Supreme Court of India
Amadalavalasa Cooperative ... vs U.O.I on 17 November, 1975
Equivalent citations: 1976 AIR 958, 1976 SCR (2) 731
Author: K K Mathew
Bench: Mathew, Kuttyil Kurien

PETITIONER:
AMADALAVALASA COOPERATIVE AGRICULTURAL &INDUSTRIAL SOCIETY L

Vs.

RESPONDENT:
U.O.I.

DATE OF JUDGMENT17/11/1975

BENCH:
MATHEW, KUTTYIL KURIEN
BENCH:
MATHEW, KUTTYIL KURIEN
RAY, A.N. (CJ)
UNTWALIA, N.L.

CITATION:
1976 AIR 958 1976 SCR (2) 731
1976 SCC (2) 934
CITATOR INFO :
RF 1983 SC 751 (2)
F 1988 SC1020 (8)

ACT:
Constitution of India, Art 19(1)(f)(g) 31(1)-359-Proclamation of Emergency-Whether Statutes made during Emergency can be challenged under Article 19-Whether liability created during emergency by statutes violating Art. 19 can be enforced after the revocation of emergency-General Clauses Act, ,. sec. 6 Emergency Risks (Goods) Insurance Act, 1962-Emergency Risks `' (Factories) Insurance Act, 1962-Liability to pay deficit premium dependent on quantification of evaded premium-Whether liability to pay deficit premium conditioned by insurer's ability to issue a supplementary policy Distinction between a compulsory and voluntary insurance.

HEADNOTE:
The President of India after the Chinese aggression in 1962, proclaimed emergency under Article 352 of the Constitution. The Parliament passed the Emergency Risks (Goods,) Insurance Act, 1962 and the Emergency Risks (Factories) Insurance Act, 1962, which came into force from

1-1-1963. It was realised after the Chinese aggression that it was necessary to make provision for reinstating the factories damaged or ruined by enemy action and for reimbursing the less or damage of goods and continue the commercial and economic activity with a view to stabilize the economy of the country. The Acts, therefore, provided for compulsory insurance of factories and goods against loss or damage sustained by enemy action. The Acts further provided that if any person failed to insure the goods or factories or insured for a lesser value than what was required by the Acts and thereby evaded the payment by way of permium such amounts would be payable by such person. Proclamation of Emergency was revoked by the President on 10-9-1968. After the expiry of the acts, notices were issued to the appellants stating that they evaded payment of Emergency Risk Insurance Premia in respect of goods or factories by undervaluing the goods or factories.

The appellant filed a writ petition, in the High Court challenging the said notices which were allowed by a learned Single Judge on the ground that after P the expiry of the Acts there could be no authorised officer to determine the quantum, of the evaded premia on the basis, of the correct value of the goods or factories. In an appeal the Division Bench of the High Court held that the liability to pay the evaded premia arose during the currency of the Acts and that the extent of the liability could be ascertained by an authorised officer even after the expiry of the Acts.

In the present appellant filed said judgment of the Division Bench is challenged. G The appellants contended:

1. That the liability to pay the evaded premia was dependent on the ascertainment by the authorised officer of the insurable value of the factory or goods and that until the extent of the liability was so ascertained there can be no liability and, therefore, section 6 of the General Clauses Act was not attracted.
2. The provisions of the Acts contravened the Articles 14, 19 and 31 of the Constitution.

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HELD: (1) The duty to take out insurance policy for the full insurable value of the factory or goods was mandatory and that the failure to do so was an offence. To effectuate this purpose the procedure for determination of the insurable value of the factory or goods and of the premium evaded was provided. The scheme of the insurance envisaged by the Acts was different from a voluntary insurance. There was no element of consensus on the fundamental terms of insurance. The liability to take insurance policy for the full insurable value of the factory or goods was compulsory. Terms and conditions of the policy to be taken were governed solely by the provisions of the Acts and the schemes. The liability to pay premia in case of under-valuation was not

dependent on the subsequent determination of the full insurable value of the factory or goods insured. The decision in the case of Ekambarappa v. Excess Profits Tax officer holding that the liability for excess profits tax arose at the close of the accounting year and was not dependent upon its ascertainment by order of assessment is approved. [737 B, C, D, F,G]

(2) The argument that the liability to pay premia on the basis of the full insurable value in case of under-insurance was conditioned by the capacity on the part of the insurer to issue a supplementary policy negatived. The obligation to insure for full insurable value was obligation which was not dependent upon corresponding liability of the insurer to indemnity. [738 B-E]

