii) The terms and conditions of cover shall be fair between the insurer and the insured.

(viii) Margins built into rates shall be consistent with the experience of the insurer in respect of commission, management expenses, contingencies and profit.

(ix) Insurer should take necessary steps in ensuring that competition will not lead to unprincipled rate cutting and other improper underwriting practices."

18. Guidelines 7 and 25 of the Guidelines issued by the IRDA on "File and Use:" requirements for general insurance products read as under :-

"7. Till the tariffs are in force, it will not be necessary for any insurer to file information on any product that complies with tariff rates, terms and conditions. In respect of products that package insurance covers that are governed by tariffs, with those that are not, the insurer should file such products and confirm that the section governed by tariffs complies with tariff rates, terms and conditions for the portion that is governed by tariffs, as long as tariffs remain in force.

25. The documents to be filed in respect of every new product or revision of an existing product in respect of products classified under categories (i) and (ii) of para 19 above shall be as follows:

i) Statement filing particulars of the product in Form A;

ii) Certificate by the Chief Executive Officer in Form B;

iii) Certificate by Appointed Actuary in Form C;

iv) Certificate by the company's lawyer in Form D;

v) Copies of Prospectus and other sales literature relating to the product;

vi) Copy of Proposal Form;

vii) Copy of Policy Form and copies of the standard endorsements to be used with the policy; and

viii) Copy of the Underwriter's Manual in respect of the product along with the list of declined risks, if any.

Important: While issuing the certificates under paras (ii), (iii) and (iv) above, persons responsible for issuing such certificates should carefully go through all the required aspects and apply due diligence. Serious view may be taken in case of any deficiencies."

19. Clauses 16 to 18 provide for the responsibility for compliance.

20. For the purpose of obtaining approval of the terms and conditions of the policy, the insurance companies are required to file the following documents before the authority in respect of a new product or any revision of an existing product, which includes a certificate by the company's lawyer as specified in Form D appended thereto.

21. The National Insurance Company being one of the subsidiary companies of the General Insurance Company issued a letter dated 18th December, 1998, inter alia, in the following terms :-

"Different situations which may arise during the renewal of insurance and how to deal with them are summarized below :-

(1) In case of renewal without a break in the period the policy will be renewed including the disease contracted during the expiring policy period.

(2) If there is a break, the fresh policy must specifically exclude the disease contracted during the expiring policy period and during the break period and it should be mentioned in the schedule of the Policy specifically (3) If an insured is already covered under an insurance policy, say, a group mediclaim, and wants to take an individual policy the same may be issued upto the identical sum insured on the same terms and conditions if there is no break.

(4) If a person is insured with another subsidiary and wishes to renew with us, the same should be considered only after ascertaining the claim status and exclusion under the previous policy.

In case the claim status revealed is adverse or there is a continuing illness or an impending illness, such cases should be advised to continue with the same subsidiary and should not be accepted."

ANALYSIS OF THE HIGH COURT JUDGMENT :

22. The High Court has considered the matter under the following broad headings :-

a) The insurer have a public duty having regard to Article 47 of the Constitution of India.

b) In view of the regulatory framework operating in the field it has a limited power to contract.

c) The terms and conditions of the insurance policies provide for an automatic renewal, the pre-condition whereof is only timely payment of premium.

d) The construction of a contract of insurance must be made having regard to the nature and principles underpinning a contract of health insurance.

e) For the purpose of effective implementation of a contract of insurance as regards mediclaim policy, business considerations are wholly immaterial.

f) Different kinds of policies would attract different principles.

23. There is no escape from the fact that the appellant is a `State' within the meaning of Article 12 of the Constitution. It has been created under the 1972 Act. The said Act, as the preamble shows, was enacted for achieving certain purposes, economic benefit of the people and/or group of people, being one of it. At the point of time when the 1972 Act was enacted the insurance companies enjoyed a monopoly status. But would it mean that only because it ceases to enjoy the same by itself is sufficient to hold that it is not required to follow the constitutional or statutory norms?

24. If it is a `State' its action must be fair and reasonable. It has been so held in a catena of decisions of the Court as for example Peacock Plywood Plywood (P) Ltd. v. Oriental Insurance Co. Ltd. [(2006) 12 SCC 673 paragraphs 57 at page 691] and Life Insurance Corporation of India v. Consumer Education and Research Centre [(1995) 5 SCC 482].

25. There cannot be any doubt that Directive Principles of State policy by themselves per se are not enforceable in a court of law. [See Kesavananda Bharati v. State of Kerala [(1974) 3 SCC 225].

