

(2006) 11 SC CK 0135

In the Supreme Court Of India

Case No : Civil Appeal No's. 1465 and 1466 of 2000

Kerala State Electricity Board

APPELLANT

Vs

Hindustan Construction Co. Ltd. and Others

RESPONDENT

Date of Decision : 16-11-2006

Acts Referred:

Citation : AIR 2007 SC 425 : (2007) 1 JT 45 : (2007) 1 KLT 76 : (2006) 12 SCALE 338 : (2009) 91 SCL 183 : (2006) 9 SCR 25 Supp

Hon'ble Judges : S. H. Kapadia, J;Arijit Pasayat, J

Bench : Division Bench

Advocate : T.L. Viswanath Iyer, C.S. Rajan and M.T. George, for the Appellant; F.S. Nariman and Darius Khambatta, P.H. Parekh, Bhavesh Punjvani, Sameer Parekh, Ajay Jha, Sumit Goel and P.V. Dinesh, for the Respondent

Final Decision : Allowed

Judgement

Arijit Pasayat, J.—Challenge in these appeals is to legality of the judgment rendered by a Division Bench of the Kerala High Court holding that the appellant was liable to implement the order of the appellant-Board dated 19.4.1994. Direction was further given to issue consequential orders on the basis of decision taken on 12.4.1994 and 30.4.1994 to make necessary payments as expeditiously as possible. The decision of the Board to cancel the earlier order dated 19.4.1994 on the basis of a decision taken at the meeting held on 25.1.1997 and communicated by order dated 29.3.1997 was set aside.

2. Background facts in a nutshell are as follows:

Appellant-Kerala State Electricity Board (hereinafter referred to as 'KSEB') entered into a contract with respondent No. 1- Hindustan Construction Company Ltd. (in short 'HCC') for the construction of a 12.09 Km long and 6.65 M diameter concrete power tunnel for Lower Periyar Hydro Electric Power Project on 27.02.1984. The contract work had to be completed within 68 months from the date of the contract; i.e. to be completed on or before 26.10.1989. The

estimated PAC of the work was Rs.14.92 crores including cost of departmental materials and the agreed PAC was Rs. 23.59 crores. The cost of departmental materials was Rs. 3.94 crores. HCC started the work on 27.2.1984 itself.

As the work could not be completed on or before 26.10.1989 i.e. within the original period of completion, KSEB vide order No. TC2-2117/89 dated 14.3.1991 accorded sanction to extend the time of completion of the work upto 30.06.1992 subject to the terms and conditions of the contract then in force.

3. The schedule for the work as was fixed is given below:

Driving Preparation and opening up faces 2 Months Driving adits 5 Months
Driving Tunnel Proper at 75m/Month 26 Months for an av.1920m Total 33 Months

Lining Preparation 2 Months Concreting Floor Portion at 7 Months 300m/month
for 1920m Concreting sides and Arch at 120 16 Months Months for 1920m Work
such as grouting, etc. and 4 Months plugging adits Total 29 Months Final cleaning
and handing over 2 Months Probable hold ups 4 Months

HCC raises certain claims by way of compensation for the delay. The claims enumerated by HCC in their memorandum dated 6.5.1992 and subsequently updated upto December 1992, were under the following heads.

Issue No. 1 Compensation for infructuous Rs. 283.80 lakhs over heads and fixed expenses
Issue No. II Compensation for extra Rs. 255.63 lakhs incidence of equipment charges
Issue No. III Cost of Financing (Original Rs. 639.25 lakhs 503.73 lakhs) later updated to
Issue No. IV Interest on delayed payments- Rs. 56.21 lakhs (Original-36.04 lakhs)(Later Updated to)
Issue No. V Extra Items Rs. 160.01 Lakhs
Issue No. VI Claims (Pending Claims and Rs. 293.68 Lakhs extra items) Total Rs. 1688.08 Lakhs

A meeting of the full time members of the Board with HCC was held on 8.7.1992 and the Chairman of KSEB agreed for the formation of a High Powered Committee as desired by HCC.

4. On 02.03.1993, KSEB constituted an Ad hoc committee to look into the claims raised by HCC. The terms of reference of the Committee were limited to the issues raised in the Memorandum dated 6.5.1992 and in accordance with the minutes of the discussion held by the full time members with HCC on 8.7.1992. After the Committee started functioning, further issues such as request of the company for interim relief of Rs. 350 lakhs against their claims and issues regarding recovery rate of cement used for concreting non-payable over breakage in the tunnel were also referred to the Committee vide Chief Engineer's letter No. D4-LPT1/93 dated 26.6.1993.

