



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 22.05.2024
Pronounced on: 01.07.2024

+ **W.P.(C) 7455/2014**

ANNIE THOMAS & ANR.

..... Petitioners

Through: Mr.Aayush Agarwala and
Mr.Ajit Pudussery, Advs.

versus

PAWAN HANS HELICOPTERS LTD. & ORS. Respondents

Through: Mr.Puneet Taneja,
Mr.Manmohan Singh
Narula and Mr.Amit Yadav,
Advs.

Mr.Ripu Daman Bhardwaj,
CGSC with Mr.Kushagra
Kumar, Adv. for UOI/BSF.
Mr.Vikas Bhadauria, Adv.
for R-3.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

1. This petition has been filed by the petitioners under Article 226 of the Constitution of India seeking a direction against the respondent nos.1 and 3 to make the payment of the additional insurance coverage amount of Rs.30 lakhs each, to both the petitioners, along with interest accrued thereon at an appropriate rate and other corresponding directions.



Case of the Petitioners:

2. Brief facts leading up to the filing of the present petition are that the husband of the petitioner no. 1 had joined the respondent no. 1 as a pilot on contractual basis in the year 2010. Husband of the petitioner no.2 joined the respondent no. 1 as a pilot on contractual basis in the year 2008.

3. The respective husbands of the petitioners had unfortunately died in a helicopter crash on 19.10.2011. It is claimed that at the time of the said helicopter crash, the husbands of the petitioners were working as pilots employed by the respondent no.1 for an operation of the respondent no.2 in the anti-naxal operations.

4. The petitioners are aggrieved of the fact that the respondent no.1 paid compensation of only an amount of Rs.30 lakhs, as covered by one of the insurance policies that the respondent no.1 had taken from the respondent no. 3 for the pilots working for it, and Rs.5 lakhs as an *ex-gratia* payment. They complain that the respondent no.1 had earlier taken an additional insurance policy of Rs.30 lakhs for the pilots that were engaged in flying operations for Border Security Force (in short, 'BSF'), that is, the respondent no.2 herein, in the Naxal-Infested Areas. This policy enhanced the insurance cover for the pilots engaged in Naxal-Infested Area to Rs. 60 lakhs. This insurance policy was renewed from time to time, however, it was not renewed beyond 03.09.2011 as the respondent no.1 failed to pay the premium for the said policy to the respondent no.3. As unfortunately, the accident in which the husbands of



the petitioners lost their lives occurred during the period when the said additional insurance policy was not in operation, the petitioners were denied the payment of the additional Rs.30 lakhs each which they would have received had the said insurance policy been duly renewed by the respondent no.1. The petitioners claim that the respondent no.1, in fact, later again took this additional policy from the New India Assurance Company for the pilots flying in the Naxal-Infested Areas on 20.06.2012. They claim that the petitioners cannot be made to suffer for the negligence of the respondent no.1 in not renewing the insurance policy within time.

5. The learned counsel for the petitioners has based the claim of the petitioners on the doctrine of legitimate expectation. He submits that the husband of the petitioner no.2 had addressed a Letter, dated 03.09.2009 to the Chief Managing Director of the respondent no.1, *inter alia*, requesting for the respondent no.1 to take an additional insurance cover for the pilots who were deputed in the Naxal-Infested Areas in the State of Jharkhand for flying operations of the respondent no.2. He submits that it is based on the said request, that the respondent no.1 had obtained an additional insurance policy of Rs.30 lakhs for the pilots from the respondent no.3, effective from 05.09.2009. The said policy was later renewed from 04.09.2010 to 03.09.2011. He submits that it is only for the fault and negligence of the respondent no.1 that the said policy was not renewed thereafter and was not in operation at the time of the unfortunate accident in which the husbands of the petitioners had lost their lives. He



submits that the petitioners had a legitimate expectation that such insurance policy has been taken/renewed and is in operation. Such legitimate expectation cannot be defeated by the lethargy of the respondent no.1. In support, he places reliance on the judgments of the Supreme Court in *K.B. Tea Product Pvt. Ltd. & Anr. v. Commercial Tax Officer, Siliguri & Ors.* 2023 SCC OnLine SC 615 and *Sivanandan C.T. & Ors. v. High Court of Kerala & Ors.* 2023 SCC OnLine SC 994.

