MAJESTY LEGAL
Advocates & Solicitors

BURDEN TO PROVE SUPPRESSION OF FACTS IS ON INSURANCE COMPANY

"MAHAKALI SUJATHA V. THE BRANCH MANAGER, FUTURE GENERALI INDIA LIFE INSURANCE COMPANY LIMITED & ANR."

Hon'ble Supreme Court in its recent ruling observed that in matters related to insurance policies, burden of proving allegations about the fact of suppression of previous life insurance policies of the insured, made by the insured person or nominee, initially lies on the insurer itself. This principle aligns with the cardinal rule of burden of proof in law of evidence, stating that "he who asserts must prove." While hearing case of ***Mahakali Sujatha v. The Branch Manager, Future Generali India Life Insurance Company Limited & Anr.***[1], Hon'ble Supreme Court emphasized that onus cannot be shifted on the appellant to deal with issues that have merely been alleged by the respondents. Appellant- nominee had challenged the impugned order passed by NCDRC which allowed the revision petition filed by the Respondent-Insurance Company and repudiated the Appellant's claim. Hon'ble Court reiterated that as per Section 101 of the Evidence Act, 1872 states that whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. Furthermore, referring to provisions of IEA, 1872, it explained that there is an essential distinction between burden of proof and onus of proof.

Hon'ble Court then examined if respondents have successfully discharged his burden of proof. It observed that tabulaltion of the 15 different policies taken by the insured-deceased presented by the respondent were not supported by any other documentary evidence. Futher, there was no effort made by the respondent to bring any authenticated material on record. Thus, it concluded that NCDRC accepted the averment of the respondents, without demanding corroborative documentary evidence in support of respondents' contention and hence, Hon'ble Court concluded that NCDRC had accepted respondents' assertion without insisting on corroborative documentary evidence to support their claim.

In light of this, appeal was allowed, and respondent were instructed to make payment to the appellant-nominee, along with interest.

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[1] Civil Appeal No.3821 of 2024

[2] Majesty legal is a LAW FIRM established in 2013 by Ms. Mahi Yadav. Objective of this legal update is to provide insights on law, statutes and is personal in nature, not to be deemed as legal advice.

2024 INSC 296

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3821 OF 2024

MAHAKALI SUJATHA ...APPELLANT

VERSUS

**THE BRANCH MANAGER,
FUTURE GENERALI INDIA LIFE INSURANCE
COMPANY LIMITED & ANOTHER ...RESPONDENTS**

J U D G M E N T

NAGARATHNA, J.

1. The present civil appeal has been filed by the complainant, who is the daughter of the insured-deceased Sri Siriveri Venkateswarlu, who is also the nominee under the subject life insurance policies of her late father. The appellant is assailing the order dated 22.07.2019 passed by the National Consumer Disputes Redressal Commission, New Delhi (hereinafter referred to as "NCDRC") in Revision Petition No.1268 of 2019.

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2. By the impugned order, the NCDRC has allowed the revision petition filed by the respondent-opposite party, thereby setting aside the orders passed by the District Consumer Forum and the State Consumer Forum and sustaining the repudiation of the complainant's claim by the opposite party insurer-company.

3. The brief facts giving rise to the present appeal are as follows:

3.1. For the sake of convenience, the parties shall be referred to as complainant and opposite party.

3.2. Late Sri Siriveri Venkateswarlu, father of the complainant, obtained two insurance policies from the opposite party – one on 05.05.2009, for a sum of Rs. 4,50,000/-, and the other on 22.03.2010, for a sum of Rs. 4,80,000/-. Under the said two policies, in the event of death by accident, twice the sum assured was payable by the insurer. In the application form of the policy, the insured had been asked about the details of his existing life insurance policies with any other insurer, and the insured had answered the same in the negative. The complainant, being the daughter of the policy holder Late Sri Siriveri Venkateswarlu, was nominated to receive the proceeds under both the policies.

3.3. On 28.02.2011, the policy holder unfortunately lost his life in a train accident, leaving behind the complainant alone as his legal heir as well as nominee for death benefits. Immediately thereafter, the complainant approached the opposite party and informed about the death of her father and they advised the complainant to submit a claim form along with necessary documents which she did. However, by letter dated 31.12.2011, the complainant's claims were repudiated by the opposite party.

3.4. The claim of the complainant was repudiated on the ground that the policy holder had suppressed material facts in his application form with respect to existing life insurance policies from other insurers. Upon investigation by the opposite party, it was found that the insured had substantial life insurance cover with other insurance companies, even prior to the date of his application. After an evaluation of all facts and documents submitted and circumstances of the case, the opposite party came to the conclusion that the replies to the questions in the application form were incorrect, in as much as the opposite party held documentary proof in support of the same. They observed that

had such information been disclosed, their underwriting decision would have materially changed. It was further remarked that the contract of insurance is based on the principle of utmost good faith and the company relies on the information provided by the life insured in the application for insurance. Thus, the claim was held to be not valid and the liability to pay under the policy was repudiated by the insurer.

3.5. Being aggrieved by the repudiation of the claim, the complainant approached the concerned District Forum by way of a consumer complaint, bearing CC No.8 of 2014. The District Commission at Vijaywada, Krishna District, by order dated 27.08.2014, allowed the consumer complaint, on the ground that no documentary evidence was available to show that the deceased-insured had taken various insurance policies from various other companies. The Commission found deficiency of services on the part of the opposite party in repudiating the claim filed by the complainant and therefore directed the opposite parties to pay the insurance amount of Rs.7,50,000/- + Rs.9,60,000/- under two policies jointly and severally with interest at the rate of 6% per annum from 31.12.2011, i.e., the date of repudiation of the claim

of the complainant, till realisation, along with costs of Rs. 2000/- to the complainant.

3.6. Being aggrieved, the insured/opposite party filed an appeal bearing FA No.94 of 2015 before the concerned State Consumer Forum at Vijaywada. The State Commission observed that there was absolutely no material produced by the opposite party before the Forum to prove the allegation of suppression. The documents attempted to be produced were neither original nor certified nor authenticated. However, even assuming that there were existing policies, still the non-disclosure of pre-existing policies does not amount to suppression of material facts. Reliance for the same was placed on some previous judgments of the NCDRC. Hence, the claim could not have been said to be vitiated by fraud. The opposite parties were not right in repudiating the claim. The State Commission therefore, by its order dated 11.12.2018, dismissed the appeal of the opposite party and upheld the order of the District Commission.

