(2000) 08 P&H CK 0237

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular First Appeal No. 1421 of 1983

Punjab State Electricity Board		APPELLANT
	Vs	
Union Government of India		RESPONDENT

Date of Decision: Aug. 16, 2000

Citation: (2001) 4 RCR(Civil) 49

Hon'ble Judges: J.S. Narang, J

Bench: Single Bench

Advocate: Mr. J.P.S. Sandhu, for the Appellant;

Final Decision: Dismissed

Judgement

J.S. Narang, J.

The appellants had filed a suit for recovery of Rs. 21,07,450/- against Union of India through General Manager, Northern Railways, New Delhi as damages caused to the property of the appellants. It is averred that a goods train of the defendants fully loaded with heavy steel blooms and steel rods etc. had rammed into the transformers of the appellants lying in the yard of the 220 KVS Station Jamalpur Awana rendering the said transformers totally useless. It is further alleged that the accident was caused due to the careless and negligent and illegal act of the employees of the defendant. The transformers were lying on the siding track which was the exclusive property and jurisdiction of the appellants.

2. The defendant-respondent had taken the plea that the suit had not been filed through a duly .authorised person and that the siding track was not meant for the exclusive use of the appellant-plaintiff. It has been further stated that on 27. 9.1977, Train No. D-22 Down was engaged in shunting in the siding at Dhandari Kalan. Empty stock which ought to have been removed from the siding boy way of placement of one of the loaded KC in the siding which had not been done. The empty stock was released by the Bhakra Beas

Management Board (one of the appellant-plaintiff). In the process of shunting, the 26th vehicle from the engine had broken and portion of the load in the rear had started rolling toward the premises of the appellants. The guard and Pointman concerned turned the breaks but were not successful. The load rolled for a distance of about 1400 meters and hit against five empty KCS which were lying outside the inter-charge gate. As such this occurrence is one o f those accidents which was beyond the control of any one. Thus, no suit for recovery of damages could be filed against the defendant-respondent. Upon the pleadings of the parties, the issues were framed. The trial Court returned a categoric finding so far as claim of clamages is concerned that the appellants had not been able to bring on record any cogent evidence on the basis of which the clam made by the appellant-plaintiffs could be assessed. Apart from this, no evidence had been brought on the file that the transformers after the said accident had totally become useless and had become non-functional. It has also not been substantiated as to whether the transformers which were damaged on account of the un-controlable accident, had been got repaired or not. In the absence of any evidence, the trial Court derived at a correct finding that in the absence of any evidence, no damages could be awarded. The issue was therefore, correctly decided.

3. The defendant-respondent had categorically pleaded that the suit had not been filed through the duly authorised person. From the title of the suit, the Punjab State Electricity Board is shown to have acted/filed the suit through its Chairman. So far as Bhakra Beas Management Board is concerned, the suit is shown to be filed through the Executive Engineer. In fact the plaint has been signed and verified by the Executive Engineer and the paragraph with regard to filing of the suit through the Executive Engineer being duly authorised or entitled to under the provisions of the statute/rules is missing. The perusal of the office order No. 3098/PSEB dated 1.12.1967 shows that regulation 8-A had been incorporated authorising the persons to be the controlling officers for the purpose instituting, defending, or coming in as intervener in the suit which may have to be filed by the Board or which may have to be defended by the Board in respect of its employee(s). The provision further provides pecuniary limit vis. the authority conferred upon such officers. It shall be apposite to reproduce regulation 8-A as under :-

"8-A. Regulation 8-A.

(a) The following officers will act as Controlling Officers to authorise (i) the institution of 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 was/is interested, or (iv) the institution or defence of a suit by or against a Board employee in his official capacity :-

(1) SECRETARY BOARD:

(i) In the case of suits by or against a Board employee, in which tortious conduct is imputed to a Board employee in the execution of his official duty.

(ii) All proceedings in the High Court, Supreme Court or Special Tribunals.

Provided that the Secretary will exercise his powers with the prior approval of the Member Incharge and provided further that where tortious conduct is imputed against the Chairman or Members of the Board, approval of the Board will be necessary.

(2) SECRETARY, CHIEF ENGINEERS, DEPUTY SECRETARIES:

(i) In respect of cases other than Land Acquisition cases affecting his administration not exceeding Rs. 20,000/- in value or amount, provided that in case involving an amount exceeding Rs. 20,000/-Secretary will act as controlling authority with the prior approval of the Member Incharge.