6. Placing reliance on the judgment of the Supreme Court in *LIC of India & Anr. v. Consumer Education & Research Centre & Ors.*, (1995) 5 SCC 482; and of this Court in *Sanjeet Singh Kalia v. Union of India & Anr.* 2017 SCC OnLine Del 8170, he submits that as the husbands of the petitioners were performing national duty, the respondent no. 1 has to act in a fair, just and equitable manner, and this court cannot be bound by the contractual terms or otherwise in awarding fair compensation to the petitioners.

Case of the Respondent no.1:

7. On the other hand, it is the case of the respondent no.1 that the present petition is liable to be dismissed as the petitioner no.2 had earlier filed a petition making similar claims before the High Court of Punjab and Haryana, being Civil Writ Petition No.4213/2014, titled *Smt. Jatinder Pal Kaur v. Union of India & Ors.*. The said petition, vide Order dated 06.03.2014 passed by the said High Court, was, however, withdrawn by the petitioner no.2 with the liberty to pursue



appropriate remedy in accordance with law. The respondent no.1 claims that, therefore, the petitioners cannot file the present petition and have to, instead, take their remedy, if any, in a Civil Court.

8. On merits, it is the case of the respondent no.1 that the second insurance policy taken from the respondent no.3 was not for an additional cover but was taken only because the insurance policy earlier taken, in accordance with the service conditions, would not have covered the pilots who were engaged in the Naxal-Infested Areas. It is further the case of the respondent no.1 that the second insurance policy was sought to be renewed by the respondent no.1 within time, however, the respondent no.3 was not ready to renew the same on an 'unnamed' basis, which means that the respondent no.3 insisted upon the names of pilots and the crew members who were to be covered by the said policy to be disclosed in the insurance documents itself. It is stated that as this was not possible for the respondent no.1, the insurance policy could not be renewed. The respondent no.1, therefore, states that the petitioners are not entitled to further compensation/payment as there was no additional insurance policy in operation at the time of the death of their husbands.

9. It is further stated that the husbands of the petitioners did not die while performing any Naxal operation; the accident had



occurred during a routine sortie. The learned counsel for the respondent no.1 submits that therefore, even otherwise the petitioners were entitled to the insurance cover as is applicable to other pilots flying elsewhere in the country for the respondent no. 1.

10. The learned counsel for the respondent no.1 reiterates that the second insurance policy taken by the respondent no.1 from the respondent no.3 was not in the form of an 'additional' coverage but only because the original policy/the first policy taken by the respondent no.1 would not have covered the pilots who were deployed in Anti-Naxal Operations of the BSF and in a high-risk Naxal-Infested Areas. He submits that such additional coverage was obtained by the respondent no.1 only in the year 2012, however, such policy cannot have a retrospective effect. He further submits that the doctrine of legitimate expectation is not applicable to the facts of the present case, as no representation of any additional coverage was ever extended by the respondent no.1 to the petitioners or to their husbands. Placing reliance on the judgment of the Supreme Court in *Union of India v. Hindustan Development Corporation & Anr.*, (1993) 3 SCC 499, he submits that a pious hope even leading to a moral obligation cannot amount to a legitimate expectation and create a right.

11. The learned counsel for the respondents, on the directions of this Court, has also produced the Office Files leading to the two insurance policies taken in the years 2009 and 2012 by the respondent no.1. The



learned counsels for the parties have referred to the relevant Notings in the said files.

Analysis & Findings:

12. I have considered the submissions made by the learned counsels for the parties.

13. It is not in dispute that in terms of the Service Conditions, the respondent no. 1 had taken an Insurance Policy for a sum of Rs. 30 lakhs by which the husbands of the petitioners were also covered and insured. It is also not in dispute that the insurance policy claim against the said policy has been given by the respondent no. 1 to the petitioners.

14. The only bone of dispute between the parties is whether the respondent no. 1, by the second policy/Un-named policy taken from the respondent no. 3, intended and even represented to its pilots working in the Naxal-Infested areas that their insurance cover stands enhanced to Rs.60 lakhs, and if so, whether by not ensuring the renewal of such policy within time and especially when the fateful accident killing the husbands of the petitioners had taken place, the respondent no. 1 would still remain liable to pay the additional compensation of Rs. 30 lakhs to the petitioners.

15. To answer the above questions, certain portions of the Office Files regarding the second additional insurance policy taken by the respondent no. 1 from the respondent no. 3, and the one taken later from the New India Assurance Company Ltd., would be relevant to be considered.



