## ARIYARATNE
## v
## THE NATIONAL INSURANCE CORPORATION AND OTHERS

COURT OF APPEAL
TILAKAWARDENA, J., AND
WIJEYARATNE J
C.A. NO. 1084/2002
JANUARY 23, 2003

*Insurance (Special Provisions) Act, No. 22 of 1979, section 3 – Conversion of Public Corporations and Government Owned Business Undertaking into Public Companies Act, No. 23, of 1987. Benefit in terms of an insurance policy – Does writ lie?, – Is there a "statutory flavour" requiring payment in terms of the policy.?*

The question arose whether the petitioner was entitled to the benefits in terms of the Divipiyasa Insurance policy.

**Held:**

(i) The authority under which payment was required to be made is not in terms of any statute but in terms of the contract that has been entered into in terms of the policy.

(ii) The fact that the authority has failed or refused to fulfil certain terms contained in that contract does not give rise either to public law rights or to any statutory obligations under which court can assume jurisdiction to issue a writ of mandamus.

There is no statutory flavour requiring payment in terms of the Policy.

(iii) There is no public duty cast upon the 1st respondent that can be enforced.

**APPLICATION** for a Writ of Mandamus.

*Phillip Chandraratne*, for petitioner.

*Nigel Hatch* for 1st, 2nd and 3rd respondents.

*Sajeewa Samaranayake*, State Counsel for 4th and 5th respondents.

*Cur. adv. vult.*

February 02, 2003

**SHIRANEE TILAKAWARDENA, J.**

The petitioner in this case has preferred this application seeking a declaration that the petitioner is entitled to benefits in terms of the Divipiyasa Insurance Policy. This relief that has been claimed is not within the purview of the jurisdiction of this Court and must necessarily be refused. 01

The second relief that has been claimed by the petitioner is for a writ of mandamus to compel the 1st to 3rd respondents to settle the loan granted by the 4th respondent to the petitioner in terms of the said "Divipiyasa Housing Loan Life Policy".

The respondents have raised several preliminary objections. The most salient objection being that the claim is based on a policy, which has been adverted to as P2, and in these circumstances that this is a pure contractual matter and does not attract the writ jurisdiction of this Court. 10

It is not in dispute that the policy had been obtained by the petitioner on the 21st of November 1998. The 1st respondent corporation was formed in terms of the Gazette Notification 1 R4 in

terms of the Insurance (Special Provisions) Act, No. 22 of 1979 in terms of section 3 of the said Act (1R4).

Subsequently on or about 03.02.1993 in terms of the Conversion of the Public Corporations or Government Owned Business Undertakings into Public Companies Act, No. 23 of 1987, the 1st respondent Company by the sale of 51% shares to the public, formed itself into a public company registered under the Companies Act, No. 17 of 1982. Vide 1R1. It is also not in dispute that the said 51% shares of the Company were sold to the public and in that sense the 1st respondent Company became a Public Company.

The important issue that has to be decided in this case is whether this company acting in terms of the powers vested in it, in terms of the Memorandum and the Articles of Association and entering into the contract P2, could be considered as having a public duty to the petitioner to pay under the aforesaid policy.

It is relevant to consider whether in the application that has been brought before this Court where the petitioner is seeking a mandate in the nature of a mandamus, was there a statutory duty cast upon the 1st respondent to make payments in terms of the policy.

This Court has carefully perused the insurance policy marked P2. The authority under which payment was required to be made is clearly not in terms of any statute but in terms of the contract that has been entered into in terms of this policy.

In other words the fact that the authority has failed or refused to fulfil certain terms contained in that contract does not give rise either to public law rights or to any statutory obligations under which this Court can assume jurisdiction to issue a writ of mandamus.

The fact that 51% of shares of the company were owned by the public does not convert a matter that has been entirely governed by the four corners of the contract into a matter that imposes a public duty under a statute.

Indeed an examination of the policy shows that there is no "statutory flavour" requiring payment in terms of this policy.

The right to make payment or to refuse payment is entirely governed by the contractual clauses contained in the policy.

Therefore Court holds that this is not a fit and suitable case for this Court to invoke the public law remedies that are available by the issuance of a writ of mandamus. Clearly there is no public duty that has been cast upon the 1st respondent that can be enforced in terms of any statutory provisions.

Counsel for the petitioner has urged this Court to consider the fact that the corporation initially was formed as a statutory body in terms of section 3 of the Insurance (Special Provisions) Act, No. 22 of 1979.

However the immediate matter that has to be determined by this Court is whether in terms of the policy any public duty arises for invoking the writ jurisdiction of this Court. Here there is a clear distinction in terms of the Private Law and Public Law.

This Court is unable to see any statutory duty which makes it incumbent upon the 1st respondent to make payment in terms of this policy entered into after it had been incorporated as a public company.

In any event the petitioner is not without an alternative remedy in a civil court of competent jurisdiction. Accordingly the application is dismissed without costs.

**WIJEYARATNE, J.** – I agree.

*Application dismissed.*