Punjab State Electricity Board Represented Vs United India Insurance Co. Ltd.

Court: NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Date of Decision: Sept. 8, 2011

Citation: 2011 0 NCDRC 738 : 2011 4 CPJ 157 : 2011 4 CPR 357

Hon'ble Judges: R.C.Jain , S.K.Naik J.

Final Decision: complaint is partly allowed

Judgement

1. AGGRIEVED by the alleged illegal, arbitrary and unjustified repudiation of insurance claim by the opposite party ? United India Insurance Co.

Ltd. (for short, ?the Insurance Company?), Punjab State Electricity Board (now Punjab State Power Corporation Ltd.) has filed the present

complaint seeking award of a sum of Rs.11,18,76,700/- (Eleven Crore Eighteen Lac Seventy Six Thousand and Seven Hundred Only) towards

the loss caused to the turbine generator of Unit - I of their thermal project installed at Lehra, Mohabat in Punjab.

2. IN nutshell, the case of the complainant ? Electricity Board is that turbine generator of Unit - I was installed at Lehra, Mohabat, Punjab with a

view to start a thermal project and Electricity Board decided to purchase the requisite equipment, i.e. boiler, turbo generators and Auxiliaries from

BHEL and in order to obtain insurance cover for the same, the Electricity Board issued limited tender notice on 11.4.1994 to the four nationalized

insurance companies, namely, United INdia INsurance Co. Ltd., New INdia Assurance Co. Ltd., Oriental INsurance Co. Ltd and National

INsurance Co. Ltd. and the above named insurance companies joined hands and submitted a joint tender. It appears that after discussion and

certain clarifications, the tender of the insurance company was accepted and the opposite party issued an insurance policy in the sum of

Rs.445.5272 Crores, i.e.,Rs.208.0867 Crores for boilers package and Rs.237.4405 Crores for T.G. package and the complainant paid a

premium exceeding Rs.4 Crores to the insurance company. INitially the period of the policy was 39 months but later on it was extended by

another 12 months, thereby making the total period of policy as 51 months. The insurance policy contained various clauses in regard to the

coverage of risk, i.e., transportation of equipment from manufacturing units to store site which was termed as Marine-cum-Storage-cum-Erection.

It is the case of the complainant Board that after machinery and equipment of Unit-I was erected and testing of turbo generator was started, on

22.5.1998 but could not run continuously for 24 hours of the day on all the days and during this testing period, unit could not achieve the target of

generating 210 MW GNDP continuously for a period of 72 hours. When the above testing exercise was in progress extensive damage was caused

to turbine generator of Unit-I on 14.08.1998 which fact was notified to the Senior Divisional Manager of the INsurance Company by means of a

telegram on the same day followed by another telegram on 16.08.1998 asking insurance company to depute a surveyor to assess the damage to

the turbo generator. It would appear that the surveyor ? M/s B.K. Sharma was appointed to visit the site and assess the damage who held the

view that the damage caused to the turbo generator was not covered under the terms & conditions of the insurance policy. Based on the said

survey report and giving its own interpretation to clause 3 of the terms & conditions of the policy, INsurance Company vide a letter dated

02.12.1998 repudiated the claim of the Electricity Board giving out the following reasons:-

On perusal of the Survey Report and connected claim papers including copy of the log book furnished by your department, it has been observed

that the said loss has occurred after the expiry of two months testing period covered under the policy. As per the log book maintained at the site,

the steam was injected into the turbine on 17.12.1997 and synchronization of the unit with the grid was achieved on 22.05.1998 whereas the

reported breakdown has occurred on 14.08.1998, i.e., almost 11 weeks after the synchronization of the turbo generator set with the grid system.

As per the terms & conditions of the policy, i.e., best as per clause, test loading commences from the date of INdustries of steam into the turbine

of the turbo generator and the policy expires with the completion of testing period covered under the subject policy unless it is intended at the

request of the insured by charging additional premium as per tariff. IN these circumstances, the reported loss does not fall within the testing period

covered under the subject policy, and as surcharge unable. We regret our inability to pay the claim and inconvenience caused to you.

On receipt of the said communication, Electricity Board controverted the grounds of repudiation and tried to explain the circumstances why the

insurance company was liable to indemnify the loss suffered by the complainant due to the extensive damage caused to Turbo generator but in vain,

hence this complaint.

