The Vanguard Fire and General Insurance Co. Ltd., Madras

Vs

M/s. Fraser and Ross and Another

Civil Appeal No. 21 of 1960

(P. B. Gajendragadkar, K. N. Wanchoo, K. C. Das Gupta JJ)

04.05.1960

JUDGMENT

WANCHOO, J. –

This is an appeal on a certificate granted by the Madras High Court. The appellant company had been carrying on various classes of insurance business other than life insurance after its incorporation in September, 1941. On the October 15, 1956, an extraordinary general meeting of the shareholders of the Company passed a resolution by which all its insurance business was to cease forthwith and no further policies of insurance of any kind were to be issued thereafter. It was also resolved that no application should be made for renewal of the certificate granted under s. 3 of the Insurance Act, No. IV of 1938 (hereinafter called the Act), and that thence-forward the Company should only carry on the business of money-lending as a loan-Company and also to do investment business. In consequence of these resolutions, the Company informed the Controller of Insurance in December, 1956, that it was not applying for renewal of its registration for carrying on the business of insurance. In May, 1957, the Controller wrote to the Company that its certificates for carrying on insurance business would be deemed to be cancelled from July, 1, 1957, and the cancellation was notified in the Gazette of India.

It appears that the Government of India had been receiving complaints against the company. Consequently on July 17, 1957, the Government of India passed an order under s. 33 of the Act directing the Controller of Insurance to investigate the affairs of the Company and to submit a report. Thereupon the Controller appointed Messrs. Fraser and Ross to act as auditors to assist him in the investigation. The Company was informed of this order in September 1957. Thereupon it wrote to the Controller that no order under s. 33 of the Act could be passed against it, as it had closed its business of insurance and the order in question was without jurisdiction. The Controller sent a reply to this communication and pointed to the provisions so s. 2D of the Act in justification of the order. Thereupon the Company made an application under Art. 226 of the Constitution in the Madras High Court. Two main contentions were raised by it in the petition. In the first place it was submitted that the company having closed all its insurance business no order could be passed against it under s. 33, as that section only applied to companies actually carrying on the business of insurance and that in any case no such order could be passed even with the help of s. 2D of the Act. In the second place it was contended that even if such an order could be passed under s. 33 read with s. 2D of the Act, it could not be done in the present case, as the Company's liabilities in respect of its insurance business did not remain unsatisfied or not otherwise provided for. Messrs. Fraser and Ross as well as the Controller were made parties to the petition. The petition was opposed on behalf of the Controller, and his contention was that the case was clearly covered by s. 2D of the Act and therefore the order under s. 33 was validly passed in this case and that it had not been

shown that the liabilities had been satisfied or had been otherwise provided for.

The learned Single Judge held that an order under section 33 read with s. 2D could be passed against the Company and that it had not been shown that the Company's liabilities had been satisfied or otherwise provided for. He therefore dismissed the writ petition. This was followed by an appeal by the Company, which was dismissed. The Division Bench substantially agreed with the view taken by the learned Single Judge. Thereupon the Company applied for a certificate to enable it to appeal to this Court and obtained it; and that is how the matter has come up before us.

Mr. Aggarwala appearing for the Company has urged the same two points before us. The Act was passed in 1938 to control persons carrying on the business of insurance. Section 2(9) thereof defines an 'insurer' inter alia as meaning any body corporate (not being a person specified in sub-cl. (c) of this clause) carrying on the business of insurance, which is a body corporate incorporated under any law for the time being in force in India or stands to any such body corporate in the relation of a subsidiary company within the meaning of the Indian Companies Act, 1913, as defined by sub-s. (2) of s. 2 of that Act. Section 3 provides for registration of any person carrying on the business of insurance and no such business can be carried on unless a certificate of registration for the particular class of insurance business has been obtained from the Controller. Section 3(4) gives power to the Controller to cancel the certificate for reasons specified therein and s. 3(5B) lays down that when a registration is cancelled the insurer shall not after the cancellation has taken effect, enter into new contracts of insurance, but all rights and liabilities in the respect of contracts of insurance entered into by him before such cancellation takes effect shall, subject to the provisions of sub-s. (5D), continue as if the cancellation had not taken place. In order to safeguard the interest of policy-holders, s. 7 provides for deposits by the insurer for various classes of his business. Section 8 lays down that any deposit made under s. 7 shall be deemed to be part of the assets of the insurer but shall not be susceptible of any assignment or charge; nor shall it be available for the discharge of any liability other than liabilities arising out of policies of insurances issued by the insurer so long as any such liability remains undischarged; nor shall it be liable to attachment in execution of any decree except a decree obtained by a policy-holder of the insurer in respect of a debt due upon a policy which debt the policy-holder has failed to realise in any other way. Section 9(1) lays down that where an insurer has ceased to carry on in India any class of insurance business in respect of which a deposit has been made under s. 7 and his liabilities in India in respect of business of that class have been satisfied or are otherwise provided for, the court may on the application of the insurer order the return to the insurer of so much of the deposit as does not relate to the classes of insurances, if any, which he continues to carry on. Under s. 10 an insurer who carries on the business of more than one kind is required to keep a separate account of all receipts and payments in respect of each such class of insurance business. Section 33(1) with which we are directly concerned, is in these terms :-