26. We would assume that it is one thing to say that the State is to make all endeavours to improve the public health but the same by itself would not mean that a contract of insurance governed by statute must receive construction in terms of the said provision or otherwise, the endeavour of the State should have been to direct compulsory insurance for all its citizens. Improvement of public health has been held to mean an obligation on the part of the State to put forth its policy to ecological balance and hygienic environment, the later being an indirect facet of the right to healthy life. {Virinder Gaur and others v. State of Haryana and others [(1995) 2 SCC 577]}. {[See also Kirloskar Brothers Ltds. v. Employees' Stte Insurance Corporation [(1996) 2 SCC 682]}.

27. Even otherwise the term "health" may be given a wider meaning in the context of insurance. It may mean sound health. Collins English Dictionary defines "health" as :-

> "Health: the state of being bodily and mentally vigorous and free from disease, the general condition of body and mind: in poor health, the condition of any unit, society, etc.: the economic health of a nation, a toast to a person, wishing him or her good health, happiness, etc., (modifier) of or relating to food or other goods reputed to be beneficial to the health:
>
> health food; a health store., (modifier) of or relating to health, esp. to the administration of health: a health committee; health resort; health service., an exclamation wishing someone good health as part of a toast (in the phrases your health, good health, etc.)."

28. The functions of the insurance companies are governed by statute. A contract of insurance, therefore, must subserve the statutory provisions. It must indisputably be construed having regard to the larger public policy and public interest guiding nationalization of the insurance companies.

29. Insurance Sector is regulated. The provisions of the Insurance Act are applicable to all insurance companies irrespective of the fact as to whether they are in public sector or private sector. When a business is regulated, all concerned would be governed thereby.

30. It is one thing to say that the terms and conditions of a contract are statutory in nature but is another thing to say that the statute governs or controls the business itself. It is the latter which is applicable to the fact of the case.

Two things are apparent. One, the Central Government has come out with a new economic policy. The monopoly status has been taken away from the General Insurance Corporation of India and its subsidiaries. The insurance companies are required to compete with others in the field, but the same may not necessarily mean that despite the statutory interdicts the public sectors insurance companies must have a level playing field with the private insurance companies.

31. We have, despite the new economic policy of the Central, no option but to proceed on the assumption that the public sector insurance companies being a State have a different role to play. It is not to say that as a matter of policy statutory or otherwise the insurance companies are bound to

regulate all contracts of insurance having the statement of Directive Principles in mind but there cannot be any doubt whatsoever that fairness or reasonableness on the part of the insurance companies must appear in all of its dealings.

The Authority wants the insurance companies to offer a fair deal and all the terms and conditions of their offer must be transparent. There should not be any hidden agenda. Even they should not take recourse to `ticketing contract'.

When, however, the terms of the new product or revised product require the approval of the Authority, prima facie the same would mean that they are fair and reasonable. The action on the part of the Authority is not in question. Regulations, guidelines and circulars are binding on the insurance companies. {See State of Kerala & Ors. v. Kurian Abraham (P) Ltd. & Anr. [(2008) 3 S.C.C. 582]} Different principles, however, have been laid down for dealing with different kinds of policies. Broadly we may divide them into two categories - life insurance which is based on an annuity scheme does not require any renewal clause. Policies not involving the life of an insured would, however, stand on a different footing.

32. It has a tariff policy. It is completely under the control of the Regulatory Authority. The tariff has to be fixed by the Authority. What should be the reasonable tariff would again be the subject matter of exercise of jurisdiction by the Authority. So far as non tariff policies are concerned, the insurance companies may charge tariff but the terms and conditions thereof are regulated by the Authority. Indisputably, the Authority intends to grant statutory protection to the policy holders. It is with that end in view the Protection Regulations were framed. It speaks of `prospectus'. It speaks of the mode and manner in which the insurance companies should function. Not only that even the guidelines have been framed on `file and use' requirements. Before the Authority each insurance company has undertaken that they will be fair in their dealing. It is one thing to say that if they breach their terms which would attract the penal clause as contained in sub-clause (4) of Clause 11 of the Regulations, the Authority may take action against the Insurance Company but it is another thing to say that the Authority would also be entitled to redress the individual grievances. Matter may be different if it is to be held that the policies are automatically renewable or for that matter all insured had a legal right of renewal as was the case in D. Nataraja Mudaliar v. The State Transport Authority of India, Madras [AIR 1979 SC 114], but it is another thing to say that no such legal right exists at all.

33. We will deal with that aspect of the mater a little later.

34. We may, however, at this stage notice that when the terms and conditions of contract of insurance are fixed, the protective umbrella over the interest of the policy holders became fully open. The insurance companies cannot either in their prospectus or in the terms of policy lay down any condition which would be derogatory to the terms and conditions approved by the Regulatory Authority. If the contract of insurance itself provides for renewal of an insurance policy the same may not mean that the assured has a legal right of automatic renewal, but the courts are required to strike a balance.

