

Trans Mediterranean Airways vs M/S. Universal Exports & Anr on 15 September, 2011

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Bench: H.L. Dattu, G.S. Singhvi

RE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1909 OF 2004

Trans Mediterranean Airways

..... App

versus

M/s Universal Exports & Anr.

.....Respond

J U D G M E N T

H.L. DATTU, J.

1) This appeal is filed under Section 23 of the Consumer Protection Act, 1986 [hereinafter referred to as "the C P Act"] against the order in Original Petition No. 161 of 1994 of the National Consumer Disputes Redressal Commission, New Delhi ["the National Commission" for short] dated 15th January, 2004, whereby the National Commission has directed the appellant to pay a sum equivalent to US \$71,615.75 with 5% interest from the date of the complaint, till its realization, and

imposed costs of `1 lakh for deficiency of service.

2) The appellant before us is an International Cargo carrier, with its principal place of business at Beirut, Lebanon. Respondent No.1 is a garment exporter and respondent No.2 is an accredited International Air Transport Association agent. By this appeal, we are called upon to examine and reconcile the area of operation of the C P Act on the one hand, and the Carriage by Air Act, 1972 [hereinafter referred to as "the CA Act"] along with the Warsaw Convention of 1929 [hereinafter referred to as "the Warsaw Convention"] on the other. The appellant, respondent No. 1 and respondent No. 2, hereinafter, for the sake of brevity, referred to as "appellant carrier", "the consignor"

and "agent" respectively.

3) The core issues that arise for our consideration and decision in this appeal are:

1. Whether the National Commission under the CP Act has the jurisdiction to entertain and decide a complaint filed by the consignor claiming compensation for deficiency of service by the carrier, in view of the provisions of the CA Act and the Warsaw Convention.

Or whether domestic laws can be added to or substituted for the provisions of the conventions.

2. Whether the appellant can be directed to compensate the consignor for deficiency of service in the facts and circumstances of the case.

Brief Facts

4) The facts leading to this appeal are as follows:

The agent made out three airway bills for shipping of garments to Spain on behalf of the consignor through the appellant-carrier. In the consignee column, the consignment was addressed as :

"BB SAE MADRID, SPAIN NOTIFY: M/S LIWE ESPANOLA S.A., MAYOR S/N, 30006 PUENTE TOCINOR APARTADO, 741, MORCIA, SPAIN, L.C. No. C. 1036-92-00276"

In the box titled `Handling Information', the following information was recorded:

"MARKS: SPAIN N/C NOS: 1027-1185 TOTAL ONE HUNDRED FIFTY NINE CARTONS ONLY/PLS INF CNEE IMM ON ARR/DOCUMENTS ATTACHED"

The airway bills from Bombay to Amsterdam were dated 25-08-1992 and the consignment through the appellant-carrier reached Amsterdam on 30-08-1992. From Amsterdam, the consignments were

sent to Madrid by road on the following day, and they reached Madrid on 03-09-1992 and were cleared by the Customs Authorities. The appellant-carrier delivered the consignment to M/s Liwe Espanola, as according to them, that was the only recognizable address available from the documents furnished by the consignor.

5) After nine months from the date of shipment, the agent made enquiry regarding two of the three airway bills. Since there was no response, the agent made further enquiry again after four months. In response to the query, the appellant-carrier informed the consigner that on finding the full name and complete postal address of the consignee as M/s Liwe Espanola, the appellant-carrier has delivered the goods to it. It was at this stage, the consignor claimed that the consignee of the said consignment was Barclays Bank, Madrid, which had only one branch in Madrid and since the appellant carrier had wrongly delivered the consignment to the address mentioned in the Block column instead of routing it through Barclays Bank and, therefore, there is deficiency of service. Accordingly, the consignor instituted a complaint under Section 12 of the CP Act before the National Commission, inter alia, claiming compensation for the alleged deficiency of service by the appellant-carrier and the agent for not delivering the said consignment to the consignee. The National Commission, after considering the entire evidence on record, has come to the conclusion that the services rendered by the appellant-carrier was deficient and thereby, it was liable to pay compensation equivalent to US \$71,615.75 with 5% interest from the date of the Complaint till its realization, and imposed costs of ` 1 lakh. It is the correctness or otherwise of this order, which is called in question in this appeal.

6) Since this is the first appeal under Section 23 of the CP Act, we are required to consider both the questions of facts as well as questions of law.

Impugned Order of the National Commission

7) The appellant-carrier before the National Commission, by way of preliminary objection, had raised jurisdiction of the National Commission in entertaining the complaint filed by the complainant. It was the contention of the appellant-carrier that in view of Rule 29 and Rule 33 of the Second Schedule to the CA Act, the National Commission in Delhi has no jurisdiction to entertain and decide the complaint. It was contended that only the Courts at the four places mentioned in the said provision have jurisdiction to adjudicate the complaint and, therefore, no other courts, Tribunal or Commission has jurisdiction to decide the complaint filed by the complainant. It was also contended that in view of the Warsaw Convention, the National Commission had no jurisdiction to decide the dispute. The National Commission, after a detailed analysis of the provisions of the CP Act and carrier laws, has negated the contention by holding that the CP Act has vested jurisdiction to the Consumer Courts to adjudicate upon a claim for compensation in cases of deficiency of service. It was also held that due to the pecuniary jurisdiction of the National Commission, even a matter that arose in Mumbai of value of more than ` 20 lakhs, could be filed for adjudication before the National Commission (prior to the 2002 amendment).

8) On merits, it was the case of the consignor before the National Commission that the services offered by the appellant-carrier and the agent were deficient and the consignment meant for the

consignee was not delivered to the notified person. It was also the case of the consignor that in view of the conditions of contract on the reverse of the airway bill, it was required for the appellant-carrier to have delivered the consignment to the consignee only, and in case of any doubt regarding the address of delivery, the appellant-carrier was required to enquire with the consignor and not deliver the consignment to any other person than the notified party. Therefore, it was contended that there is a deficiency of service by the appellant- carrier.

9) The appellant-carrier has taken the defense that the address given by the agent of the consignor was incorrect and incomplete, and the only address that was properly given was that of the notified party, to which address they have delivered the said consignment. Further, it was contended that at no point of time, the appellant-carrier was made known that the "BBE SAE, MADRID SPAIN" stood for Barclays Bank, Madrid. Further, it was contended that the consignor had to file a suit within 120 days by relying on Rule 12 and the complaint was barred by limitation. It was further contended that if there was any damage that was suffered by the consignor, it was due to the negligence of the agent. It was also contended that the consignor has received payment from the notified party. The appellant-carrier also made reference to the CA Act, Warsaw Convention and several other authorities in support of its claim.

10) The National Commission, in the impugned order, has concluded that the agent was not only the agent of the consignor, but also of the agent of the appellant-carrier, and hence any mistake committed by the agent would make the principal (appellant-carrier) liable for such damages. Further, it is held by the National Commission that the appellant-carrier was duty bound to have contacted the consignor in case it was not able to locate the address of the consignee or in the event, the consignee refused to accept the consignment. It is held that it is not open to the appellant-carrier to have delivered the consignment to the notified party without informing the consignor. On the point of limitation, the National Commission has observed that by virtue of Rule 30 of the Second Schedule, a suit could be brought within two years, and hence Rule 12 is not applicable in the facts of the case. In the light of the above findings, the National Commission has held that the services provided by the appellant-carrier were deficient and ordered payment of the compensation to the consignor.

