

(1999) 09 SC CK 0132

In the Supreme Court Of India

Case No : Civil Appeal No. 5515 Of 1983

Andhra Pradesh State Electricity Board

APPELLANT

Vs

Easun Engineering Co.

RESPONDENT

Date of Decision : 22-09-1999

Acts Referred:

Constitution of India, 1950 — Article 133

Citation : (1999) 3 SCC 112

Hon'ble Judges : M. B. Shah, J;D. P. Wadhwa, J

Bench : Division Bench

Final Decision : Allowed

Judgement

D.P. Wadhwa and; M.B. Shah, JJ.-This appeal has been preferred by Andhra Pradesh State Electricity Board ("the Board" for short) on a certificate granted by the Andhra Pradesh High Court under Article 133 read with Article 134-A of the Constitution of India. The order granting the certificate is as follows:

"An oral application is made by Shri T. Ananta Babu, the learned counsel for the respondent Board for the grant of leave to appeal to the Supreme Court. As substantial questions of law of general importance to be decided by the Supreme Court are involved, we grant leave."

2. Under Article 133 of the Constitution appeal lies to this Court if the High Court certifies that the case involves a substantial question of law of general importance and that in the opinion of the High Court the said question needs to be decided by the Supreme Court.

3. During the pendency of the appeal, the Andhra Pradesh State Electricity Reforms Act, 1998 came to be passed which broadly bifurcated the appellant Board into two separate corporations - Transmission Corporation of Andhra Pradesh Ltd. (APTRANSCO) and Generation Corporation of Andhra Pradesh Ltd. (APGENCO). An application IA No. 1 of 1999 has been filed for bringing on record APTRANSCO and APGENCO in place of the appellant Board. After hearing learned

counsel for the parties on 10-8-1999 we passed the following order:

"This application is for seeking substitution of two appellants in place of Andhra Pradesh State Electricity Board which had filed this appeal. The substitution is sought on account of the Andhra Pradesh State Electricity Reforms Act, 1998. Reference has been drawn to clause (7) of Section 23 of the Act to seek substitution. This has been opposed principally on the ground that right to damages for breach of contract is neither obligation nor debt and the appeal, in fact, abates. Reference has also been drawn to Section 306 of the Indian Succession Act. We have been referred to three decisions of this Court in *Union of India v. Raman Iron Foundry*¹, *Melepurath Sankunni Ezhuthassan v. Thekittil Geopalankutty Nair*² and *M. Veerappa v. Evelyn Sequeira*³. Mr Bhimrao Naik, learned Senior Counsel for the applicant wants some time to study the correct position in law. He says that the State of Andhra Pradesh may, in the circumstances, perhaps be required to be impleaded as a party. As prayed for by Mr Naik, learned Senior Counsel for the applicant, four weeks" time is granted. List thereafter."

4. We again heard arguments. Meanwhile a supplementary affidavit was filed on behalf of APTRANSCO. It was stated that if the Court deems fit, notice may also be issued to the State of Andhra Pradesh.

5. In view of the order which we propose to make in this appeal, we do not feel it necessary to go into the question as to whether APTRANSCO and APGENCO have succeeded the Board after the coming into force of the Andhra Pradesh State Electricity Reforms Act, 1998. We, therefore, allow the application subject to all exceptions.

6. The Board floated a tender for supply of 13 transformers of 42.5 MVA capacity for one of its hydroelectric projects (Lower Sileru Hydro Power Station). This was in August 1969. The respondent Company submitted its tender which was accepted on 20-8-1970. The schedule to the terms of delivery of the transformers was fixed as per clause 3 of the agreement as follows:

"(i) First four units by June 1973.

(ii) Next three units by December 1973.

(iii) Next three units by September 1975.

(iv) Last three units by March 1976. Prices shall continue to be firm as stated above for any further extension of the delivery period indicated above due to delays on the part of the Company on account of force majeure or any other conditions though beyond the control of the Company. However, as a special case it was agreed that the variation in statutory taxes and price increase due to variation in statutory import levies shall be made applicable even during such extended periods."

7. It appears the schedule was not adhered to and time for supply of the

transformers was extended from time to time. In the letter dated 24-4-1974 from the Board to the respondent Company, it is mentioned that the first unit of Sileru Hydroelectric Project was scheduled to be commissioned in June 1975 and that it was very essential that the transformers were received at site latest by the end of December 1974. Ultimately by letter dated 22-8-1974 the appellant, after drawing attention of the respondent Company to various correspondence exchanged earlier, directed the respondent Company to effect delivery of the seven transformers within fifteen days, which according to the appellant, ought to have been delivered in June 1973 and December 1973. It was mentioned that in case the transformers were not so delivered, the Board would be constrained to purchase the same from some other sources at the risk and cost of the respondent Company and other appropriate steps would be taken to protect the interest of the Board. Ultimately, the contract was cancelled and the bank guarantee which had been given by the respondent Company after taking advance from the Board was revoked. The Board then filed a suit in the Court of the Ist Additional Judge, City Civil Court, Hyderabad, claiming a sum of Rs 1,69,93,860.87 towards damages with future interest.

8. The following three issues were framed by the trial court:

1. Whether the defendant committed breach of contract?
2. Whether the plaintiff is entitled to recover damages, if so, to what extent?
3. To what relief?

9. The suit came to be decreed on 27-10-1979 in favour of the Board. The trial court also granted costs and current interest at 6% per annum from the date of the suit till realization.

10. The respondent Company then filed an appeal before the High Court which was listed before the two Hon"ble Judges, who differed in their opinion. The matter was then referred under clause 36 of the Letters Patent of the Andhra Pradesh High Court, to the third Hon"ble Judge, who agreed with the Hon"ble Judge who allowed the appeal. Accordingly, the appeal was allowed and the suit of the appellant Board was dismissed. It is on a certificate granted by the High Court, which we have noted above, this appeal came to be filed in this Court.

11. We have been taken through the record by Mr Ashok Grover, learned Senior Counsel appearing for the appellant, but we are unable to find if any question of law much less any substantial question of law, if any, arose in the present case for the High Court to grant certificate to appeal to this Court under Articles 133/134-A of the Constitution. It is submitted by Mr Grover that Punayya, J. in his judgment allowing the appeal, had stated that the question if time of 15 days granted by letter dated 22-8-1974 was a reasonable time, was a question of law, when in fact it would be a question of fact and it should not have been allowed to be raised in the appeal. We have been referred to Section 63 of the Sale of Goods Act which prescribes that when there is a reference to reasonable time,

the question what is reasonable time is a question of fact. That may be so. But the fact remains that the whole of the evidence was before the Court and the findings arrived at were on the basis of the appreciation of evidence. No question of law did arise in the case. The third Hon"ble Judge, who agreed with Punayya, J. did not state that the grant or otherwise of reasonable time was a question of law. In any case, we are unable to find if any substantial question of law arises in the present case. As stated above it is purely a case of appreciation of evidence and in our opinion the High Court was not right in granting certificate on the mere plea that substantial question of law arose in the present case which needed decision by this Court. Accordingly, we revoke the certificate granted by the High Court. The appeal is dismissed. There shall be no order as to costs.