35. Another distinction in the approach of the Court in this behalf must also be borne in mind, namely that a court may exercise its power of judicial review at the threshold of formation of a contract as was the case in Ramana Dayaram Shetty v. The International Airport Authority and others [AIR 1979 SC 1628] and the cases where the terms and conditions of contract are to be enforced. Whereas in the former case, the courts' jurisdiction is wider, in the latter, it is not. We may, however, hasten to add that it does not mean that the court shall not interfere even in a case where the term of the contract is against the public policy or where in enforcing the same the State acts arbitrarily, unfairly or unreasonably or makes discrimination amongst the persons similarly situated.

36. Keeping in view the aforementioned principles we may have to construe the provisions of the prospectus, the jurisdiction of the Third Party Administrator, cover incepts etc. PROSPECTUS - MEDICLAIM INSURANCE POLICIES

37. The prospectus issued provide for salient features of the policy, some of them are :-

> "1. SALIENT FEATURES OF THE POLICY:
>
> 1.1 The policy covers reimbursement of Hospitalisation/ Domiciliary Hospitalisation expenses for illness/diseases or injury sustained.
>
> 1.2 In the event of any claim becoming admissible under this scheme, the company/TPA will pay to the Hospital/Nursing Home or the Insured person the amount of such expenses as would fall under different heads mentioned below, and as are reasonable and necessarily incurred thereof by or on behalf of such Insured Person, but not exceeding the Sum Insured aggregate in the schedule hereto.

A) Room, Boarding Expenses as provided by the hospital/Nursing home.

B) Nursing Expenses.

C) Surgeon, Anaesthetist, Medical Practitioner, Consultants, Specialists Fees.

D) Anaesthesia, Blood, Oxygen, Operation Theatre Charges, Surgical Appliances, Medicines & Drugs, Diagnostic Materials and X-Ray, Dialysis, Chemotherapy, Radiotherapy, Cost of Pacemaker, Artificial Limbs & Cost of Organs and similar expenses.

(N.B. 1. Company's Liability in respect of all claims admitted during the period of insurance shall not exceed the Sum Insured per person mentioned in the schedule.)

38. What would be covered under the policy and what would not are matters governed by the Acts, Regulations and Guidelines. The limited liability of the insurance provides for a third party administrator, who is engaged for the purpose of health services and may not only oversee the claim but may also disburse it.

In order to appreciate the rival contentions the question as regards whether the policy is continuous or otherwise statutorily renewable we may notice the following clauses.

> "4.1 Any diseases/injuries which are pre-existing when the cover incepts for the first time. For the purpose of applying this condition, the date of inception of the initial mediclaim policy taken from any of the Indian Insurance Companies shall be taken, provided the renewals have been continuous and without any break.
>
> 4.3 During the first year of the operation of he policy, the expenses on treatment of diseases such as Cataract, Benign Prostatic Hypertrophy, Hysterectomy for Menorrhagia or Fibromyoma, Hernia, Hydrocele, Congenital Internal diseases. Fistula in anus, piles, Sinusitis and related disorders are not payable.
>
> 11. This insurance policy is issued for a period of one year and subject to review. Continuation of insurance cover will be available in the renewal premium is paid in time. On continuation of insurance cover and timely remittance of premium insured becomes eligible to following benefits from first day after renewal.
>
> a) Cumulative bonus if accrued (Ref. Item 9)
>
> b) Cost of health check-up if due (Ref. Item 10)
>
> c) Payment for hospitalization cost for disseases/illness/injury sustained even during first 30 days of renewal (Ref. Deletion of 4.2 and 4.3)
>
> 13. Cancellation Clause : The policy may be renewed by mutual consent. The Company shall not however be bound to give notice that it is due for renewal and the Company may at any time cancel this policy by sending the Insured 30 days notice by registered letter at the insureds' last known address and in such event the Company shall refund to the Insured a pro-rata premium for unexpired Period of Insurance. The Company shall, however, remain liable for any claim, which arose prior to the date of cancellation. The Insured may at any time cancel this Policy and in such event the Company shall allow refund of premium at Company's short period rate only (Table given here below) provided no claim has occurred up to the date of cancellation.

Period of Risk	Rate of Premium to be charged
Up to one month	< of the annual rate
Up to three months	= of the annual rate
Up to six months	3/4th of the annual rate
Exceeding six months	Full annual rate "

39. All mediclaim insurance policies, a proforma whereof has been brought to our notice, contain almost identical clauses, some of which are:-

4.0 The Company shall not be liable to make any payment under this policy in respect of any expenses whatsoever incurred by any Insured Person in connection with or in respect of :

4.1 All diseases/injuries which are pre-existing when the cover incepts for the first time.

4.2 Any disease other than those stated in clause 4.3, contracted by the Insured person during the first 30 days from the commencement date of the policy. This exclusion shall not, however, apply if in the opinion of Panel of Medical Practioners constituted by the Company for the purpose, the insured person could not have known of the existence of the Disease of any symptoms or complaints thereof at the time of making the proposal for insurance to the Company. This condition 4.2 shall not however apply in case, of the insured person having been covered under this scheme or group insurance scheme with any of the Indian Insurance companies for a continuous period of preceding 12 months without any break.