(3) Since the liability to pay the premia on the full insurable value was incurred before the expiry of the Act, section 6 of the General Clauses Act would enable the ascertainment of the extent of liability for evaded premia by an officer who was authorised when the Act was in force or by an officer authorised after the expiry of the Act. The principle behind section 6 of the General Clauses Act is that all the provisions, of the Acts would continue ill force for purposes of enforcing the liability incurred when the Acts were in force and any investigation, legal proceeding, remedy, may be instituted, continued or enforced as if the Acts had not expired. [738 G-H]

(4) Article 19 is not available to the petitioner as these Acts were passed during the proclamation of Emergency under Article 352. The liability incurred being acts or omissions during the currency of the proclamation of emergency f cannot be nullified even if it be assumed that provisions of the Acts were violative of Article 19. The procedure for ascertaining correct insurable value of the factory or goods is reasonable having regard to the previsions of Third Schedule in that behalf and cannot, therefore, violate Article 19(1)(f) or (g). [739 B, D-E]

(5) The petitioners were not deprived of any property without the authority of law. There is, therefore. no violation of Article 31(1). The`provisions are not violative of any provisions in Part III of the Constitution. [739 F)

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition No. 461 of 1971. Under article 32 of the Constitution of India AND Civil Appeals Nos. 506-510, 842-844, & 1710-1713 of From the Judgment and order dated the 12-3-1970 and 27- 4-1971 of the Andhra Pradesh High Court in W.P. Nos. 360-364 of 1970, 4365-4366/69, 2704/71 and 295, 297-298, 301/70 respectively.

AND Civil Appeals Nos. 2319 to 2354 of 1972 From the Judgment and order dated the 24-2-1971 of The Madras High Court in Writ Petitions Nos. 1794, 2544, 2563, 2570.

2598, 2600, 2634, 2635, 2636, 2642, 2643, 2644, 2764, 2795, 2806. 2807, 3409, 3459, 3679, 3698 and 3699 of 1969, and 161, 162, 307, 308, 1071, 1512, 1514, 1779, 2279, 2282, 2283, 2285, 3164, 3534 and 3535 of 1970 respectively.

A. V. Koteswara Rao and K. Rajendra Chowdhary for the Petitioners (In W.P. No. 461/71).

B. Sen, G. S. Rama Rao for the Appellants (in CAs. Nos. 506510 and 1710 to 1713/71).

Naunit Lal, K. Srinivasamurthy and Lalita Kohli for the Appellants (In CAs. Nos. 2319-2354/72) and for Respondents (In CAs: Nos. 506 to 510 and 842 to 844/71).

Gopalaratnam and A. T. M. Sampath for the Respondents (In CAs. Nos. 2328, 2332, 2343 and 2337/72).

B. Sen S. Gopalakrishnan (Mrs.) for Respondents (In CAs. Nos. 2323-2327, 2331, 2335-36, 2342 and 2344-47/72).

The Judgment of the Court was delivered by MATHEW, J.-We first take up for consideration Civil Appeals Nos. 506-510 of 1971.

The appellants in these appeals filed writ petitions before the Andhra Pradesh High Court questioning the validity of notices issued by the 2nd respondent therein under the Emergency Risks (Goods) insurance Act (Act 62 of 1962) and the Emergency Risks (Factories) Insurance Act (Act 63 of 1962) (hereinafter referred to as the Acts, collectively and individually as 'the Goods Act' and 'the Factories Act' respectively). The impugned notices stated that the appellants had evaded payments of emergency risks insurance premia in respect of goods or factories, is the case may be, by undervaluing the goods or factories for the purpose of insuring them under the Acts. A learned Single Judge of the High Court allowed the writ petitions on the ground that, after the expiry of the Acts, there could be no authorized officer to determine the quantum of the evaded premia on the basis of the correct value of the goods or factories. Appeals were filed against the orders, and a Division Bench of the Court, by a common judgment, held that the liability to pay the evaded premia arose during the currency of the Acts and that the extent of the liability could be ascertained by authorized officer even after the expiry of the Acts and allowed the appeals. These appeals are directed against the common judgment.

The President of India, after the Chinese aggression in October, 1962, proclaimed an Emergency under Article 352 of the Constitution on 26-10-1962. The proclamation was revoked by the President on 10-1-1968. The Acts came into force with effect from 1-1-1963.

The Acts were in substance similar to War Risks Insurance Acts which were in force in the United Kingdom during the Second World War. It was realised after the Chinese aggression that it was necessary to make provision, if possible on war footing, for reinstating the factories damaged or ruined by enemy action and for reimbursing the loss or damage of goods and continue the commercial and economic activity with a view to stabilize the economy of the country. In view of the

magnitude of the task, no private agency in the field of insurance could have undertaken it. By the Acts, the Central Government undertook the task of insuring factories and goods against loss damage sustained by enemy action.