16. By an Office Note dated 25.08.2009, approval was sought by the DGM (F&A) of the respondent no.1 for *'Sanction for Spl Unnamed PA Insurance Coverage for PHHL Pilots and other employees (20 nos Regular and Contractual employees) involving in Spl Operations like movement of BSF troops and other civilians involved in fighting for anti terrorists and other anti naxalites operations in insurgency effected areas in India'*.

17. In the said Office Note, it was stated that the said policy will be a *'separate specialized policy over and above the existing PA policy of Pilots for Sum Assured for Rs.30 Lacs each and other GPA Policy for other technical and support staff depending upon their grade/classification.'*

18. The said Note sheet also has a remark from the GM (Ops) of the respondent no. 1, seeking confirmation that the said insurance policy proposed to be taken is taken as an addition to the Personal Accident policy. The said officer further states that there is a need for enhancement in the said cover and the CMD of the respondent no.1 has also agreed to the same.

19. Thereafter, the respondent no.3 issued the *'Special Aviation Group Personal Accident Insurance Policy'* for 10 unnamed Pilots/Flight Engineers and 10 unnamed AME/Technical Crew/Support Staff of the respondent no.1 involved in special operations like the movement of BSF troops and other civilians involved in fighting for the Anti-Terrorists and other Anti-Naxalite operations in the insurgency affected areas in India,



effective from 05.09.2009. The same is evident from a Certificate dated 04.09.2009 issued by the respondent no.3 which states as under:

“This to certify that 10 unnamed Pilots and 10 unnamed AME/Tech Crew/ Support Staff (Regular/ Contractual) of M/s. Pawan Hans Helicopters Limited, are covered for a Sum Insured of Rs.30 lacs and 15 lacs each respectively under Special Aviation Group Personal Accident Insurance No.211100/43/2010/20.

The maximum Sum Insured under all Personal Accident Policies held by the Insured persons covered under the above Policy should not exceed 60 months salary for Table-III and 120 months salary for combined Table-I and Table -III benefits.

The above policy covers regular and contractual employees on 24 hour basis involving in Special Operation like movement of BSF troops and other civilians involved in fighting for anti terrorists and other anti sic nexalities operations in insurgency affected areas in India.

This is a coverage for one year effective from 05.09.2009 to 04.09.2010, with no refund for exits during the policy.

All other terms and conditions and exceptions shall remain as per above policy.”

20. Even the Office Note dated 29.10.2009 of the DGM (F&A) of the respondent no.1 records that the second insurance policy for 10 unnamed pilots and 10 unnamed AME/Tech Crew/support staff is “over & above the existing PA/GPA policies”.



21. As the second policy was coming to an end on 04.09.2010, by a Letter dated 01.09.2010, the respondent no.1 sought renewal of the same from the respondent no. 3, reiterating that the said policy covers employees involved in special operations like the movement of BSF troops and other civilians involved in fighting for Anti-Terrorists and other Anti-Naxalite operations in insurgency affected areas in India. The policy was duly renewed by the respondent no.3.

22. In the year 2011, again, the respondent no.1 addressed a Communication dated 25.08.2011 to the respondent no. 3, requesting it for renewal of the said policy which, in the meantime, had been extended to 28 number of unnamed employees.

23. The respondent no.3, by way of its letter dated 21.12.2011, however, expressed its inability to renew the said policy, stating as under:

“Dear Sir,

Kindly refer to your letter dated 25.08.2011 and discussion we had on 2nd September, 2011 in regard to renewal of the above policy expiring on 3rd September, 2011.

We had approached our Head Office for getting renewal terms for the above policy. However, we were advised not to renew the same on unnamed basis in respect of Aircrew who are already covered under named PA Policy as the same was not in accordance of the Insurance Regulations.

Accordingly, matter was discussed at length on 2nd September, 2011 with PHL officials about coverage under unnamed GPA policy and it was decided to cover 28 contractual and regular AMEs/Technicians/ Technical Supervisors/ other Support Staff personnel at 11 nos. named bases where PHL is responsible for maintaining



/operating /flying other organization's helicopters who are not traveling as Crew members and shall travel as passenger as staff on duty. Crew members (Pilots/Flight Engineers/ flight Attendants) are covered separately in the named PA Aircrew Policy no. 211100/43/2012/1 and they cannot be additionally covered under unnamed GPA policy applicable for unnamed personnel of PHHL as per Insurance regulations.