4.3 During the first year of the operation of the policy, the expenses on treatment of diseases such as Cataract, Benign Prostatic Hypertrophy, Hysterectomy for Menorrhagia or, Fibromyoma, Fistula anus, Piles, Sinusitis and related disorders are not payable. If these diseases are Pre-existing at the time of proposal they will not be covered during subsequent period of renewal too.

5.7 The Company shall not be liable to make any payment under the policy in respect of any claim if such claim be in any manner fraudulent or supported by any fraudulent means or device whether by the Insured Person or by any other person acting on his behalf.

5.9 The policy may be renewed by mutual consent.

The Company shall not however be bound to give notice that its due for renewal and the Company may at any time cancel this. Policy by sending the Insured 30 days notice by registered letter at the insured last known address and in such event the Company shall refund to the Insured a pro-rata premium - for unexpired Period of Insurance. The Company shall, however, remain liable for any claim which arose prior to the date of cancellation.

The Insured may at any time cancel this Policy and in such event the Company shall allow refund of premium at Company's short period rate only (table given here below) provided no claim has occurred up to the date of cancellation.

Period of Risk	Rate of Premium to be charged
Up to one month	< of the annual rate
Up to three months	= of the annual rate
Exceeding six months	Full annual rate

7. CUMULATIVE BONUS "

Sum insured under the policy shall be

progressively increased by 5% in respect of each claim free year of insurance subject to maximum accumulation of 10 claim free years of insurance.

7.1 In case of a claim under the policy in respect of insured person who has earned the cumulative bonus the increased percentage will be reduced by 10% of sum insured at the next renewal.

However basic sum insured will be maintained and will not be reduced."

CONSTRUCTION OF THE CONTRACT OF INSURANCE :

> 40. We may, for this purpose, notice a few precedents operating in the field. In New Indian Assurance Co. Ltd. v. Harshadbhai Amrutbhai Modhiya & Anr. [(2006) 5 SCC 192], this Court opined that even in respect of a contract of insurance, contracting out may be permissible. In his separate Judgment, P.K. Balasubramanian, J. opined :
>
> "A contract of insurance is to be construed in the first place from the terms used in it, which terms are themselves to be understood in their primary, natural, ordinary and popular sense.
>
> (See Colinvaux's Law of Insurance, 7th Edn., para 2-01). A policy of insurance has therefore, to be construed like any other contract. On a construction of the contract in question it is clear that the insurer had not undertaken the liability for interest and penalty, but had undertaken to indemnify the employer only to reimburse the compensation the employer was liable to pay among other things under the Workmen's Compensation Act. Unless one is in a position to void the exclusion clause concerning liability for interest and penalty imposed on the insured on account of his failure to comply with the requirements of the Workmen's Compensation Act of 1923, the insurer cannot be made liable to the insured for those amounts."

41. One important facet of the matter which must also be taken note of is duty on the part of a State to act fairly. Such a fair dealing is expected at the hands of a State within the meaning of Article 12 of the Constitution of India. Strong reliance has been placed by Mr. Parekh on the decision of this Court in Mahabir Auto Stores & Ors. v. Indian Oil Corporation & Ors. [(1990) 3 SCC 752] and Kumari Shrilekha Vidyarthi & Ors. v. State of U.P. & Ors. [(1991) 1 SCC 212]. There cannot be any

doubt whatsoever that Article 14 of the Constitution of India which encompasses within its fold, obligations on the part of the State to act fairly which operates also in the contractual field but the said principle would be applicable more in a case where bargaining power is unequal or where the contract is not a negotiated one and/or is based on the standard form contracts between unequals. Some of these decisions, however, had been taken into consideration in Asstt. Excise Commissioner. v. Issac Peter [(1994 (4) SCC 104] whereupon strong reliance has been placed by the learned Solicitor General. Therein, inter alia, it was held :

