

HIGH COURT OF CHHATTISGARH, BILASPURContempt Case (Civil) No.1132 of 2018Order reserved on: 4-12-2018Order delivered on: 7-1-2019

M/s Lanco Amarkantak Power Ltd., having its registered office at Plot No. 4, Software Units Layout, HITEC City, Madhapur, Hyderabad, Telangana and its Project Office at Village Pathadi, PO Tilkeja, District Korba, Chhattisgarh – 495 674 through the Authorized Signatory Shri Anil Sharma, Assistant Vice President (Commercial & Fuel Management).

(Appellant)

---- Applicant

Versus

A.P. Panda, Chairman-cum-Managing Director, South Eastern Coalfields Ltd., Regd. Office, Vasant Vihar, Seepat Road, Bilaspur (Chhattisgarh)

(Contemnor)

---- Respondent

For Petitioner: Mr. Ashish Shrivastava, Advocate.

For Respondent: Mr. Vivek Chopda, Advocate.

Hon'ble Shri Justice Sanjay K. AgrawalC.A.V. Order

1. The Arbitral Tribunal consisting of three Hon'ble Judges (former) of the Supreme Court passed an arbitral award by majority (2 : 1) on 13-4-2012 resolving the arbitral dispute arisen between the parties in the matter of namely M/s Lanco Amarkantak Power Ltd. v. South Eastern Coalfields Ltd. and others, so referred to them. The said arbitral award was questioned by South Eastern Coalfields Limited (SECL) by filing an application under Section 34(2) of the Arbitration and Conciliation Act, 1996 (for short, 'the Act of 1996'). The learned District Judge set aside the arbitral award by its order dated 11-3-2013 and the order so passed by the learned District Judge interfering with the arbitral award was ultimately set aside by this

Court in Arbitration Appeal No.57/2013 preferred under Section 37(1)(b) of the Arbitration and Conciliation Act, 1996 restoring the award so passed by the Arbitral Tribunal by majority and SECL was directed to make payment of the decretal amount of ₹ 22,95,00,000/- along with interest and ₹ 39,00,297/- along with interest so specified and cost to the contempt petitioner herein. The order of this Court was assailed by SECL in Special Leave Petition (Civil) Diary No.12531/2018 before the Supreme Court. Their Lordships were pleased to dismiss the SLP so preferred by SECL, on 14-5-2018 summarily. Review Petition was also dismissed by Their Lordships on 25-9-2018. Thereafter, the petitioner made a representation for making refund of the principal amount and interest as passed by the Arbitral Tribunal as per the order of this Court. But no payment was made led to filing of contempt petition before this Court alleging non-compliance of the order of this Court willfully in which the respondent / contemnor has appeared and filed a preliminary objection stating inter alia that since the execution application is maintainable under Section 36 of the Act of 1996 for executing the award passed by the Arbitral Tribunal, therefore, the contempt petition would not be maintainable and therefore the Rule issued by this Court be discharged by dropping the contempt proceedings.

2. The preliminary objection has been opposed by the petitioner, but no written objection has been filed.
3. Mr. Vivek Chopda, learned counsel appearing for the respondent / contemnor, would submit that since the award is executable as per the provision contained in Section 36 of the Act of 1996, therefore,

the contempt petitioner be relegated to the remedy of execution under Section 36 of the said Act and the contempt petition would not be maintainable. He would rely upon the decisions of the Supreme Court in the matters of Niaz Mohammad and others v. State of Haryana and others¹, R.N. Dey and others v. Bhagyabati Pramanik and others², Kanwar Singh Saini v. High Court of Delhi³ and the decision of this Court in the matter of Itwar Singh v. Ganeshram and another⁴ to buttress his submission.

4. Mr. Ashish Shrivastava, learned counsel appearing for the petitioner, while opposing the preliminary objection, would submit that this Court while restoring the arbitral award has not only set aside the order of the District Judge, but also clearly directed SECL to return the decretal amount along with interest and the direction issued by this Court has also been not interfered with by the Supreme Court and thus, the judgment of this Court has become final and, therefore, SECL / contemnor has no option except to honour the award. He would further submit that the fact that the petitioner can execute a decree can have no bearing on the contempt committed by the contemnor, as there is no dispute that the award has become final between the parties and only in order to avoid the payment of decretal amount, such an objection has been raised which deserves to be rejected. He would rely upon the decision of the Supreme Court in the matter of Bank of Baroda v. Sadruddin Hasan Daya and another⁵.