The above policy coverage, terms, condition and exceptions is as per General Group Personal Accident Insurance Policy wording approved by IRDA. In case of death claim-120 months last drawn gross salary subject to the maximum of Rs.30 Lacs and for permanent total disablement and permanent partial disablement, as per scales given in the standard policy wording subject to maximum of 60 months last drawn monthly salary under table-II.”

(Emphasis supplied)

24. From the reading of the above correspondence, it is evident that the respondent no.1 had taken the second policy for its employees including pilots who were involved in special operations like the movement of BSF troops and other civilians involved in fighting for Anti-Terrorists and other Anti-Naxalites operations in the insurgency affected areas in India. This was an additional coverage for such employees and not an alternate as suggested by the learned counsel for the respondent no.1. In fact, these pilots remained covered by the original policy that had been taken by the respondent no. 1 in terms of the Service Conditions. The second Insurance Policy was taken with an intent to provide them with additional insurance cover.



25. The subsequent conduct also shows that the pilots who were flying in the Naxal-Infested Areas continued to be covered by the first Insurance Policy. If that was not so, the petitioners would not have got the insurance cover of Rs. 30 lakhs on the death of their husbands. The second policy had been taken by the respondent no. 1 as they wanted to enhance the insurance cover of the pilots and other staff doing flying duties in the Naxal-Infested Areas.

26. The issue then arises for consideration is that, as the second insurance policy was admittedly not in operation when the unfortunate accident resulting in the death of the husbands of the petitioners had taken place, whether the petitioners are entitled to the additional claim of Rs.30 lakhs based on the application of the doctrine of legitimate expectation?

27. The doctrine of legitimate expectation is invoked when a public authority acts in a manner that leads an individual or a group to expect a particular outcome. It is based on the idea of fairness and consistency in action. It recognizes that a public authority's promise or past conduct/practice will give rise to a legitimate expectation to honour such promise or past practice. In India, it has come to be recognized by way of various judgments. Reference in this regard may be had to the judgments in *Food Corporation of India v. M/s Kamdhenu Cattle Feed Industries*, (1993) 1 SCC 71, and *Union of India &Ors. v. Hindustan Development Corpn. &Ors.*, (1993) 3 SCC 499.



28. In *Sivanandan C.T.* (Supra), the Supreme Court while highlighting the difference between procedural and substantive legitimate expectation, held that the doctrine of substantive legitimate expectation has now been accepted as an integral part of both the common law as well as Indian jurisprudence. I may quote from the judgment as under:

“26. In Hindustan Development Corporation (supra), this Court cautioned against the use of the doctrine of legitimate expectation to safeguard a substantive right. Yet, in a series of subsequent decisions, this Court accepted that the doctrine of legitimate expectations has become a source of both procedural and substantive rights. In Punjab Communication Ltd. v. Union of India, this Court explained the difference between procedural and substantive legitimate expectation in the following terms:

“27. ... The procedural part of it relates to a representation that a hearing or other appropriate procedure will be afforded before the decision is made. The substantive part of the principle is that if a representation is made that a benefit of a substantive nature will be granted or if the person is already in receipt of the benefit that it will be continued and not be substantially varied, then the same could be enforced.”

(emphasis in original)

27. A claim based on the doctrine of procedural legitimate expectation arises where a claimant expects the public authority to follow a particular procedure before taking a decision. This is in contradistinction to the doctrine of substantive legitimate expectation where a claimant expects conferral of a substantive benefit based on the existing promise or practice of the public authority. The doctrine of substantive legitimate



expectation has now been accepted as an integral part of both the common law as well as Indian jurisprudence.

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40. The principle of fairness in action requires that public authorities be held accountable for their representations, since the state has a profound impact on the lives of citizens. Good administration requires public authorities to act in a predicable manner and honor the promises made or practices established unless there is a good reason not to do so. In Nadarajah (supra), Laws LJ held that the public authority should objectively justify that there is an overriding public interest in denying a legitimate expectation. We are of the opinion that for a public authority to frustrate a claim of legitimate expectation, it must objectively demonstrate by placing relevant material before the court that its decision was in the public interest. This standard is consistent with the principles of good administration which require that state actions must be held to scrupulous standards to prevent misuse of public power and ensure fairness to citizens.