> "26. Learned Counsel for Respondents then submitted that doctrine of fairness and reasonableness must be read into contracts to which State is a party. It is submitted that the State cannot act unreasonably or unfairly even while acting under a contract involving State power. Now, let us see, what is the purpose for which this argument is addressed and what is the implication? The purpose, as we can see, is that though the contract says that supply of additional quota is discretionary, it must be read as obligatory - at least to the extent of previous year's supplies - by applying the said doctrine. It is submitted that if this is not done, the licencees would suffer monetarily. The other purpose is to say that if the State is not able to so supply, it would be unreasonable on its part to demand the full amount due to it under the contract. In short, the duty to act fairly is sought to be imported into the contract to modify and alter its terms and to create an obligation upon the State which is not there in the contract. We must confess, we are not aware of any such doctrine of fairness or reasonableness. Nor could the learned Counsel bring to our notice any decision laying down such a proposition. Doctrine of fairness of the duty to act fairly and reasonably is a doctrine developed in the administrative law field to ensure the Rule of Law and to prevent failure of justice where the action is administrative in nature. Just as principles of natural justice ensure fair decision where the function is quasi- judicial, the doctrine of fairness is evolved to ensure fair action where the function is administrative. But it can certainly not be invoked to amend, alter or vary the express terms of the contract between the parties. This is so, even if the contract is governed by statutory provisions, i.e., where it is a statutory contract - or rather more so. It is one thing to say that a contract - every contract - must be construed reasonably having regard to its language. But this is not what the licencees say. They seek to create an obligation on the other party to the contract, just because it happens to be the State. They are not prepared to apply the very same rule in a converse case, i.e., where the State has abundant supplies and wants the licencees to lift all that stocks. The licencees will undertake no obligation to lift all those stocks even if the State suffers- loss. This one- sided obligation, in modification of express terms of the contract, in the name of duty to act fairly, is what we are unable to appreciate."

42. A bare perusal of the said decision would show that the same was rendered in the context of contracts entered into between the State and its citizens pursuant to public auction of tenders or by negotiation. Respondents therein sought to get new term incorporated in the Contract on the specious plea of fairness. The said place was rightly rejected. The fact, however, remains that the ratio in Issac is not applicable to the fact of the present case not because the duty to act fairly on the

part of a State has no application in the field of a contract but the same would not apply for the purpose of alterations or modifications of a term of contract.

43. Existence of the jurisdiction of the Superior Court of India upon invoking Article 14 of the Constitution as also Section 23 of the Indian Contract Act to strike down a clause in the contract which the court feels to be unconscionable having regard to the equal bargaining power of the parties is not in question but the said provisions would have no application for the purpose of modifications, alterations or additions of a term in the contract. There cannot furthermore be any doubt whatsoever that each case must be considered on its own facts which would obviously lead to the conclusion that by reason thereof the Court shall not read into the contract an automatic renewal clause in a contract of insurance if there does not exist any.

44. This brings us to the question of reading the prospectus into the contract of insurance. We do not find that the prospectus and contract of insurance speak on different terms. They seek to attain the same object. Clause 11 and 13 of the prospectus and clauses 5, 9 and other clauses lead to one conclusion that the policy is subject to renewal which is dependent upon the mutual consent of the parties. It is also evident that both the parties have the rights to cancel the insurance policy. If it is to be held otherwise, logical corollary would be that even the insured would not be at liberty not to discontinue the insurance policy. But herein we are not concerned with such a question.

45. Let us, at this stage, consider some of the decisions relating to contracts of insurance. In Pradeep Kumar Jain v. Citi Bank [(1999) 6 SCC 361], this Court distinguished a case of general insurance from that of life insurance, stating :

> "6. In the case of life insurance policy certain sum agreed to be paid by the insurance company in the event of the death of the insured or a contingency arising as indicated in the policy. The obligation is then on the insured to pay the premiums periodically. There is no other obligation upon him. In the case of a motor vehicle, the risk to be covered is not only in respect of a vehicle but also towards the injury to others or damage caused to the property arising out of an accident. In such an event, when the policy is renewed or a fresh policy is applied for, an application has to be given and it is to be indicated whether any claim had been made in the previous year or not and to furnish appropriate material as regards the valuation of the vehicle. It can also be made clear as to the nature and extent of the risk covered whether it is only third party or comprehensive or otherwise. The obligation under the Act is only at least to cover third party risk. Thus mere payment of premium could not result in an automatic renewal of the policy. In the circumstances, we find that the appellant also had certain duties to discharge in the matter of obtaining insurance policy and cannot merely put the blame on the first respondent."

46. As a proposition of law, where a renewal is based on mutual consent, there may be no automatic renewal as has also been held by this Court in Depot Supdt., H.P. Corporation Ltd. v. Kolhapur Agricultural Market Committee [(2007) 6 SCC 159] but as would be discussed hereinafter, a mediclaim policy where a senior citizen is involved would stand somewhat on a different footing. It

will depend upon the contract entered into between the parties and the statutes operating in the field as also constitutional scheme. We do not agree with the submission of the learned Solicitor General that wherever renewal is subject to mutual consent to the parties, a State may at its whims and caprice refuse to renew.

