MONTHLY NEWSLETTER

The Law Desk

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1 CHALLENGE TO DEPARTMENTAL NOTIFICATION FALLS WITHIN SINGLE BENCH: RAJASTHAN HIGH COURT

The High Court of Rajasthan, vide its order dated 23.11.2021 in *Rajmal Nirkhi vs. The State of Rajasthan & Others*[1], held that as per the amended Rajasthan High Court Rules, 1952 *(hereinafter referred as "**1952 Rules**")*, writ petitions challenging the validity of any notification issued by the authority/executive would fall within the jurisdiction of a Single Bench of the High Court and not the Division Bench.

The issue before the Court was whether the Division Bench or the Single Bench of the High Court will have the jurisdiction to adjudicate a writ challenging the validity of notifications issued by the Jaipur Development Authority.

As per Clause (xi) of Rule 55 of 1952 Rules, the writ petitions under Articles 226 and 227 falls within the jurisdiction of a Single Judge, excluding the writ petitions challenging the *vires* / constitutional validity of any 'Act' as mentioned in Rule 55 (xi)(a) of 1952 Rules. Furthermore, the word 'notification' does not fall within the purview of the word 'act' mentioned under Rule 55 of the 1952 Rules. The un-amended Rules of 1952 included the word 'Rules' along with the word 'Act' and therefore, it contains all other statutory acts legally formulated under any other Act, such as orders, ordinances, regulations, bye-laws and notifications. Later, by amending the Rules of 1952, the word 'act' was deliberately retained whereas the word 'rule' was removed.

[1] Civil Writ Petition No. 32/2005

The Hon'ble Court agreeing to the above-stated arguments held that any writ petition challenging the notification has to be filed before the Single Judge Bench of the High Court and directed the matter to be listed before a Single Judge Bench. It was further reiterated that the validity of any Act, be it State or Central has to be challenged before the Division Bench of the High Court.