The Acts in substance provided for compulsory insurance against emergency risks of every person carrying on business as a seller or supplier of goods in respect of the insurable goods, which were from time to time owned or deemed to have been owned by him in the course of such business, if the insurable value of such goods lying in one and the same city or district exceeded Rs. 30,000/- and of all factories falling within the purview of the Factories, 1948. The schemes framed under the Acts provided for procedural matters relating to the mode of valuation of the insurable goods and assets, receipt of applications for the issue of policies, payment of premium, the terms and conditions attaching to such policies and settlement of claims and other matters.

The provisions of the two Acts were more or less similar. We would now refer to certain provisions of the 'Factories. Act'. Under s. 1(3) of that Act, it was provided that the Act would remain in force during the period of operation of the proclamation of emergency issued on 26-10- 1962 and for such further period as the Central Government might declare to be the period of emergency for the purpose of the Act. It was also provided in that section that the expiry of the Act shall not affect anything done or omitted to be done before such expiry and s. 6 of the General Clauses Act, 1897, shall apply upon the expiry of the Act as if it were repealed by a Central Act.

Section 2(f) of that Act defined 'insurable value' of property as the value of the property as ascertained for the purpose of insurance under the Act. Section 2(j) defined 'quarter' as meaning a period of three months commencing on the first day of January, April, July or October and s. 2(i) defined 'emergency risks'.

Section 3 of that Act empowered the Central Government to put into operation a scheme called the "Emergency Risk (Factories) Insurance Scheme", where by the Central Government would undertake, in relation to factories, the liability of insuring property against emergency risks. Under s. 3(3) (a), the liability of the Central Government as insurer did not extend to more than 80 per cent of the insurable value of the property insurable. Under s. 3(3)

(c), the premium under a policy was payable at a rate not- exceeding 3 per cent per annum of the sum insured as may be specified in the scheme. Section 3(7) enjoined that every scheme shall be laid before each House of Parliament for a total period of thirty days.

Section 5(1) said that while a scheme was in operation, every owner of a factory shall take out a policy of insurance against emergency risk, issued in accordance with the scheme, for a sum not less than the insurable value of the property, and, if any owner of factory failed to fulfil the obligation under s. 5(1) and failed to pay the premium on the policy which was subsequently due, he was liable to be convicted of an offence under s. 5(4), punishable with fine and, that would be without prejudice to any other penalty or liability incurred in consequence of the failure.

Section 6 placed restrictions on carrying on certain insurance business. By s. 7, the Central Government was authorised to create an "Emergency Risks (Factories) Insurance Fund". The Central Government was authorized, under s. 8, to require the owner or occupier to furnish any document or information to a person authorized by it. Section 11 provided that where any person had failed to insure as or to the full amount, required by the Act, and had thereby evaded the payment by way of premium of any money which would have had to pay but for such failure, an officer authorized in that behalf by the Central Government might determine the amount the payment of which had been so evaded. The amount so determined shall be payable by such person and shall be recoverable from him as provided in sub- section (2) of s. 11. And sub-section (2) stated that any installment of premium due on a policy of insurance issued under the scheme and any amount determined as payable under sub-section (1) shall be recoverable as an arrear of land revenue and shall be a first charge on the property in respect of which the default was made. Section 11(3) stated that a person against whom a determination is made under sub-section (1) could, within the period specified in the scheme, appeal against such determination to the Central Government, whose decision therein shall be final.

Now we will note a few relevant provisions of the Emergency Risk (Factories) Insurance Scheme. The Scheme was put into operation with effect from 1-1-1963. In clause 6 of the Scheme it was provided that an application for insurance should be made in the form set out in Part A or Part of the First Schedule thereto according as the application was for the original or supplementary policy, and that it should be made to the government agent or such other officer of the government agent as might be authorized by that agent in this behalf and the application must be accompanied by a treasury challan evidencing the payment of the requisite premium into the Government treasury.

Clause 7 pertained to the method of valuation of insurable property. It laid down that the insurable value of the property shall be ascertained in accordance with the principles mentioned therein. Clause 8 fixed the rate of premium to be 25 paise for every 100 rupees or any part thereof in respect of the quarter ending 31-3-1963. Clause 9 related to issue of policy and verification of previous policies. Clause 12 mentioned the date from which the policies would be effective.

