(2003) 12 P&H CK 0091

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1782 of 1983 and Cross Objection No. 7-C of 1984

Punjab State Electricity Board APPELLANT

Vs

Amar Deep Steel Industries RESPONDENT

Date of Decision : 06-12-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34
Punjab State Electricity Board Regulations of Conduct of Business, 1960 — Regulation 26, 8

Citation : (2004) 137 PLR 700 : (2004) 2 RCR(Civil) 746

Hon'ble Judges : Ashutosh Mohunta, J

Bench : Single Bench

Advocate : J.P.S. Sandhu, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

Ashutosh Mohunta, J.—(6th December, 2003) - This Judgment of mine shall dispose of R.S.A. No. 1782 of 1983 arid Cross Objection No. 7-C of 1984 as they have arisen from the judgments and decrees passed by both the Courts below.

2. The Punjab State Electricity Board, Patiala (for short ''the Board'') after completing usual formalities placed order with M/s Amar Deep Steel Industries, Mandi Gobindgarh (then District Patiala and now District Fatehgarh Sahib) on 16.6.1973 for re-rolling M.S. Flats and M.S. Rounds of specific sizes. M.S. Rounds of 32 mm specification weighing 40.489 Metric Tonnes were supplied to the defendant-firm. Out of this total quantity of M.S. Rounds, the firm i.e., defendant-respondent No. 1 returned 30.422 Metric Tonnes of M.S. Rounds to the Board. The balance quantity of 10.067 Metric Tonnes of M.S. Rounds had never been delivered back to the plaintiff by the defendant-firm. The Board suffered loss of Rs. 32,210.60 which with interest has been calculated at Rs. 35,109.55. The Board filed suit for recovery against the firm and its partners, i.e., defendant-respondent Nos. 1 to 4. On the pleadings of the parties, the Sub Judge 1st Class,

Patiala, framed the following issues:-

1. Whether the suit has been filed and signed by a competent person?....OPP.

2. What are the terms and conditions of the supply of material in question in-between the parties? OPP

3. Whether the plaintiff suffered damages as alleged in para No. 7 of the plaint? If so, to what effect? OPP

4. Whether the plaintiff is entitled to any interest? If so, how much and for what period? OPP

5. Whether all the defendants or any of them is/are liable to pay the amount to the plaintiff in case of decree? OPP

6. Relief.

3. Issue No. 1 was decided against the Board on the ground that the suit was not filed by the competent authority. The suit was found to have been signed by Shri Kartar Singh, Executive Engineer (PW1), who was not found to be the competent authority under the Regulations of Conduct of Business, 1960 (for short the Regulations) as according to the trial Court, if a suit above the value of Rs. 20,000/- was to be filed, then the Secretary of the Board was to act as a Controlling Authority with prior approval of the Member Incharge. Issue No. 2 was decided in favour of the Board as it was found that period of one month was fixed for re-rolling the material supplied to the firm. As the firm had failed to supply the re-rolled material to the plaintiff-Board, Issue No. 2 was decided against the defendants. Issue No. 3 was partly decided in favour of the plaintiff-Board and it was found that the material weighing about 10.067 Metric Tonnes was not supplied by the firm to the Board. The damages suffered by the Board were calculated to the tune of Rs. 20,000/- and not to the tune of Rs. 32,210.60. Issue No. 4 was decided against the Board as it was found that there was no mention of the interest in the agreement signed between the parties. Issue No. 5 was also decided in favour of the Board and it was held that all the defendants were liable to pay the amount to the plaintiff-Board in case of decree. As issue No. 1 was decided against the Board, the suit filed by it was dismissed as it had not been signed by the competent authority. The Board filed appeal in the Court of Additional District Judge, Patiala and also filed an application under Order 41 Rule 27, C.P.C. for leading additional evidence. The application filed by the Board was dismissed by the lower appellate Court and, consequently, it did not allow the Board to lead the additional evidence. As in the meantime, the firm had (been) dissolved, Mr. Nek Chand Dhiman filed cross-objections, praying therein that in the event of the suit having been decreed, the liability to pay the entire amount be put on defendant-respondent No. 4 Shri Baldev Singh, as he had become the sole-proprietor of the firm M/s Amardeep Steel Industries. As no arguments were addressed on issue Nos. 2, 3 and 4 by the counsel appearing on behalf of the respondents, the learned Additional District Judge, Patiala, decided

issue Nos. 1 and 5 only and upheld the findings of the trial Court. Consequently, both the appeal as well as the cross-objections were dismissed by the Additional District Judge, Patiala, vide judgment and decree dated 5.4.1983. Now the Board has filed the present appeal to challenge the judgments and decrees passed by both the Courts below. Nek Chand Dhiman, defendant-respondent No. 2 has also filed cross-objections herein a prayer has been made to set aside the findings of both the Courts below on issue No. 5 and the entire liability to pay the decretal amount, if any, be put on Baldev Singh, defendant-respondent No. 4.

4. No one has put in appearance on behalf of the respondents. I have heard Shri J.P.S. Sandhu, learned counsel appearing on behalf of the Board and have gone through the evidence adduced on record.

5. The only question that arises for determination by this Court is as under:- Whether the executive Engineer, who signed and verified the present suit on behalf of the Punjab State Electricity Board, was competent and was duly authorised to do so?

