

ITEM NO.18

COURT NO.2

SECTION XIV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 29590/2018

(Arising out of impugned final judgment and order dated 26-02-2018 in RFA No. 610/2016 passed by the High Court Of Delhi At New Delhi)

THE UNITED INDIA INSURANCE CO. LTD.

Petitioner(s)

VERSUS

JAY PARKASH TAYAL

Respondent(s)

(FOR ADMISSION and I.R. and IA No.114805/2018-CONDONATION OF DELAY IN FILING)

Date : 27-08-2018 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI

HON'BLE MR. JUSTICE NAVIN SINHA

HON'BLE MR. JUSTICE K.M. JOSEPH

For Petitioner(s) Mr. Mukul Rohatgi, Sr. Adv.
Mr. P.P. Malhotra, Sr. Adv.
Mr. Mohit Paul, AOR
Mr. Vineet Malhotra, Adv.
Mr. Anugrah Niraj Ekka, Adv.
Mr. Obhirup Ghosh, Adv.
Mr. Vishal Gohri, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

Heard the learned counsel for the petitioner and perused the relevant material.

Delay condoned.

We direct that Insurance Regulatory and Development Authority (IRDA) be impleaded as party-respondent. Cause-title be amended accordingly.

Issue notice insofar as conclusion(s) and relief(s) (F.1)(i) to (v) granted by the High Court is concerned, which reads as follows :

- (i) Right to avail health insurance is an integral part of the Right to Healthcare and the Right to Health, as recognised in Art. 21 of the Constitution;

- (ii) Discrimination in health insurance against individuals based on their genetic disposition or genetic heritage, in the absence of appropriate genetic testing and laying down of intelligible differentia, is Unconstitutional;
- (iii) The broad exclusion of genetic disorders' is thus not merely a contractual issue between the insurance company and the insured but spills into the broader canvas of Right to Health. There appears to be an urgent need to frame a proper framework to prevent against genetic discrimination as also to protect collection, preservation and confidentiality of genetic data. Insurance companies are free to structure their contracts based on reasonable and intelligible factors which should not be arbitrary and in any case cannot be 'exclusionary. Such contracts have to be based on empirical testing and data and cannot be simply on the basis of subjective or vague factors. It is for lawmakers to take the necessary steps in this regard.
- (iv) The Exclusionary clause of genetic disorders', in the insurance policy, is too broad, ambiguous and discriminatory hence violative of Art. 14 of the Constitution of India;
- (v) Insurance Regulatory Development Authority of India (IRDA) is directed to re-look at the Exclusionary clauses in insurance contracts and ensure that insurance companies do not reject claims on the basis of exclusions relating to genetic disorders.

Until further orders, there shall be stay of operation of the judgment of the High Court dated 26.02.2018 to the aforesaid extent.

(NEETU KHAJURIA)
COURT MASTER

(ASHA SONI)
BRANCH OFFICER