On 05.08.1993 Ad hoc Committee recommended interim release of funds amounting to Rs. 250 lakhs.

5. On 02.09.1993, the Ad-hoc Committee appointed by KSEB submitted its report on the claim of HCC, recommending KSEB to make a payment of Rs.

808.26 lakhs against the aggregate claim of Rs. 1688.08 lakhs made by the HCC. The said recommendations of the committee were based on the following conclusions:

(1) The various delays occurred at different stages and periods of execution of the work, aggregating to 47 months were beyond the control of HCC or covered under "Expected Risks" as defined under Clause 8 of the contract.

(2) That, in granting extension of time to cover the delay of 47 months beyond original completion time of 68 months, the KSEB not only did not impose any penalties or attempt to get the balance work at any stage by any other agency, at the risk and cost of the HCC, but also continued to apply contract provisions relating to cost escalations to schedule rates during the extended period.

(3) The right to claim compensation exercised by HCC in their memorandum is based on the clear provisions of Clause 18 "Force Majeure" of the contract.

Subsequently, on 13.10.1993 Board constituted a Sub Committee to study the recommendations of the Ad-hoc committee and to submit a note to the Board for discussion by the full time members of the Board. The said Sub Committee on 10.11.1993 submitted its report recommending that the full time members may have a discussion with the contractor on the various matters covered in the report of the Adhoc committee for a mutually acceptable agreement. The Board in its meeting held on 12.04.1994 decided to sanction an interest free ad-hoc advance of Rs. 250 lakhs which shall be adjusted against the amount payable to HCC.

6. KSEB, on 19.04.1994, sanctioned to pay an interest free ad hoc advance of Rs. 250 lakhs to M/s.HCC which was to be adjusted against the amount payable to the company based on the recommendations of the Ad- hoc Committee. On 30.04.1994, the Board of KSEB resolved to pay a sum of Rs. 808.26 Lakhs to HCC subject to adjustment of amounts in relation to quantities as indicated in the report. The Board did not confirm the minutes dated 30.4.1994 relating to payment as per Ad hoc committee report, on the ground that Board needs to discuss the matter further. As the question relating to payment to HCC was raised in Assembly, the State Government agreed to re-examine in the public interest. A meeting between HCC and KSEB was held on 25.09.1994. In the said meeting, Chairman KSEB states that an early decision will be taken in the matter.

7. HCC filed OP No. 762 of 1996 before the Kerala High Court, with inter-alia following reliefs:

(a) to implement Board's order dated 19.4.1994.

(b) to direct Board to issue consequential orders on the basis of the internal decision of Board at its meeting on 30.4.1994 (which had only remained in the minutes of the Board meeting and which was subsequently modified by Annexure P-8 Page 149.

The High Court after perusing the files which were produced pursuant to its directions, held that no final decision has been taken in the matter and directed the Board to take a final decision within two months.

9. HCC requested the Board on 31.10.1996 to pass appropriate orders in view of the judgment. The request was reiterated on 02.12.1996. KSEB moved the High Court for extension of time to comply with the direction dated 04.10.1996. Board in view of the directions of the High Court considered Ad-hoc committee report and on 25.01.1997 rejected the ad-hoc committee recommendations. HCC filed a Writ Appeal No. 343 of 1997 before the High Court against the judgment dated 4.10.1996 in O.P. No. 7623 of 1996. The Writ appeal was filed on 12.02.1997. Subsequently on 29.03.1997, Board passed formal order cancelling the order of 19.4.1994.

10. During the pendency of the Writ Appeal, HCC filed an application for amendment of the writ appeal by adding additional grounds, which was allowed. By the impugned judgment, the Writ Appeal was allowed, directing the Board to implement the order of the Board dated 19.4.1994 and to issue consequential orders on the basis of the decision of the Board dated 12.4.1994 and 30.4.1994 and to make necessary payments and the order dated 29.3.1997 of the Board was quashed. The High Court held in the impugned judgment that the subsequent decision taken not to confirm the minutes at its meeting held on 30.5.1994 cannot in any way dilute the decision taken earlier by the Board on 19.4.1994. The High Court was of the view that non confirmation of the minutes cannot have the effect of wiping out the decision taken. Accordingly, the directions as noted above were given.

