

IN THE SUPREME COURT OF INDIA  
INHERENT JURISDICTION

CONTEMPT PETITION (C) NOS. 1174-1177/2019

IN

CIVIL APPEAL NO. 179/2017

NABHA POWER LTD. (NPL) Petitioner(s)  
VERSUS

PUNJAB STATE POWER CORPORATION LTD.(PSPCL) & ORS.Respondent(s)  
AND

MA No. 1562/2017 AND CONTEMPT PETITION NOS. 1277-1278 of 2018

WITH

CONMT.PET.(C) No. 1178-1179/2019 in C.A. No. 10525-10526/2017

MA 817-818/2020 in MA 2394-2395/2019 in CONMT.PET.(C) No. 1766-1767/2018 in C.A. No. 10525-10526/2017

MA 815-816/2020 in MA 2396-2397/2019 in CONMT.PET.(C) No. 1277-1278/2018 in C.A. No. 179/2017

O R D E R

1. The judgment of this Court in these appeals, the second judgment really relying upon the first which was delivered as far back as on 05.10.2017, has still given rise to state of applications, review applications and contempt proceedings. The proceedings arose out of the appeals from the orders of the State Electricity Regulation Commission (SERC). A number of claims were made by the original appellants and this Court in terms of its judgment dated 05.10.2017 granted relief in a limited compass as set out in para 73 of the judgment. It was effectively stated as :

a) the appellants are entitled to the washing cost of coal;

- b) the transportation from the mine site via washing of coal to the project site inclusive of cost of road transportation for the period where it was necessary would be paid;
- c) the Calorific value of the coal would have to be taken at the project site,
- d) a period of 3 months to remit the amount, failing which interest would be payable @ 12 per cent per annum (simple interest).

2. An application was filed, MA No. 1562/2017 in Nabha Power Ltd. (NPL) case seeking to raise certain issues about calculations but that was rejected on 15.12.2017 opining that it was for the respondents itself to calculate the amount and it was not necessary to adhere to the prayer sought for. Thereafter, the second endeavour made through a review petition which was also repelled by order dated 06.02.2018.

3. The appellants, however, were of the view that the respondents were not complying with the order and thus contempt proceedings were filed. These contempt proceedings came to be decided by an order dated 07.08.2019. The Court took note of the arguments which were advanced at the time of decision of the appeal(s) relating to the controversy around schedule VII of the Power Purchase Agreement(PPA) which contained certain formula. In the contempt proceedings it was opined that there was no reason for any doubt on the issue of the calorific value of coal which was apparent from the judgment but was further made clear by the order in contempt

i.e, the weighted average gross calorific value of coal is as received at the project site on actuals thereof, and would include total moisture content that is measured at the project site. It was also clarified that what is meant by  $F^{\text{coal}}_n$  in the formula is the actual cost of purchase of unwashed coal, which would involve the actual grade of unwashed coal that is provided by the coal company to the appellants. It was thus opined that the judgment has to be followed both in letter and spirit, and thus some alien figure which had been inserted both in the numerator and denominator in the formula was required to be struck off.

4. Another application was filed in the contempt proceedings seeking directions that the computation of the claims in terms of the order dated 05.10.2017 be undertaken by the appropriate authority as may be designated by this Court after Considering claims and counter claims. This prayer has to be understood in the context of the earlier application made with almost the similar relief which had been rejected seeking the SERC to do the calculation. This endeavour also failed vide order dated 25.11.2019 and the amount remaining to be paid was required to be paid within twelve weeks from the date of the order.

5. The present contempt proceedings have arisen thereafter because it is alleged that now another endeavour has been made to circumvent the orders passed by the Court. In the short note filed on behalf of Nabha Power Ltd. A chart has been extracted which shows the position pre and post the order in

the contempt proceedings dated 07.08.2019. The chart is as under :