3.7. The opposite party thereafter approached the NCDRC through Revision Petition No.1268 of 2019, challenging the order passed by the State Commission in FA No.94 of 2015. The NCDRC,

vide impugned judgment, agreed with the opposite party that the deceased-insured had withheld the information in respect of several insurance policies which he had taken from other insurers. The NCDRC observed that on the one hand, the opposite party had duly stated the details of the other policies in their affidavit, but on the other, the complainant, even in her affidavit filed by way of evidence, did not claim that the policies mentioned in the written version of the opposite party had not been taken by the deceased. Reliance was further placed by the NCDRC on the judgment of this Court in ***Reliance Life Insurance Co Ltd vs. Rekhaben Nareshbhai Rathod, (2019) 6 SCC 175***, ***("Rekhaben")*** wherein the repudiation of the claim due to suppression of the fact of other existing insurance policies was upheld by the Supreme Court. The NCDRC held that the Supreme Court's judgment would prevail over the judgments of the NCDRC relied upon by the State Consumer forum and thus, the revision petition was allowed and the consumer complaint was dismissed.

4. Hence, the complainant has preferred the present Special Leave Petition against the impugned judgment of the NCDRC.

5. We have heard learned counsel for the Appellant, Sri Venkateswara Rao Anumolu and learned counsel for the Respondent, Sri Praveen Mahajan for the insurer. The controversy in the present case pertains to the factum of repudiation of the insurance claim of the Complainant on the ground of the material suppression of information regarding the previous policies allegedly held by the insured-deceased, while taking the life insurance policy from the Opposite Party.

6. Learned counsel for the appellant submitted that the insurance company has not proved that appellant's father had any other insurance policy while taking the insurance policy from the opposite party. Thus, there has been no material suppression of fact in the application form with respect to holding any previous policy by the insured-deceased or his family members.

7. It was further submitted by the appellant that the NCDRC was incorrect in upholding the repudiation of claim in the absence of an iota of documentary evidence on record to support the contention that the insured-deceased had suppressed any fact under Clause 6 of the Proposal Form about the previous policies

issued by other insurers. The respondent has merely alleged the fact of multiple insurance policies of the insured-deceased through their affidavit of evidence but had not discharged their burden of proof by leading any documentary evidence to support their allegation.

8. *Per Contra*, learned counsel for the respondent has supported the judgment of the NCDRC and has further contended that the insured-deceased had taken fifteen other insurance policies worth Rs.71,27,702/- prior to the issuance of the subject policies by them. These policies were not disclosed in the proposal forms and had the respondent been aware about these other insurance policies with other insurance companies and the existing risk cover at the time of assessment of risk under the subject policies, they would have certainly not issued the subject policies to the insured-deceased. Thus, the insured-deceased has suppressed the material fact and the claim has been rightly repudiated on this ground alone.

9. Learned counsel for the respondent further submitted that the policy of life insurance is based upon the principle of

"*uberrimae fidei*", i.e., utmost good faith. When a specific fact is asked for in the proposal form, an assured is under a solemn obligation to make a true and full disclosure of the information on the subject which is within the best of his knowledge. In the present case as well, the insured-deceased was under the obligation to make complete and honest disclosure of all the facts and materials at the time of filling of the proposal form. The failure to do so shows the *mala fide* intention on the part of the insured-deceased and renders the policy invalid, void *ab-initio*, inoperative and unenforceable.

10. Learned counsel for the respondent also relied upon the judgment of this court in the case of ***Rekhaben***, which is contended to be similar in facts to the present case and where this Court allowed the repudiation of the insurance claim on the ground of material suppression of information about the previously taken insurance policies.

11. Having heard the learned counsel for the respective parties, the point that arises for consideration before this Court in the present Civil Appeal, is, whether, the respondent herein was

correct in repudiating the claim of the appellant on the ground of suppression of material information pertaining to the existing policies with other insurers.

12. In order to answer the aforesaid question, it would be useful to recapitulate the relevant provisions of the law of insurance and evidence, *vis-à-vis* burden of proof and the method of discharging that burden of proof to prove an alleged fact, which is suppression of a material fact while seeking an insurance policy from an insurer.

13. The repudiation of an insurance claim is largely governed by Section 45 of the Insurance Act, 1938. Section 45 is a special provision of law, which bars the calling in question of an insurance policy beyond expiry of the stipulated period, except in a few circumstances that have to be proved by the insurer. The relevant part of the said provision, as it stood at the material time, is reproduced as under:

> "**45. Policy not be called in question on ground of mis-statement after two years.-** No policy of life insurance effected before the commencement of this Act shall after the expiry of two years from the date of commencement of this Act and no policy of life insurance effected after the coming into force of this Act shall after the expiry of two

> years from the date on which it was effected, be called in question by an insurer on the ground that a statement made in the proposal for insurance or in any report of a medical officer, or referee, or friend of the insured, or in any other document leading to the issue of the policy, was inaccurate or false, unless the insurer shows that such statement was on a material matter or suppressed facts which it was material to disclose and that it was fraudulently made by the policy-holder and that the policy-holder knew at the time of making it that the statement was false or that it suppressed facts which it was material to disclose:
>
> Provided that nothing in this section shall prevent the insurer from calling for proof of age at any time if he is entitled to do so, and no policy shall be deemed to be called in question merely because the terms of the policy are adjusted on subsequent proof that the age of the life insured was incorrectly stated in the proposal."

14. A three-judge bench of this court in ***Mithoolal Nayak vs. Life Insurance Corporation of India, AIR 1962 SC 814***, explained the scope of the operating part of Section 45 as under:

> "7….It would be noticed that the operating part of S. 45 states in effect (so far as is relevant for our purpose) that no policy of life insurance effected after the coming into force of the Act shall, after the expiry of two years from the date on which it was effected, be called in question by an insurer on the ground that a statement made in the proposal for insurance or in any report of a medical officer, or referee, or friend of the insured, or in any other document leading to the issue of the policy, was inaccurate or false; the second part of the section is in the nature of a proviso which creates an exception. It says in effect that if the insurer shows that such statement was on a material matter or suppressed facts which it was material to disclose and that it was fraudulently made by the

policyholder and that the policy-holder knew at the time of making it that the statement was false or that it suppressed facts which it was material to disclose, then the insurer can call in question the policy effected as a result of such inaccurate or false statement."