> "The Central Government may at any time by order in writing direct the controller or any other person specified in the order to investigate the affairs of any insurer and to report to the Central Government on any investigation made by him :
>
> Provided that the controller or the other person may, wherever necessary, employ an auditor or actuary or both for the purpose of assisting him in any investigation under this section."

Section 2D is in these terms :

> "Every insurer shall be subject to all the provisions of this Act in relation to any class of insurance business so long as his liabilities in India in respect of business of that class remain unsatisfied and not otherwise provided for."

The contention of Mr. Aggarwala is that s. 33 and s. 2D both refer to an insurer which is defined in s. 2(9) as a person carrying on the business of insurance. He, therefore, contends that as soon as the insurer who was carrying on the business of insurance closes it down completely he no longer remains an insurer and the provisions of the Act do not apply to him. Therefore, according to him, when s. 33 provides for an order of investigation by the Central Government such an order can only be made in respect of a person who is actually carrying on the business of insurance and is thus an insurer and cannot be made against a person who was an insurer but has closed his business. Further, according to Mr. Aggarwala, s. 2D also speaks of an insurer and makes him subject to all the provisions of the Act with respect to any class of insurance business so long as his liabilities in respect of that class remains unsatisfied or not otherwise provided for and therefore s. 2D would only apply to those cases where insurance business is being carried on, though some class of insurance business might have been closed. The contention therefore is that reading ss. 33 and 2D together, no order under s. 33 can be made in the case of an insurer who has completely closed his business of insurance.

The main basis of this contention is the definition of the word "insurer" in the s. 2(9) of the Act. It is pointed out that that definition begins with the words "insurer means" and is therefore exhaustive. It may be accepted that generally the word "insurer" has been defined for the purposes of the Act to mean a person or body corporate, etc., which is actually carrying on the business of insurance, i.e., the business of effecting contracts of insurance of whatever kind they might be. But s. 2 begins with the words "in this Act, unless there is anything repugnant in the subject or context" and then come the various definition clauses of which (9) is one. It is well settled that all statutory definitions or abbreviations must be read subject to the qualification variously expressed in the definition clauses which created them and it may be that even where the definition is exhaustive inasmuch as the word defined is said to mean a certain thing, it is possible for the word to have a somewhat different meaning in different sections of the Act depending upon the subject or the context. That is why all definitions in statues generally being with the qualifying words similar to the words used in the present case, namely, unless there is anything repugnant in the subject or context. Therefore in finding out the meaning to the word "insurer" in various sections of the Act, the meaning to be ordinarily given to it is that given in the definition clause. But this is not inflexible and there may be sections in the Act where the meaning may have to be departed from on account of the subject or context in which the word has been used and that will be giving effect to the opening sentence in the definition section, namely, unless there is anything repugnant in the subject or context. In view of this qualification, the court has not only to look at the words but also to look at the context, the collocation and the object of such words relating to such matter and interpret the meaning intended to be conveyed by the use of the words under the circumstances. Therefore, though ordinarily the word "insurer" as used in the Act would mean a person or body corporate actually carrying on the business of insurance it may be that in certain sections the word may have a somewhat different meaning.

