

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 2585 of 2014 (O&M)

Date of Decision: 29.01.2016

Punjab State Power Corporation Limited

... Petitioner(s)

Versus

The A.C.C. Limited

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Vishal Chaudhri, Advocate
for the petitioner.

Mr. Hemant Bassi, Advocate
for the respondent.

Shekher Dhawan, J.

Present petition is challenge to the order dated 18.1.2014, whereby application under Order 6 Rule 17 CPC for amendment of written statement, filed by present petitioner (defendant) was dismissed.

Learned counsel for the petitioner submitted that application for amendment of written statement was filed on the ground that earlier application for ad interim injunction was filed and the same was dismissed. Appeal filed before District Judge, Rupnagar was also dismissed on 15.6.2011. The said order was challenged before this

Court and the same was dismissed. However, M/s ACC was allowed to lift available quantity of Dry Fly Ash by paying tentative price of ₹ 400/- per metric ton. Plaintiff stopped lifting Dry Fly Ash over and above the quantity as per agreement dated 20.1.1995 and also not lifting the same as per directions of this Court. There is change of circumstances and on the basis of that, following amendments were sought for:

"In Pos para No.3, after the word "to file the present suit as", the word "there is no violation of memorandum of understanding herein referred to as MOU dated 11.03.2009" be deleted and the word "MOU is not legally enforceable agreement for either party" be added.

In Pos para No.4, after the word "tenders were re invited and opened on 26.11.2010", the word "and are in the final stage of approval of the competent authority" be deleted and the word "and the letter of allotment was issued to two firms at the rate of ₹ 558/- per MT (increase decrease twice in a year based on the formula linked with whole sale cement price index). These firms have adopted unethical means and are not executing agreement with PSPCL" be added.

In para No. 15, after the line "final agreement is yet to be executed between the parties", the lines "moreover MOU is only a memorandum of understanding and not a legally enforceable agreement for either party. No loan has ever been taken by the defendant against any

of the above said MOUs" are to be added and line "in case this MOU is established to be an enforceable agreement" is to be added in the end of para 15.

And in para No. 16, the last line, the plaintiff company is lifting dry fly ash as per MOU dated 11.03.2003" be deleted.

And in para No. 17, the line "and dry fly ash is being provided as per MOU dated 11.03.2003" be deleted.

And in para No. 17, the line "However, there is no violation of terms and conditions of MOU dated 11.03.2003" be deleted.

And para No. 21 be deleted and following para be substituted:-

"This para of the plaint is wrong and hence denied. However, dry fly ash is being provided to the plaintiff company as per agreement dated 20.01.1995. The plaintiff company had been paying ₹ 125/- P.M.T. of dry fly ash over and above the quantity as per agreement dated 20.01.1995 and MOU dated 11.03.2003 upto April, 2011 and from October, 2011 onwards plaintiff has stopped lifting dry fly ash over and above the quantity of the agreement dated 20.01.1995 of its own. The rate of ₹ 125/- per M.T. has been revised with

retrospective effect based on the open tender floated by the defendant which the plaintiff is not paying and the arrears on this account amounting to ₹ 37.86 crores have become due against the plaintiff. It is further added here that the rate of ₹ 125/- per M.T. was being paid by the plaintiff company w.e.f. 14.09.2009 upto April, 2011 and earlier to this, plaintiff company has been paying @ ₹ 60/- per M.T. since December, 2007 for the said quantity as per its own offer”.

And in para No. 23, after word “the plaintiff company”, the word “is also” be deleted and word “was” be added and similarly the word “is to be” deleted and word “has been” be added and the word “such rates are” be deleted and word “rate of ₹ 125/- per metric ton was” be added and in the last line of the para after the word “for the said quantity” the word “as per its own offer” be added.

And in para No.24, following word be deleted; “and are in final stage of approval of the competent authority”.

And in para No.25, word “and MOU dated 11.03.2003” be deleted.

And in para No. 26, the word “and MOU dated

11.03.2003" be deleted.

And I para No. 27, the line "and as per MOU dated 11.03.2003 the supply of dry fly ash is being made to the plaintiff company from balance 192 hopper on prorate basis" be deleted".

Learned counsel for the petitioner also submitted that proposed amendments are not going to change the nature of the case and are essential for the just decision of the case. However, the Court below dismissed the application without any justified reasons.

Learned counsel for the respondent submitted that by way of proposed amendment, applicant wanted to change the nature of litigation altogether and the proposed amendment amounts to withdrawal of admission statement having been made in favour of the respondent, which is legally not permissible. Learned counsel for the respondent also submitted that as per amended provisions of Order 6 Rule 17 CPC, amendment of pleadings is not permissible if trial has already commenced after settlement of the issues. Whereas in this case, issues have been framed and the case is at the stage of evidence of plaintiff and now fixed for 1.4.2016 for appearance.

Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that there is no dispute on the legal proposition that as per amended provisions of Order 6 Rule 17 CPC, amendment of pleadings can be allowed before the commencement of the trial. However, amendment of pleadings can still be allowed and if the same are essential for the just decision of the

case and the Court records findings to that effect. In the present case, trial has already commenced and after settlement of issues, the case is fixed for plaintiff's evidence and legally such an application for amendment cannot be accepted and the Court below has rightly dismissed the application.

However, as per amended provisions of Order 6 Rule 17 CPC, power has been given to the Court that amendment can still be allowed at any stage of the case if the Court considers that the proposed amendment is essential for the just decision of the case. More so, if such facts were not in the knowledge of the party and the same could not be raised before the Court despite due diligence.

The above detailed proposed amendment makes it ample clear that amendment is not just to take such a plea which was not in the knowledge of the applicant/defendant in the earlier round of litigation. But by way of proposed amendment, applicant/defendant wants to take such plea which amounts to withdrawal of admission statement having been made in favour of the other party which is legally not permissible. On that ground, the Court below rightly dismissed the application. There is absolutely no illegality in the order passed by the Court below. Present petition is without any merit and the same stands dismissed.

(Shekher Dhawan)
Judge

January 29, 2016

"DK"