15. The scope of Section 45 was dealt with by this Court in the case of ***Rekhaben*** as follows:

> "14. Section 45 stipulates restrictions upon the insurer calling into question a policy of life insurance after the expiry of two years from the date on which it was effected. After two years have elapsed the insurer cannot call it into question on the ground that: (i) a statement made in the proposal; or (ii) a statement made in any report of a medical officer, referee or friend of the insured; or (iii) a statement made in any other document leading to the issuance of the policy was inaccurate or false, unless certain conditions are fulfilled. Those conditions are that: (a) such a statement was on a material matter; or (b) the statement suppressed facts which were material to disclose *and* that (i) they were fraudulently made by the policy holder; and (ii) the policy-holder knew at the time of making it that the statements were false or suppressed facts which were material to disclose. The cumulative effect of Section 45 is to restrict the right of the insurer to repudiate a policy of life insurance after a period of two years of the date on which the policy was effected. Beyond two years, <u>the burden lies on the insurer to establish the inaccuracy or falsity of a statement on a material matter or the suppression of material facts. Moreover, in addition to this requirement, the insurer has to establish that this non-disclosure or, as the case may be, the submission of inaccurate or false information was fraudulently made and that the policy-holder while making it knew of the falsity of the statement or of the suppression of facts which were material to disclose</u>."

(emphasis by us)

16. Since the present case deals with a policy and its repudiation before the 2014 amendment to Section 45 of the Insurance Act, the pre-amendment time period of two years would be applicable to the case. As per the aforesaid language and interpretation of Section 45, the insurer cannot question the policy after the expiry of the time period and if it does, then the burden rests on the insurer to establish materiality of the fact suppressed and the knowledge of the insured about such suppression, so that the repudiation of the claim could be justified by the insurer.

17. In the present case, the onus was on the insurer to show that the insured had fraudulently given false information and the said information was related to a material fact. The second aspect of the controversy would be dealt with first.

18. For a better appreciation of the controversy, it would be important to analyse the maxim of *uberrimae fidei* that governs the insurance contracts. It may also be observed that insurance contracts are special contracts based on the general principles of full disclosure inasmuch as a person seeking insurance is bound to disclose all material facts relating to the risk

involved. Law demands a higher standard of good faith in matters of insurance contracts which is expressed in the legal maxim *uberrimae fidei.* The plea of utmost good faith has also been taken by the respondent, for contending that the insured-deceased had a duty to disclose the details of the previous policies, as the same was sought in the application form. However, the insured failed in his duty to correctly answer the question about his previous policies. The law relating to the maxim *uberrimae fidei* was dealt with by this Court in the case of ***Manmohan Nanda vs. United India Insurance Co. Ltd., (2022) 4 SCC 582***, ***("Manmohan Nanda").*** The same could be discussed at this stage with reference to legal authorities as well as relevant provisions of law.

19. MacGillivray on Insurance Law, (12th Edn., Sweet & Maxwell, London, 2012 at p. 477) has summarised the duty of an insured to disclose as under:

> "... the assured must disclose to the insurer all facts material to an insurer's appraisal of the risk which are known or deemed to be known by the assured but neither known nor deemed to be known by the insurer. Breach of this duty by the assured entitles the insurer to avoid the contract of insurance so long as he can show that the non-disclosure induced the making of the contract on the relevant terms."

20. Lord Mansfield in ***Carter vs. Boehm, (1766) 3 Burr 1905*** has summarised the principles necessitating disclosure by the assured in the following words:

> "Insurance is a contract of speculation.
>
> The special facts upon which the contingent chance is to be computed, lie most commonly in the knowledge of the assured only; the under-writer trusts to his representation, and proceeds upon confidence that he does not keep back any circumstance in his knowledge, to mislead the under-writer into a belief that the circumstance does not exist …
>
> The keeping back such circumstance is a fraud, and therefore the policy is void. Although the suppression should happen through mistake, without any fraudulent intention; yet still the under-writer is deceived and the policy is void; because the risk run is really different from the risk understood and intended to be run, at the time of the agreement.
>
> The policy would be equally void against the under-writer if he concealed; ...
>
> Good faith forbids either party, by concealing what he privately knows, to draw the other into a bargain from his ignorance of the fact, and his believing the contrary."

The aforesaid principles would apply having regard to the nature of policy under consideration, as what is necessary to be disclosed are "material facts" which phrase is not definable as such, as the same would depend upon the nature and extent of coverage of risk under a particular type of policy. In simple terms,

it could be understood that any fact which has a bearing on the very foundation of the contract of insurance and the risk to be covered under the policy would be a “material fact”.

21. Under the provisions of Insurance Regulatory and Development Authority (Protection of Policyholders’ Interests) Regulations, 2002 the explanation to Section 2 (d) defining “proposal form” throws light on what is the meaning and content of “material.” For an easy reference the definition of “proposal form” along with the explanation under the aforesaid Regulations has been extracted as under:

> “**2. Definitions.-** In these regulations, unless the context otherwise requires-
>
> x x x
>
> (d) "Proposal Form" means a form to be filled in by the proposer for insurance, for furnishing all material information required by the insurer in respect of a risk, in order to enable the insurer to decide whether to accept or decline, to undertake the risk, and in the event of acceptance of the risk, to determine the rates, terms and conditions of a cover to be granted.
>
> Explanation: "Material" for the purpose of these regulations shall mean and include all important, essential and relevant information in the context of underwriting the risk to be covered by the insurer.”

> Thus, the Regulation also defines the word "material" to mean and include all "important", "essential" and "relevant" information in the context of guiding the insurer in deciding whether to undertake the risk or not."

22. Just as the insured has a duty to disclose all material facts, the insurer must also inform the insured about the terms and conditions of the policy that is going to be issued to him and must strictly conform to the statements in the proposal form or prospectus, or those made through his agents. Thus, the principle of utmost good faith imposes meaningful reciprocal duties owed by the insured to the insurer and *vice versa*. This inherent duty of disclosure was a common law duty of good faith originally founded in equity but has later been statutorily recognised as noted above. It is also open to the parties entering into a contract to extend the duty or restrict it by the terms of the contract.