1 (1994) 6 SCC 332

2 (2000) 4 SCC 400

3 (2012) 4 SCC 307

4 (2015) 1 High Court Cases (Chh) 29

5 (2004) 1 SCC 360

5. I have heard learned counsel for the parties and considered the rival submissions made herein-above and also gone through the record with utmost circumspection.
6. The jurisdiction to punish for contempt is an inalienable attribute of and inheres in, every superior court of record. This is jurisdiction of necessity. This position has very well been highlighted by Oswald in his treatise on Contempt of Court by extracting Wilmot's opinion in the case of R v. Almon⁶.

“A court of justice without power to vindicate its own dignity, to enforce obedience to its mandate, to protect its officers, or to shield those who are entrusted to its care, would be an anomaly, which could not be permitted to exist in any civilized community.”

7. This position was duly accepted and acknowledged by the Privy Council in a case originated from the Calcutta High Court. The Judicial Committee of the Privy Council in the matter of Surendranath Banerjee v. The Chief Justice and Judges of the High Court of Bengal⁷ condensely held that High Courts in Indian presidencies as superior court of records have the same power which is exercised by superior court of records of England. The Privy Council also held that on the principles of common law, every court of record is the sole and exclusive judge of what amounts to contempt.
8. The Chief Justice Bearnese Peacock In re Abdool⁸ (again case from Calcutta) similarly observed that there can be no doubt that every court of record has the power of summarily punishing for contempt. The Calcutta High Court in past in the matter of Shyamal Krishna Chakraborty v. Sukumar Das & Ors.⁹ speaking through Justice

6 (1765) Wilm. 243, p. 270

7 (1882-83) 10 Indian Appeal 171

8 8 W.R. Cr. 32

9 2002 CrLJ 60 (Cal)

A.K. Ganguly (as His Lordship then was) reiterated the position by holding that contempt jurisdiction is inherent in High Court and recognised as such under Article 215 of the Constitution of India.

9. The Supreme Court in the matter of Sukhdev Singh v. Hon'ble C.J., S. Teja Singh and the Hon'ble Judges of the Pepsu High Court at Patiala¹⁰ traced the history of contempt jurisdiction in India locating the earlier statutory provision in clause 4 of the Charter of 1974 which stated that the Supreme Court of Bengal would have the same jurisdiction as the court of King's Bench in England accompanied by power to punish for contempt at common law, the position was clear that a superior court of record had the inherent power to punish for contempt and thus, was the consistent position of the Privy Council as well. Justice Vivian Bose speaking for the Supreme Court succinctly observed as under: -

"(13) This recognises an existing jurisdiction in all Letters Patent High Courts to punish for contempts of themselves, and the only limitation placed on those powers is the amount of punishment which they could thereafter inflict. It is to be noted that the Act draws no distinction between one Letters Patent High Court and another though it does distinguish between Letters Patent High Courts and Chief Courts; also, as the Act is intended to remove doubts about the High Courts powers it is evident that it would have conferred those powers had there been any doubt about the High Court's power to commit for contempts of themselves. The only doubt with which the Act deals is the doubt whether a High Court could punish for a contempt of a court subordinate to it. That doubt the Act removed. It also limited the amount of punishment which a High Court could inflict.

(14) Now this recognises an existing power in all Letters Patent High Courts to punish and as the Letters Patent High Courts other than the Chartered High Courts could not have derived this power from the Common Law, it is evident that the power must have been inherent in themselves because they were Courts of Record."

10 AIR 1954 SC 186

10. The Supreme Court also held in Sukhdev Singh (supra) that the superior courts have inherent jurisdiction of punishing for contempt and also referred to the Government of India Act, 1915 which recognized that High Courts are courts of record. The Supreme Court has further held that the power of a High Court to institute proceedings for contempt and punish where necessary is a special jurisdiction which is inherent in all Courts of Record and in paragraph 3 pertinently observed as under: -

“(3) We are unable to agree. In our opinion, the power of a High Court to institute proceedings for contempt and punish where necessary is a special jurisdiction which is inherent in all Courts of Record and [section 1 \(2\)](#) of the Code expressly excludes special jurisdictions from its scope. The section runs

“In the absence of any specific provision to the contrary, nothing herein contained shall affect any special law now in force or any special jurisdiction or power conferred, by any other law for the time being in force.” “

11. Likewise, in the matter of M.V. Elisabeth and others v. Harwan Investment and Trading Pvt. Ltd., Hanoekar House, Swatontapeth, Vasco-De-Gama, Goa¹¹, the Supreme Court delineating the jurisdiction of High Courts has illuminatingly held that High Court has unlimited jurisdiction by observing as under: -