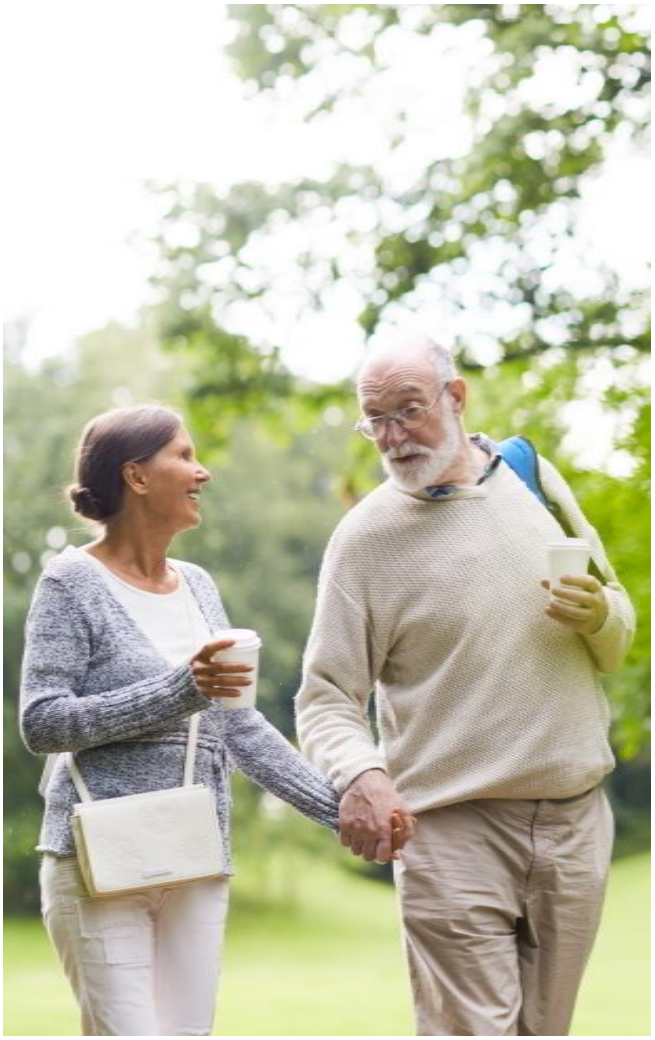
Analysis

The amendment in the 1952 Rules has settled the position w.r.t. Writ petitions challenging the validity of "rule" which includes notification, order, circular, bye-law or ordinance issued by the State. Although a Division Bench has the competency to hear matters which falls within the jurisdiction of the Single Bench, however, in order to follow the judicial hierarchy, the said rule is to be followed. In addition, this would also enable the aggrieved party to file an appeal before the Division Bench of the same Court without approaching the Hon'ble Supreme Court directly.

2 INSURERS' DUTY TO DISCLOSE CHANGED TERMS OF POLICY AT THE TIME OF RENEWAL: SUPREME COURT GRANTS RELIEF TO SENIOR CITIZEN

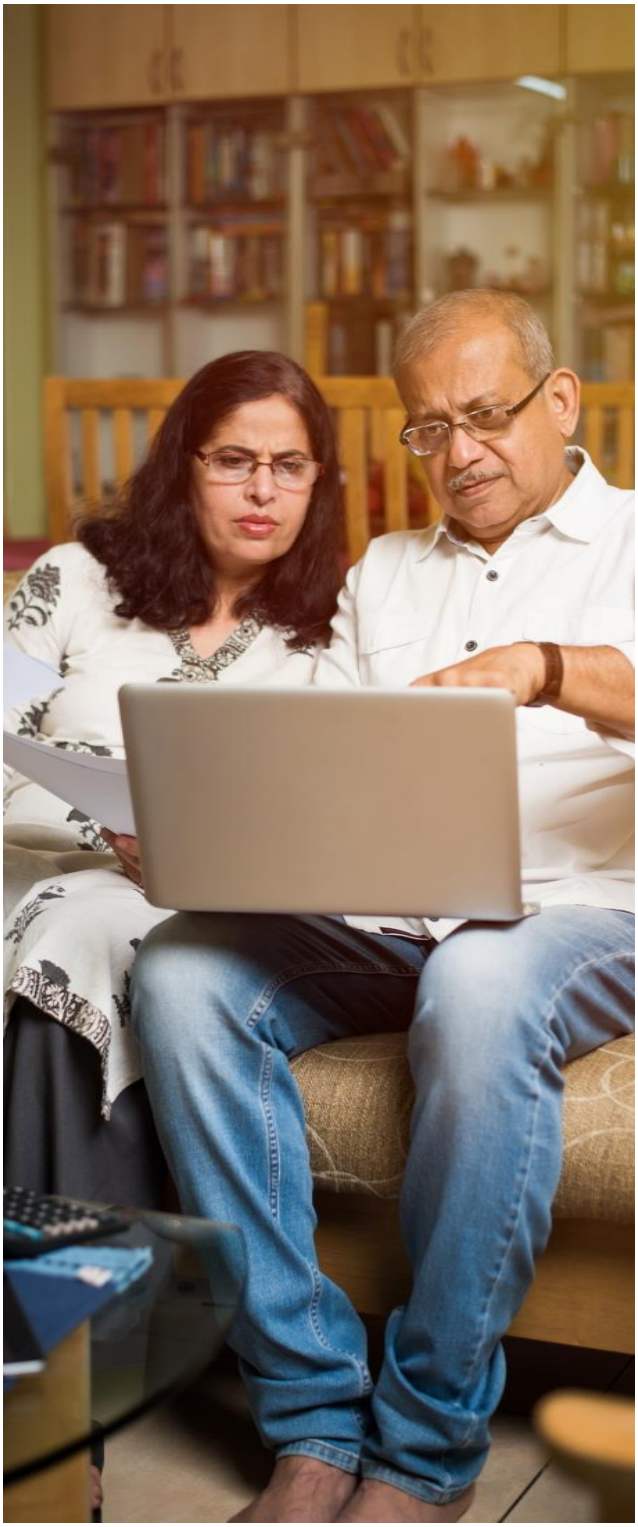
The Supreme Court vide its judgment dated 09.12.2021 in *Jacob Punnen and Another versus United India Insurance Co Ltd.*[2] has held that it is insurance company's responsibility to inform policy-holder about changes in the terms and condition of the medical insurance policy at the time of renewal.

