

M/s Everest Power Pvt. Ltd. Vs. The HPPTCL

Petition No. 46 of 2021

29.11.2023

Present: Sh. Manik Sethi, Ld. Advocate for the Petitioner.
Sh. Vikas Chauhan, Ld. Advocate for the Respondent
alongwith Sh. Virender Kumar, DGM (C&M) .

DAILY ORDER

This order would dispose of an application filed by the Petitioner seeking amendment of the Petition to bring on record subsequent developments and certain additional facts and grounds. As per the Petitioner, the events which have occurred post filing the Petition require extensive consideration and examination by the Commission and that the documents evidencing the factual developments post filing the Petition shall be placed on record for consideration of the Commission.

2. It is averred that the Petitioner intends to bring on record details regarding the PPA dated 25.07.2007 with Power Trading Corporation, PSA dated 23.03.2006 with PSEB (PSPCL) LTA dated 14.07.2008 granted by Power Grid Corporation of India (now CTUIL), details of Petition No. 54/2012 filed before the Hon'ble Punjab State Electricity Regulatory Commission and order dated 12.11.2014 passed by the Hon'ble Appellate Tribunal in Appeal No. 30 of 2014 and Batch. Further, the Petitioner also intends to bring on record the

details of the writ Petition (CWP No. 7763 of 2023) filed before the Hon'ble High Court, Petition No. 57/MP/2022 filed before the Hon'ble CERC disposed off vide order dated 04.05.2023, details of the grant of LTA dated 30.12.2022 by the Respondent for a quantum of 86 MW till 12.07.2024 and 80 MW from 13.07.2024 to 05.12.2044, connection agreement dated 28.06.2019 and 30.05.2022 and pendency of appeal before the Hon'ble APTEL being Appeal No. 628 of 2023 against the order of the Hon'ble CERC dated 04.05.2023 regarding the line in dispute and certain other details. Also as a natural corollary, grounds for filing the Petition and relief also require modification and some new grounds are also required to be added with consequent changes in the No. of paragraphs and documents.

3. It is averred that the aforesaid changed developments are necessary and material for the adjudication of controversy between the parties and that while granting the permission for amendment, the merits of the Petition are not required to be looked into and the only aspect which is required to be looked into is whether the amendment would assist in deciding the controversy between the parties. Also averred that the present application has been brought before the commencement of the final arguments and, thus no prejudice would be caused to the Respondent if the amendment, as sought for, is

allowed which has been necessitated based on the subsequent developments.

4. The application has been resisted by filing the reply raising preliminary submissions that the application is not maintainable as the Electricity Act, 2003 nowhere provides for amendment of the Petition and that the Commission is not bound by the general procedure laid down under Code of Civil Procedure, 1908 (CPC, 1908 for short). Also that the present application seeking amendment has been moved at the stage of final hearing without any submission as to why the amendment was not sought at an early stage and there is no mention as to why inspite of due diligence, the amendment could not be brought earlier. Further the application is frivolous and has been made to delay the proceedings and pertains to the facts which were already in the knowledge of the Petitioner at the time of filing of the Petition and the subsequent events are well within the knowledge of the Commission and thus, the application is not maintainable. Also that the Petitioner has also requested for modification of relief clause which amounts to introducing a different and inconsistent case. It is also averred that the replying respondent in its reply has submitted that the Petition has become infructuous and it is only after reply of the Respondent, the present amendment has been sought which is afterthought. Further the Petitioner has not

approached the Commission with clean hands and the only purpose/ motive to file the application is to delay the proceedings till the time the Petitioner gets a favourable order from the Hon'ble ATPEL.

5. On merits the contents of the application have been denied. It is reiterated that the amendment to the relief/ prayer clause will change the entire subject matter of the Petition and the amendment as sought is not necessary for adjudicating the controversy.

6. In rejoinder, the contents of the reply have been denied and those of the application have been reaffirmed.

7. We have heard, Sh. Hemant Singh, Ld Counsel of the Petitioner and Sh. Vikas Chauhan, Ld. Counsel for the Respondent and perused the entire record carefully.

8. A careful perusal of the application seeking the amendment shows that the Petitioner intends to bring on record the developments post filing the Petition as also few other details and grounds, and as per the Petitioner, the said developments and details are necessary for adjudicating the controversy in the matter effectually and completely.

9. The Petition has been filed on 12.11.2021. After filing the Petition, some developments have taken place and the Petitioner intends to bring the same on record as mentioned in the application. As per the Petitioner the developments post filing the Petition are

material and necessary for adjudicating the controversy between the parties.

10. Order 6 Rule 17 of the Code of Civil Procedure, 1908 provides for the amendment of the pleadings. which reads as under:-

“17. Amendment of pleadings.—The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties: Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

11. As per the Respondent, the application is not maintainable as the Electricity Act, 2003 does not provide for any provision for amendment and that the proposed amendment pertains to the facts prior to the filing of the Petition which were already in the knowledge of the Petitioner, and that the modification of relief clause amounts to introducing a different and inconsistent case.