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46. From the above discussion, it is evident that the doctrine of substantive legitimate expectation is entrenched in Indian administrative law subject to the limitations on its applicability in given factual situations. The development of Indian jurisprudence is keeping in line with the developments in the common law. The doctrine of substantive legitimate expectation can be successfully invoked by individuals to claim substantive benefits or entitlements based on an existing promise or practice of a public authority. However, it is important to clarify that the doctrine of legitimate expectation cannot serve as an independent basis for judicial review of decisions taken by public authorities. Such a



limitation is now well recognized in Indian jurisprudence considering the fact that a legitimate expectation is not a legal right. It is merely an expectation to avail a benefit or relief based on an existing promise or practice. Although the decision by a public authority to deny legitimate expectation may be termed as arbitrary, unfair, or abuse of power, the validity of the decision itself can only be questioned on established principles of equality and non-arbitrariness under Article 14. In a nutshell, an individual who claims a benefit or entitlement based on the doctrine of legitimate expectation has to establish: (i) the legitimacy of the expectation; and (ii) that the denial of the legitimate expectation led to the violation of Article 14.”

29. In the present case, as noted hereinabove, the respondent no.1 itself felt the need to take an additional policy for the employees who were working in the Naxal-Infested Areas. This policy was renewed for at least two years and was sought to be renewed even for the third year, however, such request for renewal remained pending because of exchange of correspondences between the respondent no.1 and the respondent no.3. The husbands of the petitioners had no part/role to play in such exchange of correspondence between the respondent no. 1 and respondent no. 3, or in the delay in renewal of the policy. As far as they are concerned, it is not even shown or contended that they were aware that they would no longer be covered by the additional cover of a policy.

30. In my view, therefore, the doctrine of legitimate expectation would be fully applicable to the facts of the present case and the respondent



no.1 cannot deny the payment of the additional cover of Rs.30 lakhs to the petitioners only for its own lethargy or inability to obtain the renewal of the subject policy within time.

31. In this entire Scheme, what is also relevant is the fact that the respondent no.1, in fact, proceeded to obtain the additional policy from the New India Assurance Company with effect from 20.06.2012, which is admitted to be additional coverage for the pilots who are operating in Naxal-Infested Areas. This itself shows that the intent of the respondent no. 1 always, and rightly so, was to obtain additional insurance cover for the pilots and the crew members operating the Naxal Infested Areas. It is just out of sheer coincidence that at the time that the accident that killed the husbands of the petitioners had taken place, the second insurance policy/additional cover had lapsed and had not been renewed on time by the respondent no. 1. However, for the said reason alone, the petitioners cannot be denied their legitimate claim arising out of the unfortunate death of their husbands.

32. The plea of the respondent no.1 that the unfortunate accident in which the husbands of the petitioners lost their lives, was not during an Anti-Naxal Operation, is not relevant to the claim of the petitioners. It is not the case of the respondent no.1 that the additional cover taken in the policy with effect from 04.09.2009 was only for Anti-Naxal operations; it was for the personnel engaged in Naxal-Infested Areas. It was therefore, the place of the accident and not the nature of the operation involved that makes the additional insurance cover applicable to the accident and the



consequent death of the pilots/petitioners' husbands. The place where the accident occurred was covered by this additional policy.

33. As far as the plea of the learned counsel for the respondent no.1 that the present petition would not be maintainable as the petitioner no.2 had earlier filed a petition before the High Court of Punjab and Haryana which was withdrawn with liberty to avail of such remedy as may be available in law, is concerned, the learned counsel for the petitioners has explained that post the said withdrawal, the petitioners became aware of the non-extension of the second policy for the additional cover due to laxity and negligence of the respondent no.1. In my view, the learned counsel for the petitioners has rightly submitted that, therefore, the withdrawal of the earlier petition would not bar the maintainability of the present petition. In any case, the petitioner no. 1 was not a party to the petition filed before the High Court of Punjab and Haryana and, therefore, cannot be barred from maintaining the present petition. Further, this petition has remained pending before this Court for almost 10 years and, therefore, this Court does not deem it appropriate to now refuse to consider the same on merits on the ground of other/alternate remedy available with the petitioners.

34. In view of the above, I find merit in the present petition. The same is, accordingly, allowed. The respondent no.1 is directed to pay an amount of Rs.30 lakhs to each of the petitioners over and above the amount which has already been paid and is mentioned hereinabove, along



with interest at the rate of 6% per annum from the date of the death of the husbands of the petitioners till the date of payment.

35. There shall be no order as to costs.

JULY 01, 2024/ns/AS

NAVIN CHAWLA, J

[Click here to check corrigendum, if any](#)