		<b>PSPCL's Conduct</b>					
Component of Energy Charge formula	<u>Pre-Judgment</u> dated 5.10.2017		<u>First contempt</u> From 5.10.2017 to Contempt Order dated 7.8.2019	<u>Second Contempt</u> After Contempt Order dated 7.8.2019			
	1. PCVn (Kcal/Kg)	E-GCV	×	Notional GCV ×	GCV-ARB ✓ (Total Moisture)		
2. FCOALn (Rs/MT)							
a. Cost of Unwashed Coal (Rs/MT)	Actual	✓	Presumptive	×	Actual	✓	
b. Quantity lost on account of washing (Yield Loss) Rs/MT	Denied	×	Actual	✓	Denied	×	
c. Washery Charges (Rs/MT)	Denied	×	Actual (Paid on Unwashed Coal Qty)	✓	Denied	×	(to the extent of quantity lost in washing)
d. Road Transportation (Rs/MT)	Denied	×	Actual (Paid on unwashed Coal Qty)	✓	Denied	×	(to the extent of quantity lost in washing)

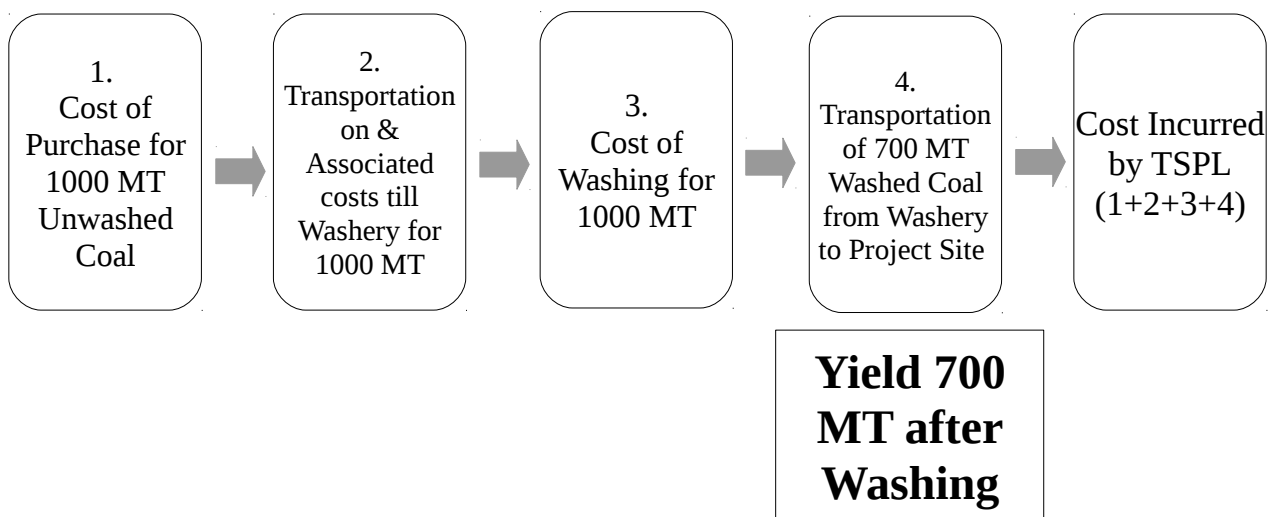
6. It has thus been urged before us by Mr. Mukul Rohatgi, learned senior counsel appearing for Nabha Power Ltd. and Dr.A.M. Singhvi, learned senior counsel through a joint motion that after the first contempt order, the position was remedied by the respondents so far as 1 and 2 (a) are concerned aforesaid but what was already been granted to the appellants was sought to be reversed in points 2 (b) (c) and (d) i.e.,

what was given by the one hand was sought to be taken by the other.

