SUPREME COURT OF INDIA **REPORTABLE**

Bench: Justices Aniruddha Bose and Sanjay Kumar

Date of Decision: 18th March 2024

CIVIL APPELLATE JURISDICTION

MISCELLANEOUS APPLICATION DIARY NO. 21994 OF 2022

CIVIL APPEAL NOS. 8625-8626 OF 2019

JAIPUR VIDYUT VITRAN NIGAM LTD. & ORS. ⋯APPELLANT(S)

VERSUS

ADANI POWER RAJASTHAN LTD. & ANR.

RESPONDENT(S)/APPLICANT(S)

Legislation:

Section 112, 148, 152 of the Code of Civil Procedure, 1908

Section 2(28) of the Electricity Act, 2003

Rule 1 of Order XXIII , Rule 6 of Order LV, Order XII Rule 3 of the Supreme Court Rules, 2013

Constitution of India

Subject: Application seeking a direction for payment of Late Payment Surcharge (LPS) in relation to a Power Purchase Agreement under the Electricity Act, 2003.

Headnotes:

Late Payment Surcharge Dispute – Request for payment of Rs.1376.35 crore as LPS by Adani Power Rajasthan Limited (APRL) from Rajasthan Discoms under PPA-2010 – Applicant relies on Article 8.3.5 of the PPA-2010 – Main appeal related to additional payment claims under PPA-2010 due to change in law was previously disposed of [Paras 2, 4].

Judicial History – The Supreme Court's 2020 judgment in the main appeal held APRL entitled to compensation due to change in law but capped interest for late payment surcharge at 9% per annum – Contempt proceedings in 2022

led to direction for payment of principal amount with capped interest, without addressing LPS specifically [Paras 3-7, 67].

Application Dismissed – The Court ruled that the Miscellaneous Application for LPS is not maintainable as the main judgment had conclusively dealt with issues around LPS – Emphasized on the improper use of Miscellaneous Applications to alter or modify concluded judgments – Costs imposed on the applicant for multiple hearings [Paras 8-23].

Electricity Act, 2003 - Payment of Late Payment Surcharge (LPS) - The Supreme Court deliberated on the claim of Adani Power Rajasthan Limited (APRL) for a Late Payment Surcharge (LPS) from the Rajasthan Discoms, as per the Power Purchase Agreement dated 28.01.2010. The main issue revolved around the non-payment of LPS by the Rajasthan Discoms, following a change in law clause under the agreement.

Power Purchase Agreement (PPA) and Late Payment Surcharge – Discussion – The Court focused on the interpretation of Article 8.3.5 of the PPA and its application, considering the context of late payment for electricity supplied by APRL under changed conditions due to non-availability of domestic coal and subsequent reliance on imported coal. [Para 3, 4, 66, 67]

Judicial Review and Interpretation – Limited Scope – The Court reiterated its limited scope in reviewing and interpreting contractual obligations under a Power Purchase Agreement, emphasizing on the specific clauses and the context of their execution. The court also reviewed previous judgments and APTEL's findings on the matter. [Para 5, 6, 14, 20]

Decision – Dismissal of Application – The Court dismissed the application filed by APRL seeking LPS, noting that the issue had been addressed in the earlier judgment, and no grounds for review or reinterpretation were established. The Court further imposed costs on APRL for the miscellaneous application. [Para 23]

Decision – Imposition of Costs – The Court imposed a cost of Rs. 50,000 on the applicant (APRL) to be remitted to the Supreme Court Legal Aid Committee, citing the multiple listings of the application and the need to discourage such repetitive and non-meritorious litigation. [Para 23]

Referred Cases:

- Energy Watchdog vs. Central Electricity Regulatory Commission and Others MA Nos.27052706 of 2018 in Civil Appeal Nos.5399-5400 of 2016 (SC)
- Supertech Limited vs. Emerald Court Owner Resident Welfare Association & Others [(2023) 10 SCC 817]
- Ghanashyam Mishra & Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited Limited [M.A. No. 1166 of 2021 in CA No. 8129 of 2019] SC
- State (UT of Delhi) -vs- Gurdip Singh Uban and Others [(2000) 7 SCC 296]
- Sone Lal and Others -vs- State of Uttar Pradesh [(1982) 2 SCC 398]
- Ram Chandra Singh -vs- Savitri Devi and Others [(2004 12 SCC 713]
- Common Cause -vs- Union of India and Others [(2004) 5 SCC 222]
- Zahira Habibullah Sheikh and Another -vs- State of Gujarat and Others [(2004) 5 SCC 353]
- P.N. Eswara Iyer and Others -vs- Registrar, Supreme Court of India [(1980) 4 SCC 680]
- Suthendraraja alias Suthenthira Raja alias Santhan and Others -vs- State through DSP/CBI, SIT, Chennai [(1999) 9 SCC 323],
- Ramdeo Chauhan alias Raj Nath -vs- State of Assam [(2001) 5 SCC 714]
- Devendra Pal Singh -vs- State (NCT of Delhi) and Another [(2003) 2 SCC 501]
- Rashid Khan Pathan in re, [(2021) 12 SCC 64]
- Uttar Haryana Bijli Vitran Nigam Ltd. & Anr. -vs- Adani Power (Mundra) Limited [MA (D) No. 18461 of 2023 in Civil Appeal No.2908 of 2022] (SC)
- Kalpataru Properties Pvt. Ltd. -vs- Indiabulls Housing Finance Ltd. [MA No.2064 of 2022 in Civil Appeal No.7050 of 2022]
- Union of India -vs- Association of Unified Telecom Service Providers of India and Ors. [MA No.83 of 2021 in MA (D) No. 9887 of 2020 in Civil Appeal No.6328-6399 of 2015] (SC)

J U D G M E N T

ANIRUDDHA BOSE, J.

The applicant, Adani Power Rajasthan Limited (APRL), is a generating company as per Section 2(28) of the Electricity Act, 2003 ("2003 Act"). It operates a thermal power plant in the State of Rajasthan. There were three appellants (1 to 3) in the main set of appeals, in connection with which the present application has been taken out, being the distribution licensees of the State of Rajasthan as per the provisions of the 2003 Act. They shall, henceforth in this judgment, be collectively referred to as "Rajasthan Discoms". Rajasthan Urja Vikas Nigam Limited was the 4th appellant in the main set of appeals. It appears to have been formed by the Government of Rajasthan for the purpose of coordination among the aforesaid three Discoms, as also other distribution licensees of the State.

2. Through this miscellaneous application, the applicant seeks a direction upon the Rajasthan Discoms for making payment of Rs.1376.35 crore towards Late Payment Surcharge ("LPS"). This claim has been raised by the applicant citing Article 8.3.5 of the Power Purchase Agreement dated 28.01.2010 ("PPA-2010") entered into between the Rajasthan Discoms and the applicant. The present application has been captioned as "APPLICATION FOR DIRECTIONS ON BEHALF OF THE RESPONDENT NO.1/APPLICANT (ADANI POWER RAJASTHAN LIMITED)" in the said appeals which stood disposed of by a common judgment of a three-Judge Bench of this Court delivered on 31.08.2020. Review petitions filed against this judgment by the Rajasthan Discoms stood dismissed on 02.03.2021.

3. The appeals arose out of a dispute involving certain additional payments claimed by the applicant as per the PPA-2010. Under the agreement, the applicant was to supply electricity to the Rajasthan Discoms, which had to be generated by the applicant. For this purpose, the PPA-2010 postulated domestic coal as the primary source of energy, while imported coal was to be used as a backup option. The applicant's complaint was that, due to non-availability of sufficient domestic coal, it could not be allocated a domestic coal linkage by the Government of India and it was compelled to rely on imported coal from Indonesia, which had a higher cost. Claim for compensation of loss, caused on account of non-supply of domestic coal,

was raised by the applicant before the Rajasthan Electricity Regulatory Commission ("RERC"), invoking the change in law clause of the PPA-2010. Change in law was one of the conditions under the PPA-2010, for which tariff adjustment payment could be made by the seller of electricity following the procedure stipulated in the aforesaid agreement. By an order dated 17.05.2018, RERC held that the applicant would be entitled to relief on account of change in law, which was held to be the difference between actual landed cost of alternative/imported coal (as certified by the auditor) and actual landed cost of domestic linkage coal. This was recorded in an order passed on 25.02.2022 by a Coordinate Bench of this Court in a contempt action brought by the applicant [Contempt Petition (Civil) No(s) 877-878 of 2021]. We shall refer to the said proceeding later in this judgment. We also need not delve into the question of eligibility of the applicant to get additional sum on account of change in law, as that question stands finally decided in the main judgment.