23. The duty of the insured to observe utmost good faith is enforced by requiring him to respond to a proposal form which is so framed to seek all relevant information to be incorporated in the policy and to make it the basis of a contract. The contractual duty so imposed is that any suppression or falsity in the statements in

the proposal form would result in a breach of duty of good faith and would render the policy voidable and consequently repudiate it at the instance of the insurer.

24. In relation to the duty of disclosure on the insured, any fact which would influence the judgment of a prudent insurer and not a particular insurer is a material fact. The test is, whether, the circumstances in question would influence the prudent insurer and not whether it might influence him *vide* ***Reynolds vs. Phoenix Assurance Co. Ltd., (1978) 2 Lloyd's Rep. 440.*** Hence, the test is to be of a prudent insurer while issuing a policy of insurance.

25. The basic test hinges on whether the mind of a prudent insurer would be affected, either in deciding whether to take the risk at all or in fixing the premium, by knowledge of a particular fact if it had been disclosed. Therefore, the fact must be one affecting the risk. If it has no bearing on the risk it need not be disclosed and if it would do no more than cause insurers to make inquiries delaying issue of the insurance, it is not material if the result of the inquiries would have no effect on a prudent insurer.

26. Whether a fact is material will depend on the circumstances, as proved by evidence, of the particular case. It is for the court to rule as a matter of law, whether, a particular fact is capable of being material and to give directions as to the test to be applied. Rules of universal application are not therefore to be expected, but the propositions set out in the following paragraphs are well established:

(a) Any fact is material which leads to the inference, in the circumstances of the particular case, that the subject matter of insurance is not an ordinary risk, but is exceptionally liable to be affected by the peril insured against. This is referred to as the “physical hazard”.

(b) Any fact is material which leads to the inference that the particular proposer is a person, or one of a class of persons, whose proposal for insurance ought to be subjected at all or accepted at a normal rate. This is usually referred to as the “moral hazard”.

(c) The materiality of a particular fact is determined by the circumstances of each case and is a question of fact.

27. If a fact, although material, is one which the proposer did not and could not in the particular circumstances have been expected to know, or if its materiality would not have been apparent to a reasonable man, his failure to disclose it is not a breach of his duty.

28. Full disclosure must be made of all relevant facts and matters that have occurred up to the time at which there is a concluded contract. It follows from this principle that the materiality of a particular fact is determined by the circumstances existing at the time when it ought to have been disclosed, and not by the events which may subsequently transpire. The duty to make full disclosure continues to apply throughout negotiations for the contract but it comes to an end when the contract is concluded; therefore, material facts which come to the proposer's knowledge subsequently need not be disclosed.

29. Thus, a proposer is under a duty to disclose to the insurer all material facts as are within his knowledge. The proposer is presumed to know all the facts and circumstances concerning the proposed insurance. Whilst the proposer can only disclose what is known to him, the proposer's duty of disclosure is not confined to his actual knowledge, it also extends to those material facts which, in the ordinary course of business, he ought to know. However, the assured is not under a duty to disclose facts which he did not know and which he could not reasonably be expected to

know at the material time. The second aspect of the duty of good faith arises in relation to representations made during the course of negotiations, and for this purpose all statements in relation to material facts made by the proposer during the course of negotiations for the contract constitute representations and must be made in good faith.

30. The basic rules to be observed in making a proposal for insurance may be summarized as follows:

> (a) A fair and reasonable construction must be put upon the language of the question which is asked, and the answer given will be similarly construed. This involves close attention to the language used in either case, as the question may be so framed that an unqualified answer amounts to an assertion by the proposer that he has knowledge of the facts and that the knowledge is being imparted. However, provided these canons are observed, accuracy in all matters of substance will suffice and misstatements or omissions in trifling and insubstantial respects will be ignored.
>
> (b) Carelessness is no excuse, unless the error is so obvious that no one could be regarded as misled. If the proposer puts 'no' when he means 'yes' it will not avail him to say it was a slip of the pen; the answer is plainly the reverse of the truth.
>
> (c) An answer which is literally accurate, so far as it extends, will not suffice if it is misleading by reason of what is not stated. It may be quite accurate for the proposer to state that he has made a claim previously on an insurance company, but the answer is untrue if in fact he has made more than one.

(d) Where the space for an answer is left blank, leaving the question un-answered, the reasonable inference may be that there is nothing to enter as an answer. If in fact there is something to enter as an answer, the insurers are misled in that their reasonable inference is belied. It will then be a matter of construction whether this is a mere non-disclosure, the proposer having made no positive statement at all, or whether in substance he is to be regarded as having asserted that there is in fact nothing to state.

(e) Where an answer is unsatisfactory, as being on the face of it incomplete or inconsistent the insurers may, as reasonable men, be regarded as put on inquiry, so that if they issue a policy without any further enquiry they are assumed to have waived any further information. However, having regard to the inference mentioned in head (4) above, the mere leaving of a blank space will not normally be regarded as sufficient to put the insurers on inquiry.

(f) A proposer may find it convenient to bracket together two or more questions and give a composite answer. There is no objection to his doing so, provided the insurers are given adequate and accurate information on all points covered by the questions.

(g) Any answer given, however accurate and honest at the time it was written down, must be corrected if, up to the time of acceptance of the proposal, any event or circumstance supervenes to make it inaccurate or misleading.

[Source : Halsbury's Laws of England, Fourth Edition, Para 375, Vol.25 : Insurance]

31. Sometimes the standard of duty of disclosure imposed on the insured could make the insured vulnerable as the statements in the proposal form could be held against the insured. Conversely, certain clauses in the policy of insurance could be interpreted in light of the *contra proferentem* rule as against the insurer. In order to seek specific information from the insured, the proposal form must have specific questions so as to obtain clarity as to the underlying risks in the policy, which are greater than the normal risks.

32. From the aforementioned discussion, it is clear that the principle of utmost good faith puts reciprocal duties of disclosure on both parties to the contract of insurance. These reciprocal duties mandate that both the parties make complete disclosure to each other, so that the parties can take an informed decision and a fair contract of insurance exists between them. No material facts should be suppressed, which may have a bearing on the risk being insured and the decision of the party to undertake that risk. However, not every question can be said to be material fact and the materiality of a fact has to be adjudged as per the rules stated in the aforementioned judgment.

