IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2468 OF 2010

1. Wills India Insurance Brokers Pvt. Ltd.)
a Company incorporated and registered under the)
Companies Act, 1956, which has its registered office at)
111, Free Press House, Free Press Journal Marg,)
Nariman Point, Mumbai-400 021)

2. Bhaichand Amoluk Consultancy Pvt. Ltd.)
a Company incorporated and registered under the)
Companies Act, 1956, which has its registered office)
at Commercial Union House, 2nd floor,)
9, Wallace Street, Fort, Mumbai-400 001)

3. Jayant Vora, Mumbai Indian Inhabitant having his)
office at Commercial Union House, 2nd floor,)
9, Wallace Street, Fort, Mumbai-400 001)

4. Mitul Vora, Mumbai Indian Inhabitant, having his)
office at 111, Free Press House, Free Press Journal Marg,)
Nariman Point, Mumbai-400 0021.)

5. Rushabh Vora, Mumbai Indian Inhabitant having his)
office at Commercial Union House, 2nd floor,)
9 Wallace Street, Fort, Mumbai-400 001)...Petitioners

versus

1. Insurance Regulatory and Development Authority,)
established under the provisions of the Insurance)
Regulatory and development Act, 1999, having its)
Office at Parisrama Bhavanam, 5-9-68/B, 3rd floor,)
Basheer Bagh, Hyderabad-500 004)

2. Mr. G. Prabhakara, Member (Life), IRDA,)
having his office at Parisrama Bhavanam, 5-9-68/B,)
3rd floor, Basheer Bagh, Hyderabad-500 004)

3. Mr. M. Ramaprasad, Member (Non Life), IRDA,)
having his office at Parisrama Bhavanam, 5-9-68/B,)
3rd floor, Basheer Bagh, Hyderabad-500 004)

4. Suresh Mathur, Joint Director, IRDA)
having his office at Parisrama Bhavanam, 5-9-68/B,)
3rd floor, Basheer Bagh, Hyderabad-500 004)

5. Union of India)

6. Willis Europe B.V., a company incorporated under the)
laws of Netherlands, having its registered office at)
51, Lime Street, London EC3M 7 DQ, 1234512 England)
and Wales.).Respondents

Mr. N.H. Seervai, Senior Advocate, with Mr. Shyam Mehta, Mr. Ranbir Singh and Mrs. Deepa Mani, instructed by M/s. Bachubhai Munim & Co., for the petitioners.

Mr. Zal Andhyarujina with Mr. Paritosh Jaiswal, instructed by M/s. Earnest legal Associates, for respondent Nos. 1 to 4.

Ms. Poornima Awasthi for respondent No.5.

Dr. V.V. Tulzapurkar, Senior Advocate, with Mr. Nikhil Sakhardande, Mr. Tejas Karia, Mr. Karan Mehra, Mr. Nitesh Jain and Mr. Tapan Deshpande, instructed by M/s. Amarchand Mangaldas & S.A. Shroff & Co., for respondent No.6.

CORAM: **P.B. MAJMUDAR &**
A.A. SAYED, JJ.

DATE: **MARCH 07, 2011.**

ORAL JUDGMENT: **(Per P.B. Majmudar, J.)**

Rule. Learned Counsel appearing for the respondents waive service of rule. With the consent of the learned counsel appearing in the matter, Rule is made returnable forthwith.

2. By way of this petition, the petitioners have challenged the order passed by the Insurance Regulatory and Development Authority (hereinafter referred to as the "IRDA") dated 26th November, 2010. By the impugned order, the Committee constituted by the authority while exercising powers vested upon them under Section 14 of the Insurance Regulatory and Development Authority Act, 1999 (hereinafter referred to as "the IRDA Act"), read with Regulation 14 (1) of the Insurance Regulatory and Development Authority (Insurance Brokers) Regulations, 2002 (hereinafter referred to as "the IRDA Regulations"), refused to grant renewal of license earlier granted to the first petitioner to act as a composite broker.

3. The first petitioner is a company registered in India on 21st October, 2000 by respondent No.6, Willis Europe, B.V., which is a Company incorporated under the laws of Netherlands. The first petitioner for the period from 2003 till 18th August, 2010 was a joint venture amongst the second petitioner (hereinafter referred to as "the Bhaichand") which held 74% of the issued capital. Respondent No.6 held 26 per cent of the issued capital of the company. The first respondent, IRDA, established under Section 3 (1) of the IRDA Act is the authority within the meaning of the IRDA Regulations. The IRDA consists of a Chairman and not more than 5 whole time members and not more than 4 part-time members. The second and third respondents are permanent members (life and non-life) of the first respondent. They are also the members of the two

persons Committee which was appointed/constituted by the authority to hear an application for renewal of composite broking license, which Committee was constituted in view of the order passed by a Division Bench of this Court vide order dated 21st October, 2010 in Writ Petition (Lodging) No. 2197 of 2010.