On being noticed on the complaint, the insurance company contested the complaint and filed its reply raising several preliminary objections in

regard to the very maintainability of the complaint before this Commission. The complaint was stated to be an abuse of the process of the

Consumer Protection Act and having been made to force the insurance company to pay a claim, the risk of which had neither been covered nor

any insurance document issued to confirm coverage of such peril. The factum of the insurance policy having been issued to the complainant to the

above noted extent and for the said period and receipt of the due premium is not disputed. It is also not disputed that during the testing period, the

Turbo generator of Unit-I was damaged on 14.08.1998 during the overall currency of the insurance policy and surveyor having been appointed

and the claim was ultimately repudiated. The repudiation of the insurance claim lodged by the complainant is largely based on condition no.3 of the

insurance policy. It is denied that the opposite party is liable to indemnify the complainant board in respect of the loss occasioned to them due to

the damage to their turbo generator plant of Unit-I on 14.08.1998.

3. IN its rejoinder, the complainant board has controverted the objections and pleas raised in the reply of the insurance company and has mostly

reiterated the averments and allegations made in the complaint. To substantiate their respective pleas, the parties have mostly relied upon the

documentary evidence, i.e., tender notice, acceptance of tender, insurance policies, the report of the surveyor and the correspondence exchanged

between the parties pre and post the peril. The complainant board has filed the affidavit of Yashinder Singh Phoolka, Deputy Director, Mechanical

Design Cell ? II, Thermal Design, PSEB, Patiala. Likewise, an affidavit of Mr. Vijay Sharma, Assistant Manager (technical department) has been

filed on behalf of the opposite party ? INsurance Company. We have carefully gone through the entire evidence and material brought on record

and have heard Mr. R.C. Mishra, Advocate, learned counsel representing the complainant and Mr. S.M. Suri, Advocate for the opposite party

and have considered their respective submissions.

There being no denial of the factual position in regard to the complainant having issued a limited tender, the nationalized insurance companies and

the opposite party having submitted their joint tender which was accepted by the complainant subject to the terms & conditions of the tender and a

contract of insurance came into existence by issuing a policy by the underwriter after receiving the due premium and that the turbo generator of unit

? I was severally damaged on 14.08.1998 during the overall validity period of the said insurance coverage, the question answer to which will

decide the fate of this complaint, viz., as to whether the peril which took place on 14.08.1998 can be said to be covered under the terms &

conditions of the insurance policy. In view of the specific plea of the insurance company that the damage to the turbo generator of unit ? I is not

covered under the policy because the loss had occurred after the expiry of testing period of two months prescribed under the policy, it will

ultimately depend upon the interpretation of the relevant clauses of the terms & conditions of the policy. The relevant clauses are clause 3 (period

of insurance) and clause 20 relating to suspension of testing period for thermal power plant. That apart, certain definition clauses in regard to what

constitute Trial Run Commissioning etc. would also be relevant. We would like to reproduce the same for facility of reference.

3. PERIOD OF INSURANCE: 39 months including two months testing period of unitwise. 39 months period of policy will be counted from the

date of arrival of 1st consignment at site. However, MCE risk will commence from the date of 1st dispatch of consignment from suppliers ware

house provided the premium is paid before the date of dispatch of 1st consignment. In case units are commissioned earlier than 39 months, the

insurance cover shall be available upto until running at full level (100% at 210 MW) continuing for 72 hours. For stand by auxiliaries like BFP?s

CEP?s ID fans and coal mills, the insurance cover shall be available upto their commissioning or 39 months whichever is earlier. ""Endorsement for

test run definition in respect of thermal power station:` Attached to and forming part of the Policy No.111000-44-1-00358-94 ""Notwithstanding

anything stated herein to the contrary it is hereby declared and agreed that entitle power station machinery insured hereunder are deemed to have

commenced their first test operation or test loading from the date of synchronization of the turbo generator set with the grid system/bus bar

provided the date of synchronization is within 72 hours from the date of introduction of steam into turbine and shall continue till the turbo generator

set is operated at full load for a continuous period of 72 hours or until expiry of testing period granted under the policy whichever is earlier. If

however, the date of synchronization exceed 72 hours from the date of introduction of steam of the first trial operation or test loading is deemed to

have commenced from the date of introduction of steam into the turbine of the turbo generator set. If the trail operation/test loading is not

completed within the time specified hereunder the Company may extend the period of testing on receipt of additional premium at agreed rates but

in no case the total testing period available under the policy should exceed 6 months.