A perusal of a few sections of the Act will illustrate this and immediately show that the word "insurer" has been used in some sections to mean not merely a person actually carrying on the business of insurance but also a person who intends to carry on the business of insurance but has not actually started it and also a person who was carrying on the business of insurance but has ceased to do so. For example, s. 3(2) which deals with an application for registration which naturally has to be

made before the business of insurance actually commences, lays down in cl. (b) that the application shall be accompanied by the name, address and the occupation, if any, of the directors where the insurer is a company incorporated under the Indian Companies Act. Here the word "insurer" has been used to indicate the company which is not actually carrying on the business of insurance but is intending to do so and is applying for registration. Further in s. 3(2)(e) which also deals with an application for registration, it is provided that an insurer having his principal place of business or domicile outside India shall send along with the application a statement verified by an affidavit of the principal officer of the insurer setting forth various requirements. Here again, the word "insurer" has been used for an intending insurer, for the business of insurance would only begin after the registration certificate is granted on the application made under s. 3(2). Then in s. 9 it is provided that where an insurer has ceased to carry on business, the court may on the application of the insurer order the return to him of the deposit made under s. 7. This shows that though the insurer is not actually carrying on the business of insurance he is still termed an insurer and on his application the deposit may be refunded to him. Again s. 55 which deals with a situation arising out of the winding-up of an insurance company or the insolvency of any other insure, provides that the value of the assets and liabilities of the insurer shall be ascertained in such manner and upon such basis as the liquidator or the receiver in insolvency thinks fit. The word "insurer" has thus been used in this section for a person or body corporate, etc., which is not actually carrying on the business of insurance and has gone into liquidation or has become insolvent. Therefore, though the ordinary meaning to be given to the word "insurer" is as given in the definition clause (s. 2(9)) and refers to a person or body corporate, etc., carrying on the business of insurance, the word may also refer in the context of certain provisions of the Act to any intending insurer or quondam insurer. The contention therefore that because the word "insurer" has been used in s. 33 or s. 2D those sections can only apply to insurers who are actually carrying on business cannot necessarily succeed, and we have to see whether in the context of these provisions an insurer will also include a person who was an insurer but has closed his business.

As we have said already the Act was passed to control the business of insurance in the interest of policy-holders and the general public and s. 33 is obviously a provision by which the Central Government can order investigation into the affairs of any insurer in order to carry out the policy of the Act. Could it be said in the circumstances that s. 33 only applies to insurers actually carrying on business and not to insurers who have closed their business ? If the policy of the Act is to be carried out and the policy-holders and the general public are to be protected, the need for making investigation into the affairs of an insurer who has closed his business is greater, for he may have done so dishonestly. We are therefore of opinion that the word "insurer" as used in s. 33 not only refers to a person who is actually carrying on business but in the context of that section and taking into account the policy of the Act and the purposes for which the control envisaged by the Act was imposed on insurers also refers to insurers who were carrying on the business of insurance but have closed it. Further if there were any doubt whether the word "insurer" in s. 33 refers to those insurers also who had closed their business that doubt in our opinion is completely dispelled by s. 2D. That section provides that every insurer shall be subject to all the provisions of the Act in relation to any class of insurance business so long as his liability in India in respect of business of that class remains unsatisfied or not otherwise provided for. Obviously this section applies to those insurers who have closed their business. It was not necessary to enact this section if the word "insurer" here also meant a person actually carrying on the business of insurance, for the provisions of the Act apply to such a person proprio vigore. Therefore, when the word "insurer" is used in s. 2D it must mean a person who was carrying on the business of insurance but has closed it. If that is so, s. 33, which provides for investigation, would apply to such an insurer who has closed his business, by

virtue of s. 2D.

Mr. Aggarwala next contends that s. 2D would only apply to those cases where an insurer was carrying on different classes of insurance business and had closed some of them but not all of them. He contends that the section provides that the insurer shall remain subject to the provisions of the Act in relation to any class of insurance business so long as his liabilities with respect to that class of business remain unsatisfied or not otherwise provided for. This, according to him, contemplates a closure of only some out of many classes of business of insurance and not of all. We see no reason however to limit the words used in this section only to a case where out of many classes of business, some are closed and others are being carried on. Under s. 13 of the General Clauses Act, No. X of 1897, in all Central Acts and Regulations, unless there is anything repugnant in the subject or context, words in the singular shall include the plural and vice versa. Though therefore s. 2D speaks of any class of insurance business in the singular it includes the plural also and would refer to all classes of insurance business. Mr. Aggarwala does not contend that where, for example, four classes of business are being carried on and three of them are closed and one is continued, the section will not apply; but he contends that at least one must continue and the section will not apply if all are closed. We do not see why if the section applies, even though the word "class" is in the singular, to a case where three out of four classes are closed and one is continued it should not apply to a case where all four classes are closed. We see no repugnancy in the context in holding that if all classes of business are closed the insurer shall be subject to all the provisions of the Act so long as his liabilities in India in respect of any business of all classes remain unsatisfied or not otherwise provided for. Therefore on a plain reading of s. 2D there can be no doubt that an insurer who has closed all classes of his insurance business remains subject to all the provisions of the Act in relation to such classes so long as his liabilities in India remain unsatisfied or not otherwise provided for. Therefore s. 33 will certainly apply to a case where all classes of insurance business have been closed so long as the liabilities remain unsatisfied or not otherwise provided for. The first contention of the appellant therefore that no investigation can be ordered under s. 33 in its case because it has closed all classes of its insurance business fails.