Clause 13(1) provided that where any person had failed to pay any premium due from him or to insure as, or to the full amount, required by the Act and had thereby evaded the payment by way of premium of any money which he would have had to pay but for such failure, the amount evaded shall be determined in accordance with the Third Schedule; and sub- clause (2) provided for appeal against the determination. Sub-clause (3) of clause 13 stated that where the amount determined under the provisions of sub-clause (1) or sub- clause (2) was fully recovered, the government agent shall, as soon as possible after such recovery, send the requisite application forms to the defaulter for completion and return, and a policy or supplementary policy in respect of the property concerned according as the recovery was in respect of non-insurance or under-insurance shall be issued by the government agent on receipt of the application correctly filled in, the said policy being made out so as to take effect from the date the amount was fully recovered.

Clause 16 declared that the insured person shall bear 20 per cent of the loss or damage. It also declared that if the total value of the property insured exceeded the sum insured, the insured person

shall be considered as his own insurer for the excess as well as for 20 per cent of the sum insured.

The First Schedule to the Scheme contained forms of applications for a policy or supplementary policy and other matters. The Second Schedule gave a model form of the policy to be Issued.

According to the Third Schedule, the authorized officer, when he k had reason to believe that the owner or occupier of any property insurable under the Act had failed to pay any premium and had thereby evaded the payment by way of premium of any money which he would have had to pay but for such failure, the officer may serve on such owner or occupier a notice requiring him to show cause why he failed to insure the property or to full amount as required by the Act and further to produce before the officer on such date any document or other evidence in support of his case. The officer, after providing him an opportunity of being heard shall assess the insurable value of the property and the amount of premium, the payment of which had been evaded. The Schedule made provisions for appeal to the Central Government.

The provisions of the Scheme framed under the 'Goods Act' were practically the same.

The appellants challenged the finding of the High Court that the liability to pay the evaded premia arose during the currency of the Acts and contended that the liability itself was dependent on the ascertainment by the authorized officer of the insurable value of the factory or goods in accordance with the Third Schedule and that until the extent of the liability was so ascertained, there could be no liability and so, s. of the General Clauses Act was not attracted. In other words, the contention was that until the liability of the insured was determined by the authorized officer by ascertaining the correct insurable value in accordance with the provisions of the Third Schedule no liability to pay the evaded premia arose and therefore, no liability was incurred before the expiry of the Acts which could be enforced under the provisions of s. 6 of the General Clauses Act after their expiry.

It is clear from the provisions of the Acts that the duty to take out insurance policy for the full insurable value of the factory of goods was mandatory and that the failure to do so was an offence. Besides, in the case of failure to insure for the full insurable value, provisions were made for recovery of the relative premia. To effectuate this purpose, the procedure for determination of the insurable value of the factory or goods and of the premia evaded was also provided.

There is no compulsion in a voluntary insurance that the cover should be made for the entire insurable value of the property. The premium collected in a voluntary insurance is related to the quantum of the risk undertaken in the light of the insurable value suggested by the insured. Generally, in a voluntary insurance, the premium is paid in consideration of the cover provided. In other words, premium is paid in order to enable the insurer to indemnify the insured against loss or damage on account of the risk specified. The scheme of insurance envisaged by the Acts was different. There was no element of consensus on the fundamental terms of insurance in the scheme. The liability to take insurance policy for the full insurable value of the factory or goods was compulsory. The terms and conditions of the policy to be taken were governed solely by the provisions of the Acts and the Schemes. It is a mistake to assume that the rights and liabilities of the parties in this statutory scheme were similar to those of a voluntary contract of insurance. If the

liability to take the insurance policy for the full insurable value was absolute and if the terms and conditions of insurance were settled by the terms of the statutes and the Schemes read with the Schedules, there is no merit in the contention of counsel for the appellants that the obligation of the President as insurer was same as that of an insurer in a contract of voluntary insurance. The liability to pay premia ill case of under-valuation was not dependent upon the subsequent determination of the full insurable value of the factory or goods insured. If the factory or goods was under-valued, when the insurance policy was taken, the liability to pay premia on the basis of the full insurable value arose at the time when the policy was taken. That liability was not dependent upon the ascertainment of the full insurable value by the authorized officer in accordance with the Third Schedule.

In Ekambarappa v. Excess Profits Tax officer(ll) this Court held that the liability for excess profits tax arose at the close of the accounting year and was not dependent upon its ascertainment by an order of assessment. In the same way, the liability to pay the premia on the basis of the full insurable value of the factory or goods insured was incurred Acts and the schemes were in operation. 'The (1) [1967] 3 S.C.R. 864.

liability to pay premia on the basis of the full insurable value of the factory or goods is one thing; the quantification of the amount is another.