47. We may, at this juncture, notice a decision of the Supreme Court of Ireland whereupon strong reliance has been placed by learned Solicitor General in Carna Foods Ltd. v. Eagle Star Insurance Company [1997 (2) ILRM 193] wherein it was held :

> "The plaintiffs say that one must imply a term into the policies of insurance issued by the defendant to the plaintiffs in this case to the effect that if a policy is cancelled or its renewal is declined the defendant must give their reasons for so doing. Apart from cases where the law implies some terms into certain kinds of contract, whether by statute or by common law (for example sale of goods, hire purchase, landlord and tenant, sale of lands etc.) one can imply a term into a contract only when the implied term gives effect to the true intentions of all the parties to the contract who might be affected by such implied term. The learned trial judge in his judgment in this case which is now reported at [1995] 1 IR 526 at p.532 quoted from the well known dictum of MacKinnon LJ. In Shirlaw v. Southern Foundries (1926) Ltd. [1939] 2 K.B. 206 and I also quote that dictum here:-
>
> "Prima facie that which in any contract is left to be implied and need not be expressed is something so obvious that it goes without saying; so that, if, while the parties were making their bargain, an officious bystander were to suggest some express provision for it in their agreement, they would testily suppress him with a common `Oh of course!'."

Here the evidence before the learned trial judge is quite clearly to the effect that if such a term were sought to be included in the insurance policies at the time when the plaintiffs were seeking insurance the defendant would not have contracted with the plaintiffs at all. If the officious bystander had interrupted in relation to condition 13 of the policies and had asked the defendant "If you do cancel, will you give your reasons for canceling". The defendant's answer would have been an emphatic "No"

whereas to imply such a term into the policies the answer would have to be by both parties "Yes, of course" expressed rather testily to discourage the officious bystander from further interrupting.

It is also helpful to quote what Pearson LJ. Said in 1973 in Trollope and Colls Ltd. v. North West Metropolitan Regional Hospital Board [1973] 1 DPP 601 at p.609 :

> "An unexpressed term can be implied if and only if the court finds that the parties must have intended that term to form part of their contract: it is not enough for the court to find that such a term would have been adopted by the parties as reasonable men if it had been suggested to them" it must have been a term that went without

> saying, a term necessary to give business efficacy to the contract, a term which, though tacit, formed part of the contract which the parties made for themselves."

These basic principles of law preclude the implication of a term into the policies to the effect that in the event of a declinature or cancellation the defendant must state its reasons therefore."

48. The said decision, therefore, does not rule out the effect of an implied contract. We must, however, place on record that the United Kingdom and Ireland do not have a written constitution. Doctrine of fairness would not be radiant in a contract in those courts. Decisions rendered in other jurisdictions merely have a persuasive and not a binding nature. A foreign law should not be applied when the constitutionalism operating in the countries are different. We have to apply the law keeping in view the equality clause contained in Article 14 of the Constitution of India. It is a heart and soul of our Constitution.

49. Even doctrine of equality had not ordinarily been applied in the field of administrative law in England. Keeping in view the advent of human right regime doctrine of equality is now being applied even in administrative law in UK. It is a recent trend of the English courts as would appear from the judgment of the House of Lords wherein the court refused to draw a distinction in the matter of `indefinite detention' of a British Citizen and a Non-citizen. [See A (FC) & Ors. (FC) v. Secetary of State for the Home Department [2004 UKHL 56]

50. It was furthermore contended that the writ court would ordinarily not grant specific performance of a contract even if it is found that there exists a renewal clause or there has been a breach of contract on the part of the appellant. Ordinarily, it is so. A writ of mandamus shall not issue in case of a breach of contract. The court shall also not ordinarily issue a writ of mandamus directing a party to perform a specific performance of the contract in exercise of its writ jurisdiction.

We, however, would notice that this is the ordinary law as has been held in Hardesh Ores (P) Ltd. v. Hede & Co. [(2007) 5 SCC 614 and Divisional Forest Officer v. Bishwanath Tea Co. Ltd. [(1981) 3 SCC 246]. In Bishwanath Tea Co., this Court had used the word ordinarily. Hardesh was a case arising out of a civil suit. The question which arose therein was as to whether exercise of option by company was for renewal itself sufficient where the execution of a fresh document is necessary.

Section 24A, introduced in 1972 Act, has invited a comment by learned Solicitor General that the situation has completely changed. The High Court might have made broad statement that by reason thereof, a State within the meaning Article 12 of the Constitution of India, does not cease to be one but, in our opinion, that is not the point. The point is what would be the effect. Would it mean that two concepts, namely, Article 12 of the Constitution and Section 24A of the 1972 Act are different? If they are not, in a given case, it may be possible to hold that even while the State shall have more liberty to enter into a contract or fix the terms and conditions thereof having regard to the field of competition opened by reason of taking away of its the monopoly status, but there exists a distinction between the acts of a private player and the State.