“66. The High Courts in India are superior courts of record. They have original and appellate jurisdiction. They have inherent and plenary powers. Unless expressly or impliedly barred, and subject to the appellate or discretionary jurisdiction of this Court, the High Courts have unlimited jurisdiction, including the jurisdiction to determine their own powers. (See [Naresh Shridhar Mirajkar v. State of Maharashtra](#)¹²). As stated in Halsbury's Laws of England, 4th edn., Vol. 10, para 713:

"Prima facie, no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly

¹¹ 1993 Supp (2) SCC 433

¹² (1966) 3 SCR 744 : AIR 1967 SC 1

shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognisance of the particular court." "

12. Similarly, in the matter of High Court of Judicature at Allahabad Through its Registrar v. Raj Kishore Yadav and others¹³, the Supreme Court held as under: -

"All that [Article 215](#) states is that every High Court shall be a court of record meaning thereby all the original record of the court will be preserved by the said court and it shall have all the powers of such a superior court of record including the power to punish for contempt of itself. As a superior court of record the High Court is entitled to preserve its original record in perpetuity. Even apart from the aforesaid attribute of a superior court of record the High Court as such has twofold powers. Being a court of record the High Court (i) has power to determine the question about its own jurisdiction; and (ii) has inherent power to punish for its contempt summarily."

13. Also, in the matter of M.M. Thomas v. State of Kerala and another¹⁴, the Supreme has held as follows: -

"14. The High Court as a court of record, as envisaged in [Article 215](#) of the Constitution, must have inherent powers to correct the records. A court of record envelops all such powers whose acts and proceedings are to be enrolled in a perpetual memorial and testimony. A court of record is undoubtedly a superior court which is itself competent to determine the scope of its jurisdiction. The High Court, as a court of record, has a duty to itself to keep all its records correctly and in accordance with law. Hence, if any apparent error is noticed by the High Court in respect of any orders passed by it the High Court has not only power, but a duty to correct it. The High Court's power in that regard is plenary. In *Naresh Shridhar Mirajkar & Ors. v. State of Maharashtra*, AIR 1967 SC 1 : (1966) 3 SCR 744, a nine-Judge Bench of this Court has recognised the aforesaid superior status of the High Court as a court of plenary jurisdiction being a court of record."

14. In a very recent pronouncement in the matter of Municipal Corporation of Greater Mumbai and another v. Pratibha

¹³ (1997) 3 SCC 11

¹⁴ (2000) 1 SCC 666

Industries Ltd. and others¹⁵, delivered on 4-12-2018, the Supreme Court speaking through R.F. Nariman, J. held that the constitutional courts, being courts of record, the jurisdiction to recall their own orders is inherent by virtue of the fact that they are superior courts of record and relied upon its earlier decisions rendered in the matters of National Sewing Thread Co. Ltd. v. James Chadwick & Bros. Ltd.¹⁶, Shivdev Singh and others v. State of Punjab and others¹⁷ and M.M. Thomas (supra).

15. In view of the aforesaid legal position, I am of the considered opinion that merely because the alternative remedy of laying execution of arbitral award under Section 36 of the Act of 1996 is available to the petitioner, the contempt petition preferred for willful disobedience of the order of this Court cannot be thrown out if it appears to the court that the order passed by this Court has been willfully disobeyed by the contemnor, as in Bank of Baroda (supra), the Supreme Court has held that even if an order is executable, it does not mean that contempt petition would not lie and it was observed as under: -

“12. ... The fact that the petitioner can execute the decree can have no bearing on the contempt committed by the respondents. ...”

As such, the contempt petition framed and filed is maintainable.

16. The Supreme Court in the matter of Priya Gupta and another v. Additional Secretary, Ministry of Health and Family Welfare and others¹⁸ has clearly held that if there is a direction of the court and it has not been complied with or there is willful disobedience

15 2018 SCC OnLine SC 2737

16 1953 SCR 1028

17 AIR 1963 SC 1909

18 (2013) 11 SCC 404

then, the contempt petition would lie. Paragraph 23 of the report states as follows: -

“23. ... The sine qua non to initiation of proceedings under the Act is an order or judgment or direction of a court and its willful disobedience. Once these ingredients are satisfied, the machinery under the Act can be invoked by a party or even by the court suo motu. ...”

17. So far as reliance placed by Mr. Chopda in Niaz Mohammad (supra), that is clearly distinguishable, as in that case there was no specific direction to pay any decretal amount to the instructors as held by the Supreme Court in paragraph 10 of its judgment.