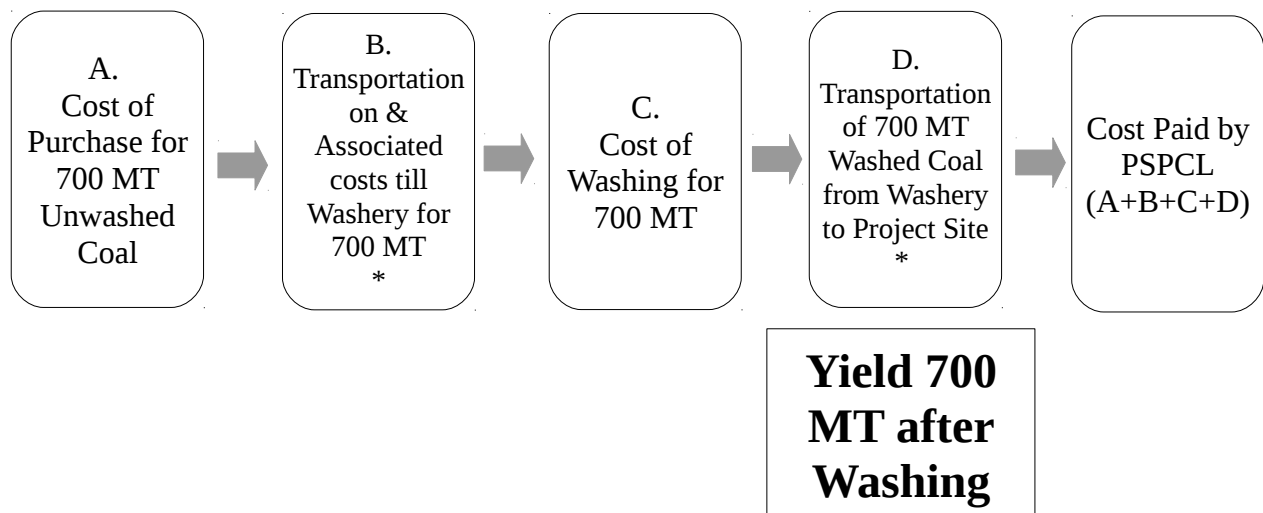
7. We may note as per the appellants the notice purports to raise issues which stand foreclosed by our judgment and orders.

8. Mr. Maninder Singh, learned senior counsel appearing on behalf of the Talwandi Sabo Power Ltd. (TSPL) has also sought to support that contention and referred to another chart filed in the contempt proceedings which, in our view, reflects the ground reality and is reproduced as under :

**"Actual Cost Incurred by TSPL**



**Cost Paid by PSPCL**



\* Transportation cost paid by PSPCL is not the actual cost incurred by TSPL

# It is evident that A+B+C+D paid by PSPCL is much lower than 1+2+3+4 incurred by the Petitioner"

9. On the aforesaid submissions, we have heard Mr. P Chidambaram and Mr. Jaideep Gupta learned senior counsel for the respondents in respective matters and we make it clear that we have little doubt that the orders of this Court has not been complied with, whatever be the reasons.

10. Learned senior counsel for the respondents thereafter took some time to obtain instructions and to have some discussions and came back to the proceedings to state that the respondents will ensure that the order is complied in *toto*. In this behalf, we may only note that while in the affidavit, the respondents have taken the stand that the whole amount stands paid, in the note submitted by them it was admitted that there were arrears even as per the calculations of the respondents.

11. We put to learned counsel for the respondents that we take very serious note of the aforesaid as we hardly expect Public Sector Enterprises to play games of this kind. Be that as it may, in view of the fairness shown by learned senior counsel for the respondents, we accept that plea that they will clear the arrears as on date as understood by the appellants and for which we have given our imprimatur today, in two

instalments, the first instalment on or before 31.03.2021 and the second installment on or before 31.05.2021.

12. Needless to say that these arrears would include interest or any other component which is admissible as per the contract *inter se* the parties and as per the orders of this Court. We may further add that there would of course be payments for future charges which would have to be paid as and when the contractual right arises in favour of the appellants.

13. The last aspect which arises for consideration is a plea which was sought to be advanced on behalf of the respondents that in their perspective, there is some problem arising from the records maintained for the GCV unwashed coal and the washed coal as according to them the reject worked out more and their apprehension is that unrealistically the GCV is being varied to cause larger financial commitments from the respondents. What they seek to contend as per the note is that the discrepancy in terms of yield loss and quality of washed coal usually happens when good quality of coal is diverted under the garb of rejects in the washing process which should have been used for generation of power and this in turn raises the issue of mismatch of GCV. On perusal and calling for certain datas, it is a view of the respondents that their apprehension is not without merit. It is thus their submission that having found this aspect, the respondents cannot be left remedy less as it is a dispute which needs adjudication for which the relevant authority is the SERC and they seek to invoke the jurisdiction

of the forum for the said purpose for which notice has been issued.

