

Civil Revision

**Present :The Hon'ble Mr. Justice Prasenjit Mandal
Judgement On: October 6, 2010.**

C.O. No. 2361 of 2003

R.K.P. Udyog Limited

Versus

Metro Railway & ors.

Point:

QUESTION BY COMPETENT AUTHORITY: Witness was being examined-in-chief- Whether the Competent Authority suo motu can ask questions to the witness- Evidence Act, 1872 S.165

Facts:

The petitioner filed the claim case no.1 of 1998 before the Competent Authority under the Metro Railway (Construction of Works) Act, 1978 praying for determination of the amount payable to the petitioner on account of loss and damage caused to the properties of the petitioner during construction of the metro railway. The claim case was at the stage of recording evidence. At the time of filing of that claim case, there was some delay, that is, why the petitioner filed an application for condonation of the delay. In order to dispose of that application under Section 5 of the Limitation Act, one P.W. was examined on behalf of the metro railway and thereafter one witness, namely, Rajesh Poddar, was being examined on behalf of the petitioner. He was one of the Directors of the petitioner company. While his deposition was being recorded, it was noticed that whenever the witness wanted to make any statement, the presiding officer, that is, the Competent Authority, suo motu, was asking several questions to that witness. In this way, the

examination of that witness was going on. When the witness was being examined, his statement was being taken by the stenographer in his dictation note. It was not being typed at that time. But it was being typed subsequently. When the deposition sheet was tendered to the witness subsequently for his signature, it was found that his statement had been altered. It was also stated by him that he did not make certain statements but those were recorded therein. Being aggrieved by the manner and the way in which the deposition of the O.P.W. No.1 was being recorded, the petitioner filed an application before the Competent Authority for setting aside the deposition of the O.P.W. No.1. That application was rejected by the Competent Authority and the next date was fixed on September 26, 2003 for further cross-examination of the O.P.W. No.1. Being aggrieved by such orders, this application has been filed.

Held:

While the O.P.W. No.1, namely, Rajesh Poddar was being examined-in-chief, the Competent Authority suo motu had asked many questions. The questions put to the witness and the answers given thereby had been recorded in the question-answer form. No doubt, the Competent Authority is competent to put questions which he thinks fit and proper for proper appreciation of the evidence on record. The Competent Authority has suo motu put many questions to the witness on his own accord. It should have been better for the Competent Authority to allow the witness, O.P.W. No.1 to make statement on his own way according to the questions of his Id. Lawyer and then to allow cross-examination by the adversary. Thereafter, if any matter was left, questions might be put on that matter by the Court suo motu. But in the instant case, The Court finds that from the further examination-in-chief starting from April 9, 2003 and onwards, the Court suo motu asked several questions and recorded the said question under the heading "To Court" and then recorded the

statements given by the witness in the answer form. It is the specific allegation of the witness that he did not say so and the statements had been moulded in such a fashion so as to support of the defence version.

Para-3

Some questions had been put to the witness which were not at all tenable. Such questions should not have been put to him while the examination of the witnesses was going on. The Competent Authority should not have put up such questions to the witness suo motu at his own initiative while the witness was being examined in chief.

Para-5

**For the petitioner: Mr. Rudradeb chowdhury,
Mr. Tapan Sil.**

For the opposite parties: None appears.

The Court:

This application is at the instance of the petitioner and is directed against the order dated September 12, 2003 passed by the Competent Authority under the Metro Railway (Construction of Works) Act, 1978 in the Claim Case No.1 of 1998 thereby rejecting the application dated July 7, 2003 on contest.

