

ITEM NO.9

Court 3 (Video Conferencing)

SECTION IV-B

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

Petition(s) for Special Leave to Appeal (C) No. 8482/2020
(Arising out of impugned final judgment and order dated 10-12-2019
in CWP No. 12700/2019 passed by the High Court of Punjab & Haryana
at Chandigarh)

PUNJAB STATE POWER CORPORATION LIMITED
VERSUS

Petitioner(s)

EMTA COAL LIMITED & ANR.

Respondent(s)

(FOR ADMISSION and I.R. and IA No.63395/2020-EXEMPTION FROM FILING
C/C OF THE IMPUGNED JUDGMENT and IA No.69953/2020-PERMISSION TO
FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 18-09-2020 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN
HON'BLE MR. JUSTICE NAVIN SINHA
HON'BLE MS. JUSTICE INDIRA BANERJEE

For Petitioner(s) Mr. K. V. Vishwanathan, Sr. Adv.
Ms. Uttara Babbar, AOR
Mr. Vinod Bharadwaj, Adv.
Ms. Bhavana Duhoon, Adv.
Mr. R. Venkataraman, Adv.
Mr. Manan Bansal, Adv.

For Respondent(s) Mr. Abhimanyu Bhandari, Adv.
Mr. Sangram S. Saron, Adv.
Ms. Nattasha Garg, Adv.
Ms. Rooh-e-hina Dua, AOR

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

The impugned judgment dated 10.12.2019 is grounded on
the fact that the impugned order passed by the Arbitral
Tribunal on 08.01.2017 was challenged only 2½ years late and
the petitioner filed the writ petition at the last minute
after the arguments had concluded before the Arbitral
Tribunal. Based on this ground, the writ petition has been

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dismissed, filed under Article 227 directly against a section 16 application without following the drill of section 16 of the Arbitration Act.

Shri K. V. Vishwanathan, learned senior counsel appearing for the petitioner, has argued before us, based on our judgment in *Deep Industries Ltd. v. Oil and Natural Gas Corporation Ltd. & Anr.* (2019) SCC Online SC 1602, and paragraph 16 in particular, which is set out hereinbelow:

“16. This being the case, there is no doubt whatsoever that if petitions were to be filed under Articles 226/227 of the Constitution against orders passed in appeals under Section 37, the entire arbitral process would be derailed and would not come to fruition for many years. At the same time, we cannot forget that Article 227 is a constitutional provisions which remains untouched by the non-obstante clause of Section 5 of the Act. In these circumstances, what is important to note is that though petitions can be filed under Article 227 against judgments allowing or dismissing first appeals under Section 37 of the Act, yet the High Court would be extremely circumspect in interfering with the same, taking into account the statutory policy as adumbrated by us herein above so that interference is restricted to orders that are passed which are patently lacking in inherent jurisdiction”

According to Shri Vishwanathan, one look at the Joint Venture Agreement and the arbitration clause therein would make it clear that the third party in this case had not been referred to at all, as a result of which there is a patent lack of inherent jurisdiction within the meaning of paragraph 16 of the *Deep Industries Ltd.* (supra).

We are of the view that a foray to the writ Court from a section 16 application being dismissed by the Arbitrator

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can only be if the order passed is so perverse that the only possible conclusion is that there is a patent lack in inherent jurisdiction. A patent lack of inherent jurisdiction requires no argument whatsoever - it must be the perversity of the order that must stare one in the face.

Unfortunately, parties are using this expression which is in our judgment in *Deep Industries Ltd.*, to go to the 227 Court in matters which do not suffer from a patent lack of inherent jurisdiction. This is one of them. Instead of dismissing the writ petition on the ground stated, the High Court would have done well to have referred to our judgment in *Deep Industries Ltd.* and dismiss the 227 petition on the ground that there is no such perversity in the order which leads to a patent lack of inherent jurisdiction. The High Court ought to have discouraged similar litigation by imposing heavy costs. The High Court did not choose to do either of these two things. In any case, now that Shri Vishwanathan has argued this matter and it is clear that this is not a case which falls under the extremely exceptional category, we dismiss this special leave petition with costs of Rs.50,000/- to be paid to the Supreme Court Legal Services Committee within two weeks.

Pending applications stand disposed of.

(NIDHI AHUJA)
AR-cum-PS

(NISHA TRIPATHI)
BRANCH OFFICER