In the instant case, two senior citizens *(hereinafter referred as "**Appellants/insured**")* purchased a medical insurance policy from United India Insurance *(hereinafter referred as "Insurer")* initially in 1982 which were renewed from time to time. In 2008, one of the Appellants underwent angioplasty for which the concerned Appellant filed a claim of Rs. 3.82 Lakhs before the insurer. However, the insurer accepted the claim to the tune of Rs. 2 Lakhs by claiming that the updated agreement (renewed policy) included a condition limiting liability of the insurer to the tune of Rs. 2 Lakhs in case the insured underwent angioplasty. Aggrieved by the same, the senior citizen approached the District Commission which allowed the complaint. However, on Appeal made by the insurer, the State Commission reversed the decision of the District Commission in favour of the insurer and subsequently the same was upheld by the National Commission. Aggrieved by the same, the original complainant had approached the Supreme Court assailing the decision of the National Commission.



[2] CIVIL APPEAL NO. 6778 OF 2013.

The Supreme Court held that the insurer has the duty to disclosure the changes made in the terms and conditions of the policy at the time of renewal. The Hon'ble Court observed that the insurer kept the policy claimers under a false impression on limiting their liability in case of angioplasty at the time when the renewal notice was issued. In light of the same, the Hon'ble Court made the insurer liable on the ground that insurer was unjustified in not disclosing about the insertion of the Clause in the terms and conditions of the policy that limits the liability of the insurer in case the insurer underwent Angioplasty. Therefore, non-disclosure on the part of the insurer amounts to deficiency of service and thus, the original complainant is entitled to relief.



The Hon'ble Court has reiterated the settled principle i.e *uberrima fide* (duty of utmost good faith). Therefore, the insurer cannot dust off its responsibility by pleading that it is duty of the policy holders to satisfy themselves about the altered terms and conditions.

The decision deserves praise as it will be beneficial for the senior citizens/incapable individual who due to their inability cannot be expected to know all the terms and conditions of the insurance policy. Therefore, the insurers now duty bound to explain changes in the terms and conditions of the policy at the renewal.

3 SUPREME COURT HELD CONSUMER COMPLAINT NOT MAINTAINABLE IF MEDICAL SERVICE AVAILED FREE OF CHARGE

The Division Bench of the Supreme Court vide its order dated 07.12.2021 in ***Nivedita Singh vs. Dr. Asha Bharti &Ors.***[3] has shed light on the definition of the *"Consumer"* under Consumer Protection Act, 1986 *(Hereinafter referred as "**1986 Act**").* The Court has clarified the position that the person who avails medical services without paying consideration cannot approach the consumer forum for seeking relief on ground of deficiency of services as the said person would not come within the definition of *'Consumer'* under Section 2(1)(d)(ii) of 1986 Act. The said Section incorporates the word *'Consideration paid'* as a necessary element for being called a consumer.

One Nivedita Singh (Hereinafter referred as "**Appellant**") availed the medical service from the District Women Hospital, Ghazipur and due to negligence on the part of the doctor and nurses on duty, Appellant developed gangrene in her two toes and consequently, the same were amputated.

Aggrieved by the same, a consumer complaint was filed before the District Consumer Forum alleging deficiency of services on the part of the doctor, nurses and the District Women Hospital. The Consumer Complaint was dismissed. Subsequently, the appeals filed were also dismissed by the State Commission as well as National Commission. Aggrieved by the same, Appellant filed the appeal.

The Hon'ble Court held that hospitals that render the service free of charge to all the patients are excluded within the definition of "Consumer" under the 1986 Act.

The Judgment grants absolute immunity to the hospitals rendering medical services without consideration. Instead, the doctors/hospitals that are negligent in their conduct must be made liable in case negligence is strictly proved after following the due procedure established by law.