Turning now to the second contention, the argument on behalf of the appellant is three-fold. In the first place it is urged than an order can only be made under s. 33 read with s. 2D when the Central Government is satisfied that the liabilities have not been satisfied or otherwise provided for, and that the order should show on the face of it that the Central Government had considered this aspect of the matter and had come to the conclusion that the liabilities remained unsatisfied or not otherwise provided for. Further there is nothing in the present order to show that the Central Government ever considered this aspect of the matter and was satisfied that the liabilities of the appellant-Company remained unsatisfied or not otherwise provided for. There is no doubt that the order is utterly silent on this point and it was only in his letter of October 15, 1957, that the Assistant Controller pointed out s. 2D of the Act and referred to this aspect of the matter. It seems to us only just and proper that when an order is being passed under s. 33 read with s. 2D of the Act it should show on the face of it that the Central Government was prima facie satisfied that the liabilities had remained unsatisfied or not otherwise provided for, for it is only when the liabilities have not been satisfied or otherwise provided for that an order under s. 33 read with s. 2D would be justified in the case of an insurer who has closed his business. We use the word "prima facie" advisedly, for it seems to have been suggested in the High Court that no order could be passed under s. 33 unless it was proved to the hilt that there were liabilities which remained unsatisfied or otherwise unprovided for. It is obvious that such proof would only be available after investigation in to the affairs of the insurer. Therefore in order that s. 2D may be workable, all that is required under it is that the Central Government should be satisfied after such prima facie inquiry as it considers necessary that there are reasons to

believe that the liabilities of the insurer who has closed his business remain unsatisfied or not otherwise provided for and in coming to this prima facie conclusion the Central Government may make enquiry from the insurer with respect to complaints that it may have received against him. But the fact that the order does not on the face of it show that the Central Government considered this aspect of the matter would not make it bad, if in subsequent proceedings taken to challenge it, it is shown that there were materials before the Central Government which would justify its coming to the prima facie conclusion that the liabilities had not been satisfied or otherwise provided for, and therefore an investigation into the affairs was called for. In the present case we find from the materials on the record that there were complaints before the Central Government from those who had claims against the company. Those complaints were apparently referred to the Company and it does not appear that the Company satisfied the Central Government that the complaints were unjustified. It was in this situation that the order for investigation was made in July, 1957, after the Company had closed its insurance business. Further on the materials available on the record it does appear that even now there are claims pending to the tune of about one lac of rupees against the Company. So it cannot be said that there were no liabilities of the Company outstanding which were not satisfied or otherwise provided for when the order was made in July, 1957. In the circumstances the order cannot be held to be bad because it does not show on the face of it that there were liabilities which had remained unsatisfied or not otherwise provided for.

In the second place it is urged that there can be no question of satisfying or otherwise providing for liabilities unless the liabilities are ascertained and either admitted or proved. In other words the argument is that it is only those liabilities which are admitted by the insurer or which have been decreed against him and the decrees have become final which can be taken into account in deciding whether the liabilities have remained unsatisfied or not otherwise provided for. It is urged that only those liabilities which are ascertained and either undisputed or proved can be satisfied and that the same applies to their being otherwise provided for. It is true that only those liabilities, which are ascertained and either admitted or proved, can be satisfied; but it does not follow that "provision otherwise" must also be only of liabilities which are ascertained and either admitted or proved. If that were so a dishonest insurer who closes his business could always get out of the provisions of s. 33 read with s. 2D by repudiating all claims made against him and then saying that there are no liabilities which remained unsatisfied or otherwise unprovided for. There can be no doubt, therefore, if these provisions have to serve the purpose for which they were enacted, (namely, the protection of the interest of the policy-holders and the general public), the words "not otherwise provided for" in s. 2D must refer to liabilities in the nature of claims against the insurer whether the insurer admits them or not and whether a decree has been finally passed in respect of them or not. The intention of making this provision in s. 2D is to ensure that probable claims arising out of the insurance business that is closed are provided for before the insurer who has closed his business can say that he is not governed by all the provisions of the Act. There can be no doubt, therefore, that when "provision otherwise" has to be made it must be with respect to probable claims also that are likely to arise out of the insurance business which has been closed. In the present case even the Company admits that there are probable claims to the tune of about rupees one lac still pending and in the circumstances until they are satisfied or it is shown that they have been provided for otherwise, all the provisions of the Act, including s. 33, will apply to the Company.