11) Shri. Vinoo Bhagat, learned counsel, appears for the appellant-carrier, Shri. Jaideep Gupta, learned senior counsel, appears for the consignor (Respondent No.1) and Shri. Siddhartha Dave, learned counsel, appears for the agent (Respondent No.2). On the question of jurisdiction of the National Commission, we were assisted by Shri. Shyam Divan, learned senior counsel, as the amicus curie. For the sake of convenience, we will deal with the submissions made by the learned counsel on the issue of jurisdiction first and then, on the factual matrix.

Issue of Jurisdiction of the National Commission

12) Shri. Vinoo Bhagat, learned counsel, submits that the Warsaw Convention exclusively governs any claims arising under it, and domestic law cannot be applied for deciding such claims. The learned counsel relies on Rule 29 of the Second Schedule to the CA Act, to contend that it was only at the places mentioned in this Rule, the claim for compensation could have been filed. He further

submits that the appellant-carrier could be sued at a court in Mumbai (where the contract was made), or at Beirut (where it has its principal place of business), or at Madrid (place of destination), and no where else. He further submits that the Court in Delhi has no jurisdiction to entertain any claim against the appellant-carrier and that the provisions of the CP Act could not alter the jurisdiction vested on Courts by the Warsaw Convention. By pointing out to Rule 33 of the Second Schedule, the learned counsel submits that this provision fortifies his contention of the exclusive operation of Rule 29 and states that not only are the places where the appellant-carrier can be sued are mentioned, but also the places where arbitration can take place, are expressly stated. The learned counsel also states that there is no cause of action under the CP Act, to invoke the jurisdiction of the National Commission. He further contends that the National Commission is not a Court and that a suit is maintainable only in a Court having jurisdiction. He states that it is not permissible to read the word "Court" to include quasi-judicial authorities and Tribunals. He places reliance on some decisions of this Court, the House of Lords, Supreme Court of the United States and the National Commission.

13) Shri. Jaideep Gupta, learned senior counsel, appearing for the consignor supports the finding of the National Commission. He submits that even assuming that Rule 29 of the Second Schedule to the CA Act was applicable, the jurisdiction of the National Commission is not ousted in any manner whatsoever. He further submits that the word "Court" is not used in the strict sense of the term, thereby it cannot be said that a quasi-judicial Tribunal is excluded. He submits that the Warsaw Convention was reproduced in two languages (being English and French), and that the term "Court" seems to be used in a sense to indicate a body that resolves disputes and cannot be restricted to the meaning accorded by our judicial system. Shri. Gupta further submits that the Warsaw Convention does not contemplate the situation of alternate Tribunals replacing Courts of Law. He relies on Rule 29(2) of the Second Schedule to the CA Act and submits that the procedural law of the country, in which the suit is filed, is what is applicable, and in India, the CP Act was the legislation that lays down the remedy and procedure for the deficiency of service. He would further state that the CP Act was brought into force to expedite the justice delivery system for matters relating to deficiency of service, and the CP Act not only prescribes territorial jurisdiction, but also the pecuniary jurisdiction of the various Forums. The learned senior counsel would contend that since the State Forum did not have the pecuniary jurisdiction, the National Commission could and, in fact, has entertained the complaint. He would further submit that since deficiency of service was computed in more than twenty lakh rupees at the relevant time (it is presently one crore rupees after the 2002 amendment) or more, the National Commission would have jurisdiction by virtue of Section 29 of the CP Act. He also cited some judgments in support of his submissions and differentiated those cited by Shri. Vinoo Bhagat.

14) Shri. Siddhartha Dave, learned counsel appearing for the agent submits that the provisions of the CP Act can co-exist with those of other Statutes and the option is given to the parties as to which remedy they would like to pursue and would support this argument by referring to decisions of this Court.

15) Due to the importance of the question of law involved, Shri. Shyam Divan, learned senior counsel, was requested to assist the Court. The learned amicus has submitted a note on the question

of jurisdiction raised by the appellant-carrier. The learned amicus has stated that it is clear from Section 3 of the CP Act that Consumer Courts are additional Forums to ensure that consumers get speedy disposal of their cases/complaints with regard to deficiency of service. He lays emphasis on the phrase "An action for damages must be brought" at the beginning of Rule 29 and states that this Rule gives an option to the plaintiff to sue in the Courts on any one of the places mentioned. He further states that Rule 33 provides an alternate remedy to parties to resort to proceedings of arbitration in case of disputes between the parties. He concludes that there is no express bar in the CA Act to oust the jurisdiction of the Forums under the CP Act.

16) To appreciate the rival contentions, it is necessary to notice the scheme of the CA Act. The Statement of Objects and Reasons of the CA Act reads:

"India is a signatory to the Warsaw Convention of 1929, which is an International Agreement governing the liability of the air carrier in respect of international carriage of passengers, baggage and cargo by air. Under that convention 'international carriage' means any carriage in which according to the contract made by the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or transshipment, are situated either within the territories of two High Contracting Parties, or within the territories of a single High Contracting Party, if there is an agreed stopping place within a territory subject to the sovereignty, suzerainty, mandate or authority of another Power, even though that Power is not a party to the Convention. The Convention provides that when an accident occurring during international carriage by air causes damage to a passenger, or a shipper or cargo, there is a presumption of liability of the carrier. The carrier, however, is not liable if he proves that he or his agent had taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures. The Convention balances the imposition of a presumption of liability on the carrier by limiting his liability for each passenger to 1,25,000 gold francs. There is no limitation of liability if the damage is caused by the willful misconduct of the carrier, or by such default, on his part as, in accordance with the law of the Court ceased of the case, is equivalent to willful misconduct. The Convention also contains detailed provisions regarding documents of carriage.

2. The Warsaw Convention has been given effect to in India by the enactment of the Indian Carriage By Air Act, 1934 (20 of 1934) in regard to international carriage and the provisions of that Act have been extended to domestic carriage, subject to certain exception, adaptations and modifications, by means of a notification issued in 1964.

3. A diplomatic conference under the auspices of International Civil Aviation Organization was held at Hague in September, 1955 which adopted a protocol to amend the provisions of the Warsaw Convention. The Hague protocol was opened for signature on 28th September, 1955 and more than the required number of States have ratified the protocol which came into force between the ratifying States on 1st August, 1963.

4. Some of the amendments effected by the Hague protocol to the Warsaw Convention are - (a) simplification of documents of carriage; (b) an increase in the amount specified as the maximum sum for which the carrier may be liable to a passenger, that is to say, the limits of the liability of the carrier in respect of a passenger has been doubled, and unless a higher figure is agreed to by a special contract, the liability is raised from 1,25,000 gold francs per passenger to 2,50,000 gold francs; (c) making the carrier liable where the damage was caused by an error in piloting or in the handling of the air craft or in navigation.

5. Acceptance of the Hague Protocol would put our national carrier on the same footing as many of its international competitors, since the passengers will be able to avail the limit of liability guaranteed by the Hague Protocol the limit being double than that stipulated under the Warsaw Convention.

6. Fifty seven countries have already ratified the Hague Protocol and passengers traveling between those countries would be ensured of the higher limit of compensation.

