

PETITIONER:
C E OR & VICE CHAIRMAN, GUJARAT MARITIME BOARD

Vs.

RESPONDENT:
SHRI HAJI DAUD HAJI HARUN ABUAND TWO OTHERS

DATE OF JUDGMENT: 20/11/1996

BENCH:
B.P. JEEVAN REDDY, K.S. PARIPOORNAN

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

B.P. JEEVAN REDDY. J.

This appeal is preferred by the Gujarat Maritime Board against the order dated 14th June, 1996 passed by the National Consumer Dispute Redressal Commission rejecting the objections filed by the appellant.

The appellant and provided finance to one Shri Ramesh Chandra Gordhandas Faldu for purchasing a vessel, 'Chandra Vasa'. The amount of loan provided was Rs. 11,25,000/-. The vessel was mortgaged in favour of the appellant (as a successor to the Director of Ports, Government of Gujarat). In the year 1982, Ramesh Chandra sold the said vessel to the first respondent Shri Haji Daud Haji Haran Abu, for a sum of Rs. 3,00,000/-.

In June 1987 the said vessel, on its voyage from Dubai to Bombay, was caught in a hurricane and sank at sea. The vessel was insured with the United India Insurance Company Limited, the third respondent in this appeal. When Haji Daud laid a claim for the insurance amount, the insurance company refused to pay the amount to him on the ground that he has no insurable interest in the vessel, whereupon Haji Abu laid a complaint before the National Consumer Commission. The Commission recorded the following findings in its order dated 12th January, 1995:

"Though the complainant claims to have paid the consideration of Rs. 3 lakhs in full, he was unable to produce the stamped receipt in token of having paid the balance consideration of Rs. 2 lakhs to the owner of the vessel was registered with the Gujarat Maritime Board, Gujarat. According to the Maritime Board, the purchaser Shri Haji Haroon Abu was only an administrator of the vessel but not the owner of the vessel.

The insured had paid the amount of consideration of Rs. 3 lakhs in full: Rs. 1 lakhs as earnest money

deposit and the balance of Rs. 2 lakhs by way of bank draft. He has however, not been able to produce the receipt in support of the payment of Rs.2 lakhs. It is, however, not clear to us as to how the Opposite Part can maintain that the complainant had no insurable interest in the vessel and that therefore, no liability could arise under the policy of insurance. It was the duty of the insurance company to have verified the title of the insured at the time of insuring the vessel and issuing the policy of insurance. This was not a matter in the special & exclusive knowledge of the insured only. The proposer for insurance could have easily asked to produce his title to the vessel which he was getting insured by payment of premium from time to time.

The agreement of sale of between the registered owner of the vessel and the purchaser i.e., the complainant before us. It appears that the title in this property was not transferred in the name of the complainant inasmuch as the mortgagee* also had an interest in the property along with purchaser. The possession of the vessel and its custody was with the complainant. In fact it is seen from the communication of 25th September, 1992 by the Gujarat Maritime Board to the insurance company that the insured ** was considered by the Board as insurance amount should be paid only to the Maritime Board."

(emphasis supplied)

* The expression "mortgagee" obviously refers to the appellant herein.

** The expression "insured" refers to Haji Abu.

(The appellant-Board was not a party to the proceedings at this stage.)

Having recorded the said findings, the Commission yet found that the complainant/insurer was "the defacto owner of the vessel" that he was in possession of the vessel and had insured it with the third respondent and that no other person had laid a claim for the insurance amount. On that basis, it concluded:

"From the totality of these facts, there is no doubt that the complainant has insurable interest in the property and the repudiation or non-payment of the claim on the ground that the insured had no insurable interest was not correct, fair or proper. In the result, there has been deficiency of service on the part of the insurance company. We therefore,

accept the petition and direct that the opposite party - insurance company shall pay to the insured the amount due under the policy of insurance viz., Rs. 13 lakhs with interest @ 18% p.a. from the date of expiry of four months from the date on which the claim was lodged with the insurer viz., the United India Insurance Co. Ltd. The complainant is allowed Rs. 2,500/- as costs."

When the appellant-Board came to know of the said order, it filed an application before the Commission stating that inasmuch as it was the mortgagee and assignee of the said vessel to the knowledge of the Commission, the direction to pay the entire insurance amount to Haji Abu is unsustainable in law. On the said application the Commission stayed (vide order dated 30th October, 1995) its earlier order dated 12.1.95 and issued notice on the said application to the respondents therein. On June 14, 1996, however, the Commission passed a short order directing that the entire insurance amount be paid to Haji Abu, leaving the appellant to adopt such remedies as are open to it in law.

The first order of the Commission dated January 12, 1995 clearly shows that the fact that the appellant had an interest in the vessel as a mortgagee was clearly brought to the notice of the Commission. Indeed, the Commission also refers to a letter written by the appellant to the Insurance Company that it alone is entitled to the entire insurance amount. Yet, it appears rather curious that it did not think it appropriate to issue a notice to the appellant and directed the entire insurance amount to be paid to the complainant Haji Abu. Even when the appellant came forward with its claim and objections, the Commission affirmed its earlier order observing that the appellant may adopt such remedies as are open to it in law.

