

In S.K. Jain v. State of Haryana (2009) 4 SCC 357 the Supreme Court considered whether a clause in an agreement which required the Claimant to deposit before the arbitral Tribunal 7% of the total claim made as a pre- condition to the claim being considered was opposed to public policy. The Supreme Court referred to its earlier decision in Assistant Excise Commissioner v. Issac Peter (1994) 4 SCC 104 and negated the plea of the Claimant. In Issac Peter it was observed that the doctrine of fairness which was developed in the administrative law cannot be “invoked to amend, alter or vary the express terms of the contract between the parties.” It was categorically stated that “in case of contracts freely entered into with the State, like the present ones, there is no room for invoking the doctrine of fairness and reasonableness against one party to the contract (State), for the purpose of altering or adding to the terms and conditions of the contract, merely because it happens to be the State.” After referring to the decisions in Central Bank of India Ltd., Amritsar v. Hartford Fire Insurance Co. Ltd. AIR 1965 SC 1288, General Assurance Society Ltd. v. Chandumull Jain AIR 1966 SC 1644, the Supreme Court in S.K. Jain v. State of Haryana held that “in interpreting documents relating to a contract of insurance, the duty of the Court is to interpret the words in which the contract is expressed by the parties, because it is not for the Court to make a new contract, however, reasonable, if the parties have not made it themselves.”