7. It is, therefore, proposed to enact a law, in place of the existing Indian Carriage By Air Act, 1934, to apply the existing provisions based on the Warsaw Convention to countries which would choose to be governed by that Convention and also to apply the provisions of the Warsaw Convention as amended by the Hague Protocol to countries which may accept the provisions thereof. Under Section 4 of the Indian Carriage By Air Act, 1934, the rules contained in Warsaw Convention have already been applied to non-international carriages subject to certain exceptions, adaptations and modifications. It is now proposed to take power to apply the rules contained in the Warsaw Convention as amended by the Hague Protocol also to non-international carriages subject to exceptions, adoptions and modifications.

8. The Bill seeks to give effect to the above objectives."

17) The preamble to The Carriage by AIR Act, 1972 reads as follows:

"An Act to give effect to the Convention for the unification of certain rules of international carriage by air signed at Warsaw on the 12th day of October, 1929 and to the said Convention as amended by the Hague Protocol on the 28th day of September, 1955 and to make provision for applying the rules contained in the said Convention in its original form and in the amended form (subject to the exceptions, adaptations and modifications) to non-international carriage by air and for matters connected therewith."

18) The CA Act was enacted to give effect to the convention for unification of rules relating to international carriage by air signed at Warsaw as amended at Hague in 1995 and the Montreal Convention of 1999.

19) Section 2 of the CA Act is the definition clause. Section 2(ii) of the CA Act defines convention to mean convention for unification of certain rules relating to international carriage by air signed at Warsaw on 12.10.1929. Section 3 provides for the application of the Warsaw Convention to India. It says that the rules contained in the First Schedule being the provisions of the convention relating to the rights and liabilities of carriers, passengers, consignors, consignees and other persons, shall have the force of law in India in relation to any carriage by air to which those rules apply irrespective of the nationality of the aircraft performing the carriage, subject to the provisions of the Act. Section 4 provides for application of amended convention to India and also provides for Second Schedule in consonance with the amended convention. This Schedule applies to the claim made in the present case as it is a dispute that occurred in 1994 before the Montreal Convention in 1999. Section 4A provides for the application of the Montreal Convention to India and provides for the Third Schedule. Section 5 sets out the liability in case of death of a passenger as being those governed by the First and Second Schedules. Sections 6 and 6A provide for conversion of francs and conversion of special drawing rights. Section 7 provides that every high contracting party to the convention shall, for the purpose of any suit brought in a Court in India in accordance with the provisions of Rule 28 of the First Schedule or of the Second Schedule, as the case may be, enforce a claim in respect of the carriage undertaken by him. Section 8 enables the application of the Act to carriages which are not international.

20) The First Schedule to the Act, vide Rule 1, provides that the rules under this Schedule shall apply to all international carriage of persons, luggage or goods performed by aircraft for reward. Sub-Rule 2 defines "the High Contracting Party" to the convention. Sub-Rule 3 defines international carriage. Rule 18 provides for liability of the carrier for damages. Rule 19 provides for liability of the carrier for damages occasioned by delay and Rule 28 provides for territorial jurisdiction for suing for damages. The Second Schedule of the CA Act provides for rules for the purpose of the Act. Chapter I of the Second Schedule gives the definitions and the scope of the Schedule. Chapter II deals with the documents of carriage, viz. passenger ticket (Part I), baggage check (Part II), airway bill (Part III). Chapter III enumerates the provisions regarding the liability of the carrier with regard to the acts which the carrier will be held liable for, the jurisdiction of the Court at which the carrier can be sued, the limit of the liability, limitation for bringing a suit, etc. Chapter IV and Chapter V deal with provisions relating to combined carriage and general provisions respectively. Part III of Chapter II of the Second Schedule is relevant for the purpose, of the case. Therefore, omitting what is not necessary, relevant rules are extracted as :

"5. (1) Every carrier of cargo has the right to require the consignor to make out and hand over to him a document called as "air waybill"; every consignor has the right to require the carrier to accept this document.

(2) The absence, irregularity or loss of this document does not affect the existence or the validity of the contract of carriage which shall, subject to the provisions of rule 9, be nonetheless governed by these rules.

6. (1) The air waybill shall be made out by the consignor in the three original parts and be handed over with the cargo.

(2) The first part shall be marked "for the carrier", and shall be signed by the consignor. The second part shall be marked "for the consignee"; it shall be signed by the consignor and by the carrier and shall accompany the cargo. The third part shall be signed by the carrier and handed by him to the consignor after the cargo has been accepted.

(3) The carrier shall sign prior to the loading of the cargo on board the aircraft.

(4) The signature of the carrier may be stamped; that of the consignor may be printed or stamped. (5) If, at the request of the consignor, the carrier makes out the air waybill, he shall be deemed, subject to proof to the contrary, to have done so on behalf of the consignor.

10. (1) The consignor is responsible for the correctness of the particulars and statements relating to the cargo which he inserts in the air waybill. (2) The consignor shall indemnify the carrier against all damage suffered by him, or by any other person to whom the carrier is liable, by reason of the irregularity, incorrectness or incompleteness of the particulars and statements furnished by the consignor."

12. (1) Subject to his liability to carry out all his obligations under the contract of carriage, the consignor has the right to dispose of the cargo by withdrawing it at the aerodrome of departure or destination, or by stopping it in the course of the journey on any landing, or by calling for it to be delivered at the place of destination or in the course of the journey to a person other than the consignee named in the air waybill, or by requiring it to be returned to the aerodrome of departure. He must not exercise this right of disposition in such a way as to prejudice the carrier or other consignors and he must repay any expenses occasioned by the exercise of this right.

(2) If it is impossible to carry out the orders of the consignor the carrier must so inform him forthwith. (3) If the carrier obeys the orders of the consignor for the disposition of the cargo without requiring the production of the part of the air waybill delivered to the latter, he will be liable, without prejudice to his right of recovery from the consignor, for any damage which may be caused thereby to any person who is lawfully in possession of that part of the air waybill. (4) The right conferred on the consignor ceases at the moment when that of the consignee begins in accordance with rule 13. Nevertheless, if the consignee declines to accept the waybill or the cargo, or if he cannot be communicated with, the consignor resumes his right of disposition.

13. ...

14. The consignor and the consignee can respectively enforce all the rights given to them by rules 12 and 13, each in his own name, whether he is acting in his own interest or in the interest of another, provided that he carries out the obligations imposed by the contract.

15. (1) Rules 12, 13 and 14 do not affect either the relations of the consignor or the consignee with each other or the mutual relations of third parties whose rights are derived either from the

consignor or from the consignee.

- (2) The provisions of rules 12, 13 and 14 can only be varied by express provision in the air waybill.
- (3) Nothing in these rules prevents the issue of a negotiable air waybill.

16. (1) The consignor must furnish such information and attach to the air waybill such documents as are necessary to meet the formalities of customs, octroi or police before the cargo can be delivered to the consignee. The consignor is liable to the carrier for any damage occasioned by the absence, insufficiency or irregularity of any such information or documents, unless the damage is due to the fault of the carrier or his servants or agents. (2) The carrier is under no obligation to enquire into the correctness or sufficiency of such information or documents."