33. Whether the information with regard to previous policies from other insurers is a material fact or not has already been dealt with by this Court in the judgment of ***Rekhaben***. The facts of the said case were that the insured therein had taken a policy of life insurance from Max New York Life Insurance Co. Ltd. on 10.07.2009 for a sum of Rs. 11 lakhs. Barely two months thereafter, on 16.09.2009, the insured submitted a proposal for a life insurance term plan policy of Reliance Life Insurance Co Ltd for an insurance cover of Rs. 10 lakhs. One of the questions that the proposer was required to answer in the proposal form was whether he was currently insured or had previously applied for life insurance cover, critical illness cover or accident benefit cover. This query was answered in the negative. In substance, the information regarding life insurance policy earlier taken had to be mentioned. The query was answered as "NA" or "not applicable" response. The appellant company therein issued a policy of life insurance to the spouse of the respondent on 22.09.2009. The respondent spouse died on 08.02.2010. A claim for payment of Rs.10 lakhs was submitted. On coming to know that the spouse of the respondent therein had been insured with another private

insurance company for a sum of Rs.11 lakhs and that the claim had been settled, the appellant company repudiated the claim stating that there was suppression of material fact inasmuch as there was glaring omission in the mentioning of details of the life insurance policy held by the life assured with other company. Being aggrieved by the repudiation, the respondent in the said case filed a consumer complaint which was dismissed on the ground that there was non-disclosure of the fact that the insured had held a previous policy in the proposal form filled up by the proposer. The appeal filed by the respondent was, however, allowed based on a decision of the NCDRC in ***Sahara India Life Insurance Co. Ltd. vs. Rayani Ramanjaneyulu, 2014 SCC OnLine NCDRC 525 : (2014) 3 CPJ 582 ("Sahara India").*** The decision of the State Consumer Disputes Redressal Commission was affirmed by NCDRC for the reason that the omission of the insured to disclose a previous policy of insurance would not influence the mind of a prudent insurer, as held in ***Sahara India.***

34. The question before this Court in the aforesaid case was, whether, the repudiation could be sustained on the grounds of suppression of information about other insurance policies. It is

pertinent to note that the insured therein had admitted the non-disclosure of the earlier cover for life insurance held by him, but argued that the non-disclosure of such information was not a material fact whose suppression would allow for repudiation of the claim under Section 45. Therefore, the Court ruled in favour of the insurance company and held that such suppression was indeed a material suppression of information, as it had a bearing on the decision of the insurer to enter into the contract of insurance or not. The court thereunder held as follows:

> "32. In the present case, the insurer had sought information with respect to previous insurance policies obtained by the assured. The duty of full disclosure required that no information of substance or of interest to the insurer be omitted or concealed. Whether or not the insurer would have issued a life insurance cover despite the earlier cover of insurance is a decision which was required to be taken by the insurer after duly considering all relevant facts and circumstances. The disclosure of the earlier cover was material to an assessment of the risk which was being undertaken by the insurer. Prior to undertaking the risk, this information could potentially allow the insurer to question as to why the insured had in such a short span of time obtained two different life insurance policies. Such a fact is sufficient to put the insurer to enquiry.
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> 33. The learned counsel appearing on behalf of the insurer submitted that where a warranty has been furnished by the proposer in terms of a declaration in the proposal form, the requirement of the information being material should not be insisted upon and the insurer would be at liberty to

avoid its liability irrespective of whether the information which is sought is material or otherwise. For the purposes of the present case, it is sufficient for this Court to hold in the present facts that the information which was sought by the insurer was indeed material to its decision as to whether or not to undertake a risk. The proposer was aware of the fact, while making a declaration, that if any statements were untrue or inaccurate or if any matter material to the proposal was not disclosed, the insurer may cancel the contract and forfeit the premium. MacGillivray on Insurance Law formulates the principle thus:

> "…In more recent cases it has been held that all-important element in such a declaration is the phrase which makes the declaration the "basis of contract". These words alone show that the proposer is warranting the truth of his statements, so that in the event of a breach this warranty, the insurer can repudiate the liability on the policy irrespective of issues of materiality."

34. We are not impressed with the submission that the proposer was unaware of the contents of the form that he was required to fill up or that in assigning such a response to a third party, he was absolved of the consequence of appending his signatures to the proposal. The proposer duly appended his signature to the proposal form and the grant of the insurance cover was on the basis of the statements contained in the proposal form. Barely two months before the contract of insurance was entered into with the appellant, the insured had obtained another insurance cover for his life in the sum of Rs 11 lakhs. We are of the view that the failure of the insured to disclose the policy of insurance obtained earlier in the proposal form entitled the insurer to repudiate the claim under the policy."

35. However, the aforesaid judgment is distinguishable from the present case, insofar as there is no admission by the appellant herein of any previous policies taken by the insured. In that case, after the admission by the policy holder, the Court was tasked only with the question of whether the fact about previous polices qualified to be a “material fact” that was suppressed. However, in the present case, in light of Section 45 of the Insurance Act, 1938, the burden rests on the insurer to prove before the Court that the insured had suppressed the information about the previous policies. This burden of proof has to be duly discharged by the insurer in accordance with the law of evidence.

36. In the instant case, NCDRC has extracted from the letter dated 31.12.2011, by which the claim of the appellant was repudiated, and has relied upon the reply filed by respondent company before the District Forum wherein details of as many as fifteen insurance policies taken from various insurers, other than the policy taken from the respondent company, have been given as under:

Sl. No.	**Insurers**	**Policy No.**	**Issue Date**	**RCD**	**Sum assured**	**Date of birth declared**
1.	Kotak	1839610	11.01.2010	11.01.2010	5,00,000/-	14.7.1960
2.	Bharti Axa Life	5003353827	Not known	28.3.2009	7,50,000/-	12.9.1960
3.	Aviva	ASP2610613	Not known	09.6.2009	10,00,000/-	12.7.1960
4.	Reliance Life Insurance	13231705	Not known	17.12.2008	2,00,000/-	6.7.1959
5.	Reliance Life Insurance	13741094	Not known	11.2.2009	5,00,000/-	14.7.1960
6.	HDFC Standard Life	13061074	Not known	29.8.2009	4,80,000/-	NA
7.	HDFC Standard Life	12695703	Not known	21.3.2009	4,80,000/-	NA
8.	Max New York Life	809471329	Not known	27.1.2009	5,75,289/-	14.7.1960
9.	Max New York Life	388825572	Not known	30.9.2009	4,24,711/-	14.7.1960
10.	Birla	2489174	Not known	28.1.2009	1,33,461/-	14.7.1960
11.	Birla	2490595	Not known	28.1.2009	2,60,241/-	14.7.1960
12.	Birla	3121574	Not known	3.8.2009	5,00,000/-	14.7.1960
13.	Birla	3956699	Not known	17.3.2010	3,24,000/-	14.7.1960
14.	IDBI	Not given	Not known	20.4.2010	5,00,000/-	14.7.1960
15.	IDBI	Not given	Not known	28.04.....	5,00,000/-	14.7.1960
				Total	**71,27,702/-**	
Total: Seventy-one lac twenty-seven thousand seven hundred and two only						

37. A mere perusal of the aforesaid table would indicate that the date of birth declared are different and the date of issuance has not been stated except in respect of one policy. It is also not known from the table to whom the said policies were issued. However, the NCDRC has observed that the appellant-complainant had not alleged in her complaint that no other insurance policy had been taken by the deceased. In the affidavit of the complainant, the fact that insurance policies were taken from other insurers was not denied. The respondent insurance company had given details of the aforesaid policies by way of an affidavit. Therefore, NCDRC concluded that deceased insured had withheld information in respect of several insurance policies which he had taken from other insurers.

38. Placing reliance on ***Rekhaben***, the NCDRC observed that ***Sahara India*** had been overruled in ***Rekhaben*** and therefore consumer complaint was dismissed. We find that the approach of the NCDRC is erroneous for the following reasons:

i) Firstly, the NCDRC has failed to note that the details of the policies extracted in the table above do not state as in whose name the said policies were issued. On perusal of the dates of birth declared in the policies, it is not clear as to whose dates of birth are stated therein.

ii) Secondly, the dates of issuance of policies have not been mentioned. More significantly, by merely mentioning the details as above stated would not establish the case of the insurance company. There was no corroboration of the said fact either by producing copies of the aforesaid policies or by examining the officers of the various insurance companies which had issued the policies so as to establish the fact that the said policies had indeed been issued to the insured in order to prove material suppression of the fact of other policies obtained by the insurer in the proposal form. In the absence of any corroboration of the aforesaid details by letting in proper evidence, the mere mentioning of the half baked details in the affidavit would not amount to proof of the said fact. The NCDRC has thus failed to take note of the fact that the

aforesaid details have not been supported by other corroborative evidence. The mere mentioning of certain details in an affidavit of evidence is not proof of the facts unless that is supported either by other documentary and/or oral evidence.

iii) Further, the NCDRC was also not right in finding fault with the complainant not mentioning in her affidavit the evidence that the insured had taken policies from other insurance companies and that the details given in the version of the respondent company were not true.

39. Next, we also find that the declaration form asked the following queries which were accordingly answered in the negative. The queries are extracted as under:

> "6.1 Details of applications submitted to & existing life insurance policies with future Generali and with any insurer. (In case of housewife, major student or minor life to be Assured please give details of husbands and parents insurance also)
>
> 6.2 Whether any proposal for life cover or critical illness Rider or Accident and Disability Benefit Rider, application for revival of any Policy has been made to any life insurer, declined/postponed/dropped/accepted or revived at modified rates"

On a reading of Query 6.1, what was sought was details of applications submitted to and existing life insurance policies with Future Generali (respondent company) and with any (other) insurer. Further details sought were in case of housewife, major student or minor life to be assured and to give details of husband's and parents' insurance also. It is not clear as to whether Query 6.1 referred to details of insurance policy of the proposer with Future Generali and with any other insurer, as what was also sought was details of wife, major student or a minor life to be assured and to give details of the husband's and parents' insurance. Therefore, it is not clear from reading of Query 6.1 as to whether details of insurance policy of the insured with Future Generali and with other insurer were sought or the query related to the details of husband and parents' insurance policy being disclosed in case the insured was a housewife, major student or a minor life when the insured was a housewife or a minor child. The insured in the instant case did not belong to either the two categories. Query 6.2 was, whether any proposal for life cover or critical illness rider or accident and disability benefit rider, application for revival of any policy had been made to any life insurer,

declined/postponed/dropped/accepted or revived at modified rates. The answer to the said queries were given by the insured in the negative.

Considering Query 6.2, firstly, it is noted that the deceased proposer had stated in the negative with regard to making of any application for revival of any policy. There is no evidence whatsoever let in by the respondent insurance company that there was an application made for revival of any policy of the insured which had either been declined/postponed/dropped/accepted or revived at modified rates. Therefore, the answer in the negative given to Query 6.2 cannot be held as against the appellant herein. In the circumstances, the NCDRC could not have concluded that when the answer "NO" was written to Query 6.2, there was any suppression of material fact.

40. Insofar as the Query 6.1 is concerned, it is noted that the same is not clear and it is not known in what context the details of the insured were sought with regard to any existing life insurance policy. On a reading of Query 6.1 holistically, it is also not clear regarding the nature of information that was sought by the respondent insurance company as discussed above. The

answer given by the insured to the Query 6.1 was thus in the negative. In this backdrop, can it be said that there was a suppression of material fact by the insured in the proposal form. In this context, it is necessary to place reliance on the *contra proferentem* rule. This Court in the case of ***Manmohan Nanda,*** discussed the rule of *contra proferentem* as under:

> "**45.** The contra proferentem rule has an ancient genesis. When words are to be construed, resulting in two alternative interpretations then, the interpretation which is against the person using or drafting the words or expressions which have given rise to the difficulty in construction, applies. This rule is often invoked while interpreting standard form contracts. Such contracts heavily comprise of forms with printed terms which are invariably used for the same kind of contracts. Also, such contracts are harshly worded against individuals and not read and understood most often, resulting in grave legal implications. When such standard form contracts ordinarily contain exception clauses, they are invariably construed contra proferentem rule against the person who has drafted the same.
>
> **46.** Some of the judgments which have considered the *contra proferentem* rule are referred to as under:
>
> **46.1.** In *General Assurance Society Ltd.* v. *Chandumull Jain, AIR 1966 SC 1644*, it was held that where there is an ambiguity in the contract of insurance or doubt, it has to be construed *contra proferentem* against the insurance company.

