

LEGAL SECTION/

: PUNJAB STATE ELECTRICITY BOARD:
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From

IMPORTANT:

The Secretary,
Punjab State Electricity Board,
Patiala.

To

1. All Chief Engineers, PSEB.
2. Chief Accounts Officer, PSEB, Patiala.
3. Chief Auditor, PSEB, Patiala.
4. DIG (Vigilance & Security), PSEB, Patiala.
in
5. All Superintending Engineers, PSEB.
6. All Xens. in PSEB.

Memo No. 33237/577 /LB

Dated Patiala, the 30-3-1977.

Sub: Institution and defence of suits on behalf
of the Board. :-o:-

In terms of Section 12 of the Electricity (Supply) Act, 1948, the Punjab State Electricity Board is a body corporate, having perpetual succession and a common seal with power to acquire and hold property both movable and immovable and shall by its name sue and be sued.

2. The Board has in exercise of the powers vested in it under Section 79(5) of the Act, *ibid.*, has framed "The Punjab State Electricity Board Regulations of Business, 1960". For the institution and defence of the suits on behalf of the Board, the Regulation 8-A was incorporated in the said Regulations and circulated, vide this office order No. 12638/M-227/PS/36 dated 26-7-74. The said Regulation is re-produced below, for facility of reference :-

Regulation 8-A
of P.S.E.B.
Regulations of
Business.

"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.

(I) Secretary Board:

- (i) In the case of suits by or against a Board employee, in which tortious conduct is

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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 In charge 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 Engineer, Deputy Secretaries.

In respect of cases affecting his administration not exceeding Rs. 20,000/- in value or amount, provided that in cases involving an amount exceeding Rs. 20,000/- Secretary will act as a controlling authority with the prior approval of the Member In charge.

- (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 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 the 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 proceedings 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 documents or Power of Attorney to any counsel on behalf of the Punjab State Elec. Board in connection with any fresh or pending case or proceedings in any court or in any fresh or pending reference to arbitration by or on behalf of the Punjab State Elec. Board :-

- (1) Secretary, Deputy Secretary, Under Secretary, Assistant Secretary (Legal) and Assistant Secretary (Services) of the PS&B, generally for all cases arising on behalf of or against the Punjab State Elec. 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 Officer/Chief Auditor and Senior Accounts Officers in respect of cases/proceedings arising within their jurisdiction.

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Note: The Board is also pleased to validate & ratify the action already taken by the authorised officers to sign, attest and authenticate any plaint, application, petition, written statement, replication, affidavit and any other legal documents or instrument or power of Attorney to any counsel on behalf of the PS&B in pursuance of O/O No. 4519/PS&B dated 23.3.69."

3. It is observed that the provisions of Regulation 8-A reproduced above are not being followed in as much as the controlling officers defined therein do not accord sanction to the institution or defence of the suits after consulting the Legal Section as prescribed therein. Notwithstanding the merits of a particular suit in favour of the Board, if the requirements of the regulation are not followed, the suits are likely to be decided against the Board for want of requisite sanction being accorded after consulting the Legal Section of the Board. In fact there has been instances where the Board lost cases on this very ground.

4. The detailed instructions for the institution and defence of the suits are contained in Chapter VIII of the Manual of Orders Public Works Department (Electricity Branch) and the Punjab Law Department Manual. For facility of reference, the relevant instructions for the institution & defence of suits are given as under :-

(A) - INSTITUTION OF SUITS.

Para 8.2 of the
EB Manual of Orders/
Para 17.2 of Law
Deptt. Manual.

(I) No suit on behalf of the Board or a public officer as such shall be instituted without the previous sanction of the competent authority.

(II) Any officers who considers that a suit should be instituted on behalf of the Board, shall submit a clear and detailed report showing :

- (a) the circumstances which, in his opinion, render the institution of the suit necessary and precisely when and where each of them occurred;
- (b) the subject of the claim and the relief sought;
- (c) the steps which have been taken to obtain satisfaction of the claim without bringing a suit;

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Rule 8.5 of
EB of Ma-
nual of
Orders/
Para 17.3
of Law
Deptt.
Manual.

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- (d) the pleas or objections (if any) which have been urged by the proposed defendant against the claim;
- (e) the evidence both oral and documentary, which is believed to be obtainable and which it is proposed to adduce in support of the claim;
- (f) whether the documents (if any) referred to in sub-clause (e) above are registered or not;
- (g) whether or not the circumstances of the person against whom it is proposed to institute the suit are such as to render it likely that execution will be obtained of any decree that may be given against him;
- (h) the evidence, both oral and documentary, which so far as is known, the proposed defendant will be able and is likely to adduce in his defence;
- (i) whether the documents (if any) referred to in sub clause (h) above are registered or not ;
- (j) any other facts which the officer considers material e.g., whether there are any special reasons for the institution of the suit apart from the amount actually claimed; whether other similar claims will hinge upon its decision or the like;
- (k) whether the amount required for stamp or other expenses to be above Rs. 500.