21) We also need to notice Rule 17, 18, 20, 29, 30 and 33 of Chapter III and V of the Second Schedule. These are :

"17. The carrier is liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

18. (1) The carrier is liable for damage sustained in the event of the destruction or loss of, or of damage to, any registered baggage or any cargo, if the occurrence which caused the damage so sustained took place during the carriage by air.

(2) The carriage by air within the meaning of the preceding sub-rule comprises the period during which the baggage or cargo is in charge of the carrier, whether in an aerodrome or on board an aircraft, or in the case of a landing outside an aerodrome, in any place whatsoever.

(3) The period of the carriage by air does not extend to any carriage by land, by sea or by river performed outside an aerodrome. If, however, such a carriage takes place in the performance of a contract for carriage by air for the purpose of loading delivery or transshipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the carriage by air.

20. The carrier is not liable if he proves that he and his servants or agents have taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures.

29. (1) An action for damages must be brought, at the option of the plaintiff, in the territory of one of the High Contracting Parties, either before the Court having jurisdiction where the carrier is ordinarily resident, or has his principal place of business, or has an establishment by which the contract has been made or before the Court having jurisdiction at the place of destination.

(2) Questions of procedure shall be governed by the law of the Court seized of the case.

30. (1) The right to damages shall be extinguished if an action is not brought within two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.

(2) The method of calculating the period of limitation shall be determined by the law of the Court seized of the case.

33. Any clause contained in the contract and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this Schedule, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void. Nevertheless for the carriage of cargo arbitration clauses are allowed, subject to these rules, if the arbitration is to take place within one of the jurisdictions referred to in sub-rule (1) of rule 29."

22) The CP Act aims to protect the interests of the consumers and provide for speedy resolutions of their disputes with regard to defective goods or deficiency of service. The Statement of Objects and Reasons of the CP Act are as under:

"The Consumer Protection Bill, 1986 seeks to provide for better protection of the interests of consumers and for the purpose, to make provision for the establishment of Consumer councils and other authorities for the settlement of consumer disputes and for matter connected therewith.

2. It seeks, inter alia, to promote and protect the rights of consumers such as -

(a) the right to be protected against marketing of goods which are hazardous to life and property;

(b) the right to be informed about the quality, quantity, potency, purity, standard and price of goods to protect the consumer against unfair trade practices;

(c) the right to be assured, wherever possible, access to an authority of goods at competitive prices;

(d) the right to be heard and to be assured that consumers interest will receive due consideration at appropriate forums;

(e) the right to seek redressal against unfair trade practices or unscrupulous exploitations of consumers; and

(f) right to consumer education.

3. These objects are sought to be promoted and protected by the Consumer Protection Council to be established at the Central and State level.

4. To provide speedy and simple redressal to consumer disputes, a quasi-judicial machinery is sought to be set up at the district, State and Central levels. These quasi-judicial bodies will observe the principles of natural justice and have been empowered to give relief of a specific nature and to award, wherever appropriate, compensation to consumers. Penalties for non-compliance of the orders given by the quasi-judicial bodies have also been provided.

5. The Bills seeks to achieve the above objects."

23) The relevant provisions of the CP Act that are required to be noticed for resolving the issues before us are Sections 3 and 21. They are as under:

"3. Act not in derogation of any other laws. - The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

.....

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 value of the goods or services and compensation, if any, claimed exceeds rupees one crore; and

(ii) appeals against the orders of any State Commission; and

(b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity."

It is to be noted that at the relevant time, the pecuniary jurisdiction was twenty lakh rupees for the National Commission. Jurisdiction of the National Commission

24) It was rightly argued by learned counsel Sri Vinoo Bhagat that the primary question that arises for our consideration in this appeal is whether the CA Act and the three international conventions in it constitute all the law governing liabilities of international air carriers arising out of international carriage of passengers and goods by air or whether domestic law can be added or substituted for the provisions of the conventions. In a nutshell, the submission of the learned counsel for the appellant-carrier is that conventions, viz. Warsaw Convention, as amended at Hague in 1955 and the Montreal Convention of 1999 exclusively govern carrier liabilities and, therefore, a remedy under domestic law cannot be invoked.

The frame work for the CP Act was provided by a Resolution dated 09.04.1985 of the General Assembly of the United Nations Organization, which is commonly known as Consumer Protection Resolution No.39/248. India is a signatory to the said Resolution. The Act was enacted in view of the aforementioned Resolution of the General Assembly of the United Nations. The preamble to the Act suggests that it is to provide better protection for the consumers and their interests. By this Act, the Legislature has constituted quasi- judicial Tribunals/Commissions as an alternative system of adjudicating consumer disputes.

Section 3 of the CP Act gives an additional remedy for deficiency of service and that remedy is not in derogation of any other remedy under any other law.

25) In Proprietor, Jabalpur Tractors vs. Sedmal Jainrain and Anr. 1995 Supp. (4) SCC 107, it is held:

"The Consumer Protection Act is not in derogation of any law."

26) In Fair Air Engineers Pvt. Ltd. and Anr. Vs. N.K. Modi (1996) 6 SCC 385, it is held:

"15. Accordingly, it must be held that the provisions of the Act are to be construed widely to give effect to the object and purpose of the Act. It is seen that Section 3 envisages that the provisions of the Act are in addition to and are not in derogation of any other law in force. It is true, as rightly contended by Shri Suri, that the words "in derogation of the provisions of any other law for the time being in force" would be given proper meaning and effect and if the complaint is not stayed and the parties are not relegated to the arbitration, the Act purports to operate in derogation of the provisions of the Arbitration Act. Prima facie, the contention appears to be plausible but on construction and conspectus of the provisions of the Act we think that the contention is not well founded. Parliament is aware of the provisions of the Arbitration Act and the Contract Act, 1872 and the consequential remedy available under Section 9 of the Code of Civil Procedure, i.e., to avail of right of civil action in a competent court of civil jurisdiction. Nonetheless, the Act provides the additional remedy."

27) In State of Karnataka vs. Vishwa Bharathi House Building Co-

operative Society and Others (2003) 2 SCC 412, a three Judge Bench of this Court observed:

"16. ...inasmuch as the provisions of the said Act are in addition to the provisions of any other law for the time being in force and not in derogation thereof as is evident from Section 3 thereof."

28) In the case of Secy., Thirumurugan Coop. Agricultural Credit Society v. Ma. Lalitha, (2004) 1 SCC 305, this Court took the view:

"12. As per Section 3 of the Act, as already stated above, the provisions of the Act shall be in addition to and not in derogation of any other provisions of any other law for the time being in force. Having due regard to the scheme of the Act and purpose sought to be achieved to protect the interest of the consumers better, the provisions are to be interpreted broadly, positively and purposefully in the context of the present case to give meaning to additional/extended jurisdiction, particularly when Section 3 seeks to provide remedy under the Act in addition to other remedies provided under other Acts unless there is a clear bar."