Shri S.P. Gussain, Chief Executive Officer and vice Chairman of the appellant-Board brought to our notice, clause 10 of the Finance Agreement between the appellant and Ramesh Chandra. It reads:

"Immediately on mechanising a sailing vessel the Borrower shall take out a comprehensive Risk Insurance Policy for the mechanised vessel as per Rule 23 of the Rules, at his cost and shall assign the policy in favour of the Director of Ports representing the Government of Gujarat."

We have also seen the Insurance Policy taken out by Haji Abu. It clearly contains an endorsement in terms of clause (10) of the Finance Agreement. In this view of the matter we are of the opinion that the Commission was not justified in directing the entire insurance amount to be paid to the insurer and in directing the appellant to adopt such remedies as are open to it in law. The Commission should have gone into the question whether the appellant is entitled to the whole or part of the insurance amount in terms of the aforesaid agreement and the Insurance Policy.

Mr. Dushyant Dave, learned counsel for the first respondent raised a doubt whether the Commission has the jurisdiction to go into the decide the rival claims of the appellant and Haji Abu in a complaint filed under the Consumer Protection Act, 1986. In our opinion such a power

must be held available to the Commission as a power incidental or ancillary to the substantive power conferred upon the Commission by the Act. Section 21 deals with the jurisdiction of the National Commission. In so far as relevant, it reads:

"21. Jurisdiction of the National Commission. - Subject to the other provisions of this Act, the National Commission shall have jurisdiction, -

(a) to entertain,-

(i) complaints where the values of the goods or services and compensation, if any, claimed exceeds rupees (twenty lakhs]; and
....."

This provision has to be read alongwith Section 22 which clothes the Commission with the powers of a civil court specified in sub-sections (4),(5) and (6) of Section 13 and the several powers specified in clauses (a) to (i) of sub-section (1) of Section 14. It would be appropriate to read the aforesaid provisions here:

"[22. Power of and Procedure applicable to the National Commission - The National Commission shall, in the disposal of any complaints or any proceedings before it have-

(a) the powers of a Civil court as specified in sub-section (4), (5) and (6) of Section 13;

(b) the power to issue an order to the opposite party directing him to do any one or more of the things referred to in clause (a) to (i) of sub-section (1) of Section 14;

and follow such procedure as may be prescribed by the Central Government]"

"13(4) For purposes of the sections the District forum shall have the same powers as are vested in Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit in respect of the following matters, namely,-

(i) the summoning and enforcing attendance of any defendant or witness and examining the witness on oath;

(ii) the discovery and production of any document or other material object producible as evidence;

(iii) the reception of evidence on affidavits;

(iv) the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source;

(v) issuing of any commission for the examination of any witness and
(vi) any other matter which may be prescribed.

(5) Every proceeding before the

District Forum shall be deemed to the judicial proceeding within the meaning of Secs. 193 and 228 of the Indian Penal Code (45 of 1860), and the District Forum shall be deemed of Sec. 195, and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)

[(6) Where the complainant is a consumer referred to in sub-clause (iv) of clause (b) of sub-section (1) of section 2, the provisions of rule 8 of Order I of the First Schedule to the Code of Civil Procedure, 1908 shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to a complaint or the order of the District Forum thereon]."

"14. Finding of the District Forum.- (1) If, after the proceeding conducted under Sec. 13, the District Forum is satisfied that the goods complained against suffer that the goods complained against suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint about the services are proved, it shall issue an order to the opposite party directing him to [do] one or more of the following things, namely,-

- (a) to remove defect pointed out by the appropriate laboratory from the goods in question;
- (b) to replace the goods with new goods of similar description which shall be free from any defect;
- (c) to return to the complainant the price, or, as the case may be, the charges paid by the complainant;
- (d) to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party.
- (e) to remove the defects or deficiencies in the services in question;
- (f) to discontinue the unfair trade practice or the restrictive trades practice or not to repeat them;
- (g) not to offer the hazardous goods for sale;
- (h) to withdraw the hazardous goods from being offered for sale;
- (i) to provide for adequate costs to parties]."

It is also relevant to notice that the Act defines the expressions "complainant" and "consumer" as also the

expression " consumer dispute" and that Section 24 invests the orders of the Commission with finality.

The jurisdiction of the Commission to entertain and decide complaints necessarily means that where plurality of person claim the same relief, simultaneously disputing each other's right to claim the said relief, the Commission has the necessary power to adjudicate the rival claims and decide the said dispute also. This power flows from an incidental and ancillary to the substantive power conferred by Section 21 (a) (i) read with Section 22 which applies sub-sections (4) , (5) and (6) of Section 13 to the National Commission as well. It is well-settled that where a substantive power is conferred upon a court or tribunal, all incidental and ancillary powers necessary for an effective exercise of the substantive power have to be inferred. See *Khyerbari Tea Company Limited & Another v. State of Assam & others* [A.I.R. (1964) S.C. 925 at 935]. The rule as quoted in *Craies* is "one of the first principles of law with regard to the effect of an enabling act is that a legislature enables something to be done, it gives power at the same time by necessary implication to do everything which is indispensable for the purpose of carrying out the purpose in view."

For the above reasons, this appeal is allowed, the impugned orders of the Commission are set aside and the matter is remitted to the Commission for a fresh disposal of the matter according to law. No order as to costs.

We make it clear that we may not be understood to have expressed any opinion on the merits of the case of either party. The observations made hereinabove merely constitute reasons for this order and not findings on the claims of the respective parties.