(ii) In respect of Land Acquisition cases affecting his administration not exceeding Rs. 1 lac in value or amount, Secretary, Deputy Secretary, CEs, can act as a controlling authority to accord sanction for the defence of the cases in the District Courts.

(3) SUPERINTENDING ENGINEER:

In respect of cases not exceeding Rs. 10,000/- in value or amount.

(4) EXECUTIVE ENGINEER:

In respect of cases not exceeding Rs. 5,000/-.

(b)(i) The powers of controlling authority as mentioned in the preceding Sub-Rule shall be exercised in consultation with Legal Section of the Board.

(ii) "Suit" means a suit by or against, or affecting the Board or a Board employee in his official capacity or which is brought or defended by a Board employee at the Board"s expenses, and includes an appeal, and application for revision or review or execution of decree, and any civil judicial proceeding in which the Board or a Board employee in his official capacity is a party or has any interest.

(c) The following officers are authorised to sign, attest and authenticate any plaint, application, petition, written statement, replication, affidavit and any other legal instrument or document or power of attorney to any counsel on behalf of the Punjab State Electricity Board in connection with any fresh or pending cases or proceedings in any court or in any fresh or pending references to arbitration by or on behalf of the Punjab State Electricity Board :-

(i) Secretary, Dy. Secretary, Under Secretary, Assistant Secretary (Legal) and Assistant Secretary (Services) of the PSEB, generally, for all cases arising on behalf of or against the Pb. State Elecy. Board in any court or arbitration Proceedings within or without the Punjab State.

(ii) All officers not below the rank of an Executive Engineer and above upto the Chief Engineers in respect of cases/proceedings arising within their jurisdiction/Zones.

(iii) Chief Accounts Officers/Chief Auditor and Senior Accounts Officers in respect of cases/pro-ceedings arising within their jurisdiction.

NOTE: The Board is also pleased to validate and ratify the action already taken by the authorised officers to sign, attest and authenticate any plaint, application, petitioner written statement, replication, affidavit and any other legal document or instrument or power of Attorney to any counsel on behalf of the PSEB in pursuance of O/O No. 88/PSEB dt. 2.4.1959 and O/O No. 4019/PSEB dt. 22.3.68."

4. The above order was superseded by another order No. 4348/PSEB dated 3.9.1980. The said order gave un-restricted authority i.e., without providing any pecuniary limit as is evident from clause 26 of the said order which reads as under :-

"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 Engineers

(iii) Chief Accounts Officer

(iv) Chief Auditor

(v) Financial Advisor

(vi) Superintending Engineers

(vii) Deputy Secretaries

(viii) Executive Engineers"

5. It is obvious that the suit had not been filed through a duly authorised person. Reliance has been placed upon the order which was issued on 3.9.1980 whereas the suit had been filed on 21.8.1980 meaning thereby if the authority has to be seen, the order which was passed in 1979 was to be relied upon. The said order did not permit the Executive Engineer to file the suit because of the pecuniary constraint.

6. Learned counsel has further argued that in fact no orders were required as the authority to institute the suit can be inferred from the Electricity (Supply) Act, 1948 and

reliance has been placed upon a Single Bench judgment of this Court which is reported as 1982 All India Land Law Reporter 355. The question which is involved in the present case was not at all the subject matter in the case cited. Thus the same is not applicable to the facts of the present case.

7. If the authority could be inferred from the statute, there was no need for passing any kind of "orders" by the Board.

8. Learned counsel further placed reliance upon the Sales Manual under which vide instruction No. 263, the Executive Engineers have been given the authority to sign, attest and authenticate any plaint etc.

9. I have considered the same and I find that the said manual gave the authority to the Executive Engineers for instituting such kind of suits which relate to consumption of electricity by the consumers. I am afraid, the said manual cannot be relied upon for the purpose of filing a suit for damages. The finding of the lower Court is correct to the extent that the suit has not been filed by a duly authorised person as the authority in favour of the Executive Engineer could neither be inferred from the statute, regulation or any order applicable at that time, as the office order of 1980 was issued on 3.9.1980 i.e., after the filing of the suit.

10. In view of thee aforesaid, I find no substance in the appeal of the Board and the same is dismissed.

11. Appeal dismissed.