18. In the matter of Kapildeo Prasad Sah and others v. State of Bihar and others¹⁹, the Supreme Court has held that initiation of contempt proceedings is not a substitute for execution proceedings.

It has been held in paragraphs 9 and 10 of the report as under: -

“9. For holding the respondents to have committed contempt, civil contempt at that, it has to be shown that there has been willful disobedience of the judgment or order of the court. Power to punish for contempt is to be resorted to when there is clear violation of the court's order. Since notice of contempt and punishment for contempt is of far-reaching consequence, these powers should be invoked only when a clear case of willful disobedience of the court's order has been made out. Whether disobedience is willful in a particular case depends on the facts and circumstances of that case. Judicial orders are to be properly understood and complied with. Even negligence and carelessness can amount to disobedience particularly when the attention of the person is drawn to the court's orders and its implications. Disobedience of the court's order strikes at the very root of the rule of law on which our system of governance is based. Power to punish for contempt is necessary for the maintenance of effective legal system. It is exercised to prevent perversion of the course of justice.

10. In his famous passage, Lord Diplock in Attorney General v. Times Newspapers Ltd.²⁰ said that there is also

¹⁹ (1999) 7 SCC 569

²⁰ (1973) 3 All ER 54 (HL)

"an element of public policy in punishing civil contempt, since administration of justice would be undermined if the order of any court of law could be disregarded with impunity".

Jurisdiction to punish for contempt exists to provide ultimate sanction against the person who refuses to comply with the order of the court or disregards the order continuously. Initiation of contempt proceedings is not a substitute for execution proceedings though at times that purpose may also be achieved."

19. In a decision rendered by this Court in Itwar Singh (supra) for non-compliance of judgment and decree for injunction passed by the trial Court, the contempt petition was held to be not maintainable which is not the factual position herein, as in this instant case, arbitral award passed was set-aside by the learned District Judge which was interfered with by this Court in its appellate jurisdiction not only restoring the award, but also directing payment of decretal amount.

20. The judgment of the Supreme Court in Kanwar Singh Saini (supra) is also not applicable to the facts of the present case and is clearly distinguishable.

21. Reverting to the facts of the present case, it is quite vivid that this Court while granting the appeal under Section 37(1)(b) of the Act of 1996 preferred by the petitioner not only set aside the order passed by the learned District Judge setting aside the award and restoring the arbitral award so passed by majority, but also directed SECL to pay the decretal amount which states as under: -

"39. As a fallout and consequence of aforesaid discussion, the order passed by the learned District Judge granting application under Section 34(2) of the AC Act deserves to be and is accordingly set aside. The award by majority as passed by the arbitral tribunal dated 13-4-2012 is hereby restored. The respondent is directed to return the decretal amount of

₹ 22,95,00,000/- along with interest and ₹ 39,00,297/- along with interest so specified and cost to the appellant (LAPL), forthwith.”

22. Against the above-stated order, SLP has been preferred by SECL which has been dismissed on 14-5-2018 and review petition has also been dismissed on 25-9-2018, as such, even the appellate order passed by this Court has become final and despite the appellate order, the contemnor has not complied with the award and therefore the contempt petition has been filed. The appellate order passed by this Court restoring the award clearly directs SECL to make payment of the amount which the contemnor has admittedly not complied with and as such, it cannot be held that since the execution petition under Section 36 of the Act of 1996 is maintainable, this Court being the constitutional court and the court of record under Article 215 of the Constitution of India cannot look into the fact as to whether its order directing payment of decretal amount has been complied with by the contemnor or it has been willfully disobeyed by the contemnor. In my considered opinion, this Court is empowered to look into the compliance of the order of the court in order to keep the record of this court straight and it cannot be held to be not maintainable on the ground of availability of alternative remedy of laying execution petition under Section 36 of the Act of 1996. As such, the preliminary objection filed in this behalf is hereby rejected and the contempt petition is held to be maintainable in law.

23. The respondent / contemnor is directed to file his reply within ten days from today, as he has already entered into appearance long back and has not filed his reply.

24. List the matter for consideration on 21-1-2019.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma



HIGH COURT OF CHHATTISGARH, BILASPUR

Contempt Case (Civil) No.1132 of 2018

M/s Lanco Amarkantak Power Ltd.

Versus

A.P. Panda

Head Note

Contempt jurisdiction is jurisdiction of necessity and inheres in every court of record.

अवमानना का क्षेत्राधिकार आवश्यकता का क्षेत्राधिकार है एवं वह प्रत्येक अभिलेख न्यायालय में अंतर्निहित है।

