

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA No.999 of 2017 (O&M)

Date of decision: 26.04.2017

Punjab State Civil Supplies Corporation Ltd. & anr. Appellants

VS

Satinder Pal Singh Respondent

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. J.S.Jaidka, Advocate
for the appellant.

RAJIV NARAIN RAINA, J. (ORAL)

This is a regular second appeal directed against the judgment and decree by the learned Addl. District Judge, Ludhiana pronounced on 30.08.2016 overruling the judgment and decree dated 11.02.1999 passed by Addl. Civil Judge (Sr. Div.), Samrala, Ludhiana and disallowing the appeal filed by PUNSUP in a suit for recovery against its employee defendant-respondent. The defendant respondent worked as an Inspector posted as in-charge of wheat stock stored in the open plinths and in a godown of PUNSUP, Machhiwara at the relevant time when alleged loss was caused by deterioration of wheat stock entrusted to his custody for which he was responsible for custodial care, health and upkeep. By his act of negligence and irresponsibility in performance of duties entrusted to him by virtue of office, he mishandled the wheat stock belonging to the plaintiff-PUNSUP in all the categories for which he was charge sheeted by PUNSUP.

The trial court returned findings on material issues No.1, 2 and

4 i.e. as to whether the plaintiffs were entitled to recover the suit amount from the defendant; whether the suit has been filed through duly authorised person and whether the interest claimed in the plaint is excessive and held that the plaintiff was entitled to recover an amount of Rs.4,61,757.03 Ps with interest @ 6% per annum from 25.11.1987 till the realisation of the decretal amount.

Aggrieved by the judgment and decree of the learned Additional Civil Judge, (Sr Div) Samrala dated 11.02.1999, defendant-respondent carried an appeal to the first Appellate Court at Ludhiana. The appeal has been allowed and the judgment and decree of the trial court has been set aside.

Presently, PUNSUP is in second appeal claiming that the judgment and decree of the second Court deserves to be set aside and the suit decreed as prayed. Even the defendant has deservedly been held guilty of negligence in the deterioration of wheat stock, then while reversing the findings of the trial court the first Appellate Court has returned proper findings of fact after appreciating the evidence as discussed below.

The lower appellate court found on evidence that the wheat stock was covered with polythene sheets and that is all what the Inspector inherited as material to keep it safe from rain. When the defendant was posted at Machhiwara, to take over the authority over the stock, there was no shortage reported. He had taken proper care of the stock handed over to him and if it deteriorated it was not on account of negligence of the official; it is the duty of PUNSUP to provide adequate storage and buildings to

maintain the stock in good health and in safe condition and the government departments cannot escape from their liability as principal custodians of the stock; the charge is not that the employee misappropriated the stock by fraud or by theft; financial indiscipline was not the charge. No single person can be held solely responsible for stock damage; the stock was already deteriorated and rain effected. The second Judge observed, and rightly so, that it is not good thinking in PUNSUP that unless the Inspector demands the safety material the same is not to be supplied. The department was owner of food grains owing duty of care in the first instance and was conscious that there were no adequate storage facilities at the disputed storage facility and if stocks are to be kept open to sky, then the department is duly bound to provide adequate safety material to its employees so that stock can be kept preserved and in safe condition before distribution.

The then Director, Food and Supplies Department, Punjab, Chandigarh, namely Mr. Bawa Charan Pal Singh appeared as DW2 who stated that he was the inquiry officer against the defendant – Satinder Pal Singh, Inspector. In his report made on 06.02.1990 Ex.D1 he had exonerated the defendant of liability. When the Department of Food and Supplies, Government of Punjab had exonerated the defendant, it cannot be said that the defendant was negligent in dealing with the wheat stock. The charge was not one of misappropriation of stock but for recovery of money sought on account of loss caused due to negligent handling of stock. There was no causal connection between custody and damage occurring on account of negligence of the defendant solely in discharge of duties. The

first appellate court has returned a finding of fact based on evidence that there is no proof of negligence in handling of stock entrusted to the defendant when he was posted as Inspector on deputation with PUNSUP at Machhiwara. The Lower Appellate Court for good and sufficient reasons and upon appreciation of evidence has held that hypothetical calculations have been made by PUNSUP by calculating the quantity of gross weight and net weight and by calculating the rates, which the stock could have fetched if they were consumable. No evidence was led on record to prove these calculations of the rates which the stock could have fetched from the market if it was not damaged. In the main, the Judge held that the plaintiff-appellant is not entitled to recover any amount much less ₹ 4,61,757.03 Ps or the interest thereupon, as claimed by the plaintiff-appellant on hypothetical basis.