46.2. In *DDA* v. *Durga Chand Kaushish, AIR 1973 SC 2609*, it was observed:

> "In construing document one must have regard, not to the presumed intention of the parties, but to the meaning of the words they have used. If two interpretations of the document are possible, the one which would give effect and meaning to all its parts should be adopted and for the purpose, the words creating uncertainty in the document can be ignored."

46.3. Further, in *Central Bank of India Ltd.* v. *Hartford Fire Insurance Co. Ltd., AIR 1965 SC 1288*, it was held:

> "*11.* … what is called the contra proferentem rule should be applied and as the policy was in a standard form contract prepared by the insurer alone, it should be interpreted in a way that would be favourable to the assured."

46.4. In *Sahebzada Mohammad Kamgarh Shah* v. *Jagdish Chandra Deo Dhabal Deb, AIR 1960 SC 953*, it was observed that where there is an ambiguity it is the duty of the court to look at all the parts of the document to ascertain what was really intended by the parties. But even here the rule has to be borne in mind that the document being the grantor's document it has to be interpreted strictly against him and in favour of the grantee.

46.5. In *United India Insurance Co. Ltd.* v. *Orient Treasures (P) Ltd., (2016) 3 SCC 49*, this Court quoted *Halsbury's Laws of England* (5th Edn. Vol. 60, Para 105) on the *contra proferentem* rule as under:

> "*37. … Contra proferentem rule.*—Where there is ambiguity in the policy the court will apply the *contra proferentem* rule. Where a policy is produced by the insurers, it is their business to see that precision and clarity are attained and, if

> they fail to do so, the ambiguity will be resolved by adopting the construction favourable to the insured. Similarly, as regards language which emanates from the insured, such as the language used in answer to questions in the proposal or in a slip, a construction favourable to the insurers will prevail if the insured has created any ambiguity. This rule, however, only becomes operative where the words are truly ambiguous; it is a rule for resolving ambiguity and it cannot be invoked with a view to creating a doubt. Therefore, where the words used are free from ambiguity in the sense that, fairly and reasonably construed, they admit of only one meaning, the rule has no application."

46.6. The learned counsel for the appellant have relied upon *Sushilaben Indravadan Gandhi v. New India Assurance Co. Ltd., (2021) 7 SCC 151,* wherein it was observed that any exemption of liability clause in an insurance contract must be construed, in case of ambiguity, *contra proferentem* against the insurer. In the said case reliance was placed on *Export Credit Guarantee Corpn. (India) Ltd.* v. *Garg Sons International, (2014) 1 SCC 686*, wherein this Court held as under :

> "*39. … 11.* The insured cannot claim anything more than what is covered by the insurance policy. "The terms of the contract have to be construed strictly, without altering the nature of the contract as the same may affect the interests of the parties adversely." The clauses of an insurance policy have to be read as they are. Consequently, the terms of the insurance policy, that fix the responsibility of the Insurance Company must also be read strictly. The contract must be read as a whole and every attempt should be made to harmonise the terms thereof, keeping in mind that the rule of *contra proferentem* does not apply in case of commercial contract, for the

> reason that a clause in a commercial contract is bilateral and has mutually been agreed upon."

Having regard to the aforesaid discussion on *contra proferentem* rule, it is noted that the Queries 6.1 and 6.2 are not clear in themselves as we have discussed the same above. Therefore, the answer given by the deceased cannot be taken in a manner so as to negate the benefit of the policy by repudiation of the same on the demise of the insured.

41. At this stage, we may also dilate on the aspect of burden of proof. Though the proceedings before the Consumer Fora are in the nature of a summary proceeding. Yet the elementary principles of burden of proof and onus of proof would apply. This is relevant for the reason that no corroborative evidence to what has been deposed in the affidavit is let in by the insurance company in order to establish a valid repudiation of the claim in the instant case. Section 101 of the Evidence Act, 1872 states that whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that

person. This Section clearly states that the burden of proving a fact rests on the party who substantially asserts the affirmative of the issue and not upon the party who denies it; for a negative is usually incapable of proof. Simply put, it is easier to prove an affirmative than a negative. In other words, the burden of proving a fact always lies upon the person who asserts the same. Until such burden is discharged, the other party is not required to be called upon to prove his case. The court has to examine as to whether the person upon whom burden lies has been able to discharge his burden. Further, things which are admitted need not be proved. Whether the burden of proof has been discharged by a party to the *lis* or not would depend upon the facts and circumstances of the case. The party on whom the burden lies has to stand on his own and he cannot take advantage of the weakness or omissions of the opposite party. Thus, the burden of proving a claim or defence is on the party who asserts it.

42. Section 102 of the Evidence Act, 1872 provides a test regarding on whom the burden of proof would lie, namely, that the burden lies on the person who would fail if no evidence were given on either side. Whenever the law places a burden of proof upon a

party, a presumption operates against it. Hence, burden of proof and presumptions have to be considered together. There are however exceptions to the general rule as to the burden of proof as enunciated in Sections 101 and 102 of the Evidence Act, 1872, i.e., in the context of the burden of adducing evidence: (i) when a rebuttable presumption of law exists in favour of a party, the onus is on the other side to rebut it; (ii) when any fact is especially within the knowledge of any person, the burden of proving it is on him (Section 106). In some cases, the burden of proof is cast by statute on particular parties (Sections 103 and 105).

43. There is an essential distinction between burden of proof and onus of proof; burden of proof lies upon a person who has to prove the fact and which never shifts but onus of proof shifts. Such a shifting of onus is a continuous process in the evaluation of evidence. For instance, in a suit for possession based on the title, once the plaintiff has been able to create a high degree of probability so as to shift the onus on the defendant, it is for the defendant to discharge his onus and in the absence thereof, the burden of proof lying on the plaintiff shall be held to have been discharged so as to amount to proof of the plaintiff's title *vide* ***RVE***

Venkatachala Gounder vs. Arulmigu Viswesaraswami and VP Temple, (2003) 8 SCC 752.