4. Since the earlier license granted to the first petitioner was to expire in 2009, the first petitioner applied vide its application dated 16th February, 2009 for the renewal of their composite broking license. It seems that at the time of submitting the said renewal application, a show cause notice was issued to the first petitioner under Regulation 34 of the IRDA Regulations for cancellation/suspension of the composite broking license of the first petitioner. The said show cause notice dated 6th January, 2010 as well as the order dated 1st September, 2010 were challenged by the petitioners by way of Writ Petition (Lodging) No. 2179 of 2010. The Division Bench of this Court disposed of the said writ petition on 21st October, 2010 by taking note of the contentions made by the learned counsel Mr. Andhyarujina for the respondent-IRDA that show cause notice issued would be withdrawn and the first petitioner will be given a reasonable opportunity of hearing when the renewal application is being considered afresh. A statement was also made that the renewal application shall be decided on its own merits. The Division Bench observed that such renewal application should be decided by a Committee of two Members of the first respondent. The Division Bench also rejected the prayer on the part of the first

petitioner that till such renewal application is decided, the first petitioner should be allowed to renew the policies of its customers. The list of such clients/accounts was also submitted before the Division Bench. The Division Bench, however, did not accept the request on behalf of the Petitioners to continue the business except to the limited extent of fulfilling statutory obligations as per Regulation 15 of the IRDA Regulations. Before the Division Bench, on behalf of respondent No.6, a request was made that respondent No.6 also should be heard at the time of deciding the renewal application of the first petitioner. The said request was made in view of the cancellation of the joint venture agreement entered into between the first petitioner and the sixth respondent. However, the Division Bench observed that as per Regulation 14 (1) of the IRDA Regulations, a reasonable opportunity of being heard is to be given to the applicant and the application has been submitted by the first petitioner way back on 16th February, 2009 and if the parties have fallen apart thereafter, it would not be permissible for the Court to say that respondent No. 6 must also be heard. The Division Bench thereafter disposed of the said writ petition by holding that the show cause notice dated 6th January, 2010 and the impugned order which was challenged in that writ petition stood withdrawn by the authority and the renewal application dated 16th February, 2009 stands restored to the file of the first respondent. The Committee of two members of first respondent was directed to hear and decide the renewal application dated 16th February, 2009 on its own merits, without being influenced by any remarks

mentioned in the impugned order in the writ petition. The Division Bench directed the Committee to take an appropriate decision within the stipulated time. As stated earlier, the Division Bench, however, declined the prayer made by the first petitioner to continue with the business. The Division Bench also observed that all the issues on merits are left open.

5. After the aforesaid order of the Division Bench, the 2 Members Committee of the IRDA passed the impugned order dated 26th November, 2010. The authority ultimately came to the conclusion that since the broker has violated the rules and regulations and having regard to the gravity of the same and in view of the facts and circumstances of the case, the broker has failed to adhere to the applicable and relevant regulations while carrying out the activities as an insurance broker and has acted in a manner prejudicial to the interest of the policy holders. The authority was of the opinion that the application of the broker seeking grant of renewal of license that was earlier granted to them to carry out the functions as a composite insurance broker be rejected. Accordingly, by the impugned order, prayer for renewal of the license has been rejected by the first respondent. The said impugned order is the subject matter of this petition.

6. Mr. Seervai, learned Senior Counsel appearing for the petitioners, vehemently submits that the impugned order is absolutely arbitrary, illegal and

contrary to the principles of natural justice. He submits that the relevant facts were not even brought to the notice of the petitioners as to on what ground the authority has decided not to renew the license of the first petitioner and the grounds mentioned in the impugned order have not been brought to the notice of the petitioners even at the time of deciding the renewal application. It is submitted that in a very casual manner, the renewal application was rejected and the hearing was nothing but a farce and no questions were even put to the petitioners in any manner. It is submitted by Mr. Seervai that in the impugned order certain grounds are mentioned which were never put to the notice of the petitioners when renewal application was under consideration. Mr. Seervai further submits that even on merits, the grounds mentioned in the impugned order are not sustainable at all and whatever particulars which the petitioners were required to give at the time of filling the format were submitted. Whatever materials required by the authority, the same had been submitted by the petitioners. Learned counsel further submitted that by deciding the renewal application in such a casual manner, the fundamental right of the petitioners under Article 19 (1) (g) of the Constitution has been violated and the impugned order resulted into an economic death of the petitioners as they would be out of insurance business in which they actively associated. It is further submitted that in the past the petitioners license was also renewed in 2006 and the grounds mentioned in the impugned order were also available at that time, still the same were not taken into consideration and the license was renewed in 2006. The said

license is not renewed on mala fide grounds as, according to the learned Counsel, the Chairman of the first respondent was keeping bias and grudge against the petitioners in connection with the dispute between Bhaichand and the Export Credit Guarantee Corporation of India Limited ("ECGC"). It is submitted that Bhaichand had some transactions with ECGC for which some dispute was going on which was ultimately settled before this Court. The said fact weighed with the Chairman of the first respondent and same has resulted into non renewal of the license of the petitioners. It is submitted that so far as the petitioner No.1 is concerned, it is an independent body and is a Company and it has no bearing with any of the transaction which might have been carried out by Bhaichand. It is submitted by Mr. Seervai that even otherwise it was not required on the part of the first petitioner to mention anything in connection with the so-called dispute between Bhaichand and ECGC as it had no connection in the matter of renewal of the license and ultimately irrelevant facts were taken into consideration by the first respondent in not renewing the license. Petitioners have also made certain averments alleging mala fide against the Chairman as, according to the petitioners, since Bhaichand had some dispute with ECGC and in which the Chairman was personally interested and was asking Bhaichand to pay up the dues of ECGC which ultimately the petitioners have paid. It is further submitted by the learned counsel that in any case, the first petitioner has nothing to do with Bhaichand and at the time of renewal application no dispute was pending before any forum. Even otherwise, it was