29) This Court, in the case of *Kishore Lal v. Chairman, Employees' State Insurance Corpn.* (2007) 4 SCC 579, took the view:

"7. The definition of "consumer" in the CP Act is apparently wide enough and encompasses within its fold not only the goods but also the services, bought or hired, for consideration. Such consideration may be paid or promised or partly paid or partly promised under any system of deferred payment and includes any beneficiary of such person other than the person who hires the service for consideration. The Act being a beneficial legislation, aims to protect the interests of a consumer as understood in the business parlance. The important characteristics of goods and services under the Act are that they are supplied at a price to cover the costs and generate profit or income for the seller of goods or provider of services. The comprehensive definition aims at covering every man who pays money as the price or cost of goods and services. However, by virtue of the definition, the person who obtains goods for resale or for any commercial purpose is excluded, but the services hired for consideration even for commercial purposes are not excluded. The term "service"

unambiguously indicates in the definition that the definition is not restrictive and includes within its ambit such services as well which are specified therein. However, a service hired or availed, which does not cost anything or can be said free of charge, or under a contract of personal service, is not included within the meaning of "service" for the purposes of the CP Act."

30) In *Skypak Couriers Ltd. v. Tata Chemicals Ltd.*, (2000) 5 SCC 294, this Court observed:

"2. With the industrial revolution and development in the international trade and commerce, there has been a substantial increase of business and trade, which resulted in a variety of consumer goods appearing in the market to cater to the needs of the consumers. The modern methods of advertisement in media, influence the mind of the consumers and notwithstanding the manufacturing defect or imperfection in the quality, a consumer is tempted to purchase the goods. There has been possibility of deficiency in the services rendered. For the welfare of such consumer and to protect the consumers from the exploitation to provide protection of the interest of the consumers, Parliament enacted the Consumer Protection Act, and the Act itself makes provision for the establishment of Commissions for settlement of

the consumer disputes and matters connected therewith. The Commissions, under the Act, are quasi-judicial bodies and they are supposed to provide speedy and simple redressal to consumer disputes and for that purpose, they have been empowered to give relief of a specified nature and in an appropriate way, to award compensation..."

31). This Court in the case of Patel Roadways Limited v. Birla Yamaha Ltd., (2000) 4 SCC 91, has considered this question and has laid down that the Disputes Redressal Agency provided for in the Act will have the jurisdiction to entertain complaints in which the claim for loss or damage of goods entrusted to a carrier for transportation is in dispute.

32). In our view, the protection provided under the CP Act to consumers is in addition to the remedies available under any other Statute. It does not extinguish the remedies under another Statute but provides an additional or alternative remedy. In the instant case, at the relevant point of time, the value of the subject matter was more than `20 lakhs, by which the National Commission is conferred jurisdiction for any cause of action that arises under the Act. Further, we are not inclined to agree with the argument of Shri. Bhagat that exercising of jurisdiction was in contravention of International Law, as the Warsaw Convention and the Hague Protocol have been incorporated into the domestic law by the passage of the CA Act. Therefore, we do not find any legal infirmity in the National Commission exercising its jurisdiction, as the same can be considered a Court within the territory of a High Contracting Party for the purpose of Rule 29 of the Second Schedule to the CA Act and the Warsaw Convention. Before we conclude on this issue, we may usefully notice a three Judge Bench decision of this Court in the case of Ethiopian Airlines vs. Ganesh Narain Saboo (Civil Appeal No.7037 of 2004) which view is binding on us. It is held:

"67. Similarly, the Carriage by Air Act, 1972 explicitly provides that its rules apply to carriage performed by the State or by legally constituted public bodies under Chapter 1, Section 2, Sub-section 1. Thus, it is clear that according to the Indian Law, Ethiopian Airlines can be subjected to suit under the Carriage Act, 1972. It may be pertinent to mention that the Carriage by Air Act, 1972 (69 of 1972) is an Act to give effect to the Convention for the unification of certain rules relating to international carriage by air signed at Warsaw on the 12th day of October, 1929 and to the said Convention as amended by the Hague Protocol on the 28th day of September, 1955 and to make provision for applying the rules contained in the said Convention in its original form and in the amended form (subject to exceptions, adaptations and modification) to non-international carriage by air and for matters connected therewith."

33). However, Shri. Vinoo Bhagat, learned counsel appearing for the appellant-carrier has placed reliance on the decisions of foreign courts to contend conventions exclusively govern carriers' liabilities. We do not wish to refer to all those decisions, since in our view, this issue is no more res integra in view of the decisions of this Court in Ethiopian Airlines, wherein this Court has observed:

"72. On careful analysis of the American, English and Indian cases, it is abundantly clear that the appellant Ethiopian Airlines must be held accountable for the

contractual and commercial activities and obligations that it undertakes in India.

73. It may be pertinent to mention that the Parliament has recognized this fact while passing the Consumer Protection Act, 1986 and the Carriage by Air Act, 1972. Section 86 was itself, a modification and restriction of the principle of foreign sovereign immunity and thus, by limiting Section 86's applicability, the Parliament though these incorrect acts, further narrowed a party's ability to successfully plead foreign sovereign immunity. In the modern era, where there is close interconnection between different countries as far as trade, commerce and business are concerned, the principle of sovereign immunity can no longer be absolute in the way that it much earlier was. Countries who participated in trade, commerce and business with different countries ought to be subjected to normal rules of the market. State owned entities would be able to operate with impunity, the rule of law would be degraded and international trade, commerce and business will come to a grinding halt. Therefore, we have no hesitation in coming to the conclusion that the appellant cannot claim sovereign immunity."

National Commission is a 'Court'?

34) Shri. Bhagat has cited several decisions of this Court in which this Court has taken the view that Consumer Forums are not Courts but are quasi-judicial bodies or authorities or agencies, in furtherance of his contention that only a Court in Mumbai has the jurisdiction to try a suit against the appellant-carrier and that the National Commission is not a Court. [See *Laxmi Engineering Works v. P.S.G. Industrial Institute*, (1995) 3 SCC 583; *Charan Singh v. Healing Touch Hospital*, (2000) 7 SCC 668; *State of Karnataka v. Vishwabharathi House Building Coop. Society*, (2003) 2 SCC 412]. This position has been fortified recently by a decision of a Constitution Bench of this Court in the case of *Union of India v. R. Gandhi, President, Madras Bar Association*, (2010) 11 SCC 1, where this Court has observed:

"38. The term "courts" refers to places where justice is administered or refers to Judges who exercise judicial functions. Courts are established by the State for administration of justice that is for exercise of the judicial power of the State to maintain and uphold the rights, to punish wrongs and to adjudicate upon disputes. Tribunals on the other hand are special alternative institutional mechanisms, usually brought into existence by or under a statute to decide disputes arising with reference to that particular statute, or to determine controversies arising out of any administrative law. Courts refer to civil courts, criminal courts and the High Courts. Tribunals can be either private tribunals (Arbitral Tribunals), or tribunals constituted under the Constitution (Speaker or the Chairman acting under Para 6(1) of the Tenth Schedule) or tribunals authorised by the Constitution (Administrative Tribunals under Article 323-A and tribunals for other matters under Article 323-B) or statutory tribunals which are created under a statute (Motor Accidents Claims Tribunal, Debt Recovery Tribunals and Consumer Fora). Some Tribunals are manned exclusively by Judicial Officers (Rent Tribunals, Motor Accidents Claims Tribunal, Labour Courts

and Industrial Tribunals). Other statutory tribunals have judicial and technical members (Administrative Tribunals, TDSAT, Competition Appellate Tribunal, Consumer Fora, Cyber Appellate Tribunal, etc.)

45. Though both courts and tribunals exercise judicial power and discharge similar functions, there are certain well-recognised differences between courts and tribunals. They are:

(i) Courts are established by the State and are entrusted with the State's inherent judicial power for administration of justice in general. Tribunals are established under a statute to adjudicate upon disputes arising under the said statute, or disputes of a specified nature. Therefore, all courts are tribunals.