The last argument in support of the second contention is that the liabilities have been otherwise provided for. It is said that the Company deposited Rs. 3,94,000 as security under s. 7 of the Act, which is still available to pay off the liabilities of the Company and therefore when such liabilities do not appear to exceed that amount they have otherwise been provided for. The question thus raised is whether the Company is entitled to take into account the security deposit under s. 7 in order

to show that the liabilities have been otherwise provided for. The contention on behalf of the Controller is that when the Act envisages "provision otherwise", this provision has to be over and above the security deposit made by the Company under s. 7. It appears from s. 8 that this deposit is available for the discharge of liabilities arising out of policies of insurance issued by the insurer so long as any such liability remains unsatisfied. But even if a decree has been obtained by a policy-holder on the basis of a liability under the policy he is not entitled to attach any part of this deposit until he shows that he has failed to realise the decree in any other way. Further it appears that s. 8 only contemplates policy-holders holding a decree attaching part of the security deposit in case they fail to realise their debt in any other way; it does not contemplate, for example, third parties who have decrees against an insurer, like the Company (which in its motor insurance business indemnifies the policy-holders against third party risk up to a certain extent), doing so. Such third parties cannot under any circumstances attach any part of the deposit, for s. 8 only permits its attachment in the last resort by a policy-holder of the insurer in respect of a debt due upon a policy. But under s. 2D the decree of a third party in such a case would be the liability of the insurer in respect of his motor insurance business which could not be realised by attachment of any part of the deposit under s. 7. Besides, even with respect to decrees of policy-holders the deposit could only be attached when all other ways of realising the money have failed. In these circumstances it can hardly be said that the fact that this deposit is there is itself a "provision otherwise" to meet the liabilities of the insurer. The policy-holder cannot attach this deposit unless he first exhausts all other means. Even if he has got a decree and even if the insurer admits his claim and wants to pay it, he cannot do so out of the money in deposit under s. 7. As for third parties who may have decrees against the insurer, they can never attach this deposit in view of the provisions of s. 8. It could not be the intention of the legislature when it was in effect exempting the insurer from all the provisions of the Act on his liabilities being otherwise provided for that such provision should include the security deposit under s. 7, when it has made it so difficult for a policy-holder to get his debt satisfied from that deposit and when it is clear that a third party could not in any way attach the deposit. In these circumstances we are of opinion that when s. 2D provides that the insurer shall be subject to all the provisions of the Act so long as his liabilities in India in respect of the business which is closed remain unsatisfied or not otherwise provided for, the satisfaction or "provision otherwise" does not refer to the deposit under s. 7 and has to be over and above that deposit. It is true that s. 9 provides that the insurer can take back the deposit after satisfying the court that he has satisfied or otherwise provided for his liabilities. But this "provision otherwise" for the purposes of s. 9 must obviously be other than the deposit itself. Further when the insurer wants to take back his deposit on making "provision otherwise" he will have to satisfy the court that the "provision otherwise" has been fully made and the court will be in a position to investigate into the matter. This, however, does not mean that if the insurer does not want to take advantage of s. 9 of the Act he can say without submitting to the terms of that section that he has made "provision otherwise", because the deposit which is made under s. 7 is more than all his liabilities of the insurance business that he has closed. It is urged that it is hard, for example, on an insurer who has a large deposit and whose liabilities are small that he should not be able to fall back on his deposit for the purposes of s. 2D. We do not, however, see any hardship in a case of this kind, for if it is a fact that the deposit of the insurer is large and his liabilities are small he can always take advantage of s. 9 of the Act and submit to an investigation by the court and take back his deposit after depositing the small sum required to meet his liabilities. We are, therefore, of opinion that when s. 2D speaks of satisfaction or "provision otherwise" for the liabilities of insurance business which is closed it contemplates such satisfaction or "provision otherwise" over and above the deposit made under s. 7. It is not in dispute in this case that there are some liabilities still pending; it is also not in dispute that they are not satisfied and no provision has been made otherwise for them irrespective of the security deposit.

This also appears to have been the position when the order was made in July, 1957. In the circumstances the order is good and cannot be called in question by the Company.

The appeal therefore fails and is hereby dismissed with costs.

Appeal dismissed.

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