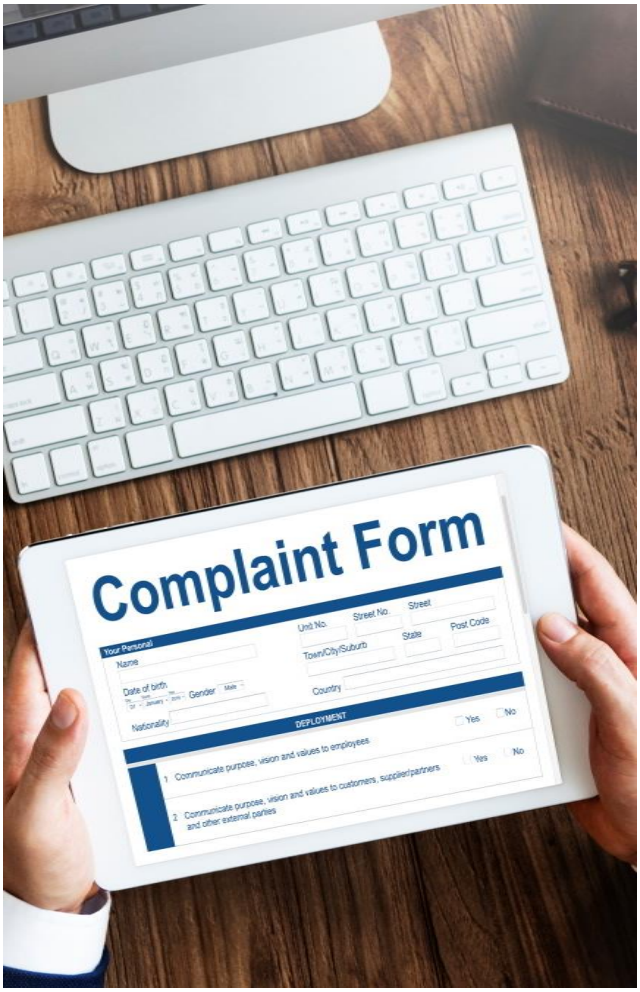
According to settled principles, if the language used in the statute is clear and unambiguous, the Courts are required to give literal interpretation or plain / grammatical meaning to the words. The definition of the word "*Consumer*" as such is unambiguous and clear and therefore, the Court has given a plain and simple meaning. However, such interpretation has resultantly left some segment of consumers who availed free medical services and they cannot approach Consumer

[3] CIVIL APPEAL NO(S).103 OF 2012.

Forum for the reason that they are not Consumer as per the 1986 Act even when there is a clear case of medical negligence. It definitely curtails the intent and objectives with which the Consumer Protection Act was enacted.

It is also accepted that in majority of the cases, free medical services are availed by the lower income/poor people who cannot afford to approach private hospitals. Therefore, this segment of people is deprived of right to approach Consumer Forums as they are not even Consumer within 1986 Act.

Therefore, a suitable mechanism needs to be brought in order to maintain equilibrium between the interests of the doctors/hospitals on the one hand and the patients on the other. The said mechanism should be such that allows hospitals to provide free medical services and it do not restrict them in fear or apprehension of litigation and at the same time, in cases where the doctors/hospital providing free services are proved grossly negligent, then they ought to be made liable.