But all tribunals are not courts.

(ii) Courts are exclusively manned by Judges.

Tribunals can have a Judge as the sole member, or can have a combination of a judicial member and a technical member who is an "expert" in the field to which the tribunal relates. Some highly specialised fact-finding tribunals may have only technical members, but they are rare and are exceptions.

(iii) While courts are governed by detailed statutory procedural rules, in particular the Code of Civil Procedure and the Evidence Act, requiring an elaborate procedure in decision making, tribunals generally regulate their own procedure applying the provisions of the Code of Civil Procedure only where it is required, and without being restricted by the strict rules of the Evidence Act."

35) In the case of *Bharat Bank Ltd. v. Employees*, 1950 SCR 459, this Court took the view that to be a court, the person or persons who constitute it, must be entrusted with judicial functions, that is, of deciding litigated questions according to law. This Court further observed that before a person or persons can be said to constitute a court, it must be held that they derive their powers from the State and are exercising the judicial powers of the State. In *State of Bombay v. Narottamdas Jethabhai*, 1951 SCR 51, this Court held that the word "Court" denoted a place where justice was judicially administered, having been vested the jurisdiction for this purpose by the State. In the case of *Brajnandan Sinha v. Jyoti Narain*, (1955) 2 SCR 955, it was held that in order to constitute a "Court" in the strict sense of the term, an essential condition is that the Court should have, apart from having some trappings of a judicial tribunal, power to give decision or a definitive judgment which has finality and authoritativeness which are the essential tests of a judicial pronouncement. This Court, in *Ram Narain v. The Simla Banking and Industrial Co. Ltd.*, AIR 1956 SC 614, held that a Tribunal which exercised jurisdiction for executing a decree would be a "court" for the purpose of the Banking Companies Act.

36) While examining the Contempt of Courts Act, 1971, a Constitution Bench of this Court in *Baradakanta Mishra v. Registrar of Orissa High Court*, (1974) 1 SCC 374, observed:

"68. What then is a court? It is "an agency of the sovereign created by it directly or indirectly under its authority, consisting of one or more officers, established and maintained for the purposes of hearing and determining issues of law and fact regarding legal rights and alleged violations thereof, and of applying the sanctions of the law, authorised to exercise its powers in due course of law at times and places previously determined by lawful authority." *Isbill v. Stovall*, Rex. Civ. App. 92 SW 2d 1057, 1070."..."

37) In *State of Tamil Nadu v. G.N. Venkataswamy*, (1994) 5 SCC 314, this Court observed that the primary function of a Court was to adjudicate disputes, while holding that a Collector constitutes a Revenue Court within the meaning of Entry 11-A of the List III of the Seventh Schedule of the Constitution. In *Canara Bank v. Nuclear Power Corpn. of India*, (1995) Supp 3 SCC 81, this Court observed:

"26. In our view, the word 'court' must be read in the context in which it is used in a statute. It is permissible, given the context, to read it as comprehending the courts of civil judicature and courts or some tribunals exercising curial, or judicial powers..."

This Court also quoted, with approval, the Halsbury's Laws of England and observed thus:

"29. In Halsbury's Laws of England (4th Edn., Vol. 10, paras 701 and 702), this is observed:

"701. Meaning of 'court'. Originally the term 'court' meant, among other things, the Sovereign's palace. It has acquired the meaning of the place where justice is administered and, further, has come to mean the persons who exercise judicial functions under authority derived either directly or indirectly from the Sovereign. All tribunals, however, are not courts, in the sense in which the term is here employed. Courts are tribunals which exercise jurisdiction over persons by reason of the sanction of the law, and not merely by reason of voluntary submission to their jurisdiction. Thus, arbitrators, committees of clubs and the like, although they may be tribunals exercising judicial functions, are not 'courts' in this sense of that term. On the other hand, a tribunal may be a court in the strict sense of the term even though the chief part of its duties is not judicial. Parliament is a court. Its duties are mainly deliberative and legislative; the judicial duties are only part of its functions. A coroner's court is a true court although its essential function is investigation.

702. What is a court in law. The question is whether the tribunal is a court, not whether it is a court of justice, for there are courts which are not courts of justice. In determining whether a tribunal is a judicial body the facts that it has been appointed by a non-judicial authority, that it has no power to administer an oath, that the chairman has a casting vote, and that third parties have power to intervene are immaterial, especially if the statute setting it up prescribes a penalty for making false statements; elements to be considered are (1) the requirement for a public hearing,

subject to a power to exclude the public in a proper case, and (2) a provision that a member of the tribunal shall not take part in any decision in which he is personally interested, or unless he has been present throughout the proceedings.

A tribunal is not necessarily a court in the strict sense of exercising judicial power merely because (1) it gives a final decision; (2) it hears witnesses on oath; (3) two or more contending parties appear before it between whom it has to decide; (4) it gives decisions which affect the rights of subjects; (5) there is an appeal to a court; and (6) it is a body to which a matter is referred by another body.

Many bodies are not courts even though they have to decide questions, and in so doing have to act judicially, in the sense that the proceedings must be conducted with fairness and impartiality. Examples are the benchers of the Inns of Court when considering the conduct of one of their members, the disciplinary committee of the General Medical Council when considering questions affecting the conduct of a medical man, a trade union when exercising disciplinary jurisdiction over its members...."

30. These passages, from the earlier edition of Halsbury, were cited by this Court in *Thakur Jugal Kishore Sinha v. Sitamarhi Central Coop. Bank Ltd.* The question there was whether the provisions of the Contempt of Courts Act applied to a Registrar exercising powers under Section 48 of the Bihar and Orissa Cooperative Societies Act. It was held that the jurisdiction of the ordinary civil and revenue courts of the land was ousted in the case of disputes that fell under Section 48. A Registrar exercising powers under Section 48, therefore, discharged the duties which would otherwise have fallen on the ordinary civil and revenue courts. He had not merely the trappings of a court but in many respects he was given the same powers as were given to the ordinary civil courts of the land by the Code of Civil Procedure, including the power to summon and examine witnesses on oath, the power to order inspection of documents, to hear the parties after framing issues, to review his own order and to exercise the inherent jurisdiction of courts mentioned in Section 151. In adjudicating a dispute under Section 48 of the Bihar Act, the Registrar was held to be "to all intents and purposes a court discharging the same functions and duties in the same manner as a court of law is expected to do".

38) The aforesaid observation has been strongly relied upon by Shri. Jaideep Gupta in reply to the contention of Shri. Bhagat that the National Commission was not a Court, and therefore, lacked jurisdiction to decide the complaint filed by the opposite party. In *P. Sarathy v. State Bank of India*, 2000 (5) SCC 355, this Court took the view that the term "Court" in Section 14 of the Limitation Act, 1963, meant any authority or tribunal having the trappings of a court. It may also be relevant to notice that a Constitution Bench of this Court in the case of *Kihoto Hollohon v. Zachillhu*, (1992) Supp (2) SCC 651 held that all Tribunals may not be Courts, but all Courts are Tribunals.