4. THE insurance company by giving its own interpretation to clause 3 (supra) repudiated the claim of the complainant precisely on the ground that

the said loss had occurred after the expiry of two months? testing period laid down in the policy because after going through the log book

maintained at the site in regard to the commissioning of turbo generator, unit ? I, the insurance company found that the steam was injected into the

turbine on 17.12.1997 and synchronization of the unit with the grid was achieved on 22.5.1998 and since the break down had occurred on

14.8.98 after 11 weeks of synchronization of the turbo generator set with the grid system, the loss is not covered under the policy. According to

the insurance company as per the terms & conditions of the policy, the first load commenced from the date of injection of steam into the turbine

and the policy expires with the completion of the testing period covered under the special policy unless it was extended at the request of the

insured by charging additional premium as per tariff.

The factum of the steam having been injected into the turbine on 17.12.97 and thereafter synchronization of the turbo generator having been done

on 22.5.1998 which continued uptil 14.8.98 are not denied by the complainant. Even otherwise the same is borne from the copy of the log book

placed on record. The contention of the complainant, however, is that the trial period of two months envisaged in the policy had not expired if the

functioning of the turbo generator is computed in terms of total hours. According to the complainant, unit ? I had not been in operation for 1440

hrs. (16 days X 24 hrs.) but it was in operation for 1257 hrs. only utpil 14.8.98 as the unit was non-operational at least for 11 days between

22.5.1998 to 14.8.98 and even on other days it was not operational for the entire 24 hours a day. The fact that the unit was not operational for the

entire duration from 22.5.98 to 14.8.98 and had to be shut down for 11 days is otherwise borne out from the report of surveyor, B.K. Sharma

who observed as under:-

No. of days from the date of synchronization to be considered for Testing period. Date of synchronization : 22/05/98 Date of loss : 14/08/98 No.

of days of Testing : 9-days in may?98 30-days in June?98 31-days in July? 98 14-days in Augs?98 ---------- Total no. of days

upto loss 84 days Less 11 days of continuous Outage from 29/5 to 8/6/98 11 days ---------- 73 days* * Additional number of

days, when the steam was introduced and whether? synchronization was achieved within 72 hours Details awaited Conclusion: Even considering

no. of days from the date of present synchronization, the T.G. set has already run for more than 60 days (2 months). As per the terms & conditions

of the policy, cover for Unit-I ceases after 2 months from the date of introduction of steam in Turbine and Generator put to grid/busbar.

INSURERS LIABILITY: Based on the generation data available in the records of the Insured, the Insured has commenced trial run and

synchronized the unit with the grid on 22.5.98. As per information provided by the Insured, generation upto May? 98 was 228.916 lakh units

during July, it was 997.58 units and upto August 13/8 the generation was 396.85 units. As per insurance policy, the Power station machinery is

deemed to have commenced their first test operation or test loading from the date of synchronization of the Turbo-Generator set with the grid

system/bus bar provided the introduction of steam into the turbine and shall continue till the Turbo Generator set is operated at full load for

continuous period of 72 hours or until the expiry of testing period granted under the policy whichever is earlier. If, however, the date of

synchronization exceeds 72 hours from the date of introduction of steam in the turbine, the first test operation/test loading is deemed to have

commenced from the date of introduction of steam into the turbine of the Turbo Generator. In our opinion the testing period of two months had

expired (taking into consideration the period comprising of more than 7 days of all the outages/suspension of testing) before the occurrence of the

loss. The insured did not prefer to extend the testing period beyond 2 months as per option provided in scope of the policy. Keeping in mind the

above facts and as per the calculations arrived at from the Insured?s records (ref Annexure-B&C), we are of the opinion that the loss has

occurred after the expiry of testing period, when interpreted with the definition described in the terms and conditions of the policy issued. Further,

as the Insured has neither availed the option of extension of testing period by paying additional premium, in our opinion the loss is not indemnifiable.