51. We, however, do not mean to say that even in the field of contract qua contract, the State is not free to negotiate its terms; what we mean to say is that its action cannot be arbitrary. Role of both are different. A private player, as the law stands now, may not be bound to comply with the constitutional requirements of the equality clause, the appellants are.

52. There exists a distinction between a private player in the field and a public sector insurance company. Whereas a private player in the field is only bound by the statutory regulations operating in the field, the public sector insurance companies are also bound by the directions issued by the General Insurance Corporation as also the Central Government. They cannot be ignored. The said directions are not said to be in derogation of the statutory provisions. Their validity is not under challenge.

53. We may also notice that the Universal Declaration of Human Rights states that :

> "Everyone has right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care, and necessary social services, and the right to security in the vent of unemployment, sickness, disability, widowhood, old age, or other lack of livelihood in circumstances beyond his control."

54. The declaration also demands that the member nations secure the recognition and observance of the said rights. The authority would do well in issuing appropriate direction keeping in view the aforementioned human rights and particularly in view of the fact that the Government of India does not provide for any social security by way of compulsory insurance. Unlike the provisions of the Motor Vehicles Act, 1988 such compulsory insurance does not find a place in any statute book.

We, in the aforementioned situation, have strived to strike a balance between the human rights as contained in the Universal Declaration of Human Rights as also the right of a State and others who perform public utility provisions like insurance companies. It is also useful to note that although ordinarily a contract of insurance services would not come within the purview of the public utility services, the Legal Services Act, 1987, as amended in 2002, says so in terms of Section 22(b) or 22(c) thereof.

55. We are referring to the aforementioned provisions only with a view to show that whereas attempts are being made to strengthen the control over the insurance sector by creating new forums which would easily be accessible to the service recipient, the insurance companies having regard to the new policy of the Central Government, in general and under Section 24A of the 1972 Act in particular should not be allowed to make all attempts to frustrate the same. Whereas on the one hand we cannot forget the new market economy and the Foreign Direct Investment, we also cannot shut our eyes to the ground realities. There is a huge gap between the high sounded wants of the Government and the realities on the ground. It is essential that while on the one hand, the insurance companies are not put to undue burden keeping in view the changes in the statute as also the policy decisions of the Central Government, they cannot also be permitted to act wholly arbitrarily and unreasonably. They cannot be permitted to create a social condition which would negate all human

rights. We although would not place medicare and old age being the facets of human rights with abject poverty, but then the gap between the object on the statutes and the action on the part of the players on the field must be taken care of. JUDICIAL REVIEW

56. The action was brought by private individuals.

The writ petition, however, had wider ramification. They not only would affect the writ petitions, but also others who would be similarly situated.

Such cases may not be dealt with as individual cases. In appropriate case, such litigation may be regarded as public interest litigation.

Even if it not so regarded, the High Court may consider the same to be `Public Law Litigation' While determining a lis having public law domain, the courts would be entitled to take a broader view. It would not consider to be case involving contract-qua-contract question only.

Even cases involving contracts may be determined by the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India. (see LIC of India & Anr. v. Consumer Education & Research Centre & Ors. [(1995) 5 SCC 482], Sanjana M. Wig (Ms) v. Hindustan Petroleum Corpn. Ltd. [(2005) 8 SCC 242], ABL International Ltd & Anr. v. Export Credit Guarantee Corporation of India Ltd & Ors. [(2004) 3 SCC 553], The D.F.O, South Kheri & ors. v. Ram Sanehi Singh [(1971) 3 SCC 864, Noble Resources Ltd. v. State of Orissa & Anr. [(2006) 10 SCC 236]. We, however, do not think that facts involved in each case and the law laid down therein need not be discussed as there does not exist any basic principles therefor. These cases do not involve serious disputed question of fact.

Basic facts are admitted. The High Court was concerned with the interpretation of statute and interpretation of the contract.

Judicial Review of the impugned action on the part of the appellant was, therefore, permissible.

APPLICATION OF LAW

57. Keeping in view the aforementioned legal principles, we may notice the fact of each case.

58. The insurer in SLP (C) No.9877entered into a contract of mediclaim insurance in 1990 for a sum of Rs.90,000/- from 1992 to 2002. He had been making payments of the premiums regularly. His policy had been renewed every year. It was also renewed for the period 4.10.2001 to 3.10.2002. The insured's wife, son and daughter-in-law have also entered into such policy since 1992. Their policies had also been renewed from time to time without any change in terms.