11. Civil Appeal No. 1465 of 2000 is filed by the KSEB, while Civil Appeal No. 1466 of 2000 is filed by the State of Kerala. Learned Counsel for the appellant in each case submitted that the High Court went wrong in concluding that non confirmation of minutes did not have the effect of wiping out the decision taken earlier. When the minutes of the meeting are not confirmed at the subsequent meeting, it means that the decisions taken at the earlier Board's meeting were intended not to be given effect to. The inevitable conclusion is that the decision is not enforceable. It is further submitted that interests is not payable and on the basis of interim orders passed, this Court had directed payment to the respondents which has been made and nothing further is to be paid.

In response, learned Counsel for the respondents submitted that the Board's decision was taken unanimously and the effect of non confirmation of minutes cannot in any way affect the decision which had already been taken.

12. If one reads the minutes of 30.4.1994 which were not confirmed at the meeting held on 30.5.1994 it is clear that it was merely noted that the Board decided to discuss the issue further. The High Court rightly took note of the fact that nothing happened for a long time. Counter affidavit was filed stating that the Board has not finally accepted the recommendations of the Ad hoc Committee for

payment of Rs. 808.26 lakhs as it was under no legal obligation to implement the order. The Committee was constituted by the appellant-Board. The varying stands, taken at different points of time show that the object was to avoid payment. The Ad hoc Committee which was appointed consisted of experts in the fields and also Additional Secretary and Under Secretary to the Government. Twenty one sittings were held, site visits were made and voluminous documents were considered. After a very detailed consideration of the whole matter, recommendations were made for making payment of Rs. 808.26 lakhs as against claim of Rs. 1688.08 lakhs by the respondents. The Board constituted another Sub-Committee consisting of two members, one of whom was the Convener and representative of the Board in the Ad hoc Committee. After considering the recommendations and the report the Board decided to make payment of Rs. 250 lakhs as an interim payment. On 30.4.1994 unanimously a decision was taken to pay Rs. 808.26 lakhs as noted by the Ad hoc Committee. In order to test the rival submissions the only thing that needs to be considered is the effect of non confirmation of the minutes.

13. In Shackleton on the Law and Practice of Meetings, Tenth Edition, at p.86 it has been stated as follows:

5. Essential Points in Drafting Minutes:

Minutes should commence with the name of the body concerned and give the type of meeting (e.g executive committee). They should state the date, time and place of the meeting and the time the meeting finished (at the end of the minutes). They should also contain a record of the names of the members present and "in attendance," and whether present for all or part of the meeting or a note of the list attendance sheets or other document where their names may be found. They should also record the name of the member taking the chair. Minutes should:

(a) be taken by the person best placed to do so. Independence, discretion and a good understanding of the business of the organization are key here. It is recommended that a member who is required to make a significant contribution to the meeting does not also take the minutes;

(b) be accurate if there are any especially complex or technical areas recorded in the minutes, it is good practice to double check these with the relevant member to ensure complete accuracy, whilst preparing the draft minutes. The Chairman of the meeting should be given the opportunity to comment on the first draft before they are circulated to all members;

(c) be clear and unambiguous minutes must be easily understood; not just by the members but by others who may need to glean a good understanding of the company's business and decision-making e.g. auditors. Avoid too many acronyms and technical language refer instead to the papers for the detail if the reader requires this;

(d) be well structured a good minute taker will be able to omit the recording of discussions which strayed away from the agenda items and were not relevant. He should also re-order the minutes to tie in with the agenda if the meeting was not well chaired and the meeting did not strictly follow the agenda order;

(e) be concise not too long or too short, dependent of course on the culture and style of the organisation and the personal preferences of the Chairman;

(f) record the essential elements of the discussion on each item, i.e. narration which is vital to an understanding of the proceedings. This will encourage members to speak up next time and also helps remind the organization why they made a particular decision and how they came to it. The full text of all resolutions should be recorded;

(g) avoid comment and expressions of opinion unless an essential part of the decision- making process;

(h) be produced in a timely fashion minutes should ideally be produced within 48 hours of the meeting to ensure accuracy. The minute taker should agree with the Chairman a sensible time period for distribution of the minutes to members after the meeting, taking into account any annual programme of meetings and the period of time between each. He/she should also agree whether any attendees at the meeting are entitled to receive copies of the minutes.