not necessary to mention the said aspect of dispute in the renewal application which prescribe particular formats. It is submitted that the first petitioner has nothing to do with Bhaichand as first petitioner is an independent Company. It is also pointed out that though respondent No. 6 has subsequently terminated the joint venture agreement, the same will have no bearing so far as the question of renewal is concerned. It is further submitted that non-renewal of license will have serious consequences as the sixth respondent has taken out winding up proceedings on the said ground and by not renewing the license, the petitioners are likely to suffer economic death and the action of the first respondent is violative of Article 19 (1) (g) of the Constitution of India as the petitioners are deprived of their right to carry out its business. It is further submitted by Mr. Seervai that Bhaichand is merely a shareholder with the first petitioner. He has also submitted that one of the issues raised against the petitioner in the impugned order was regarding charging of interest which was also rectified in 2006 when the license was renewed. It is submitted that on all irrelevant grounds, prayer for renewal of license has not been granted. In order to substantiate his say, Mr. Seervai has also relied upon the Regulations framed by the first respondent in this behalf. It is pointed out by Mr. Seervai that assuming that there was some dispute between Bhaichand and ECGC, that ground should not have weighed with the authority in taking such a view against the petitioners in the matter of renewal of the license. It is submitted that even otherwise the grounds which have been taken into consideration for non renewal are the

grounds which were in existence prior to 2006 and so far as the point regarding ECGC is concerned, the same was taken for the first time in 2008. It is submitted that even if there is any complaint against Bhaichand, it is not a ground for not renewing the license of the first petitioner. It is further submitted that in any case, the dispute between Bhaichand and ECGC is already settled by filing consent terms, which are at page 458 of the compilation. It is further submitted that at the time of so-called hearing, nothing was brought to the notice of the petitioners in any manner otherwise the petitioners could have given explanation, if it was brought to the notice of the petitioners that authority may not renew the license on certain grounds. It is submitted that if Section 9 of the IRDA Act is interpreted in a wide manner, it may amount to giving unfettered powers to the first respondent and in that case Section 9 is required to be struck down on the ground that unfettered and arbitrary powers are given to the first respondent in this behalf. Mr. Seervai has also relied upon the format prescribed under the Rules. According to Mr. Seervai, as per the prescribed format, the first petitioner was required to give particulars and not beyond that. It is further submitted by Mr. Seervai that in any case when the transaction between Bhaichand and ECGC took place, Bhaichand was not the shareholder of the first petitioner as Bhaichand became the shareholder in April, 2003. Mr. Seervai further submitted that there is no alternate efficacious remedy available especially when petitioners have made allegations against the Chairman. Mr. Seervai also tried to justify the stand taken by Bhaichand in connection with the

dispute with ECGC on the ground that the transaction in question between Bhaichand and ECGC was of 1996 for which ECGC had filed a complaint in 2008. It is further submitted that ECGC was not supposed to inform the first Respondent in this behalf but the said aspect was brought to the notice of the first respondent only with a view to see that the Chairman may intervene in the matter for settlement and Chairman took personal interest in the said dispute and ultimately even though Bhaichand had settled the dispute, yet the license has not been renewed. On the aforesaid grounds the impugned order is attacked by Mr. Seervai. It is also submitted by Mr. Seervai that since respondent No.1 has acted in an absolutely arbitrary manner in not considering the request of the petitioners for renewal of the license, this Court may issue mandamus by asking the first respondent to renew the license of the petitioners. It is lastly submitted by Mr. Seervai that Bhaichand had settled the dispute with ECGC even though the claim of ECGC was time barred and considerable amount was paid towards settlement. Inspite of the same, the impugned order came to be passed.

7. Mr. Seervai further submits that even though allegations have been made against respondent No.6, he is not pressing any of the allegations against respondent No.6 in the instant matter and seeks liberty to take out other appropriate proceedings in this behalf against respondent No.6.

8. Mr. Andhyarujina, learned counsel appearing for respondent Nos. 1 to 4, in his turn has submitted that since the impugned order is passed at Hyderabad, this Court is not having territorial jurisdiction as the matter is required to be filed at Hyderabad. It is further submitted by Mr. Andhyarujina that no cause of action has arisen within the territorial jurisdiction of this Court and this petition is not maintainable. It is further submitted that simply because this Court has entertained the petition when it came at the show cause notice stage, it cannot be said that the first respondent has waived the point of jurisdiction. It is further submitted by Mr. Andhyarujina that the petitioners' have a right to make representation under the IRDA Regulations and in view thereof, this Court may not entertain the petition. It is further submitted that no bias is attributed to the members of the Committee who passed the impugned order. It is submitted that it is not correct to say that the Chairman was biased or having malice against the petitioners in any manner. It is further submitted by Mr. Andhyarujina that reasonable opportunity of being heard was given to the petitioners and in the matter of considering the application for renewing the license, it is not necessary to give any show cause notice to the petitioners. It is further submitted that the charges were known to the petitioners which were the subject matter of earlier show cause notice. The petitioners could have pointed out the said aspect to the two members Committee by giving appropriate explanation in this behalf but nothing was brought to the notice of the Committee. It is submitted that since no legal practitioner is allowed at the

hearing, the grievance of the petitioners that they were not permitted to engage Advocate is not justified. Mr. Andhyarujina further pointed out that the affairs of the second petitioner and its conduct are relevant for deciding the application for renewal as they are having 74 per cent shareholding in the Company and as a regulatory body, first respondent is supposed to know the consequences of renewal of license in case ultimately it is found that the affairs of first petitioner are not properly conducted. It is submitted that over and above the aforesaid aspects, other factors were are also taken into consideration such as charging interest which is not permissible by the broker and in that view of the matter, the decision taken by the Regulatory Authority is not required to be interfered with by this Court in its extraordinary jurisdiction under Article 226 of the Constitution of India. It is further submitted by Mr. Andhyarujina that though the first petitioner is a company registered under the Companies Act it is a sort of glorified partnership and, therefore, the relationship of partners as well as the conduct of one of the partners i.e. second petitioner who is having majority shareholding is also required to be taken into consideration before granting the renewal. It is further submitted that even a subsequent development viz. Respondent No.6 having terminated the joint venture agreement is also required to be taken into consideration. The licensing authority is not required to decide the matter in a mechanical manner. It is submitted that in the past simply because license was renewed from time to time itself is not a ground for renewing the license. If some additional material is brought on the record, it may