Para 17.4 of
Law Deptt.
Manual.

(III) Copies of documents referred to in clauses (e) and (h) of the preceding sub-para (II) and of all correspondence and written proceedings, whether in English or in the Vernacular (together with in the latter case, with translation), connected with the proposed suit, should accompany the report, with an exact list of the same where-ever this is reasonably possible. If these copies cannot be supplied for any reason, the originals should be submitted. The controlling authority, will, thereupon, consult the Legal Section of the Board and decide upon the course to be decided. If legal action is decided on, the controlling authority will accord necessary sanction for the institution of the suit under intimation to the Legal Section of the Board and take further action for filing of the suit by engaging a counsel, as per standing instructions of the Board.

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Paragraph 16.4
Law Deptt.
Manual

(IV) In each case, the officer submitting the report to the controlling authority, shall satisfy himself, before forwarding it, that the instructions contained in sub-para (II) have been fully complied with and state his own opinion on the matter, with his reasons for that opinion.

(IV)(1) All copies or translations submitted should be absolutely accurate and complete, re-producing every particular contained in the originals, whether of a formal nature or not.

(2) When a map or plan would be calculated to elucidate any point reported on, it should be supplied.

(B) - DEFENCE OF SUITS.

I (a) No person having a just claim against the Board should be compelled to resort to litigation to enforce it.

(b) When any persons threaten to bring a suit against the Board, it is incumbent on the proper departmental officers and the controlling authorities to satisfy themselves without delay of the justice or otherwise of the whole and every part of the claim made, all reasonable efforts being made to bring about an amicable adjustment, without an appeal to the law, so far as this can be done without sacrificing the just rights of the Board.

II (1) To enable the controlling authority to take a decision to defend the suit and accord sanction on behalf of the Board, the proper departmental officer should submit to the controlling authority, the following documents together with an extract list of the same :-

- (a) the notice of suit, the summons and a copy of the plaint;
- (b) a second copy or translation of the plaint,

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Para 8.2 of
EB Manual of
Orders/
Para 18.1
of Law Deptt.
Manual.

Para 18.4
of Law Deptt.
Manual.

written in English, on half margin, each statement therein being marked with a letter (A, B & C) and notes being added in the margin stating whether each statement of fact made therein is correct or not, and, if not, in what respect is not so;

- (d) copies of documents and lists of documents, if any filed with the plaint ;
- (d) copies of all other documents procurable, which are believed to bear on the case, either for the plaintiff or the defendant, together with as accurate a description as may be of other documents (if any) which are believed to be relevant, but of which the contents cannot be precisely ascertained except through the Court;
- (xx) These documents shall be accompanied by a clear detailed report, stating -
- (f) the circumstances which led to the suit, mentioning precisely when and where they each occurred; the course which it is proposed to adopt, namely, whether to admit, compromise or defend the suit, and the reasons for the same, and the steps (if any) which have already been taken to adjust the matter out of Court;
- (g) If it is proposed to defend the suit, the proposed defence, written on half margin, showing clearly and fully how each of the allegations in the plaint is to be met, and the evidence which it is proposed to adduce for that purpose;
- (h) whether the documents referred to in (c) and (d) are registered or not;
- (i) the date fixed by the Court for the first hearing.
- (2) English translation of every document which is not in that language shall be supplied with the report, wherever this is reasonably possible.

Para 18.15 of Law Department Manual. III. Instructions contained in clauses III and IV relating to institution of suits will also be applicable to suits filed against the Board.

Reg. 8-A of PS&B Regulations of Business. IV. After examination of the case, the controlling authority shall consult the Legal Section of the Board, which will send its advice to the controlling authority. If it is decided to defend the suit, the controlling authority shall accord necessary sanction for the defence of the suit under intimation to the Legal Section of the Board and take further action necessary for the defence of the suit.

Para 3.6
of EB
Manual of
orders.

V. When, after receiving any notice of threatened suit and enquiring into the matter, the controlling authority proposes to -

- (a) tender any amount admitted to be due to the claimant;
- (b) offer terms of adjustment or suggest reference to arbitration.