Hence in our opinion, the subject claim lodged by the Insured does not fall within the scope of the policy issued and is NON MAINTAINABLE.

A perusal of the above opinion/finding of the surveyor would show that even in the opinion of the surveyor, the period of two months talked of in

the duration clause had to be computed keeping in view the provisions contained in the Test Run Clause which is as under:

Endorsement for test run definition in respect of thermal station: Attached to and forming part of the policy No.111000-44-1-00358-94.

Notwithstanding anything stated herein to the contrary it is hereby declared and agreed that entire power station machinery insured hereunder are

deemed to have commenced their first test operation or test loading from the date of synchronization of the turbo generator set with the grid

system/bus bar provided the date of synchronization is within 72 hours from the date of introduction of steam into turbine and shall continue till the

turbo generator set is operated at full load for a continuous period of 72 hours or until expiry of testing period granted under the policy whichever

is earlier. If, however, the date of synchronization exceed 72 hours from the date of introduction of steam of the first trial operation or test loading

is deemed to have commenced from the date of introduction of steam in to the turbine of the turbo generator set. If the trial operation /test loading

is not completed within the time specified hereunder the company may extend the period of testing on receipt of additional premium at agreed rates

but in no case the total testing period available under the policy should exceed 6 months.

5. THE above endorsement besides explaining when the testing period will be deemed to have commenced and completed, lays down that if the

trial operation/test loading is not completed within the specified time, the company/the insurer may extend the period of testing on receipt of

additional premium at agreed rates uptil another four months in addition to the prescribed period of two months. This would in turn show that the

period of two months envisaged for completion of the trial operation/testing was not fixed or so sacrosanct that it could not have been extended in

any situation. This clause had been incorporated in the policy document so as to take care of the situation as noted here if it was not possible to

complete the trial run within the initially prescribed period of two months.

6. THE complainant vide a communication dated 07.10.1998 sought extension of the period of policy upto 31.03.1999. On payment of additional

premium, the insurance company expressed its willingness to extend the policy for Unit-II but. THE insurance company sought certain information

in regard to the testing period required for Unit-II but so far as the extension of the period of insurance in respect of Unit-I is concerned, the

insurance company declined the same by stating as under:-

Since the testing run under the policy for Unit-I is already over, we cannot grant extension to that unit under the policy. You may kindly take

Marine-cum-Storage-cum-Erection and testing policy for the turbine when the same is ready for dispatch after repairs from M/s BHEL, Hardwar.

This was sought to be explained by the complainant vide communication dated 12.10.1998 reiterating its stand that the policy for Unit-I was still

valid as the Unit had not been commissioned by then. It was explained that Unit could be said to have been commissioned only when it had run for

72 hours at full load as per the provisions of policy. On the strength of the above correspondence, it is urged on behalf of the insurance company

that the extension sought for was not granted because the policy stood terminated w.e.f. the date of expiry of two months from the date of

commencement of the trial period, i.e., latest by 22.07.1998 or 03.08.1998. Insurance company had not denied to extend the period of insurance

but according to them it was for valid reasons that the policy itself had come to an end on the completion of two months trial period, i.e., either on

22.7.1998 or latest by 03.08.1998 excluding the 11 days period during which the unit remained unoperational and, therefore, there was no

question of extension of the said policy after the peril on 14.08.1998. It is possible to take such a view but we cannot loose sight of various

attenuating circumstances which would show that the trial period of two months as envisaged in clause 3 (supra) was not over by 14.08.1998, e.g.,

the date of peril. Those important circumstances, we may note as under:-

1.Going by the log book of the complainant, the test run period commenced on 22.05.1998 when unit was synchronized with the grid but the total

period of testing in terms of total hours of operation of the Unit-I was 48 days 23 hours and 41 minutes, in all uptil 14.8.1998. Actual period of

operation of the Unit was 48 days 23 hours and 41 minutes and not 1440 hours, i.e., two months. 2.Entire machinery of the plant was not in

readiness to achieve 100% load generation and in fact had not achieved the same continuously for 72 hours (one of the conditions of clause 3).

3.During the trial period (one of the conditions of completion of the trial period in clause 3) performance granted certificate was not issued by the

supplier/contractor till 14.8.1998.