4 FILING OF APPLICATION U/S 34(4) – NOT OBLIGATORY TO REFER THE MATTER TO THE ARBITRAL TRIBUNAL

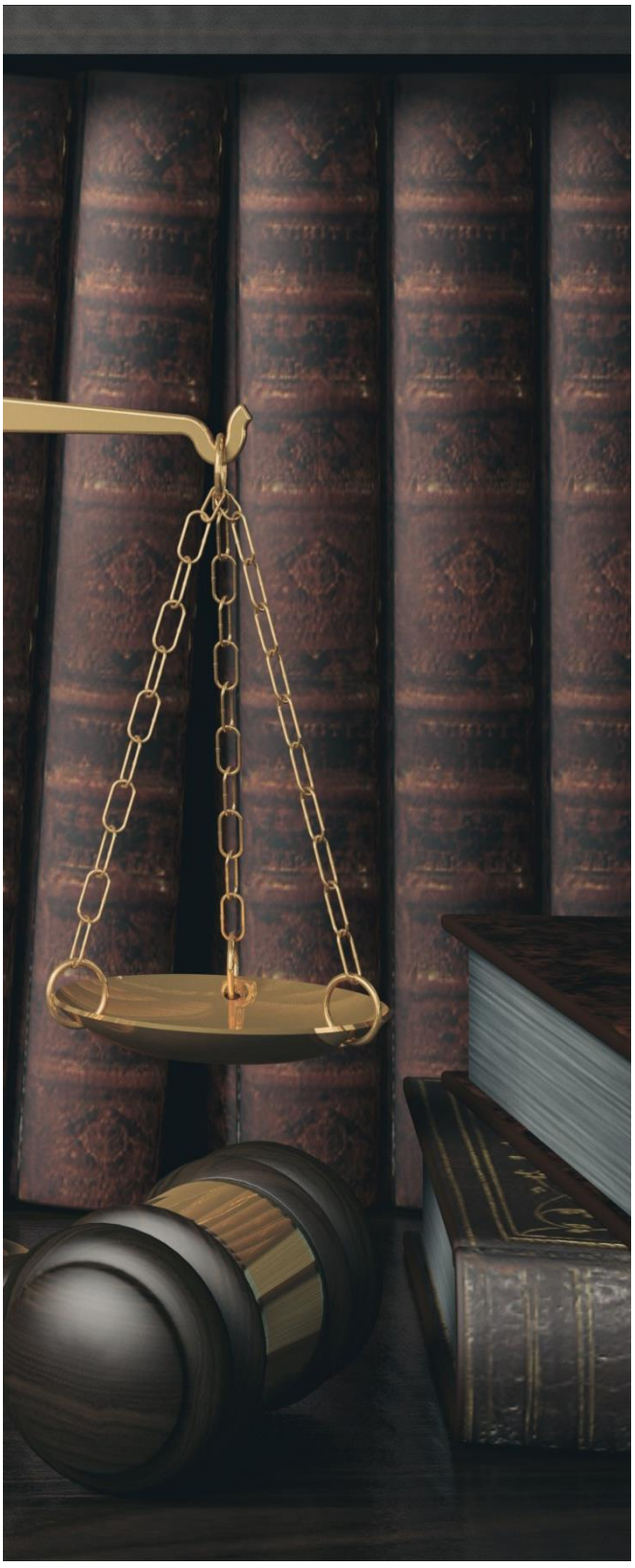
The Supreme Court in ***I-pay Clearing Services Private Limited vs Icici Bank Limited***[4] has categorically held that mere filing of an application under section 34(4) of the Arbitration and Conciliation Act, 1996, *("**hereinafter referred to be as Act**")* does not entail the Court to refer the case to an arbitral tribunal.

According to the Apex Court, the discretionary power given under section 34(4) of the Act is to be used where there is insufficient explanation or to fill in the gaps in the reasoning in support of the findings already recorded in the award. Under the pretence of adding reasons and filling in the holes in the reasoning, the Division Bench comprising Justice R. Subhash Reddy and Justice Hrishikesh Roy observed that no award could be remitted to the Arbitrator when there are no findings.

According to the facts of the case, the claimant, I-pay, entered into an arrangement with the respondent, ICICI Bank, to provide technology and manage the operations and processing of HPCL's Smart Card-based loyalty programmes. Under the name "Drive Smart Software," the appellant was tasked with developing several software application packages for the management of Smart Card-based loyalty programmes similar to the credit cards. The respondent also requested the appellant to design a "Drive Track Fleet Card" management solution for the fleet industry in order to extend their customer base.