14. We have examined the aforesaid plea and it is our view that insofar as the liabilities of the respondents to the appellants arising from the judgment are concerned, the matter stands closed in terms of our judgment dated 05.10.2017 and orders passed on the applications from time to time. What is said to be raised is really in the nature of a fresh dispute. If that be the position, we have not precluded the respondents from raising all future disputes as we were concerned with adjudication of certain aspects where we accepted part of the claims of the appellants and rejected part of the claims of the appellants. In our view, it will be for the authority to consider whether any of the claims sought to be preferred by the respondents can really be open to any fresh adjudication in view of the judgment rendered by us and the orders passed by us referred to aforesaid. We make it clear that the liberty to approach the SERC arises from the contract itself but that certainly cannot open the chapters which have been closed and that would be taken care of by the SERC while adjudicating the claim now sought to be raised by the respondents.

15. We close the present proceedings with the hope for us and caution to the respondents that there should be no further occasion for moving any application or revival of contempt proceedings otherwise the consequences may be very serious for

the respondents.

16. The contempt petitions stand disposed of in the aforesaid terms.

17. Miscellaneous applications also stand disposed of.

18. Needless to say, we have not expressed any view on the merits of the disputes raised by the respondents as the occasion for the same has not arisen.

.....J.  
[SANJAY KISHAN KAUL]

.....J.  
[ R. SUBHASH REDDY]

New Delhi;  
March 09, 2021.

ITEM NO.12                      Court 9 (Video Conferencing)                      SECTION XVII

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

CONMT.PET.(C) No. 1174-1177/2019 in C.A. No. 179/2017

NABHA POWER LTD. (NPL)

Petitioner(s)

VERSUS

PUNJAB STATE POWER CORPORATION LTD.(PSPCL) & ORS.Respondent(s)  
AND

MA No. 1562/2017 AND CONTEMPT PETITION NOS. 1277-1278 of 2018

(With applns. For permission to file addl. documents)

WITH

CONMT.PET.(C) No. 1178-1179/2019 in C.A. No. 10525-10526/2017  
(XVII)

(With applications for permission to file addl. Documents)

MA 817-818/2020 in MA 2394-2395/2019 in CONMT.PET.(C) No. 1766-  
1767/2018 in C.A. No. 10525-10526/2017 (XVII)

(FOR ADMISSION and IA No.28508/2020-EXTENSION OF TIME)

MA 815-816/2020 in MA 2396-2397/2019 in CONMT.PET.(C) No. 1277-  
1278/2018 in C.A. No. 179/2017 (XVII)

(FOR ADMISSION and IA No.31578/2020-EXTENSION OF TIME)

Date : 09-03-2021 These petitions were called on  
for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL  
HON'BLE MR. JUSTICE R. SUBHASH REDDY

For Petitioner(s)

Mr. Maninder Singh, Sr. Adv.  
Ms. Anuradha Dutt, Adv.  
Mr. Anish Kapur, Adv.  
Mr. Tushar Jarwal, Adv.  
Mr. Aditya Sarin, Adv.  
Ms. Nikhita Suri, Adv.  
Ms. B. Vijayalakshmi Menon, AOR

Dr. Abhishek Manu Singhvi, Sr. Adv.  
Mr. Mukul Rohatgi, Sr. Adv.  
Mr. Mahesh Agarwal, Adv.  
Mr. Aniket Prasoan, Adv.  
Mr. Parul Shukla, Adv.  
Ms. Devika Mohan, Adv.  
Mr. Nishan Rao, Adv.  
Ms. Shweta, Adv.  
Mr. Yojit Mehra, Adv.  
Mr. E. C. Agrawala, AOR

For Respondent(s)/  
Applicant(s)

Mr. P. Chidambaram, Sr. Adv.  
Mr. Jaideep Gupta, Sr. Adv.  
Mr. Sakya Singh Choudhary, AAG, Punjab  
Ms. Uttara Babbar, AOR  
Mr. Manan Bansal, Adv.  
Ms. Gayatri Aryan, Adv.  
Mr. Avijeet Lala, Adv.  
Ms. Nameeta Singh, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

The contempt petitions stand disposed of in the  
aforesaid terms.

Miscellaneous applications also stand disposed  
of.

Pending applications stand disposed of.

[CHARANJEET KAUR]  
ASTT. REGISTRAR-cum-PS

[POONAM VAID]  
COURT MASTER (NSH)

[ Signed order is placed on the file ]