justify the action of first respondent in not renewing the license. Mr. Andhyarujina has further submitted that in any case if this Court is of the opinion that the first petitioner is required to be given further opportunity of being heard in the matter of renewal application, first respondent is willing to give such hearing and is also willing to take decision with open mind and if appropriate things are brought to the notice of the first respondent while deciding such renewal application, first respondent may consider the said aspect objectively as there is no question of any bias on the part of the first respondent. Mr. Andhyarujina, however, submitted that if the matter is remitted back, the authority shall reconsider the same and pass an appropriate order after giving an opportunity of hearing to the petitioners and whatever material is placed, the same shall also be considered again. Mr. Andhyarujina further submitted that this Court cannot straightway issue mandamus directing the authority to renew the license and in a given case even if such directions can be given, this is not a fit case which justifies giving such mandatory direction directing the first respondent to renew the license as at the most this Court may ask the first respondent to reconsider the matter afresh. On the said aspect, both the sides have also relied upon certain decisions regarding the powers of the Court to issue such writ and/or directions.

9. Dr. Tulzapurkar, learned senior Counsel appearing for respondent No. 6, states that since Mr. Seervai has given up the allegation of mala fides

against respondent No.6, he is not required to say anything more in the matter except that respondent No.6 has already filed winding up petition of first petitioner Company and that joint venture agreement has already been terminated by the respondent No. 6 company. It is also submitted that suit is also filed by respondent No.6 in connection with breach of trade mark and trade name which is pending.

10. We have heard the learned counsel appearing in the matter at great length. We have considered voluminous documents forming part of the petition. We have also gone through the reply and rejoinder.

11. So far as the preliminary objection taken up by Mr. Andhyarujina regarding territorial jurisdiction of this Court is concerned, it is required to be noted that the registered office of the Company is located at Mumbai, the application for renewal is made at Mumbai, the decision was taken by the first respondent at Hyderabad as the office of first respondent is located at Hyderabad. At this stage, reference is required to be made to Article 226 (2) of the Constitution of India which reads thus:

> "(2) The power conferred by clause (q) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority

or the residence of such person is not within those territories."

12. In view of the above, it cannot be said that the first petitioner company is not affected by the impugned decision within the territorial jurisdiction of this Court. Simply because the head office of respondent No.1 is located at Hyderabad and since the decision was taken at Hyderabad which is communicated to the first petitioner at Mumbai, it cannot be said that only Hyderabad High Court will have jurisdiction to decide the dispute. It can safely be said that part of the cause of action has arisen within the territorial jurisdiction of this Court. We are, therefore, of the opinion that substantial part of the cause of action can be said to have arisen within the jurisdiction of this Court and the petition before this Court is maintainable. At this stage Mr. Andhyarujina has relied upon the decision of the Supreme court in the case of *State of Rajasthan and others vs. M/s. Swaika Properties and another*[1] . In the aforesaid case, the proceedings regarding acquisition of the land were initiated by Rajasthan State Government. The land was located at Jaipur. The Company was located at Calcutta. The Company representative appeared before the authority at Jaipur. The acquisition of the land was recommended by the authority to the State Government. The notification acquiring the land was issued by the Rajasthan State Government. The petition challenging the acquisition proceedings and notification was filed in the Calcutta High Court and considering the facts of the case it was held that the petition before the

1 (1985) 3 SCC 217

Calcutta High Court was not maintainable. In the aforesaid case it was noted that the cause of action arose in Jaipur. As pointed out earlier, the land was situated at Jaipur. The notification was issued at Jaipur. Considering the aforesaid factual background, it was held that the Calcutta High Court had no jurisdiction to enter into the matter. In the instant case, as pointed out earlier, the first petitioner's registered office is located at Mumbai, it operates its business from Mumbai but since the office of first respondent is at Hyderabad that the renewal application was required to be preferred at Hyderabad. In our view, part of the cause of action can be said to have arisen within the territorial jurisdiction of this Court.

13. Mr. Andhyarujina next relied upon the decision of the Supreme Court in the case of *Union of India and others vs. Adani Exports Ltd. and another*[1]. In the aforesaid case the Company filed Special Civil Application before the Gujarat High Court claiming the benefit of passbook scheme established under the import export policy in relation to certain credits to be given on export of shrimps. It was found that none of the respondents in the Civil Application (Union of India) was stationed at Ahmedabad. The passbook in question, benefit of which the respondents sought in the civil applications was issued by an authority stationed at Chennai. The entries in the passbook under the scheme concerned were to be made by the authorities at Chennai. The export of the prawns made by the respondents and the import of the inputs, benefit of which

1 (2002) 1 SCC 567

the respondents had sought in the applications also were to be made through Chennai. Considering the said factual aspect of the matter, the Supreme Court found that no part of the cause of action had arisen within the territorial jurisdiction of Gujarat High Court and under the circumstances, the decision taken by the High Court entertaining the petition was set aside by the High Court.

14. Mr. Andhyarujina has also relied upon the decision of the Supreme Court in the case of *Alchemist Ltd. and another vs. State Bank of Sikkim and others*[1]. In the said judgment, it is held that the writ petition can now be instituted in the High Court within the territorial jurisdiction of which the cause of action in whole or in part arises. In the aforesaid case, the State of Sikkim invited offers for strategic partnership with the respondent Bank functioning in the said State. The appellant Company in the said case was having its registered office at Chandigarh. Respondent bank accepted the offer of the appellant Bank. Subsequently the Government of the State of Sikkim rejected the said acceptance. Writ Petition was filed by the appellant at Punjab and Haryana High Court. The said petition was dismissed by the High Court for want of territorial jurisdiction. The Supreme Court found that no part of the cause of action arose within the territorial jurisdiction of the High Court at Chandigarh. It was found that the facts pleaded by the appellant were not essential, integral or material facts so as to constitute a part of the cause of action within the

1 (2007) 11 SCC 335

meaning of Article 226 (2) of the Constitution.