12. The purpose and object of order 6 Rule 17 of the Code of Civil Procedure, 1908 is to allow either party to alter or amend the pleadings in such a manner and on such terms as may be just and necessary for determining the real controversy between the parties.

13. As per Section 94 of the Electricity Act, 2003, the appropriate Commission for the purpose of any enquiry or proceedings shall have the powers as are vested in the Civil Court under the Code of Civil

Procedure, 1908 and to pass such interim orders in any proceedings, hearing or matter before the appropriate Commission, as the Commission may consider appropriate. The issue of amendment of the pleadings come up for consideration before the Hon'ble APTEL in IA No. 1766 of 2022 in Appeal No. 334 of 2023 wherein it has been held vide order dated 23.03.2023 in Paras 44 and 45 as under:

"44. As Section 120(1) of the Electricity Act provides that the Appellate Tribunal shall have the power to regulate its own procedure and can even travel beyond the provisions of CPC to meet the ends of justice, this Tribunal is entitled to draw upon the principles underlying the provisions of the CPC while adopting its own procedure under Section 120(1) of the Electricity Act. (New Bombay Ispat Udyog Ltd v Maharashtra State Electricity Distribution Co. Ltd & Anr., 2010 SCC OnLine APTEL 44; Southern Power Distribution Company of AP Limited V. Andhra Pradesh Electricity Regulatory Commission (Order in APPEAL NO. 397 OF 2022 AND APPEAL NO. 147 OF 2021 dated 14.11.2022)

45. As this Tribunal can, in the absence of any procedure having been stipulated by it to the contrary, always be guided by the provisions of the Order CPC we shall proceed on the basis that Order VII Rule 7 CPC is applicable to the case on hand. Order VII Rule 7 CPC requires the relief to be specifically stated, and provides that every plaint shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the Court may think just to the same extent as if it had been asked for."

14. In view of the aforesaid, the Commission in the absence of any procedure for amendment in the Electricity Act, 2003 shall always be guided by the Code of Civil Procedure, 1908 and, therefore, Order 6 Rule 17, Code of Civil Procedure, 1908 is applicable in the matter and the assertion of the Respondent has no force that the application in not maintainable.

15. The Respondent has also come out with a stand that the proposed amendment pertains to the facts which were already in the knowledge of the Petitioner before filing the Petition and no explanation has been offered as to why such detail was not incorporated while filing the Petition and the application is not tenable after the commencement of the trial.

16. It is settled principle of the law that while granting permission for amendment, the merits of the proposed amendment are not to be looked into and what is required to be looked into is whether the proposed amendment would be necessary for deciding the real controversy between the parties. In this regard reliance may be placed in *Rajesh Kumar Aggarwal Vs. KK Modi* reported in (2006) 4 SCC 385 wherein it has been held by the Hon'ble Supreme Court as under:

“18. As discussed above, the real controversy test is the basic or cardinal test and it is the primary duty of the court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused. On the contrary, the learned Judges of the High Court without deciding whether such an amendment is necessary have expressed certain opinions and entered into a discussion on merits of the amendment. In cases like this, the court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard the rights of both parties and to subserve the ends of justice. It is settled by a catena of decisions of this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the court.

19. While considering whether an application for amendment should or should not be allowed, the court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment. This cardinal principle has not been followed by the High Court in the instant case.”

17. It is also held by the Hon’ble Supreme Court in Mohinder Kumar Mehra Vs. Roop Rani Mehra reported in (2018) 2 SCC 132, as under:

“28. While considering the prayer of amendment of the pleadings by a party, this Court in Mahila Ramkali Devi v. Nandram [Mahila Ramkali Devi v. Nandram, (2015) 13 SCC 132 : (2016) 1 SCC (Civ) 662] has again reiterated the basic principles, which are to be kept in mind while considering such applications in paras 20, 21 and 22, which is quoted as below: (SCC p. 138)

“20. It is well settled that rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of rules of procedure. The court always gives relief to amend the pleading of the party, unless it is satisfied that the party applying was acting mala fide or that by his blunder he had caused injury to his opponent which cannot be compensated for by an order of cost.

21. In our view, since the appellant sought amendment in Para 3 of the original plaint, the High Court ought not to have rejected the application.

22. In Jai Jai Ram Manohar Lal v. National Building Material Supply [Jai Jai Ram Manohar Lal v. National Building Material Supply, (1969) 1 SCC 869], this Court held that the power to grant amendment to pleadings is intended to serve the needs of justice and is not governed by any such narrow or technical limitations.”

29. Although, the learned counsel for the parties in their submissions have raised various submissions on the merits of the claim of the parties, which need no consideration by us since the only issue which has to be considered is as to whether the amendment application filed by the plaintiff deserves to be allowed or not. We make it clear that we have neither entered into merits of the claim nor have expressed any opinion on the merits of the claim of either party and it is for the trial court to consider the issues on merits while deciding the suit.”