Mr. Mishra, learned counsel representing the Electricity Board submitted that that repudiation of the insurance claim by the opposite party is wholly

arbitrary and unjustified and in any case is based on a very hyper technical interpretation of the duration clause. This submission of the counsel is

based on the legal position as laid down by the Supreme Court in catena of its decisions. In this regard, reference has been made to the well

celebrated authority of the Supreme Court in the case of General Assurance Society Ltd. Vs. Chandumal Jain & Anr. (1996) 3 SCR 500. At page

No. 513, the Supreme Court reproduced the observations of Lord Watson made in the case of Sun Fire Office Vs. Hart as under:

??.. to enable the insurers to release themselves from their contract during its currency, leaving it in full vigour down to the time of notice. The

words in which the power of determination is expressed, taken by themselves, are very wide and comprehensive. According to their primary and

natural meaning, they import that, in order to justify the exercise of the power, nothing is required except the existence of a desire, on the part of

the insurers, to get rid of future liability, whether such desire be prompted by causes which prevent the policy attaching, or by any other cause

whatever

7. IN the same case, it was held that contract of insurance is based on uberrimafides i.e. good faith on the part of the assured and the contract is

likely to be construed contra proferentem i.e. against the company in case there is ambiguity or doubt in the terms and conditions of the policy. If

there is doubt in the interpretation of the clauses of the Policy then in case of ambiguity or if the terms are capable of two possible interpretations,

one beneficial to the insured should be accepted. This position has been reiterated in the case of Peacock Plywood (P) Ltd. Vs. Oriental

INsurance Co. Ltd. (2006) 12 SCC 673 by observing as under:

If a clause of marine insurance policy covers a broad fact, in our opinion, it would be inequitable to deny the insured to raise a plea, particularly

when the insurer being a State within the meaning of Article 12 of the Constitution of INdia is expected to act fairly and reasonably. The purpose

and object for which goods are insured must be given full effect. IN a case of ambiguity, the construction of an insurance policy should be made in

favour of the insured and not the insurer"". Again in the case of United INdia INsurance Company Co. Ltd. Vs. Pushpalaya Printers (2004) 3 SCC

694, it was held:

IN order to interpret clause 5 of the insurance contract, it is also necessary to gather the intention of the parties from the words used in the policy.

It is evident from the terms of the insurance policy that the property was insured as against destruction of damage to whole or part. If the word

impact"" is interpreted narrowly, the question of impact by any rail would not arise as the question of a rail forcibly coming into contact with a

building or machinery would not arise. IN the absence of specific exclusion and the word ""impact"" having more meanings in the context, it cannot

be confined to forcible contact alone when it includes the meanings ""to drive close"", ""effective action of one thing upon another"" and ""the effect of

such action"". It is reasonable and fair to hold in the context that the word ""impact"" contained in clause 5 of the insurance policy covers the case of

the respondent to say that damage cause to the building and machinery on account of its ""impact"". Clause 5 speaks of ""impact"" by ""any rail / road

vehicle or animal"". If the appellant Company wanted to exclude any damage or destruction caused on account of driving of vehicle on the road

close to the building, it could have expressly excluded the same. The insured possibly did not understand and expect that the destruction and

damage to the building and machinery is confined only to a direct collision by vehicles moving on the road, with the building or machinery. IN the

ordinary course, the question of a vehicle directly dashing into the building or the machinery inside the building does not arise. Further ""impact"" by

road vehicle found in the company of other words in the same clause 5 normally indicates that damage caused to the building on account of

vibration by driving of vehicle close to the road is also included"".

Mr. Mishra, learned counsel for the complainant-Board submitted that the contract of insurance in the present case covered all risks and was

composite and comprehensive except the war risks which is prohibited under Inland Transit Risk Policy as is evident from the letter of the

insurance company dated 21.4.94/10.05.94. Our attention has also been invited to para 14 of the said letter. Admittedly, in the present case,

damage has not been caused by war or similar circumstances and, therefore, it could be safely presumed that the insurance cover was

comprehensive and was available until the occurrence of either of the two situations, namely, the commissioning of the project or 51 months

whichever happened earlier. In our view, this being the position, the insurance company cannot be permitted to split or compartmentalize the

contract of insurance to various stages, namely, transportation, storing, erection, testing and commissioning and treat each stage an independent

contract between the parties.