4. The applicant had also raised another claim for additional payment before the RERC, under the head of carrying cost which was disallowed by the RERC. Rajasthan Discoms, being aggrieved by the grant of change-in-law compensation, as also the applicant, being aggrieved by rejection of the claim for carrying costs appealed against the order of the RERC before the Appellate Tribunal for Electricity ("APTEL"). By a common decision dated 14.09.2019, the APTEL found that the applicant's claim based on "change in law" was valid and opined that the applicant was entitled to compensation for the loss caused to it because of change in law under a subsequent coal supply scheme, termed as the SHAKTI scheme, which failed to provide domestic coal linkage. The APTEL further found that the applicant would also be entitled for payment towards applicable carrying cost. The Rajasthan Discoms had appealed against the common decision of APTEL before this Court. The three-Judge Bench of this Court, by the judgement dated 31.08.2020, dismissed the appeals with the following observations and directions: -

*"**66.** Considering the facts of this case and keeping in view that the RERC and APTEL have given concurrent findings in favour of the respondent with regard to change in law, with which we also concur, we may now deal with the question of liability of appellants-Rajasthan Discoms with regard to late payment surcharge. In this regard, the following Articles 8.3.5 and 8.8 of PPA, which are relevant for the present purpose, are extracted hereunder:*

"8.3.5. In the event of delay in payment of a Monthly Bill by the Procurers beyond its Due Date, a Late Payment Surcharge shall be payable by such Procurers to the Seller at the rate of two percent (2%) in excess of the applicable SBAR per annum, on the amount of outstanding payment, calculated on a day to day basis (and compounded with monthly rest), for each day of the delay. The Late Payment Surcharge shall be claimed by the Seller through the Supplementary Bill. 8.8 Payment of Supplementary Bill 8.8.1 Either Party may raise a bill on the other Party (supplementary bill) for payment on account of:

i) Adjustments required by the Regional Energy Account (if applicable):

ii) Tariff Payment for change in parameters, pursuant to provisions in Schedule 4; or iii)Change in Law as provided in Article 10, and such Supplementary Bill shall be paid by the others party.

8.8.2 The Procurers shall remit all amounts due under a Supplementary Bill raised by the Seller to the Seller's Designated Account by the Due Date and notify the Seller of such remittance on the same day or the Seller shall be eligible to draw such amounts through the Letter of Credit. Similarly, the Seller shall pay all amounts due under a Supplementary Bill raised by Procurer(s) by the Due Date to concerned Procurer's designated bank account and notify such Procurer(s) of such payment on the same day. For such payments by the Procurer(s), Rebate as applicable to Monthly Bills pursuant to Article 8.3.6 shall equally apply.

8.8.3 In the event of delay in payment of a Supplementary Bill by either Party beyond its Due Date, a Late Payment Surcharge shall be payable at the same terms applicable to the Monthly Bill in Article 8.3.5.

8.9 The copies of all; notices/offers which are required to be sent as per the provisions of this Article 8, shall be sent by a party, simultaneously to all parties."

Liability of the Late Payment Surcharge which has been saddled upon the appellants is at the rate of 2% in excess of applicable SBAR per annum, on the amount of outstanding payment, calculated on a day to day basis (and compounded with monthly rest) for each day of the delay. Therefore, there shall be

huge liability of payment of Late Payment Surcharge upon the appellants-Rajasthan Discoms.

67. *With regard to the question of interest/late payment surcharge, we notice that the plea of change in law was initially raised by APRL in the year 2013. A case was also filed by APRL in the year 2013 itself raising its claim on such basis. However, the appellants-Rajasthan Discoms did not allow the claim regarding change in law, because of which APRL was deprived of raising the bills with effect from the date of change in law in the year 2013. We are, thus, of the opinion that considering the totality of the facts of this case and in order to do complete justice and to reduce the liability of the appellants-Rajasthan Discoms, payment of 2 per cent in excess of the applicable SBAR per annum with monthly rest would be on higher side. In our opinion, it would be appropriate to direct the appellants-Rajasthan Discoms to pay interest/late payment surcharge as per applicable SBAR for the relevant years, which should not exceed 9 per cent per annum. It is also provided that instead of monthly rest, the interest would be compounded per annum.*

68. *We accordingly direct that the rate of interest/late payment surcharge would be at SBAR, not exceeding 9 per cent per annum, to be compounded annually, and the 2 per cent above the SBAR (as provided in Article 8.3.5 of PPA) would not be charged in the present case.*