59. On or about 9.9.2002, Respondent No.1 handed over a cheque for a sum of Rs.6,377/- by way of renewal of insurance policy. As no action thereon was taken, a reminder was sent. A legal notice was also issued. The legal notice was refused to be accepted by the Divisional Manager. In response

thereto, only on 30.9.2002, the appellant stated that the policy would be renewed by loading of 300% premium. A sum of Rs.18,982 was deposited. A receipt acknowledging the sum of Rs.6,377/- was also issued. Despite issuance of the said sum, the policy was not renewed. Strangely enough, only on October 3, 2002, the appellant stated that the said policy could be renewed subject to exclusion of the diseases specified therein. It was in the aforementioned situation, the writ petition was filed.

60. In SLP (C) No.10205 of 2004, the second respondent, who is a practicing consultant neurologist and physician since 1961, had taken mediclaim insurance for himself his wife and his family members since 1992-1993. He was diagnosed with Hypogamglobulinemias in August- September 1999. Despite the same, the policy was renewed. By a letter dated 26.7.2002, appellant informed him that his mediclaim policy which was to expire on 13.8.2002 would be renewed subject to the exclusion of the disease Septioemia with Hypogamglobulinemias and was advised that the next premium will be accepted after loading of 100% with 5% excess for each and every claim. It is at that juncture, the writ petition was filed.

61. Respondent No.3 in SLP (C) No.10205 of 2004 had taken a mediclaim policy and accident insurance policy in 1988. By a letter dated 15.1.2002, the mediclaim policy for the year 2002-2003 was refused to be renewed and he was asked to renew his policy in another company. The policy was cancelled.

62. We have noticed the judgment of the Gujarat High Court in each of these cases.

63. First Respondent in SLP (C) No.1534 of 2006 approached the Delhi High Court when the joint mediclaim policy was refused to be renewed. His claim of Rs. 2,19,660/- which he had incurred for undergoing a bye-pass surgery in January 2003 was refused to be paid. He had obtained mediclaim policy in April, 1995. The same had been renewed. He had undergone Angioplasty in July 1998 and again in June 2001. He had undergone a bye-pass surgery in December 2002. Respondent No.1 tendered premium for renewal of the policy in April, 2003 which was declined on the ground of `high claim ratio in the last three years'.

64. Each of the aforementioned cases clearly shows that the action on the part of the authorities of the appellant was highly arbitrary. Respondents though were not entitled to automatic renewal, but indisputably, they were entitled to be treated fairly. We have noticed hereinbefore some of the clauses contained in the prospectus as also the insurance policy. When a policy is cancelled, the conditions precedents therefor must be fulfilled. Some reasons therefor must be assigned. When an exclusion clause is resorted to, the terms thereof must be given effect to. What was necessary is a pre-existing disease when the cover was inspected for the first time. Only because the insured had started suffering from a disease, the same would not mean that the said disease shall be excluded. If the insured had made some claim in each year, the insurance company should not refuse to renew insurance policies only for that reason. The words `incepts for the first time' as contained in clause 4.1 as also the words `continuous and without break' if the renewal premium is paid in time, must be kept in mind as also the reasons for cancellation as contained in clause 7(1)(n) thereof.

65. Renewal of a medi-claim policy subject to just exceptions should ordinarily be made. But the same does not mean that the renewal is automatic. Keeping in view the terms and conditions of the prospectus and the insurance policy, the parties are not required to go into all the formalities. The very fact that the policy contemplates terms for renewal, subject of course to payment of requisite premium, the same cannot be placed at par with a case of first contract.

66. Having regard to the fact situation obtaining in each case, we are not inclined to exercise our discretionary jurisdiction under Article 136 of the Constitution of India. Before parting with this case, however, we would like to observe that keeping in view the role played by the insurance companies, it is essential that the Regulatory Authority must lay down clear guidelines by way of regulations or otherwise. No doubt, the regulations would be applicable to all the players in the field. The duties and functions of the Regulatory Authority, however, are to see that the service provider must render their services keeping in view the nature thereof. It will be appropriate if the Central Government or the General Insurance Companies also issue requisite circulars.

67. Appellants before us being subsidiaries to General Insurance Corporation cannot ignore the statutory provisions. They are bound by the directions issued by the Central Government.

68. We would request the IRDA to consider the matter in depth and undertake a scrutiny of such claims so that in the event it is found that the insurance companies are taking recourse to arbitrary methodologies in the matter of entering into contracts of insurance or renewal thereof, appropriate steps in that behalf may be taken.

68. These appeals are dismissed with costs. Counsel's fee assessed at Rs.25,000/- (Rupees twenty five thousand only) in each case.

.....J. [S.B. Sinha] .....J. [V.S. Sirpurkar] New Delhi;

May 16, 2008