15. On behalf of the petitioners, Mr. Seervai on the point of jurisdiction has relied upon the decision of the Supreme Court in the case of *Navinchandra N. Majithia vs. State of Maharashtra and others*[1]. It has been held that the High Court will have jurisdiction, if any part of the cause of action arises within the territorial limits of its jurisdiction, even though the seat of Government or authority or residence of person against whom direction, order or writ is sought to be issued is not within the said territory. It was held that writ petition filed before the Bombay High Court for quashing of criminal complaint filed at Shillong on the ground that it was false and had been filed with a mala fide intention of causing harassment and putting pressure on the petitioner to reverse the transaction relating to transfer of company shares, which had entirely taken place at Mumbai, was found to be maintainable and it was held that the Bombay High Court had erred in dismissing the writ petition on the ground that it had no jurisdiction to quash the complaint filed at Shillong as prayed for.

16. Mr. Seervai thereafter referred to the decision of the Supreme Court in the case of *Dinesh Chandra Gahtori vs. Chief of Army Staff and another*[2] wherein the Supreme Court has observed in para as follows:

1 (2000) 7 SCC 640
2 (2001) 9 SCC 525

> "4. The writ petition was filed in 1992. The impugned order was passed in 1999. This is a fact that the High Court should have taken into consideration. More importantly, it should have taken into consideration the fact that the Chief of Army Staff may be sued anywhere in the country. Placing reliance only on the cause of action, as the High Court did, was not justified."

17. Mr. Seervai has also relied upon the decision of the Supreme Court in the case of *Dinesh Chandra Gahtori vs. Chief of Army Staff and another*[1]. In paragraph 4 it has been held as under:

> "4. The writ petition was filed in 1992. The impugned order was passed in 1999. This is a fact that the High Court should have taken into consideration. More importantly, it should have taken into consideration the fact that the Chief of Army Staff may be sued anywhere in the country. Placing reliance only on the cause of action, as the High Court did, was not justified."

18. Mr. Seervai has cited another judgment of the Supreme Court int he case of *Om Prakash Srivastava vs. Union of India and another*[2] wherein the Supreme Court has observed in para 7 as under:

> "7. The question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial limits of any High Court has to be decided in the light of the nature and character of the proceedings under Article 226 of the Constitution. In order to maintain a writ petition, a writ petitioner has to establish that a legal right claimed by him has *prima facie* either been infringed or is threatened to be infringed by the respondent within the territorial limits of the Court's jurisdiction and such infringement may take place by causing him actual injury or threat thereof."

1 (2001) 0 SCC 525
2 (2006) 6 SCC 207

19. Considering the issue involved in the matter and considering the fact that the office of respondent No.1 is located at Hyderabad from where the decision is required to be taken in connection with the renewal application, the person who is likely to be affected in connection with his business on the basis of such decision taken by the head office can approach the Court where he is affected by such decision. By no stretch of imagination it can never be said that no part of the cause of action arose within the territorial jurisdiction of this Court. We accordingly negative the preliminary contention raised by Mr. Andhyarujina and, in our view, the petition filed before this Court is maintainable.

20. The next submission is regarding alternate remedy. It is required to be noted that in view of the fact that the Court has already decided to dispose of the matter finally, this Court has heard the matter on merits at length and considering the fact that there are serious allegations even against the Chairman of the first respondent, of which there may or may not be any foundation, we would not like to relegate the petitioner to alternate remedy. Accordingly both the sides have advanced lengthy arguments on merits of the issue. Even otherwise, since the matter is heard at great length, it would not be proper to dispose of the matter only on the ground that the petitioners have to approach the authority by way of an alternate remedy. In view of the various averments made against the Chairman, it would not be just and proper to relegate the

petitioner to approach the authority by way of revision. Apart from the above, earlier also the Division Bench had not relegated the matter to the Chairman in view of the controversy involved and had directed the first respondent to constitute a Committee consisting of two members which decided the renewal application of the petitioners in which the impugned order is passed. This Court, therefore, would not like to relegate the petitioners to the alternate forum by way of making representation to the Chairman.

21. So far as the main issue involved in the petition is concerned, we have heard the counsel at great length. So far as the impugned order is concerned, para 3 of the impugned order refers to certain instances while considering the application for renewal. Point one is regarding settlement of dispute with ECGC. It pertains to the role played by Bhaichand who owed considerable amount of Rs. 5.08 crores as due to ECGC as recovery from reinsurers on claims lodged by them and also that Bhaichand had received substantial amount of dues from the foreign brokers which they had failed to remit to ECGC. ECGC had also filed a suit against petitioner No.2 for recovery of the dues. There is a reference about the said transaction in clauses (b), (c), (d) and (e) of the said impugned order. It has been observed that Bhaichand being a dominant partner of the first petitioner has failed to discharge the responsibilities of a broker as specified in the IRDA Regulations and they have failed to disclose the disputes with ECGC at the time of submitting the requirements during the renewal of the license in

the years 2006 as well as 2009. It is further observed that the petitioners by not furnishing the required information in item 5.1 of Form-A under Regulation 13 of the Regulations, have violated the said provisions. Another ground mentioned in the said order is that the first petitioner invested the money belonging to Insurance Bank Account in fixed deposits during the financial years 2003-2004, 2004-2005, 2005-2006 and 2006-2007 and thereby earned interest. Thus the broker violated the provisions of Regulation 23 of the Regulations and the said fact has been admitted by the petitioners in their letter dated 23rd July, 2010 to the authority. Accordingly, on the aforesaid grounds, the respondent No.1 refused to grant renewal license.