69. *Before we part with the case, we may notice that Shri Prashant Bhushan, raised the submission with respect to over-invoicing. He attracted our attention to the investigation pending before the DRI. He has submitted that 40 importers of coal are under investigation by the DRI concerning alleged over-invoicing. The letter of rogatory was issued. However, leamed counsel conceded that there is no ultimate conclusion in the investigation reached so far. Thus, we are of the opinion that until and unless there is a finding recorded by the competent court as to invoicing, the submission cannot be accepted. At this stage, it cannot be said that there is over-invoicing. We have examined the case on merits with abundant caution, and we find that there are concurrent findings of facts recorded by the RERC and the APTEL. With*

respect to the aspect that bid was premised on domestic coal, we find that findings recorded do not call for any interference."

5. The applicant had filed contempt proceedings alleging disobedience of the said judgment and order, which were registered as Contempt Petition (C) Nos. 877-878 of 2021. We have already referred to this proceeding. In the contempt proceeding, the applicant's position gets reflected in the submissions of its learned senior counsel, recorded in paragraph 6 of the order passed on 25.02.2022 (One of us, Aniruddha Bose, J., was a party to this order). The relevant portion of that order is reproduced below:-

*"**6.** Shri Abhishek Manu Singhvi, learned Senior Counsel appearing for the petitioner has submitted that the only dispute which was to be resolved by RERC, APTEL and this Court was with regard to the payment due because of "change in law", which was held to be the actual landed cost of alternate coal/imported coal as certified by the auditor minus landed cost of domestic linkage coal. There was no other dispute which was to be resolved by this Court. Learned Senior Counsel has submitted that it is now contended by the respondents that certain payments have been made by the respondents which, according to the learned Senior Counsel, was towards regular payment on the basis of domestic linkage coal and nothing else. Since, the "change in law" ground of the petitioner has been accepted by all the authorities i.e. RERC, APTEL and this Court and also confirmed by the dismissal of the Review Petition filed before this Court, the question cannot now be reopened at this stage. It is, thus, submitted that since the actual landed cost of alternate coal/imported coal as was submitted by the petitioner has been duly certified by the auditors, which has not been disputed by the respondents, the payment, as claimed, ought to have been made and since the same has not been paid, the respondents are liable for contempt. The further contention of the learned Senior Counsel of the petitioner is that the claim of the respondents that they had paid certain amount towards energy charges regularly month by month, which included certain amount of price of alternate coal/imported coal charges cannot be accepted, as at that stage i.e. in the year 2013, the respondents had not accepted the claim of the petitioner with regard to "change in law", and the assertion now being made by*

the respondents that they had paid certain amount after partially accepting the "change in law" theory cannot be accepted, as this issue had never been raised by respondents in any proceedings earlier, as the respondents had, in fact, throughout contested that the petitioner is not entitled to the "change in law" benefit."

6. The allegations of non-compliance with the judgment of the three-Judge Bench were dealt with by the Coordinate Bench in the aforesaid order passed on 25.02.2022. It was, inter-alia, observed and directed in the said order:-

*"**9.** Firstly, what we have to consider is only the effect of "change in law", which as per RERC, API'EL and this Court would be the actual landed cost of alternate coal/ imported coal minus the landed cost of domestic linkage coal. The question of any claim which the respondents may have against the petitioner, is not an issue before us. As per the principle laid down by RERC and affirmed up till this Court, the petitioner has claimed an amount of Rs.5344. 75 crores up to March, 2021. The said principle having been affirmed by the APTEL as well as by this Court and even in Review Petition, cannot be reopened now. It cannot be disputed that after March, 2021 also, the petitioner would be entitled to payment on the basis of the same calculation, which up to November, 2021 comes to Rs.130.69 crores. As such, the due amount up to November 2021 would be Rs.5344. 75 + Rs.130.69 = 54 75.44 crores. Out of this amount of Rs.54 75.44 crores, the petitioner has been paid a sum of Rs.2426.81 crores in terms of the interim order passed by this Court. Hence, as per the petitioner, the balance amount of Rs.3048.63 crores would remain due to be paid up to November, 2021. The interest at the maximum rate of 9% per annum, as capped by this Court vide its judgment and order dated 31.08.2020, is to be applied on the said amount, from the date the amount became due, till the date of actual payment. The further claim of late payment surcharge, amounting to Rs.2477.70 crores, as per the petitioner, would be a subject matter which the petitioner, if so advised, can claim before the appropriate forum, as the same is not the subject in question in the present*

proceedings, regarding which no directions have also been issued by this Court.