The past tense should be used to record events at the meeting, e.g. "It was reported that, and the past perfect tense for events prior to the meeting, e.g. "Mr. X reported that he had completed his survey.

The following are examples of minutes with suggested improvements:

Mr. X reported that we had secured a further contract on satisfactory terms from the Z Co. Ltd.

The use of the word "we" instead of "the company" is a common mistake. In addition, the minute omits important particulars. The following is suggested as a more useful record:

1A Mr. X reported the signature on behalf of the company of a contract dated .with the Z. Co. Ltd. for the purchase of a further 1,000 tonnes of coal of the same quality as that previously supplied, at per tonne, to be delivered to the company's Birmingham factory, delivery as required July/December [year]. The previous contract was at per tonne. The approval of the contract was ratified.

From a directors' meeting:

2 Resolved that transfers of 1,000 Ordinary shares produced be approved and passed.

The minute should read:

2A It was resolved that transfers nos ...to inclusive, produced to the meeting,

details of transferor and transferee below, relating to 1,000 ordinary shares in the company, be and they are hereby approved for registration and that the common seal of the company be affixed to certificates nos... to ...relating thereto.

From the meeting of a charity:

3 Mr Jones said that before we move on to normal business there is a petition which is being presented by the St. Albans branch for the relief of VAT on charities. There are petition forms here tonight and we hope that if possible you will all sign before you leave.

An improved version:

3A The treasurer drew attention to a petition which was being presented by the St Albans branch for the relief of VAT on charities and invited members to sign it at the conclusion of the meeting

From the minutes of a management meeting:

4 Radios, cabs, yard and general housekeeping were extremely poor. GENERAL COMMENT: "A DISGRACE"!

This might be better written as:

4A The attendees felt that the standard of housekeeping, particularly in respect of the radios, cabs and yard, was extremely poor and indeed disgraceful and it was agreed that (action to be taken, by whom and in what timescale.)

Within a single paragraph it may not be necessary to introduce every sentence with words which imply reported speech. For example, the minutes of a meeting of the council of an association could (quite correctly) read as follows:

5 The chairman expressed disappointment at the figures for 1996. She stressed the need for urgent action, to avoid exhaustion of the reserves. She said that, with additional expenditure on the awards, pressure on resources would be acute. She pointed out that part of the problem resulted from the decision of previous councils not to increase subscription rates.

This could be better reported as follows:

5A The chairman expressed disappointment at the figures for 1996. With additional expenditure on the awards, and because previous councils had decided not to increase subscription rates, urgent action was necessary to avoid exhaustion of the reserves.

The names of the proposers and seconders of motions are usually shown, but there is no need to record details of voting. Motions which are not seconded need not be recorded although it can be useful in understanding the collective will of members.

6. CONFIRMATION OF THE MINUTES

Decisions once arrived at do not need confirmation: At a vestry meeting it was the usual procedure to read over at the next meeting the resolutions of the preceding one. At the second of two meetings there was considerable diversity of opinion as to the votes admitted at the first meeting, but judgment was to the effect that there was no necessity for the confirmation by the second vestry of what was legally done at the first, if the first was a legal vestry meeting the election thereat was legal. However, confirmation of the minutes as an accurate record of the decisions made at the previous meeting is usually obtained by submitting them to the chairman of the next meeting for signature. If they have not been previously circulated he will ask the secretary to read them, and, if the meeting confirms (usually on a show of hands) that they are a correct record, he will sign them. If they have previously been circulated, he will sign them without their being read out if the meeting so agrees.

The chairman who signs the minutes at the next meeting need not necessarily have been the chairman of the previous meeting or indeed even present at the meeting of which the minutes are a record. His action in signing them is merely to record that they are a correct record of the business transacted. There may however be occasions where the Chairman although having no reason to question the accuracy of the record, refuses to sign the minutes. In such cases a record should be made in the minutes to the effect that the minutes of the previous meeting were correct.

If there is a considerable interval between meetings, the chairman can sign the minutes as soon as they have been prepared: this power is useful too when the minutes are needed to confirm to third parties that a particular decision has been made.