22. Mr. Seervai vehemently argued that the factum regarding dispute between Bhaichand and ECGC is absolutely irrelevant in the matter of renewal of license. It is submitted that since irrelevant point has been considered, the order deserves to be set aside. It is further submitted that this fact was not brought to the notice of the petitioners when renewal application was heard by the Committee of the first Respondent. Form-A of Schedule-1 of IRDA Regulations prescribes the format in connection with the grant of license as an insurance broker and/or for renewal of license. It is not in dispute that the dispute between Bhaichand and ECGC was settled by a consent decree in Suit No. 1268 of 2009 and even the criminal complaint which was filed against Bhaichand was also quashed by the High Court. Both the aforesaid aspects had

taken place before the impugned order was passed by the authority. It is required to be noted that as per the format prescribed, whatever information was required to be disclosed was disclosed by the petitioners. In our view, it cannot be said that at the relevant time when the petitioners had applied for renewal in 2009, any dispute was pending before any authority or before any court of law in any manner. It is true that Bhaichand is having major shareholding in the first petitioner Company but while considering the renewal application of the first petitioner, disputes between Bhaichand and ECGC which was not pending even before any Court at the relevant time had no bearing. Simply because the first petitioner failed to mention about the so-called dispute between Bhaichand and ECGC, the said ground, in our view was not relevant in rejecting the renewal application of first petitioner on the ground of suppression of material facts. Section 9 of the IRDA Act though gives wide powers to the regulatory authority but such power has to be exercised in a reasonable manner and only relevant aspects are required to be considered while taking decision. It is required to be noted that the petitioner No.1 is a legal entity and as per the format prescribed, what is required to be given is details of all settled and pending disputes by the applicant /proprietor or any of the partners, directors or key managerial personnel in the last three years. At the time when the petitioners applied for renewal, no dispute was pending before any authority or any Court between Bhaichand and ECGC.

23. Considering the aforesaid aspect, we are of the opinion that the Committee of the first Respondent has not properly applied its mind while rejecting the renewal application. It is also required to be noted that in fact dispute between Bhaichand and ECGC was pending since long even before 2006. When the renewal was granted in 2006, simply because ECGC might have complained to the first respondent and it is pointed out that the Chairman of the first respondent tried to see that the dispute is settled and assuming that because of his intervention that Bhaichand has ultimately settled with ECGC, that fact should not have been weighed in the mind of the first respondent in not renewing the license on the said ground. The rejection of the renewal application on the aforesaid ground about non-disclosure of the dispute between Bhaichand and ECGC, therefore, was not a relevant aspect which was required to be considered at the time of considering the renewal application. In any case, it is not in dispute that the said fact was not brought to the notice of the first petitioner when renewal application was under consideration and when petitioner No.1 was given hearing in this behalf. Considering the material on record and other relevant documents, we are of the opinion that rejection of the renewal application on the aforesaid ground is not justified.

24. However, there is an additional ground for rejecting the renewal application and that is in connection with the petitioners having invested the

money belonging to the Insurance Bank Account in FD during the financial years 2003-2004, 2004-2005, 2005-2006 and 2006-2007 and thereby earned interest. In this connection, it is alleged that the petitioner No.1 has violated Regulation 23 of IRDA Regulations. The said Regulation reads as under.

> " 23. **Segregation of insurance money**:- (1) The provisions of Section 64VB of the Act shall continue to determine the question of assumption of risk by an insurer.
>
> (2) In the case of reinsurance contracts, it may be agreed between the parties specifically or as part of international market practices that the licensed reinsurance broker or composite broker can collect the premium and remit to the reinsurer and/or collect the claims due from the reinsurer to be passed on to the insured. In these circumstances the money collected by the licensed insurance broker shall be dealt with in the following manner:-
>
> (a) he shall act as the trustee of the insurance money that he is required to handle in order to discharge his function as a reinsurance broker and for the purposes of this regulation it shall be deemed that a payment made to the reinsurance broker shall be considered as payment made to the reinsurer;
>
> (b) ensure that 'insurance money' is held in an "Insurance Bank Account' with one or more of the Scheduled Banks or with such other institutions as may be approved by the Authority;
>
> (c) give written notice to, and receive written confirmation from, a bank, or other institution that he is not entitled to combine the account with any other account, or to exercise any right of set off, charge or lien against money in that account;
>
> (d) ensure that all monies received from or on behalf of an insured is paid into the 'Insurance Bank Account' which remains in the 'Insurance Bank Account' to remain in deposit until it is transferred on to the reinsurer or to the direct insurer;

(e) ensure that any refund of premium which may become due to a direct insurer on account of the cancellation of a policy or alteration in its terms and conditions or otherwise shall be paid by the reinsurer directly to the direct insurer;

(f) interest on recovery/payment received shall be for the benefit of the direct insurer or reinsurer;

(g) only remove from the 'Insurance Bank Account' charges, fees or commission earned and interest received from any funds comprising the account;

(h) take immediate steps to restore the required position if at any time he becomes aware of any deficiency in the required 'segregated amount'."