10. *As such, considering the totality of facts and circumstances of this case, prima face we are of the opinion that the respondents are liable for contempt for not complying this Court's order dated 31.08.2020. We, thus, direct the respondents to pay to the petitioner, the principal amount (as per the terms/norms laid down in the judgment of this Court dated 31.08.2020) minus Rs.2426.81 crores deposited by the respondents in terms of the interim order dated 29.10.2018 (which, as per the petitioner, the balance payable amount would be Rs.3048.63 crores) along with interest as per the applicable SBAR for the relevant years, which should not exceed 9% per annum (to be compounded annually), from the date the amount became due till the date of actual payment, within four weeks from today, failing which the respondents shall appear before this Court in person, on the next date, so as to enable this Court to frame charges."*

7. The contempt petitions were subsequently directed to be closed by another Coordinate Bench of this Court and order to that effect was passed on 19.04.2022. In this order, it was, inter-alia, observed:-

"With regard to the first question it may only be observed that by order dated 25.02.2022 passed in these contempt petitions, this court, in paragraph no. 9, has observed as under:

"The further claim of late payment surcharge, amounting to Rs.2477.70 crores, as per the petitioner, would be a subject matter which the petitioner, if so advised, can claim before the appropriate forum, as the same is not the subject in question in the present proceedings, regarding which no directions have also been issued by this Court."

As such, since according to the respondent(s) the payment made is only towards the principal amount plus 9% interest per annum, we are not inclined to pass any further orders as we have already left the question of late payment surcharge open, which the petitioner, if so advised, can claim before the appropriate forum.

As regards the second question of the alleged noncompliance, by the respondents after November, 2021 of the judgment and order dated 31.08.2020, we would not like to make any observation as there is neither. any material before us with regard to that nor the same was in question when the contempt petitions were filed. As such, we leave this question open to be agitated by the petitioner, of it is so advised.

With regard to the last issue raised by the respondents, which is to the effect that the claim of the Rajasthan Utilities against the petitioner outside the judgment dated 31.08.2020 be permitted to be made, we would only like to observe that the same cannot be a matter to be considered in a contempt petition and as such neither we are inclined to grant any such relief nor stop them from raising any such issue, if the respondents are so advised and found entitled under the law. With the aforesaid observations, we close these contempt petitions."

8. After institution of the present application on 19.07.2022, it was heard from time to time and finally on 24.01.2024, when this matter was called on for hearing, Dr. Abhishek Manu Singhvi, learned senior counsel, appearing for the applicant, sought leave to withdraw the application. Mr. Dushyant Dave, learned senior counsel appearing for the Rajasthan Discoms, however, opposed such prayer and his case was that the present application, having been taken out in an appeal which stood disposed of, did not lie and it should be dismissed on the ground that it is not maintainable. Mr. Dave drew our attention to paragraph 67 of the judgment of the three-Judge Bench, which we have quoted above.

The issue of LPS has been dealt with by the three-Judge Bench in the said passage.

9. In the course of hearing, it was projected as an application for clarification, though the same was registered as a miscellaneous application. The reliefs asked for in this application do not refer to any clarification. We have referred to the substance of the reliefs prayed for in this application earlier in this judgment.

10. Order XII Rule 3 of the Supreme Court Rules, 2013 ("2013 Rules") framed in pursuance of Article 145 of the Constitution of

India, stipulates:-

*"**3.** Subject to the provisions contained in Order XLVII of these rules, a judgment pronounced by the Court or by a majority of the Court or by a dissenting Judge in open Court shall not afterwards be altered or added to, save for the purpose of correcting a clerical or arithmetical mistake or an error arising from any accidental slip or omission."*

There are, however, two chapters in the 2013 Rules which permit review of a judgment or order of this Court, being Order XLVII and XLVIII. The former Order, contained in Part IV of the 2013 Rules relates to "Review of a Judgment" and the latter relates to "Curative Petition". There is no other provision in the 2013 Rules, whereby a litigant can apply for modification of a judgment or an order of this Court in a matter which stands finally concluded. On rare occasions, a litigant may apply for clarification of an order if the same is ex-facie incomprehensible, but we do not expect any judgment or order to bear such a character. So far as the applicant is concerned, it did not apply for review of the judgment delivered by the three-Judge Bench. Neither in the contempt action initiated by the applicant, did this Court find that any case of willful disobedience of the judgment of the three-Judge Bench was made out on the question of LPS. This would be apparent from the orders passed by this Court in the contempt petitions which have been reproduced earlier in this judgement. The judgment of the threeJudge Bench has already examined the question of LPS and by taking out a Miscellaneous Application, the applicant cannot ask for reliefs which were not granted in the main judgment itself.