[4] Civil Appeal No. 7 of 2022

Following its consideration of the arguments, the Supreme Court stated that Section 34(4) of the Act can be used to record reasons for findings previously made in the award or to fill in the gaps in the award's reasoning. Further, Section 34(4) of the Act itself makes it clear that it is the discretion vested with the Court for remitting the matter to the Arbitral Tribunal to give an opportunity to resume the proceedings or not. The Hon'ble Bench of the Apex Court stated that the words *"where it is appropriate"* itself indicate that it is the discretion to be exercised by the Court, to remit the matter when requested by a party. As such, when an application is filed U/s 34(4) of the Act, the same is to be considered keeping in mind the grounds raised in the application u/s 34(1) of the Act by the party, who has questioned the award of the Arbitral Tribunal and the grounds raised in the application filed u/s 34(4) of the Act and the reply thereto.



Analysis

On the plea of 'accord and satisfaction' it can be safely construed that even if the arbitral tribunal wants to consciously hold that there was 'accord and satisfaction' between the parties, it cannot do so by changing the award itself, which the Tribunal had already passed. Therefore, the Hon'ble Division Bench of the Apex court rightfully dismissed the appeal and declined to intervene in the High Court's conclusions.

5 LEGAL NEWS AND UPDATES

- Arbitrator Can Grant Post-Award Interest On The Interest Amount Awarded: Supreme Court.
- Offence Of Rape Not Waived: Delhi HC Refuses To Quash FIR Against Govt. Servant Following Settlement & Marriage With Victim.
- Zee Media v. Mahua Moitra: Delhi High Court Seeks Video Footage Of The Incident.
- Trademark Infringement Suit Has To Be Stayed Till Disposal Of Rectification Proceedings Before Registrar: Delhi High Court
- Allahabad HC Dismisses PIL Against ECI's Order Granting 'National Party' Status To BJP, Congress, Allotting Symbols to Them
- Uphaar Cinema case: Delhi court dismisses Ansal brothers' plea for suspension of 7-year jail term for tampering with evidence.
- 'Woman Has Right Not To Carry Pregnancy, Subject To Restrictions': Telangana High Court Permits Rape Victim To Terminate 26 Weekss Old Foetus.
- Delhi High Court Directs Whatsapp To Take Down Groups Illegally Circulating E-Newspapers Owned By Dainik Bhaskar Corp. Ltd.
- Google Moves Karnataka High Court Challenging CCI Order In Case Related To Play Store Payment Policy.
- Karnataka Assembly Passes Bill To Impose Restrictions On Religious Conversions & Inter-Faith Marriages.
- Karnataka High Court Reserves Order On Pleas Challenging State's Ban On Online Gaming.
- CCI Revokes Approval For Amazon's Deal With Future Group; Imposes Rs 200 Crore Penalty On Amazon For Violations.
- Supreme Court Collegium Recommends Appointment Of Justice Aniruddha Roy As Permanent Judge Of Calcutta High Court.
- Supreme Court Permits State Of Himachal Pradesh To Divert Forest Land For Public Projects.
- Sessions Court Cannot Stay Own Bail Order Under CrPC - Bombay High Court.

- Provisions Of Rent Act Will Not Have Overriding Effect Over Provisions Of SARFAESI Act: Karnataka High Court.

- Pegasus Case : West Bengal Governor Writes To CM Seeking Records Of Justice Lokur Commission.

- 20% Reduction In Private School Fees To Continue Only Till March 15, 2022: Calcutta High Court.

- "No Evidence": Delhi Court Discharges Former BJP MLA Kuldeep Singh Sengar & 5 Others In Unnao Rape Survivor's Road Accident Case.

- Motor Vehicles Act: Delhi High Court Issues Notice On Plea For Upgradation Of Technology To Detect Traffic Violations.

- Acquisition Of Jayalalithaa's 'Veda Nilayam' : Madras HC Reserves Judgment On AIADMK's Appeal.

- Delhi High Court To Hear In January Amazon's Plea Challenging Enforcement Directorate's Jurisdiction To Investigate Matters Beyond It's Power Under FEMA.

- Absence Of Prior Approval By State Government Before Executing The Sale Deed Would Vitiate And Invalidate The Document: Karnataka High Court.

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