25. It is argued by Mr. Andhyarujina that the petitioners cannot appropriate the interest amount for its own purpose and it was required to be deposited in a separate account. He submits that the petitioners also admit the said fact. Mr. Seervai however submitted that the said fact was also there even earlier in 2006, yet the license was renewed. He states that other brokers are also doing similar thing by putting the interest in their own FD account. So far as this aspect is concerned, at the time of hearing of the renewal application, it should have been brought to the notice of the first petitioner so that the first petitioner could have pointed out the same to the respondents. Hearing of renewal application is not a formality but is a matter of substance as it affects the rights of the petitioners to carry on its business. It is required to be noted that there is reference to certain documents in para 3 (d) of the impugned

order. The first respondent should have brought to the notice of the petitioners by informing the first petitioner to give its explanation in connection with the aforesaid aspect so that the petitioners, if they had any reasonable or plausible explanation, could have furnished the same. Reference of some correspondence is made without bringing the same to the notice of the petitioners and without placing the same before the first respondent. Mr. Seervai points out that if the attention of the petitioner was focussed, the petitioners could have explained the aforesaid aspects so that the authority might have been convinced about the explanation of the petitioners. It is required to be noted that once the license is not renewed on any particular ground, at least the material on which reference is made is required to be pointed out to the person so affected. It is not in dispute that from the earlier order of the Division Bench, decision was required to be taken in consonance with the principles of natural justice and after hearing the petitioners. Since that has not been done, in our view, in connection with the aforesaid alleged violation of Rule 23, the matter is required to be sent back to the authority for re-consideration and to pass appropriate order after affording an opportunity of hearing to the petitioner in this behalf. Mr. Seervai tried to justify his argument that there is no violation of Rule 23. However, we would not like to go in detail about this aspect as it is for the authority to apply its mind and take an appropriate decision after hearing the petitioners in this behalf.

26. On the point of principles of natural justice, Mr. Seervai has relied upon the decision of the House of Lords in the case of *B. Surinder Singh Kanda vs. Government of the Federation of Malaya*[1] wherein it is observed as under:

> "In the opinion of Their Lordships, however, the proper approach is somewhat different. The rule against bias is one thing. The right to be heard is another. These two rules are the essential characteristics of what is often called natural justice. They are the twin pillar supporting it. The Romans put them in the two maxims: *nemo judex in causa sua* : and *audi alteram partem*. They have recently been put in the two words, impartiality and fairness. But they are separate concepts and are governed by separate considerations. In the present case Inspector Kanda complained of a breach of the second. He said that his constitutional right had been infringed. He had been dismissed without being given a reasonable opportunity of being heard.
>
> If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know that evidence has been given and what statements have been made affecting him: and then he must be given a fair opportunity to correct or contradict them. This appears in all the cases from the celebrated judgment of Lord Loreburn L.C. in Board of Education v. Rice[2] down to the decision of Their Lordship's Board in Ceylon University vs. Fernando[3] It follows, of course, that the judge or whoever has to adjudicate must not hear evidence or receive representations from one side behind the back of the other. The court will not inquire whether the evidence or representations did work to his prejudice. Sufficient that they might do so. The Court will not go into the likelihood of prejudice. The risk of it is enough. No one who has lost a case will believe he has been fairly treated if the other side has had access to the judge without his knowing."

1 1962 PC 322
2 (1911) AC 179, 182 : 27 T.L.R. 378 J.L.
3 (1960) 1 W.L.R. 223 : (1960) 1 All E.R. 631 P.C.

> "... Applying these principles, their Lordships are of opinion that Inspector Kanda was not in this case given a reasonable opportunity of being heard. They find themselves in agreement with the view expressed by Righby J. in these words "In my view, the furnishing of a copy of the findings of the Board of inquiry to the adjudicating officer appointed to hear the disciplinary charges, coupled with the fact that no such copy was furnished to the plaintiff, amounted to such a denial of natural justice as to entitle this court to set aside those proceedings on this ground. It amounted, in my view, to a failure to afford the plaintiff a reasonable opportunity of being heard in answer to the charge preferred against him which resulted in his dismissal." The mistake of the police authorities was no doubt made entirely in good faith. It was quite proper to let the adjudicating officer have the statements of the witnesses. The Regulations show that it is necessary for him to have them. He will then read those out in the presence of the accused. But Their Lordships do not think it was correct to let him have the report of the Board of Inquiry unless the accused also had it so as to be able to correct or contradict the statements in it to his prejudice."

27. Mr. Seervai has vehemently submitted that since the authority has acted in an absolutely arbitrary manner, this Court, instead of sending the matter back, issue mandamus for which he has relied upon the decision of the Madras High Court in the case of *Government of Tamil Nadu represented by its Secretary, Health and Family Welfare Department and the Director of Medical Education vs. Sri Nandha Educational Trust rep. by its Chairman and Managing Trustee, Mr. V. Shanmugham*[1]. In the aforesaid case, there was delay in granting no objection certificate for seven years despite the compliance by the writ petitioner therein with the directives of the respondents. Considering the facts of the case, the Court directed the appellants therein to grant no objection certificate. In

1 MANU/TN/1117/2005

paragraph 33 it was observed as follows:-

> "33. In the present case, the grant of "No Objection Certificate has been delayed or rejected for the past seven years despite compliance by the writ petitioner on ten occasions of directives of the respondents to remove the alleged deficiencies, and inspection by the inspection teams on three occasions, and filing of three writ petitions on three occasions. We are satisfied that all the requirements of the State Government for establishing the Nursing College and grant of No Objection Certificate have been complied with. Hence we agree with the learned single Judge that it is not necessary for us to again remand the matter to the appellants to consider the grant of "No Objection Certificate" to the respondent/trust as that will only lead to further delay, and further arbitrariness."

28. Reference is required to be made to the decision of the Supreme Court in the case of *Al-Karim Educational Trust and another vs. State of Bihar and others*[1] wherein it has been held as under.