39) Now let us look at the definition of the term "Court" as commonly understood. The Oxford Advanced Learner's Dictionary [8th Edition] defines it as "the place where legal trials take place and where crimes, etc. are judged." The Oxford Thesaurus of English [3rd Ed] gives the following synonyms: "court of law, law court, bench, bar, court of justice, judicature, tribunal, forum,

chancery, assizes, courtroom". The Chamber's Dictionary [10th Ed.] has described a court as "a body of person assembled to decide causes". In Stroud's Judicial Dictionary [5th Ed], the word "court" has been described as "a place where justice is judicially ministered, and is derived", and is further observed, "but such a matter involves a judicial act which may be brought up on certiorari".

40) The above dictionary meaning and decision of this Court in the case of Canara Bank (Supra.) and also the observations of the Constitution Bench decision of this Court in the case of R. Gandhi (Supra.) reveal that word "Court" must be understood in the context of a body that is constituted in order to settle disputes and decide rights and liabilities of the parties before it. "Courts" are those bodies that bring about resolutions to disputes between persons. As already mentioned, this Court has held that the Tribunal and Commissions do not fall under the definition of "Court". However, in some situations, the word "Court" may be used in a wide, generic sense and not in a narrow and pedantic sense, and must, in those cases, be interpreted thus.

41) In State of Karnataka v. Vishwabharathi House Building Coop.

Society, (2003) 2 SCC 412, this Court took the view that there is a legal fiction created in giving tribunals like the Consumer Forum the powers of a Court. It was held:

"57. A bare perusal of Section 25 of the Act clearly shows that thereby a legal fiction has been created to the effect that an order made by District Forum/State Commission or National Commission will be deemed to be a decree or order made by a civil court in a suit. Legal fiction so created has a specific purpose i.e. for the purpose of execution of the order passed by the Forum or Commission. Only in the event the Forum/State Commission or the National Commission is unable to execute its order, the same may be sent to the civil court for its execution. The High Court, therefore was not correct to hold that in each and every case the order passed by the District Forum/State Commission/National Commission are required to be sent to the civil courts for execution thereof.

58. Furthermore, Section 27 of the Act also confers an additional power upon the Forum and the Commission to execute its order. The said provision is akin to Order 39 Rule 2-A of the Code of Civil Procedure or the provisions of the Contempt of Courts Act or Section 51 read with Order 21 Rule 37 of the Code of Civil Procedure. Section 25 should be read in conjunction with Section 27. A parliamentary statute indisputably can create a tribunal and might say that non-compliance with its order would be punishable by way of imprisonment or fine, which can be in addition to any other mode of recovery."

42) The use of the word "Court" in Rule 29 of the Second Schedule of the CA Act has been borrowed from the Warsaw Convention. We are of the view that the word "Court" has not been used in the strict sense in the Convention as has come to be in our procedural law. The word "Court" has been employed to mean a body that adjudicates a dispute arising under the provisions of the CP Act. The CP Act gives the District Forums, State Forums and National Commission the power to decide

disputes of consumers. The jurisdiction, the power and procedure of these Forums are all clearly enumerated by the CP Act. Though, these Forums decide matters after following a summary procedure, their main function is still to decide disputes, which is the main function and purpose of a Court. We are of the view that for the purpose of the CA Act and the Warsaw Convention, the Consumer Forums can fall within the meaning of the expression "Court".

43) This view of ours is fortified by the decision of this Court in the case of Patel Roadways Ltd. (supra) where this Court has held that a complaint before the Consumer Forum is within the meaning of the term "suit" as employed by Section 9 of the Carriers Act, 1865. In other words, we are of the view that when it comes to legislations like the CP Act, there can be no restricted meaning given to the word "Court". Hence, we reject the argument of Shri. Bhagat that the National Commission is not a "Court" within the meaning of Rule 29 of the Second Schedule of the CA Act.

Deficiency of Service

44) Shri. Vinoo Bhagat, learned counsel appearing for the appellant-carrier, would contend that there was no deficiency of service on the part of the appellants. He would point out that the appellant-carrier had delivered the consignment to the address that was given by the consignor in the box with the title "Consignee's Name and Address". He would further state that the only party in the consignee box with a name and an address was that of M/s. Liwe Espanola S.A. He would assail the findings of the National Commission that there was a deficiency of service on the part of the appellant-carrier for not having delivered the consignment at the correct address, and state that "BBSAE, MADRID, SPAIN" was not identifiable address to which any delivery of goods could be made. He would also state that there was no way of finding out that the consignment was to be made to a Bank. Shri. Bhagat would lay emphasis on the fact that it was the duty of the consignor to place the correct address and particulars while making the airway bill, by placing reliance on the Air Cargo Tariff Rules framed and notified by IATA. He states that the entire responsibility for the correct address of the consignee falls upon the consignor and there is no obligation on the part of the carrier or shipper to ensure that the address is correct. The carrier, Shri. Bhagat would submit, is only responsible to ensure the contents of the consignment and not the addressee. He would further submit that it would not be practical for the carrier to check the authenticity of the address in the consignee box for each and every consignment and that they would only check if there is an address or not.

45) The learned counsel, Shri. Bhagat would also contend that the consigner did not invoke the rights under the Warsaw Convention for the non-arrival of goods in a timely manner and as a result, was disentitled to later complaining about the lost consignment. He would then refer to Clause 12 of the airway bill and state that if the notice was not given by the consignor within a period of 120 days, then the claim would get extinguished. He would further contend that neither the consignee nor the consignor invoked their rights under Article 13(3) and Article 14 at any time. This fact sufficiently proves, according to the learned counsel, that the claim made is not genuine.

46) Before the National Commission, appellant-carrier had filed the affidavit of Mr. Daulat Kripalani, who was working as Manager of the appellant-carrier in India. In the affidavit, it is stated

that the consignor must provide all the information of the consignee and further, the consignor did not give the address of the consignee even when it is asked for and it was also not informed to them that the goods must be released after obtaining appropriate credit. It is the responsibility of the consignor to give full particulars of the consignee as provided in IATA Regulations. It is also stated that Barclays Bank has several offices in Madrid and the Bank did not receive any letters of credit (L/C) from Canara Bank, Bangalore. It is also stated that L/C was not attached to the airway bill and, therefore, there was no way of finding out that the consignment was addressed to the Bank. It is also stated that if the name and address of the Bank was not given in full, the custom authorities would not have released the goods. He also states that there was delay in approaching the air carrier after shipment of the goods, which would disentitle them from making any claim.

47) The appellant has also filed the affidavit of Khaled El Tameer, Asstt. Vice President, Insurance claims, who has also stated in the same lines on that of Mr. Daulat Kripalani. In his cross-examination, he has stated that it is the responsibility of the agent of the consignor to furnish all required documents and they would accept the Airway bill on the basis of the documents furnished by the agent.

48) The cargo agent/respondent No.2 has filed the affidavit of Mr. Anil Vazirani, who is the partner of the firm. He has stated that the airway bills are prepared as per the instructions of the consignor and the abbreviations used in the airway bills are universally known and in the dispute between the appellant-carrier and the consignor, it has no role to play and they are also not liable for any damages for any deficiency of service.

49) Mr. Rajendra Hinduja - partner of the consignor, has filed his affidavit. He has stated in his affidavit that the address of BBSAE has been given to notify the party, who is the consignee. The same stands for Barclays Bank, Madrid. It is also stated that since they did not receive the value of the consignment, they had made several oral enquires with the appellant-carrier and since they did not get positive response, they made written correspondence in the year 1993.