8. ASSUMING for the sake of the arguments that the testing period stage is separable from all other composite risks and can be resorted to deny

the liability due to the spilling over of the two months testing period keeping in view the duration clause readwith the suspension clause, it is

manifest that the prescribed period of two months was not a fixed one and it was relaxable and extendable in certain contingencies.

That apart, in order to exhibit that the trial run was not completed by the time the Turbo Generator of Unit 1 was extensively damaged, our

attention has been invited to following circumstances:

1. The readiness by the contractor / erector was not declared for test run of the plant on 100% load for 72 hours continuously till 14.08.98. 2. No

preliminary acceptance certificate was issued till 14.08.98. 3. Performance guarantee certificate was not issued by supplier / contractor till

14.08.98. 4. Entire machinery of the plant was not in readiness to achieve 100% load generation continuously for 72 hours. 5. The boilers were

not declared for commercial loading. 6. From second week of June 1998, whenever load on the machine was increased vaccum in the turbine

started falling resulting in restrictions on turbine loading. 7. H.P. heaters 5 & 6 were not charged till 14.08.98. 8. Coal Mill IC was made available

in 6/98, Mill ID in 7/98, Mill IE 7/98 and Mill IF finally in 4/99, which show that the required number of mills were not available in May, 1998 to

attain full load

In our view also, the above circumstances have a great bearing on the question and, therefore, we are inclined to hold that the commencement of

trial run and its completion was not dependent only on the time limit of two months envisaged in clause (3) but was dependent on certain other

relevant factors. In any case the period of policy which was initially for 39 months, was extended by another 12 months, meaning thereby that it

was to expire only on 30.11.98. In other words, the peril had taken place well within the period of insurance. Therefore, the contention of the

opposite party-insurance company that the insurance coverage had come to an end prior to 14.08.98 cannot be accepted.

9. ASSUMING for a moment that two months period is required to be computed in the manner, the insurance company wants to do as per the

terms and conditions and the insurers own showing, it was for the complainant-Board to seek extension of the period of trial run beyond two

months uptil the period of six months on payment of additional premium. However, the request of the Board was not accepted on the plea that the

testing run for Unit No.1 was already over. However, the Board was advised to take marine-cum-storage-cum-erection and testing policy for the

turbine when the same was ready for dispatch after repairs from M/s BHEL Haridwar.

10. IN our view, having regard to the entirety of the facts and circumstances of the case and that the trial run of the turbine was not complete uptil

14.08.1998, the insurance company ought to have extended the period of trial run. At best, they could charge the additional premium as was

envisaged under the terms and conditions of the policy.

Having considered the matter in its entirety and from different angles and giving harmonious construction to the terms and conditions of the

insurance in the case in hand, we are clearly of the view that repudiation of the claim by the insurance company was not in accordance with the

terms and conditions of the policy and, therefore, can to be said to be arbitrary and unjust.

In our view, the complainant-Board is entitled to be indemnified by the insurer for the loss occasioned to it due to severe damage to its Turbo

generator of Unit No.1 on 14.08.98.

11. WHAT is the extent of loss suffered by the complainant-Board is not much in dispute. From the payment detail (Annexture A-1), it is manifest

that complainant-Board has paid a sum of Rs.11,20,738,76/- to BHEL under different invoices on account of the repair of turbo generator of Unit

No.1 between 05.12.98 to 01.11.99. Complainant has claimed Rs. 12 crore as damages to the said turbine. Since the complainant has not

claimed any interest and the claim was not settled within the reasonable period and the repudiation of the claim has been found unjustified, we are

of the opinion that it would adequately meet the ends of justice, if we direct the insurance company to pay a lumpsum compensation of Rs.11.5

crore to the complainant - Board.

In the result, complaint is partly allowed and the insurance company is directed to pay a sum of Rs.11.5 crore (Rupees Eleven Crore Fifty Lakh)

to the complainant-Board within a period of six weeks from the date of this order failing which the awarded amount shall carry interest @ 12%

p.a. from the date of default. The complainant-Board is also awarded cost of Rupees One Lakh in these proceedings.