> " 11. In the matter of grant of affiliation, it is ordinarily for the State Government after consulting the Medical Council of India to arrive at a decision. However, if it is found that the affiliation is being withheld unreasonably or the decision is being prolonged for one reason or the other, this court would, though reluctantly, be constrained to exercise jurisdiction. We must make it clear that we are not diluting the importance of fulfilling the essential prerequisite set by the Medical Council before granting recognition. The facts of this case are very special and exceptional".
>
> 12. In the totality of the circumstances disclosed in the case and having regard to the fact that at each stage new deficiencies are being pointed out, the latest being the report dated 28-6-1995 (explained by the subsequent affidavit of the appellants dated 4-9-1995), we are satisfied beyond any manner of doubt that the deficiencies have been substantially complied with and minor deficiencies pointed out in the last mentioned report of 28-6-1995 are not such as to permit

1 (1996) 8 SCC 330

> withholding of the affiliation to which the appellants' institution is entitled. From the manner in which the deficiencies have been pointed out from time to time, each time the old deficiencies are shown to have been removed, new deficiencies are shown, gives the impression that the affiliation is unnecessarily delayed. For the removal of minor deficiencies pointed out in the report of 28-6-1995, a compliance affidavit dated 4-9-1995 is filed. Once the institution feels secure on the question of affiliation, we have no doubt that these minor deficiencies, if they exist, shall be taken care of by those in charge of the Institution. For taking such further steps, the grant of affiliation need not wait. We make this position clear. The steps for the grant of affiliation to the appellants' institution may now be expedited and we direct the respondents to issue the necessary orders without loss of time. The appeal is disposed of accordingly. In the facts and circumstances of the case, we make no order as to costs."

29. Mr. Andhyarujina has relied upon the decision of the Supreme Court in the case of *Union of India and another vs. Bilash Chand Jain and another*[1] wherein the Supreme Court has held that even if High Court in writ petition against the Central Government's order refusing to grant consent to execute decree under Section 86 (3) of the CPC, considers the order to be arbitrary, it can remand the matter to the Government for reconsideration in accordance with law instead of itself directing the Government to give consent under Section 86 (3). In paras 5 and 6, the Supreme Court has observed as under:

> "5. It may be mentioned that there is a distinction between "judicial review" and "appellate jurisdiction". The High Court in a writ petition when examining an administrative order is not exercising the appellate power but exercising the power of judicial review which is much narrower than the appellate

1 (2009) 16 SCC 601

power. Such judicial review can only be exercised on Wednesbury principles.

6. It is well settled by a series of decisions of this Court that the High Court cannot itself perform the functions of a statutory authority. Thus in *G. Veerappa Pillai v. Raman and Raman Ltd.*[1] it was held that the High Court under Article 226 of the Constitution of India cannot direct the Regional Transport Authority to grant bus permits as the grant of the permit is entirely within the discretion of the Regional Transport Authority. Of course, if the Regional Transport Authority rejects the application for grant of permits arbitrarily or illegally, the High Court can s et aside the order of the Regional Transport Authority and direct the Regional Transport Authority to pass a fresh order in accordance with law, but the High Court cannot itself order grant of permits, in that case it will be taking over the function of the Regional Transport Authority."

30. Considering the case law on the subject, we are of the opinion that the court can, in an appropriate case, issue mandamus directing the authority to take a particular decision such as directing them to renew license or in a service matter to pass a particular order regarding punishment. However, this is not one of such an exceptional case that this Court would like to issue mandamus directing the first Respondent to renew the license of the first petitioner. Instead this Court is of the opinion that considering the facts and circumstances of the case, the first respondent should take a fresh decision on the renewal application of the first petitioner. While taking fresh decision, the first ground mentioned which is in our view is not relevant i.e. non-disclosure of dispute between Bhaichand and ECGC, the same shall not be taken into consideration but the

1 AIR 1952 SC 192

petitioners may be given hearing on the question about the alleged violation of Regulation 23 which is in connection with charging of interest. After giving appropriate opportunity to the petitioners, an appropriate decision may be taken within a period of four weeks from today and that too after hearing the petitioners.

31. During the course of hearing, Mr. Seervai has frankly pointed out that in a given case if the authority has got any other material, the same can be considered while considering the case for renewal of license but such material should be brought to the notice of the petitioners asking the petitioners to submit its say in connection with any queries which are in the mind of the authority concerned. In view of the same, while deciding the renewal application afresh, it will be open to the authority to consider any other relevant material by which it may not be possible to renew the license such as any legal impediments in this behalf. The authority to take a fresh decision in accordance with law. In the meanwhile, it would not be proper to allow the first petitioner to continue with its business especially in view of the earlier order passed by the Division Bench of this Court wherein the Division Bench declined to grant such relief. The earlier Committee which took the decision now may take a fresh decision on the renewal application in accordance with law. It is clarified that if there is any other ground available with the authority, the same may also be considered provided the same should be brought to the notice of the petitioners.

It is, however, clarified that since we have found that non-disclosure of the dispute between Bhaichand and ECGC was not a relevant aspect, the same may not be taken into consideration while deciding the renewal application afresh. It is needless to state that the decision may be taken objectively and after giving opportunity of hearing to the petitioner and such decision may be communicated to the petitioners forthwith.

32. Mr. Seervai has frankly submitted that since the petitioners are aware about the ground on which renewal application is not granted, it would not be necessary to give any show cause notice to the petitioners and asking explanation regarding Regulation 23 of the IRDA Regulations. The petitioners may submit its appropriate explanation regarding Regulation 23 by giving written submission in writing. As pointed out earlier, if any additional ground on which the authority wants to rely and if there is any legal impediment in passing the order of renewal, the same may be brought to the notice of the petitioners. Mr. Seervai submits that while taking such a decision, Advocates may be heard. We are not in a position to accede to the said request. However, if written submissions are given, the authority shall consider the same and appropriate decision may be taken within four weeks from today in accordance with law. We are sure the authority will not ask for further extension in this behalf.

33. Rule is made absolute to the aforesaid extent with no order as to costs.

P. B. MAJMUDAR, J.

A.A. SAYED, J.