50) All the witnesses, who had filed their affidavit by way of examination-in-chief, have been cross examined by the contesting parties.

51) The learned counsel Sri Vinoo Bhagat would contend that in the airway bill, the consignor had indicated the name of the consignee as M/s. LIWE ESPANOLA in the consignee box and, therefore, the consignor could not have expected the carrier to have delivered the consignment to BBSAE, Madrid, Spain. The airway bill is one of the documents produced along with the Memorandum of civil appeal. A perusal of the same would show that the agent of the consignor in the consignee's box specifically mentions the name of the consignee as BBSAE, Madrid and immediately thereafter, the name of M/s LIWE ESPANOLA is mentioned. It has come in the evidence of the consignor and his agent that BBSAE, Madrid is Barclays Bank, Madrid and 'SAE' is a Spanish abbreviation for incorporation like 'limited'. Therefore, the consignee is only Barclays Bank, Madrid. It is the stand of the appellant-carrier that BBSAE, Madrid is not the consignee and further, it was the responsibility of the consignor and his agent to have furnished the correct and accurate particulars of the consignee and since the name of M/s. LIWE ESPANOLA also finds a place in the consignee

box, the consignment is delivered to the notified party and, therefore, it cannot be said that there was deficiency of service. We cannot agree. The consignor, through his agent, has stated that in the airway bill that is handed over to the appellant-carrier, in the consignee box, the name of BBSAE, Madrid is specifically mentioned. If, for any reason, the appellant-carrier was of the view that the name of the consignee is not forthcoming or if the particulars furnished were insufficient for effecting the delivery of the consignment, it was expected from the appellant-carrier to have made enquiries. In our view, at this belated stage, the appellant-carrier cannot shift the burden by contending that it was expected from the consignor and his agent to have furnished the correct and proper particulars of the consignee in the airway bill. The appellant is an air line carrier of high repute and they effect transportation of goods to various parts of the world including Spain and, therefore, it can safely be presumed that the carriers were fully aware of the consignee's name, which was indicated in the consignee's box and they should have notified the notified party immediately after the arrival of the consignment. Since, that has not been done, the National Commission was justified in holding that there is deficiency of service on the part of the carrier in not effecting the delivery of goods to the consignee.

52) Learned counsel for the appellant-carrier has contended that by virtue of Articles 6, 10 and 16 of the Rules, the consignor is required to make the airway bill and they are only responsible for correctness of the airway bill and consequences of errors in it and the carrier is not required to check correctness of consignor's documents. We have already noticed the relevant rules. Repetition of it may not be necessary. Rule 6 of the Rules envisages that the airway bill requires to be made by the consignor and handed over the same to the carrier with the cargo. Rule 10 stipulates that the consignor is responsible for the correctness of the particulars and statements relating to the cargo which he inserts in the airway bill. Sub-clause (2) of Article 10 provides that the consignor shall indemnify the carrier against all damages suffered by him or to any other person to whom the carrier is liable, by reason of the irregularity, incorrectness or incompleteness of the particulars and statements furnished by the consignor. Rule 16 provides that the consignor should furnish all the information and attach it to the airway bill to meet the requirements of law enforcing agencies. In the present case, as we have already noticed that the consignor had furnished all the relevant information in the airway bill which would satisfy the requirements of both Rule 6 and 16 of the rules and, therefore, the consignor cannot be accused of not furnishing the correct particulars and information in the airway bill which is handed over to the appellant-carrier with the cargo. In our view, the appellant-carrier cannot absolve its responsibilities by contending that it would be practically impossible to verify the correctness of all the airway bills which are furnished with the cargo. The appellant's contention that the name and address of the consignee was inadequate is difficult to accept. There is evidence on record to show that documents supporting the letter of credit was sent by the consignors using the self same name and address and there was no difficulty in the same being delivered to the consignee bank.

53) The learned counsel also submits that the consignor, having not invoked Article 14 of the Rules within a reasonable time, is disentitled to make any complaints before any forum, much less National Commission. We are not impressed with the arguments canvassed. Rule 14 confers the right on the consignor to make complaint to the carrier if the consignment has not reached its destination qua the consignee. In the evidence of the consignor, it is elicited that necessary oral

enquiries were made with the carrier within a reasonable time, when the consignor did not receive the value of the goods from the consignee and since it did not receive any reasonable explanation, it had no other alternative but to correspond with the appellant-carrier by written correspondence. Though, the witnesses of the consignor are cross examined by the appellant-carrier, nothing worthwhile is elicited. Therefore, in the absence of any contrary evidence, the statement made by the consignor and its witness require to be accepted.

54) It is also contended that Clause 12 of the Conditions of Contract printed on the reverse of airway bill requires that the person entitled to delivery must make a complaint to the carrier in writing in the case of non delivery of the goods within 120 days from the date of the issue of the airway bill. If not done within the time stipulated, claim, if any, against the carrier extinguishes. Per contra, Shri Jaideep Gupta, learned senior counsel, submits that under CP Act, the cause of action does not depend on any notice in writing being served on the carrier unlike in certain other Statutes. While considering this issue, the National Commission, in the impugned Judgment, has concluded:

"In our view, this submission cannot be accepted. Firstly, Clause (12) only provides that the persons entitled to delivery must make a complaint to the carrier in writing, in case of non- delivery of the goods within 120 days from the date of issue of airway bill. There is no question of delivery of goods to the shipper/Complainant. Further, it cannot control the period of limitation provided under 'the Act'. Rule 29(2), upon which heavy reliance was placed by the Respondent, also nowhere provides that it should be filed within 120 days. On the contrary, Rule 29(2) specifically provides that questions of procedure shall be governed by the law of the Court seized of the case.

In addition, Rule 30 of the second Schedule leaves no doubt that the right to damages shall be extinguished only if the action is not brought within two years as provided therein. It reads thus:

"30(1). The right to damages shall be extinguished if an action is not brought within two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.

(2) The method of calculating the period of limitation shall be determined by the law of the Court seized of the case."

The Complainant entrusted the goods to the carrier on 25th August, 1992 and the goods reached Madrid on 3rd September, 1992.

Admittedly, the complaint is filed within a period of 2 years.

Further, Rule 33 which is quoted above, upon which heavy reliance was placed by the learned Counsel Mr. Bhagat for Opposite Party No.1, in contending that this Commission would have no jurisdiction to decide the matter, specifically provides that any clause contained in the contract

entered into before the damage occurred by which the parties purport to infringe the rules laid down by the schedule, whether by deciding the law to be applied, or by altering the rules as to the jurisdiction, shall be null and void'.

Hence, Clause 12 of the airway bill would not be of any ground for holding that petition filed by the Complainant is barred by period limitation (sic.)."

55) We are in total agreement with the conclusion reached by the National Commission. Therefore, we do not see any merit in the contention canvassed by the learned counsel for the appellant-carrier.

56) We conclude that the National Commission has jurisdiction to decide the dispute between the parties and it is a Court and that there was deficiency in service by the appellant-carrier.

57) In view of the above discussion, we do not see any merit in this appeal. Accordingly, it is dismissed. Parties are directed to bear their own costs.

.....J. [G.S. SINGHVI]J. [H.L. DATTU] New Delhi, September 15, 2011.