44. In a claim against the insurance company for compensation, where the appellants in the said case had discharged the initial burden regarding destruction, damage of the showroom and the stocks therein by fire and riot in support of the claim under the insurance policy, it was for the insurance company to disprove such claim with evidence, if any, *vide* ***Shobika Attire vs. New India Assurance Co. Ltd., (2006) 8 SCC 35.***

45. Section 103 of the Evidence Act, 1872 states that the burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person. This Section enlarges the scope of the general rule in Section 101 that the burden of proof lies on the person who asserts the affirmative of the issue. Further, Section 104 of the said Act states that the burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence. The import of this Section is that the person who is legally entitled to give evidence

has the burden to render such evidence. In other words, it is incumbent on each party to discharge the burden of proof, which rests upon him. In the context of insurance contracts, the burden is on the insurer to prove the allegation of non-disclosure of a material fact and that the non-disclosure was fraudulent. Thus, the burden of proving the fact, which excludes the liability of the insurer to pay compensation, lies on the insurer alone and no one else.

46. Section 106 of the Evidence Act, 1872 states that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. This Section applies only to parties to the suit or proceeding. It cannot apply when the fact is such as to be capable of being known also by persons other than the parties. (Source: Sarkar, Law of Evidence, 20th Edition, Volume-2, LexisNexis)

47. In light of the aforesaid discussion on burden of proof, it has to be analysed if the respondent in the present case has adequately discharged his burden of proof about the fact of suppression of previous life insurance policies of the insured.

48. The respondent insurance company has produced no documentary evidence whatsoever before the District Forum to prove its allegation that the insured had taken multiple insurance policies from different companies and had suppressed the same. The District Forum had therefore concluded that there was no documentary evidence to show that the deceased-life insured had taken various insurance policies except an averment and on that basis the repudiation was held to be wrong. Before the State Commission, the respondent had provided a tabulation of the 15 different policies taken by the insured-deceased, amounting to Rs.71,27,702/-. The same has been extracted above. However, the said tabulation was not supported by any other documentary evidence, like the policy documents of these other policies, or pleadings in courts, or such other corroborative evidence. The respondent sought to mark a bunch of documents before the State Commission, which related to the policy papers of the insured with another insurer, i.e., Kotak Life Insurance. However, the respondent was not granted permission by the State Commission, as the said documents were neither original, nor certified, nor authenticated. Apart from this, there was no effort made by the

respondent to bring any authenticated material on record. Thus, in the absence of any evidence to prove that the insured-deceased possessed some insurance policies from other insurance companies, the State Commission upheld the decision of the District Forum in setting aside the repudiation of the claim by the respondent.

49. Before the NCDRC, the respondent again provided the aforesaid tabulation of policies of the insured-deceased. The respondents in their affidavit stated that the insured-deceased had taken multiple insurance policies before taking the policy from them. The NCDRC however accepted the averment of the respondents, without demanding corroborative documentary evidence in support of the said fact. The NCDRC, on the contrary, also held that the fact about multiple policies was not dealt with by the appellant in her complaint or evidence affidavit and this therefore proved that the insured had indeed taken the policies from multiple companies as claimed by the respondents.

50. The aforesaid approach adopted by the NCDRC is, in our view, not correct. The cardinal principle of burden of proof in the law of evidence is that "he who asserts must prove", which means

that if the respondents herein had asserted that the insured had already taken fifteen more policies, then it was incumbent on them to prove this fact by leading necessary evidence. The onus cannot be shifted on the appellant to deal with issues that have merely been alleged by the respondents, without producing any evidence to support that allegation. The respondents have merely provided a tabulation of information about the other policies held by the insured-deceased. The said tabulation also has missing information with respect to policy numbers and issuing dates and bears different dates of births. Further, this information hasn't been supported with any other documents to prove the averment in accordance with law. No officer of any other insurance company was examined to corroborate the table of policies said to have been taken by the deceased policy holder, father of the appellant herein. Moreover, the table produced is incomplete and contradictory as far as the date of birth of the insured is concerned. Therefore, in our view, the NCDRC could not have relied upon the said tabulation and put the onus on the appellant to deal with that issue in her complaint and thereby considered the said averment as proved or proceeded to prove the stance of the opposite party. A

fact has to be duly proved as per the Evidence Act, 1872 and the burden to prove a fact rests upon the person asserting such a fact. Without adequate evidence to prove the fact of previous policies, it was incorrect to expect the appellant to deal with the said fact herself in the complaint or the evidence affidavit, since as per the appellant, there did not exist any previous policy and thus, the onus couldn't have been put on the appellant to prove what was non-existent according to the appellant.

51. The respondents, *vide* their counter affidavit before this court, have sought to produce some documents to substantiate their claim of other existing insurance policies of the insured-deceased, but the same cannot be permitted to be exhibited at this stage, that too, in an appeal filed by the complainant who is the beneficiary under the policies in question. Any documentary evidence sought to be relied upon by the respondent ought to have been led before the District Forum but the same was not done. It was before the District Forum that the evidence was led and examined and at that stage, the respondent did not take adequate steps to lead any oral or documentary evidence to prove their assertion. Their attempt to annex documents in support of their

claim before the State Commission was also declined due to the presentation of unauthenticated documents. Therefore, it can be safely concluded that the respondents have failed to adequately prove the fact that the insured-deceased had fraudulently suppressed the information about the existing policies with other insurance companies while entering into the insurance contracts with the respondents herein in the present case. Therefore, the repudiation of the policy was without any basis or justification.

52. Moreover, we have also held on the facts of this case having regard to the nature of queries in Query Nos.6.1 and 6.2, there was no suppression of any material fact as per our earlier discussion based on the *contra proferentem* rule.

53. In light of the above discussion, the impugned order dated 22.07.2019 passed by the NCDRC in Revision Petition No.1268 of 2019 is set aside. The respondent company is directed to make the payment of the insurance claim under both the policies to the appellant, amounting to Rs. 7,50,000/- and Rs. 9,60,000/-, with interest at the rate of 7% per annum from the date of filing the complaint, till the actual realisation.

54. The appeal stands allowed in the aforesaid terms.

55. Parties to bear their respective costs.

. . . . . J.
[B.V. NAGARATHNA]

. . . . . J.
[AUGUSTINE GEORGE MASIH]

New Delhi;
April 10, 2024