But it was argued that if a policy was taken not for the full in surable value, the authorized officer should have ascertained the cor rect insurable value within the quarter and a supplementary policy should have been issued on the basis of the full insurable value, also within the quarter, so that the liability to pay premia on the basis of the full insurable value might arise. In other words, the argument was that the liability to pay premia on the basis of the full insurable value in case of under insurance was conditioned by the capacity on the part of the insurer to issue a supplementary policy within the quarter undertaking to indemnify the insured on the basis of the correct value against emergency risks, and, as the insurer ceased to have the capacity after the expiry of the quarter, and a fortiort after the expiry of the Acts, to issue a supplementary policy undertaking the liability to indemnify against loss arising out of emergency risk, on the basis of the full insured value, the obligation to pay premia on the full insurance value ceased, as, after the expiry of the Acts, there could no longer be any emergency risk.

We do not think that the argument is correct. As we said, the obligation to insure for full insurable value of the factory or goods was an obligation which was not dependent upon the corresponding liability of the insurer to indemnify. If the owner of factory or goods failed to take insurance policy at the time he ought to have taken it and pay the premia, the liability of the insured to pay the premia could be enforced under clause 13 or 14 respectively of the Schemes under the 'Goods Act' or the 'Factories Act'. In such a case there would be no obligation on the part of the President to indemnify the insured in case of loss or damage on account of emergency risk the insured did not take out the policy of insurance. The obligation to issue the policy or supplementary policy, as the case may be, would arise only after payment or recovery of the evaded premia, and even then, the liability of the insurer under the policy or supplementary policy would be from the date of payment or recovery of the evaded premia. The fact, therefore, that no supplementary policy was issued before the expiry of

the Acts is no answer for not fulfilling the obligation of the insured to pay the premia in accordance with the correct insurable value of the factory or goods as determined under the Third Schedule to the Schemes. Therefore, if under 6. S of the 'Factories Act' or under s. 7 of the 'Goods Act', the liability to pay the premia on the full insurable value was incurred before 'he expiry of the Act, s. 6 of the General Clauses Act would enable the ascertainment of the extent of liability for the evaded premia by an officer who was authorized when the Act was in force or by an officer authorised after the expiry of the Act. The principle behind s. 6 of the General Clauses Act is that all the provisions of the Acts would continue in force for purposes of enforcing the liability incurred when the Acts were in force and any investigation, legal proceeding, remedy, may be instituted, continued or enforced as if the Acts had not expired.

The Third Schedule to the Schemes provides for the method of ascertaining the liability in case of under- insurance. The provisions of the Third Schedule show that the officer has to give an opportunity to the insured to show cause why he should not be made to pay the premia on the basis of correct value of the factory or goods under valued.

It was contended for the petitioner in Writ Petition No. 461 of 971 that the provisions of the Acts contravened Articles 14, 19 and Article 19 is not available to the petitioner for challenging the validity of the provisions of the Acts as these Acts were passed during the currency of the proclamation of emergency under Article 352. No doubt, when the proclamation of emergency was revoked in 1968, the provisions of the Acts became liable to be challenged on the ground that they violated Article 19(1); but the liability incured for acts or omissions during the currency of the proclamation of emergency cannot be nullified even if it be assumed that the provisions of the Acts were violative of Article 19. In other words, liability crated by an act or omission when the Acts were in operation during the currency of the proclamation of emergency cannot be challenged even after the revocation of the proclamation on the ground that the provisions of the Acts violated Article 19. This, we think, is the principle laid down by this Court after reading Article 358 of the constitution in Makhan Singh v. State of Punjab(1).

We also think that the procedure for ascertaining the correct in surable value of the factory or goods is reasonable, having regard to the provisions of the Third Schedule in that behalf and cannot, therefore, violate Article 19(1)(f) or (g).

The writ petitioner has not shown how the provisions of the Acts violated Article 14.

And, as regards the contention of the petitioner that the provisions of the Acts violated Article 31(1), we do not think that the petitioner was deprived of any property without the authority of law. he petitioner has not succeeded in showing law the law which deprived him of his property could be challenged on the ground that it was violative of any of the provisions in Part III of the Constitution;

We dismiss Writ Petition No. 461 of 1971 and Civil Appeals Nos. 506-510, 842-844 and 1710-1713 of 1971 and allow Civil Appeals Nos. 2319-2364 of 1972 without any order as to costs.

P.H.P Appeals partly allowed.

(1) [1964] 4 S.C.R. 797 at 812