18. It is, thus, evident that a party cannot be refused just relief merely because due to some mistake or inadvertence, entire detail could not be incorporated at the time of filing of the Petition. The detail as sought to be brought on record is for aligning the original pleadings with the proposed amendment. Otherwise also, no where it is mentioned in the reply as to what prejudice will occur to the Respondent if such detail is incorporated by way of amendment, therefore, this assertion too is not tenable.

19. Coming to the next assertion of the Respondent that there is delay in filing the Petition and the modification of the relief clause amounts to alteration/ changing of the nature of the Petition which would be prejudicial. This assertion is also devoid of merits as the necessity for amending the Petition has arisen to explain, the subsequent developments post filing the Petition and as a natural corollary, to mould the relief clause suitably enabling the Commission to know as to what relief has been claimed. The Respondent has not been able to show as to how the Respondent is going to be prejudiced. Similarly, there is no mention in the reply that the plea is inconsistent. Therefore, even if some facts were in the knowledge of the Petitioner, no prejudice will be cause to the Respondent, if such facts are also brought on record so as to facilitate the Commission to adjudicate the Petition effectually and completely.

20. In this regard reliance may be placed in the law laid down by the Hon'ble Supreme Court in Sampath Kumar Vs. Ayyakannu & Another reported in (2002) 7 SCC 559 wherein it has been held as follows:-

“8. In Rukhmabai v. Lala Laxminarayan [AIR 1960 SC 335] this Court has taken the view that where a suit was filed without seeking an appropriate relief, it is a well-settled rule of practice not to dismiss the suit automatically but to allow the plaintiff to make necessary amendment if he seeks to do so.

9. Order 6 Rule 17 CPC confers jurisdiction on the court to allow either party to alter or amend his pleadings at any stage of the proceedings and on such terms as may be just. Such amendments as are directed towards putting forth and seeking determination of the real questions in controversy between the parties shall be permitted to be made. The question of delay in moving an application for amendment should be decided not by calculating the period from the date of institution of the suit alone but by reference to the stage to which the hearing in the suit has proceeded. Pre-trial amendments are allowed more liberally than those which are sought to be made after the commencement of the trial or after conclusion thereof. In the former case generally it can be assumed that the defendant is not prejudiced because he will have full opportunity of meeting the case of the plaintiff as amended. In the latter cases the question of prejudice to the opposite party may arise and that shall have to be answered by reference to the facts and circumstances of each individual case. No straitjacket formula can be laid down. The fact remains that a mere delay cannot be a ground for refusing a prayer for amendment.

11. In the present case the amendment is being sought for almost 11 years after the date of the institution of the suit. The plaintiff is not debarred from instituting a new suit seeking relief of declaration of title and recovery of possession on the same basic facts as are pleaded in the plaint seeking relief of issuance of permanent prohibitory injunction and which is pending. In order to avoid multiplicity of suits it would be a sound exercise of discretion to permit the relief of declaration of title and recovery of possession being sought for in the pending suit. The plaintiff has alleged the cause of action for the reliefs now sought to be added as having arisen to him during the pendency of the suit. The merits of the averments sought to be incorporated by way of amendment are not to be judged at the stage of allowing prayer for amendment. However, the defendant is right in submitting that if he has already perfected his title by way of adverse possession then the right so accrued should not be allowed to be defeated by permitting an amendment and seeking a new relief which would relate

back to the date of the suit and thereby depriving the defendant of the advantage accrued to him by lapse of time, by excluding a period of about 11 years in calculating the period of prescriptive title claimed to have been earned by the defendant. The interest of the defendant can be protected by directing that so far as the reliefs of declaration of title and recovery of possession, now sought for, are concerned the prayer in that regard shall be deemed to have been made on the date on which the application for amendment has been filed.”

21. As mentioned above, the Petitioner intends to bring on record the subsequent events post filing the Petition. The matter is only at the stage of completion of proceeding. Hence, there is nothing to infer at this stage that the application has been filed for delaying the proceedings. The proposed amendment neither sets up a new case nor changes the nature and character of the suit in any manner nor introduces any inconsistent plea nor the same is barred by the law of limitation. There is nothing on record to infer that the proposed amendment would lead to travesty of justice or would cause prejudice to the Respondent which cannot be compensated in terms of money.

22. The application is supported by an affidavit. On careful consideration of the application, the Commission is of the opinion that the proposed amendment is necessary for adjudicating the controversy between the parties and no prejudice, whatsoever, will occur to the Respondent if the proposed amendment is allowed. Otherwise also, the merits are not be seen at this stage and the Respondent will get an opportunity to rebut the averments of the

amended Petition by filing the reply to the amended Petition. The application is therefore, allowed and the Petitioner is allowed to amend the Petition. The amended Petition has already been filed.

23. Let amended reply be filed within two weeks with advance copy to the opposite party and the Petitioner shall also file rejoinder within a week on receipt of reply.

24. The application is disposed off. Be tagged to the file.

List this case on 27.12.2023 at 11:00 AM.

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| -Sd- (Shashi Kant Joshi) Member | -Sd- (Yashwant Singh Chogal) Member (Law) | -Sd- (Devendra Kumar Sharma) Chairman |
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