The entire blame cannot be shifted to the lower level official to make good the loss by recovering the same from his salaries. The Government is responsible through its agencies to preserve food grain and not keep it lying open beneath the sky and expect weather to remain its friend or abdicate its primary duty through inspections by superior officials and put blame on local officials every time much less expect the Inspector to fight like a valiant soldier in defence of his territory when not provided armour. After all the District Manager, PUNSUP was also posted in Machhiwara and it was his principal duty to make arrangements for proper storage of all the produce and provide material required for safety and maintenance of stock through the inspectorate staff. Merely covering huge

quantity of wheat stock under polythene sheets is not enough to stave intruders, the weather being the culprit from above and bugs below. Above all, the spoilsport, tardy movement of food grains to destination points by the movers and shakers in PUNSUP.

Learned District Judge has carefully and in a seasoned manner considered the statements of witnesses produced by the plaintiff. PW-2 Arpinderjit Singh in his cross-examination testified that he was working as Senior Auditor but did not have any letter to confirm that the sale was made in open auction or not. Assuming no sale was made then the suit based on artificial calculations could not hold good to know the actual difference between the purchased price and sale price at an auction. To make matters worse for PUNSUP, PW-4 Mr. Varinder Chopra, Field Officer at Ludhiana posted during the relevant year 1985 that physical verification was conducted half yearly. He conducted physical verification at Machhiwara Centre on 09/10.07.1985. This was the time when the defendant was incharge of wheat stock and same bore the signature of the witness. PW-4 was partly cross-examined. He admitted that the stock was lying in open spaces as well as in godown. The stock lying open was covered with polythene sheets on kacha plinths. He admitted as correct that double lock system was prevalent in the department. He admitted that at the time of physical verification at Machhiwara Centre, Arun Kumar was PDC for the help of Satinder Pal Singh. His remaining cross-examination was deferred and thereafter he failed to appear for deferred cross-examination and therefore, his statement and whatever remained had he been subjected to

further cross-examination cannot be taken into consideration and when it was not allowed to be recorded in sufficient proof of negligence on the part of the defendant in pursuing its case.

The District Manager, PUNSUP, Ludhiana appeared as PW-5 and testified that the present case was filed during his tenure. He admitted that the defendant remained posted as Inspector at Machhiwara from 01.10.1984 to 08.08.1985 i.e. for only 10 months. The first physical verification on Machhiwara Centre was done on 31.12.1984. There was no adverse remark with regard to shortage or health of stock at that time recorded except regarding the previous stock for the session 1983-84 when the defendant was not on the seat. The next verification was conducted by Varinder Chopra, Field Officer on 09/10.07.1985 and the defendant was transferred in less than a month thereafter i.e. on 08.08.1985.

These findings were recorded by learned Addl. District Judge fairly in the facts which rather tells a story of a sorry state of affairs in the functioning of the high-ups in the Department of Food and Supplies, Punjab and its agency PUNSUP of finding scapegoats and then bringing suits to hide their own irresponsible actions of wheat loss hiding behind the shield of matter being sub judice in the shape of a recovery suit. It would have been different if all the officers responsible in the hierarchy had been charge sheeted for their roles and only then could the entire picture unfold.

In fact the appellate Judge has recorded in his judgment that the attitude of the department is not in a good taste to pass the buck to the defendant Inspector that he must demand safety materials, not to talk of the

days and months spent to purchase and supply things and products which help to preserve the edible life of perishable food grain. By the very nature of things, food grains are open to deterioration when not kept safely in godowns. Even then special care is required. If PUNSUP have no godowns then it must stop purchasing wheat for the Food and Supplies Department if its officers and officials are not collectively responsible for its upkeep and in good health. Fault lies elsewhere for which a white paper on the malady of accusations made by PUNSUP of the likes of the defendant instead catching the lower staff and hold them responsible for wheat loss and then file suits for recovery against employees, who may even be pensioners by the time the cases are finally decided.

I have no reason to interfere with the findings of fact recorded by the lower appellate court and I would endorse its findings as based on proper appreciation of evidence. The Judge has applied his mind and weighed the evidence in its proper perspective. If at all anyone is to blame, it is the higher officers in PUNSUP, if not the weather.

Accordingly, the appeal is dismissed.

(RAJIV NARAIN RAINA)
JUDGE

26.04.2017
sonia

<i>1. Whether speaking/non-speaking?</i>	<i>Yes</i>
<i>2. Whether reportable/non-reportable?</i>	<i>No</i>