
(1993) 11 NCDRC CK 0007

In the National Consumer Disputes Redressal Commission

EXECUTIVE ENGINEER, UPPER GANGA CANAL
MODERNIZATION UNIT DIVN.I, U.P.

APPELLANT

Vs

PUNJAB AND SIND BANK

RESPONDENT

Date of Decision : 16-11-1993

Acts Referred:

Citation : 1993 0 NCDRC 68 : 1993 3 CPJ 413 : 1994 1 CPC 289 : 1994 1 CPR
27 : 1995 2 CLT 376

Hon'ble Judges : V.BALAKRISHNA ERADI , A.S.VIJAYAKAR , B.S.YADAV J.

Advocate : K.D.SEHGAL , B.T.SINGH , ATUL CHITALE

Judgement

1. THIS order will dispose of Original Petition Nos. 106 and 107 both of 1992 as the facts in both the cases are practically similar. These complaints have been filed by the State of Uttar Pradesh through its Executive Engineer of Upper Ganga Canal Modernization Unit, Division -1 against the Punjab & Sind bank through its Chairman and Managing Director, New Delhi. Later on M/s. G.S. Atwal & Co. (GUA) was also allowed to be impleaded as a party on the request of the complainant vide order dated 12th March, 1993.

2. THE brief facts according to the complainant are that the State of Uttar Pradesh had undertaken the modernization project of Upper Ganga Canal in the State of Uttar Pradesh and for that purpose it had given a contract for construction of New Pathri Super-Passage at km. 15.6 of Parallel Upper Ganga Canal in the District of Hardwar to M/s. G.S. Atwal and Co. (for short the "Contractor,). The complainant gave Mobilisation Advance of Rs. 22.50 lacs to the Contractor in two instalments (in O.P. No. 107 of 1992 the bank guarantee was for performance of the contract to the satisfaction of the complainant). The said advance were to bear interest @ 14% per annum from the date of advances to the date of repayment. As per Clause 8 of the General Conditions of the agreement, the Contractor was required to furnish security deposit or a bank guarantee in lieu thereof for Rs. 22.51 lacs (in O.P. No. 107 of 1992 the amount involved is Rs, 27,01,245/- and it was for performance of the contract to the

satisfaction of the complainant). The bank guarantee in both the cases was issued by the Opposite party No. 1, i.e., Punjab and Sind Bank, Yamunagar Branch, Haryana. The due date of the completion of the work was 30th April, 1992. The contractor's performance of the work was extremely poor due to lack of resources, poor planning and other various lapses and that he could execute only about 6% of the work of the contract by 30.6.1990, after which date the work was abandoned by the Contractor and he even shifted his machinery equipment, material and man-power on the night of 5.9.1990 without permission of the complainant. Thereafter on 8.9.1990 the complainant demanded from the Opposite Party No. 1 the encashment of the bank guarantee of Rs. 22.51 lacs (in Original Petition No. 107 of 1992 the bank guarantee was invoked on 20th April, 1992). The Opposite Party No. 1 did not honour the bank guarantees. Apprehending that the complainant would naturally take steps on terminating the agreement and forfeiting the security deposit and consequently would call on the bank for encashment of the bank guarantees, the Contractor filed a civil suit in the Court of Additions! Senior Sub Judge, Jagadhri, Haryana wherein the Court restrained the Opposite Party No. 1 from encashing the bank guarantees vide its order dated 8th December, 1990. The complainant filed an appeal against the said order and the Additional District Judge, Jagadhri, Haryana quashed the order of the Lower Court vide order dated 17th April, 1992 and vacated the injunction order granted by the Lower Court. Thereafter the present Original Petitions were filed. It may be mentioned here that during pendency of these original petitions, the Contractor filed a Revision Petition in the High Court of Punjab and Haryana which was dismissed. The Contractor filed an SLP in the Supreme Court of India and the same was also dismissed on 15th June, 1992. The Opposite Party No. 1 had contested both the Original Petitions but now those contentions are not material because on 30th September, 1993 the Counsel for that party submitted before this Commission that the amount covered by the bank guarantees would be paid to the complainant on or before Tuesday, the 5th October, 1993. Both these original petitions were adjourned to 6th October, 1993 for reporting compliance. On that date, the Counsel for the Opposite Party No. 1 stated that the amount of both the bank guarantees has been paid to the complainant on 5th October, 1993. On behalf of the complainant a prayer for interest has been made.

3. AFTER hearing the parties, we are of the opinion that the bank is liable to pay interest to the complainant for the period during which it had not been restrained by the Court from honouring the Bank guarantees. The bank was not concerned with the dispute that arose between the complainant and the contractor. The Bank was bound to honour the bank guarantees as soon as the demand for their encashment was made by the complainant unless restrained by some competent Court from doing so. We think in both the complaints the bank is liable to pay interest to the complainant for the delayed payment under the Bank guarantees. Of course, the period for which the injunction order was in force will have to be excluded while computing the claim for which the bank is liable to pay interest.

We think it reasonable to award interest to the complainant at the rate of 10% p.a. in both the petitions on the amount of the bank guarantees.

4. IN Original Petition No. 107 of 1992, the demand for encashment of the bank guarantees was made on 20th April, 1992 i.e., after the vacation of the injunction order. Therefore, in that petition the claimant will be entitled to interest at the above rate from 20th April, 1992 to 4th October, 1993 (both days inclusive). In Original Petition No. 106 of 1992, the demand for encashment of the bank guarantees was made on the 8th of September, 1990. In that case the injunction order referred to above remained in force from 8th September, 1990 to 17th April, 1992. Thus, in that petition the complainant will be entitled to interest at the above rate from 8th September, 1990 to 7th December, 1990 (both days inclusive) and from 17th April, 1992 till 4th October, 1993 (both days inclusive). In both the petitions, the complainant will also be entitled to Rs. 3000/- each as costs from Opposite Party No. 1. Both the petitions are disposed of accordingly.