11. In the case of **Ghanashyam Mishra & Sons Private Limited -vs- Edelweiss Asset Reconstruction Company Limited** [M.A. No. 1166 of 2021 in CA No. 8129 of 2019], a two-Judge Bench of this Court in its judgment delivered on 17th August 2022 observed and held:-

"4. *Having heard learned senior counsel for the parties and having perused the relevant materials placed on record, we are of the considered view that the present applications are nothing else but an attempt to seek review of the judgment and order passed by this Court on 13th April 2021 under the garb of miscellaneous application.*

5. We find that there is a growing tendency of indirectly seeking review of the orders of this Court by filing applications either seeking modifications or clarifications of the orders passed by this Court.

6. In our view, such applications are a total abuse of process of law. The valuable time of Court is spent in deciding such application which time would otherwise be utilized for attending litigations of the litigants who are waiting in the corridors of justice for decades together.*"*
(emphasis supplied)

12. Subsequently in the judgment of this Court in the case of **Supertech Limited-vs- Emerald Court Owner Resident Welfare Association & Others** [(2023) 10 SCC 817], a two-Judge Bench of this Court examined the maintainability of miscellaneous applications "for clarification, modification or recall" and was pleased to observe the following in the context of that case:-

"12. The attempt in the present miscellaneous application is clearly to seek a substantive modification of the judgment of this Court. Such an attempt is not permissible in a miscellaneous application. While Mr Mukul Rohatgi, learned Senior Counsel has relied upon the provisions of Order LV Rule 6 of the Supreme Court Rules, 2013, what is contemplated therein is a saving of the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent an abuse of the process of the Court. Order LV Rule 6 cannot be inverted to bypass the provisions for review in Order XLVII of the Supreme Court Rules, 2013. The miscellaneous application is an abuse of the process."

The authorities which were cited in the said Judgment by the Coordinate Bench are the cases of **State (UT of Delhi) -vs- Gurdip Singh Uban and Others** [(2000) 7 SCC 296], **Sone Lal and Others -vs- State of Uttar Pradesh** [(1982) 2 SCC 398], **Ram Chandra Singh -vs- Savitri Devi and Others** [(2004 12 SCC 713], **Common Cause -vs- Union of India and Others** [(2004) 5 SCC 222], **Zahira Habibullah Sheikh and Another -vs- State of Gujarat and Others** [(2004) 5 SCC 353], **P.N. Eswara Iyer and Others -vs- Registrar, Supreme Court of India** [(1980) 4 SCC 680], **Suthendraraja alias Suthenthira Raja alias Santhan and Others -vs-**

State through DSP/CBI, SIT, Chennai [(1999) 9 SCC 323], **Ramdeo Chauhan alias Raj Nath -vs- State of Assam** [(2001) 5 SCC 714], **Devendra Pal Singh -vs- State (NCT of Delhi) and Another** [(2003) 2 SCC 501] and **Rashid Khan Pathan in re**, [(2021) 12 SCC 64]. These authorities broadly stipulate that multiple attempts to reopen a judgment of this Court should not be permitted. Hence, we do not consider it necessary to deal with these authorities individually.

13. Rule 6 of Order LV of the 2013 Rules stipulates: - *"6. Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court."*

The maintainability of the present application cannot be explained by invoking the inherent power of this Court either. The applicant has not applied for review of the main judgment. In the contempt action, it failed to establish any willful disobedience of the main judgment and order on account of non-payment of LPS. Now the applicant cannot continue to hitchhike on the same judgment by relying on the inherent power or jurisdiction of this Court.

14. Appearing on behalf of the applicant, Dr. Singhvi, learned Senior Counsel, relied on five orders of this Court in which postdisposal applications were entertained. The first one was an order dated 29.10.2018 in the case of **Energy Watchdog -vs- Central Electricity Regulatory Commission and Others**, [MA Nos.27052706 of 2018 in Civil Appeal Nos.5399-5400 of 2016]. In that case, an application for impleadment on behalf of the State of Gujarat was allowed, upon going through a High Power Committee's report, which was given after the judgment was delivered. The judgment disposing of the Civil Appeal was delivered on 11.04.2017, but in the miscellaneous application, the applicant was given liberty to approach the Central Electricity Regulatory Commission for approval of the proposed amendments to be made to a power purchase agreement. That was a case where this Court, after the judgment was delivered, considered certain events which accrued subsequently and had a bearing on the main decision. The subsequent event was taken into account for modifying the order but there was no substantive change in the judgment itself.