2. The short fact is that the petitioner filed the claim case no.1 of 1998 before the Competent Authority under the Metro Railway (Construction of Works) Act, 1978 praying for determination of the amount payable to the petitioner on account of loss and damage caused to the properties of the petitioner during construction of the metro railway. The claim case was at the stage of

recording evidence. At the time of filing of that claim case, there was some delay, that is, why the petitioner filed an application for condonation of the delay. In order to dispose of that application under Section 5 of the Limitation Act, one P.W. was examined on behalf of the metro railway and thereafter one witness, namely, Rajesh Poddar, was being examined on behalf of the petitioner. He was one of the Directors of the petitioner company. While his deposition was being recorded, it was noticed that whenever the witness wanted to make any statement, the presiding officer, that is, the Competent Authority, suo motu, was asking several questions to that witness. In this way, the examination of that witness was going on. When the witness was being examined, his statement was being taken by the stenographer in his dictation note. It was not being typed at that time. But it was being typed subsequently. When the deposition sheet was tendered to the witness subsequently for his signature, it was found that his statement had been altered. It was also stated by him that he did not make certain statements but those were recorded therein. The statements were recorded in such a fashion that the statement might help the opposite party, that is, the metro railway. Even certain questions put to the witness by the Competent Authority were also altered and the answers were recorded in such a fashion as if they helped the Competent Authority though the witness did not state such statement at all. In this way, the evidence of the O.P.W. No.1 was being taken. Being aggrieved by the manner and the way in which the deposition of the O.P.W. No.1 was being recorded, the petitioner filed an application before the Competent Authority for setting aside the deposition of the O.P.W. No.1. That application was rejected by the Competent Authority and the next date was fixed on September 26, 2003 for further cross-examination of the O.P.W. No.1. Being aggrieved by such orders, this application has been filed.

3. Upon hearing the learned Advocate for the petitioner and on perusal of the materials on record, I find that while the O.P.W. No.1, namely, Rajesh Poddar was being examined-in-chief, the Competent Authority suo motu had asked many questions. The questions put to the witness and the answers given thereby had been recorded in the question-answer form. No doubt, the Competent Authority is competent to put questions which he thinks fit and proper for proper appreciation of the evidence on record. But, if I look the deposition recorded by the Competent Authority on April 9, 2003 and onwards, I find that the Competent Authority has suo motu put many questions to the witness on his own accord. It should have been better for the Competent Authority to allow the witness, O.P.W. No.1 to make statement on his own way according to the questions of his Id. Lawyer and then to allow cross-examination by the adversary. Thereafter, if any matter was left, questions might be put on that matter by the Court suo motu. But in the instant case, I find that from the further examination-in-chief starting from April 9, 2003 and onwards, the Court suo motu asked several questions and recorded the said question under the heading "To Court" and then recorded the statements given by the witness in the answer form. It is the specific allegation of the witness that he did not say so and the statements had been moulded in such a fashion so as to support of the defence version.

4. On perusal of the questions put to him, I find that some questions had been put to the witness which were not at all tenable. The Competent Authority should not have put such questions to the witness. As for example, I am recording some questions that the Competent Authority had asked the witness to answer:

1. How do you know that Amit Ghosh, Stenographer, typed the said letter?
2. Do Directors of the company stand beside typists when they type letters?
3. Do you sit in the same room as the stenographer?

4. How big is the room in which the stenographer sits?
5. How far is your table away from the stenographer's table?
6. Do you face the stenographer while sitting at your desk?
7. Does the stenographer face you while sitting at his desk or does he face in the opposite direction?
8. Is it possible for a person sitting at your desk to read what the stenographer is typing?

5. So, from the question put to the witness by the presiding officer, it appears that such questions should not have been put to him while the examination of the witnesses was going on. Similar is the situation with regard to marking of document marked exhibit E(1) and putting questions on such documents. I am not stating in details, but, on perusal of the deposition as recorded by the Competent Authority as a whole, it appears that the Competent Authority should not have put up such questions to the witness suo motu at his own initiative while the witness was being examined in chief.

6. This being the situation, I am of the view that the impugned order is not sustainable at all. The manner of examining the O.P.W.1 by the Court himself cannot be supported at all. The Competent Authority has committed errors of law. He has exceeded his jurisdiction. Accordingly, the impugned order is hereby set aside. The evidence recorded by the Competent Authority of the O.P.W.1 is hereby treated as cancelled. The petitioner is at liberty to adduce fresh evidence either by examining Rajesh Poddar or any other witness in support of his application on limitation.

7. The application is allowed in the manner as indicated above.

8. Considering the circumstances, there will be no order as to costs.

9. The L.C.R. be sent down immediately.

Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.

(Prasenjit Mandal, J.)