The Legal Section of the Board should ordinarily be consulted to as to the form or terms of the proposed tender, adjustment or reference, as the case may be, before they are communicated to the opposite party and once a suit has been instituted, no sum should be tendered, terms of adjustment offered or reference to arbitration suggested, otherwise than through the officer in charge of the case.

C.- REFERENCE TO ARBITRATION

Board's
Circular
Memo No.
19549/
845/LB 2
(2484) dt.
6.10.76.

Clause 29 of the Abridged Conditions of Supply provides for reference of difference or dispute between the Board and consumers in respect of matters connected with the supply to the arbitration. It was, inter-alia, laid down that whenever a consumer filed a suit, clause 29 of the Abridged Conditions of Supply be invariably invoked. It was advised that before filing written statement or taking any other steps for judicial proceedings pending in the court of law, an application should be moved under Section 34 of the Indian Arbitration Act, 1940 for staying the judicial proceedings and for reference of the dispute to arbitration in accordance with afore-mentioned clause 29, which forms a part of agreement with the consumers. It has come to the notice that these instructions are not being kept in view while defending the suits filed by the consumers. It is, therefore, again re-iterated that when in a suit filed by a consumer against the Board, it is decided by the controlling authority to defend the same after following the procedure outlined above, it should be ensured that an application under Section 34 of the Arbitration Act is immediately

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moved before filing written statement, because relief of staying the suit and reference of the dispute to the arbitration can only be sought for from the Court, before filing the written statement. These instructions are, mutatis-mutandis applicable to other cases which provide for reference or dispute to arbitration.

D-COPIES OF ORDERS/JUDGEMENTS.

Board's circular Memo No. 28409/674/LB2 (Genl) dated 24-5-71. Instructions have been issued time and again that as soon as an order or judgment is passed by a court, an application for its certified copy should be moved immediately and the certified copy of the order or judgment as the case may be supplied to this office (Legal Section) immediately for examination. It is immaterial whether the orders have been passed in favour of the Board. Where the order or judgment is against the Board, Legal Section of the Board should immediately be consulted for further line of action in-as-much as whether the order or judgment passed against the Board should be further contested in appeal or revision or review as may be legally competent. Where the order or judgment is in favour of the Board, its certified copy is also essentially required, not only for reference or record, but also to see if there is any observation/finding against the Board required to be contested in the competent Court. A certified copy of the order or judgment may be obtained whether it is a preliminary, interlocutory or final order/judgment. The certified copy of order/judgment must be accompanied by the comments on the factual position in respect of the rules/regulations mentioned therein and the facts of the case as per record maintained in the Board's offices.

E- LIMITATION.

Board's Circular Memo No. 28409/674/LB2 (General) dt. 24.5.71

As per standing instructions of the Board, it is also essential that while forwarding a certified copy of an order or judgment against the Board the limitation available

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for challenging the said order or judgment may also be intimated alongwith opinion of the Board's counsel. These instructions are not being complied with. In most of the cases, certified copies are also not sent which could only enable this office to commute limitation period available with the Board for challenging such order or judgment, if it is so decided. It may, therefore, be ensured that certified copy of ^{order or} judgment is invariably supplied alongwith typed copy duly attested as true, but in case the ~~Board's~~ Counsel's opinion is not conveniently and expeditiously available, it should not be made a ground to with-hold the submission of certified copy of order or judgment to this office for examination and further advice well before the expiry of the limitation period.

5. A proforma for according sanction to the institution and defence of the suits on behalf of the Board is enclosed.

6. All court cases are of time-bound nature. Therefore, in order to ensure that the Board's interest is carefully and properly watched and is not put to jeopardy, it is incumbent upon all concerned to ensure that not only the instructions contained hereinbefore are properly imbibed and followed meticulously but also the cases are attended to with utmost care and promptitude, so that all the formalities are completed in time.

7. Please acknowledge its receipt.

DA/Proforma.

(I, J. Ohri) 30/3/77
Under Secy. (In)-cum-Law Officer
for Secretary, Pb. State Elec. Board
Patiala.

Encl. No. 39578/773 /LB-
Copy forwarded to :-

Dated: 30-3-1977.

1. All Deputy Secretaries.
 2. All Under Secretaries-I, & II.
 3. All Branch Officers
 4. All Sectional Heads in Headquarter offices.
 5. PE to Chairman/Members/Secretary
- for information.

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For all
Branch Officers/
Heads of Section.

2. The above instructions may be strictly followed
in connection with institution/defences of the suits
under them.

so - [Signature]
(I. J. Ohri) 30/3/77
Under Secy. (L) - cum - Law Officer,
for Secretary, Pb. State Electricity Board,
Patiala.

DA/ [Signature]
Prof. ma.