15. The next order, on which Dr. Singhvi placed reliance, was passed on 04.05.2023 in the case of **Uttar Haryana Bijli Vitran Nigam Ltd. & Anr. -vs- Adani Power (Mundra) Limited** [MA (D) No. 18461 of 2023 in Civil Appeal No.2908 of 2022]. The substantive part of the order is contained in Paragraph 2 thereof and this paragraph reads:-

"2. As agreed by the learned counsel for the parties, the words "As per the details given in the PPA, the mode of transportation is through railway" shown in paragraph 32 of the judgment dated 20.04.2023 passed in C.A. No. 2908 of 2022 be read as "As per the details given in the FSA, the mode of transportation is through railway".

But this order appears to be in the nature of correcting an error which was clerical in nature and the Code of Civil Procedure, 1908 ("the Code") itself provides for such correction under Section 152 thereof, as also Order XII Rule 3 of the 2013 Rules.

16. The third order relied on by Dr. Singhvi was passed on 09.12.2022 in the case of **Kalpataru Properties Pvt. Ltd. -vs- Indiabulls Housing Finance Ltd**. [MA No.2064 of 2022 in Civil Appeal No.7050 of 2022]. The applicant therein had approached this Court contending that he was not heard when the civil appeal was decided. In that case, the appellant had approached this Court against an Order passed by NCLAT in Company Appeal (AT)(Insolvency) No. 880/2021 and the said appellant sought to withdraw the appeal on deposit of certain amount by the first respondent in the said appeal. The request was accepted by this Court and by the Order passed on 26.09.2022, the appeal pending before the NCLAT was also disposed of by this Court. The applicant was an intervenor before the NCLAT and his submission was that in the appeal before the NCLAT which was disposed of, he also sought to raise some grievances before the NCLAT, in his capacity as an intervenor. His case was that he should have been given the liberty to be heard as an intervenor before the NCLAT. A Coordinate
Bench of this Court entertained that application and held: -

"We do believe that this controversy should be resolved by the NCLAT itself i.e. whether on the appellants seeking to withdraw the appeal, there can be any impediment in withdrawal of the appeal and is the NCLAT really required to comment on the merits

of the order of the NCLT at the behest of an intervener. We further make it clear that we are not expanding the array of parties before the NCLAT as a number of entities seems to have jumped into the picture as the matter has gone on before the Court. We make it clear that only the parties/existing interventionist before the NCLAT will have the right of hearing.

In view of the orders passed in Civil Appeal No. 9062/2022, this appeal will also to be listed before the Bench presided over by the Chairman.

In view thereof, the final picture which would emerge would be before the NCLAT and to that extent the order passed by us on 14.11.2022 would be kept in abeyance till the NCLAT resolves the issue."

Again, this Order was in the nature of a review order by the applicant who was a party to the proceeding before the NCLAT. All the appeals before the NCLAT were disposed of without hearing him. The context is entirely different from the one in which the applicant has presently approached this Court.

17. The fourth order on which the present applicant relied was passed on 12.08.2022 in the case of **Supertech Limited -vs- Emerald Court Owner Resident Welfare Association & Ors.** [MA No.1918 of 2021 in Civil Appeal No.5041 of 2021]. The Coordinate Bench of this Court granted extension of time, as sought by the applicant therein, in effecting demolition of two building towers which were approved by the Court while disposing of the civil appeal. The power to extend time beyond that fixed by a Court on a legitimate ground is incorporated in Section 148 of the Code. If the time to do something requires to be extended, it would be within the inherent jurisdiction of this Court to go beyond the maximum period of 30 days prescribed in the aforesaid Section, after sufficient reason is shown. Section 112 of the Code itself provides that nothing contained in the Code shall affect the inherent powers of the Supreme Court under Article 136 or any other provision of the Constitution.