6. Both the Courts below have dismissed the suit of the plaintiff-Board primarily on the ground that the suit had not been signed by a competent authority as Mr. Kartar Singh, Executive Engineer, was not competent to sign and verify the original plaint. The Additional District Judge, Patiala, farther held that the appeal before him was also not signed by the duly authorised person. Otherwise, as per the finding of the Sub Judge 1st Class, Patiala, recorded in issue No. 3, the damages to the tune of Rs. 20,000/- are proved to have been suffered by the Board and no contest has been laid on behalf of the respondents before the lower appellate Court. As Issue No. 1 has been decided against the Board, both the Courts below have dismissed its suit.

7. I am of the considered opinion that whole approach of the Courts below is wrong and illegal. The Electricity (Supply) Act, 1948, nowhere provides that the Board is to act through resolutions only. There are regulations for the conduct of business of the Board. According to Regulation 8 of the Punjab State Electricity Board Regulations of Conduct of Business, every order or decision of the Board shall be authenticated by the signatures of the Chairman or in his absence by the signatures of the whole-time-member. All other instruments issued or executed by or on behalf of the Board shall be authenticated by the signatures of the Secretary, Deputy Secretaries. Personnel Office/Under Secretaries or any other Officer as may be specifically empowered by the Chairman in this behalf. In the present case, it stood proved that the Executive Engineer had instituted the suit on behalf of the Board on the basis of the authority given to him by the Secretary of the Board. The letter written by the Secretary in this behalf was sufficient to verify the validity of the authority given to the Executive Engineer. It was a hypertechnical objection on behalf of both the Courts below that no document had been placed on record to show that the Board had taken a decision for the institution of the suit and that it had delegated the powers to the Executive Engineer to sign and verify the pleadings. Similarly, along with the

grounds of appeal field by the lower appellate Court, a letter from the Secretary to the Executive Engineer, wherein the latter had been asked to file the appeal against the decision of the trial Court, had been field, as per Regulation 8 ibid, the "instruments issued or executed by or on behalf of the Board shall be authenticated by the signatures of the Secretary, Deputy Secretaries, Personnel Officer/Under Secretaries or any other officer as may be specifically empowered by the Chairman in this behalf." The objection raised by both the courts below was, thus, highly hypertechnical, and unsustainable.

8. Still further, as per Regulation 26 of the Regulations, the Executive Engineer, who had signed and verified the suit and the appeal, was competent to do so. Regulation 26 of the Regulations is reproduced hereunder for ready reference:-

"26. For the institution of (i) a suit on behalf of the Board; (ii) the defence of any threatened suit to which the Board has been made a party; (iii) intervention by the Board in any suit in which the Board shall/is interested or (iv) the institution or defence of a suit by or against a Board employee in his official capacity, the following officers shall act as Competent Controlling Authorities in matters relating to their charge:-

(i) Secretary

(ii) Chief Engineer

(iii) Chief Accounts Officer

(iv) Chief Auditor

(v) Financial Adviser

(vi) Superintending Engineer

(vii) Deputy Secretaries

(viii) Executive Engineers."

9. The afore-mentioned Regulations (8) and (26) make it abundantly clear that the Executive Engineer, who signed and verified the present suit before the trial Court as well as the appeal before the Additional District Judge, Patiala, was fully competent to do so. In this view of the matter, the suit field before the Sub Judge 1st Class, Patiala, and the appeal filed before the Additional District Judge, Patiala, were competent and could not be thrown away on the ground of incompetency. In this view of the matter, I am fortified by the judgment of this Court reported as The State Electricity Board, Patiala v. K.K. Bansal, S.D.O. 1982 All India Land Laws Reporter 355. Consequently, I decide issue No. 1 in favour of the Board and against the defendants.

10. As no one has put in appearance on behalf of the respondents, I uphold the findings of both the Courts below that the Board had suffered the damages to the tune of Rs. 20,000/-. Moreover, with regard to issue No. 3 no arguments were addressed on behalf of the respondents before the Additional District Judge,

Patiala.

11. However, I do not uphold the findings of the Courts below with regard to issue No. 4 as no interest has been granted to the Board on the damages suffered by it. Even though there was no mention with regard to interest in the covenant entered into between the parties, yet the Courts are fully competent to award interest on the principal amount u/s 34 of the Civil Procedure Code. In the present case, the order was placed with the respondent-firm on 16.6.1973. One month''s time was given to the respondent-firm for re-rolling the material supplied to it. The firm failed to deliver back 10.067 Metric Tonnes of M.S. Rounds, the total cost of which was found to be Rs. 20,000/- by the Courts below. It shows that the total re-rolled material had to be supplied by the firm upto 16.7.1973. Keeping in view the facts and circumstances of the case of the case, I grant interest at the rate of 9 per cent per annum with effect from August 1, 1973 till the ate of actual payment.

12. 1 do not find any merit in the cross-objections filed on behalf of Nek Chand Dhiman, respondent No. 2.1 uphold the findings of both the Courts below on issue No. 5 and hold that all the defendants shall be jointly liable to pay the decretal amount to the Board.

13. In the light of the above discussion, it is ordered that the defendants are jointly and severally liable to pay the damages to the Board to the tune of Rs. 20,000/- along with interest at the rate of 9 per cent per annum with effect from august 1, 1973 up till the date of actual payment.

Consequently the appeal filed by the Board succeeds in the terms mentioned above.

The cross-objections filed by respondent No. 2 are dismissed. However, there shall be no order as to costs.