14. In *Dr. Chetkar Jha Vs. Dr. Vishwanath Prasad Verma and Others*, it was noted *inter alia* as follows:

The question then is whether the minutes, as drafted and placed before the meeting on July 3, 1963, could be altered as was done on that day. The alteration clearly was not of a minor or a clerical error but constituted a substantial change. Minutes of a meeting are recorded to safeguard against future disputes as to what had taken place thereat. They are a record of the fact that a meeting was held and of the decision taken thereat. Usually they are written up after the termination of the meeting, often from rough notes taken by the person who is to draft them and then are placed before the next meeting for what is generally known as "confirmation", though they are placed for verification and not for confirmation. Indeed, there is no question of any confirmation at the next meeting of a decision already taken, for, a decision once taken does not require any confirmation. Accordingly, when minutes of a meeting are placed before the next meeting only thing that can be done is to see whether the decision taken at the earlier meeting has been properly recorded or not. The accuracy of the minutes and not the validity of the decision is, therefore, before the meeting. Once a decision is duly taken it can only be changed by a

substantive resolution properly adopted for such a change. When, therefore, a decision is taken and is minuted and such minutes are signed by the Chairman they become prima facie evidence of what took place at the meeting. In the case of company meetings, every meeting of directors or managers in respect of whose proceedings minutes have been so made is deemed to have been properly held and convened and all proceedings had there to have been duly had and all appointments of directors, managers or liquidators are deemed to be valid unless the contrary is proved. (cf. Halsbury's Laws of England, 3rd Edn. vol. 6, p. 318). This is the position when minutes have been signed by the Chairman. After such signature they cannot be altered. But before the minutes are signed they can be altered if found to be inaccurate or not in accord with what was actually decided. If that were not to be so, it would result in great hardship and inconvenience, for, however, inaccurate they are, they cannot be altered to bring them in conformity with the actual decision. [of. Talbot, W.F., Company Meetings, (1951 ed. P.82). This was precisely what was done at the meeting of July 3, 1963 and no objection to the course adopted then by the Chairman and the Syndicate could be validly taken particularly as none present then had raised any protest against the alteration. The decision relied on by Mr. Jha in *In re Botherham Alum and Chemical Company* 1884 (25) C.D.103 is altogether on a different question and cannot be of any assistance.

Since the Vice-Chancellor was right in his understanding that what had been decided at the meeting of May 7, 1963 was not to accept the Commission's recommendation and since such refusal to accept meant u/s 26(4) that the matter should be sent back to the Commission for recommendation, his action in asking the Commission to reconsider clearly fell u/s 26(4) and could not be said to be unwarranted as the Chancellor ruled. Since that was actually the decision of the Syndicate, the Vice-Chancellor was bound to follow it up by writing to the Commission to reconsider its recommendation. It is somewhat difficult to appreciate the Chancellor's observation that that action was unwarranted as it was without the Syndicate's sanction. Once the Syndicate had taken the decision of not accepting the recommendation, it was obligatory under s. 26(4) to refer back the matter to the Commission. The action taken by the Vice-Chancellor was consequential and required no further sanction of the Syndicate. Equally unsustainable was the view of the Chancellor that the alteration in the minutes on July 3, 1963 constituted a revision or a rescission of the earlier decision or that such revision or rescission could not be made before the expiry of six months as provided by the rule passed by the Syndicate in 1952. In our view, the revised advertisement, the remission of the matter to the Commission, the recommendation of respondent 1 by the Commission and the proceedings of the Syndicate's meeting of July 3, 1963 including the revision of the draft minutes were all in accordance with the provisions of the Act and the University Statutes and therefore the Chancellor had no jurisdiction u/s 9(4) of the Act to annul the decision of the Syndicate or the proceedings of the meeting of July 3, 1963.

Above being the position, the High Court's view that the decision taken on

30.4.1994 has to be given effect to cannot be faulted. As rightly submitted by learned Counsel for the respondents non confirmation of minutes does not have any effect on the decision taken at the earlier meeting. The position has been illuminatingly stated in Chetkar Jha's case (supra).

15. Pursuant to the orders passed by this Court, Rs.500 lakhs have been paid to the respondents and Rs. 300 lakhs have been deposited pursuant to the order dated 2.5.2006. The amount has been deposited with the Registry of this Court to be invested in Fixed Deposit. Let this amount be released to the respondents with interest accrued thereon. The respondents shall be entitled to interest @7.5% from the date of Division Bench's judgment i.e. 15.12.1998 after adjustment of the amounts paid and the interest elements so far as relatable to the payment. The balance amount shall be paid within a period of three months from today.

16. The appeals are dismissed with the aforesaid modifications. There will be no order as to costs.