18. The fifth order referred to by the applicant was passed on 23.07.2021 in the case of **Union of India -vs- Association of Unified Telecom Service Providers of India and Ors.** [MA No.83 of 2021 in MA (D) No. 9887 of 2020 in Civil Appeal No.6328-6399 of 2015]. A miscellaneous application had been

filed for modification of the content of judgment dated 1st September 2020 passed in M.A. (D) No. 9887 of 2020 in Civil Appeal Nos. 6328-6399 of 2015. In the said proceeding, clarification was also sought on the aspect that the judgment did not bar the Union of India from considering and rectifying the clerical/arithmetical errors in computation of certain dues. This was again an Order, in substance, permitting rectification of an arithmetic error, which is implicit in Section 152 of the Code read with Order XII Rule 3 of the 2013 Rules.

19. We have indicated in the earlier part of this judgment that Dr. Singhvi had expressed his desire to withdraw the present application on the last date of hearing, i.e., 24.01.2024. Ordinarily, we would not have had set out the background leading to the filing of the present application and the course of the application that was taken before this Court in view of such submission. Any plaintiff would be entitled to abandon a suit or abandon part of the claim made in the suit at any time after institution of the suit, as provided in Rule 1 of Order XXIII of the Code. We, however, decided not to permit such simpliciter withdrawal, as the Rajasthan Discoms sought imposition of costs. Secondly, in our opinion, the provision which pertains to a suit would not ipso facto apply to a miscellaneous application invoking inherent powers of this Court, instituted in a set of statutory appeals which stood disposed of. Even if an applicant applies for withdrawal of an application, in exceptional cases, it would be within the jurisdiction of the Court to examine the application and pass appropriate orders. So far as the present proceeding is concerned, an important question of law has arisen as regards jurisdiction of the Court to entertain an application taken out in connection with a set of statutory appeals which stood disposed of. Judgment of this Court in **Supertech Limited** (supra) deals with this question and in our opinion, the ratio of the said judgment would apply to the present proceeding as well.

20. We felt it necessary to examine the question about maintainability of the present application as we are of the view that it was necessary to spell out the position of law as to when such post-disposal miscellaneous applications can be entertained after a matter is disposed of. This Court has become functus officio and does not retain jurisdiction to entertain an application after the appeal was disposed of by the judgment of a three-Judge Bench of this Court on 31.08.2020 through a course beyond that specified in the statute. This is not an application for correcting any clerical or arithmetical error. Neither it is an application for extension of time. A post disposal application for modification and clarification of the order of disposal shall lie only in rare

cases, where the order passed by this Court is executory in nature and the directions of the Court may become impossible to be implemented because of subsequent events or developments. The factual background of this Application does not fit into that description.

21. Our attention was drawn to an order passed on 14.12.2022 in which a Coordinate Bench was of the prima facie opinion that the applicant may be entitled to LPS as per Article 8.3.5 of PPA-2010, at least from 31.08.2020, till the actual payment was made pursuant to the order passed by this Court in the contempt proceedings. This prima facie view was expressed in the course of hearing of the present application only. We have examined the issue in greater detail. As we have already indicated, the applicant, after the three-Judge Bench decision was delivered, did not file any petition for review. On the other hand, it was the Rajasthan Discoms that had filed the review petitions which stood dismissed. In the contempt action instituted by the applicant, the question concerning payment of LPS was raised, but the Bench of this Court found that the same was not the subject in question in the contempt proceedings regarding which no direction had been issued by this Court. Hence the Coordinate Bench decided not to address that question in the contempt proceedings. In this judgement, we have already quoted the observations regarding the question of LPS made by the Contempt Court on 25.02.2022 and 19.04.2022. Despite that question being left open by the Contempt Court, we are of the view that a miscellaneous application is not the proper legal course to make demand on that count. A relief of this nature cannot be asked for in a miscellaneous application which was described in the course of hearing as an application for clarification.

22. So far as the observations made in the order passed in the present proceedings on 14.12.2022 are concerned, they were made only at a prima facie stage and do not have binding effect at the hearing stage. Moreover, the question whether such a prayer could be made in an application labeled as a “Miscellaneous Application” taken out in connection with a set of appeals which have been finally decided, does not appear to have been considered by this Court at the time of making of the order dated 14.12.2022. The order of this Court does not reflect any discussion on the issue of maintainability of the present application. It also does not appear to us that the maintainability issue was raised at that stage. Thus, mere making of such observations cannot be construed to mean that this Court found such application to be maintainable.

23. We, accordingly, dismiss the present application. This application was listed before us on several occasions and for that reason we impose costs of Rs. 50,000/- to be paid by the applicant to be remitted to the Supreme Court Legal Aid Committee.

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