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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP-36759-2025 (O&M)
Date of Decision: 12.12.2025**

TALWANDI SABO POWER LIMITED

....Petitioner(s)

Versus

PUNJAB STATE POWER CORPORATION LIMITED

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Vishrov Mukherjee, Advocate,
Mr. Pratyush Singh, Advocate,
Mr. Arjun Sheoran, Advocate,
Ms. Pranhita Singh, Advocate,
for the petitioner.

Mr. Gurminder Singh, Senior Advocate with
Mr. Somesh Arora, Advocate,
Ms. Anusha Nagrajan, Advocate,
Mr. Jatinder Singh Gill, Advocate,
Mr. Rahul Ranjan, Advocate,
Ms. Aakanksha, Advocate,
for the respondent.

JASGURPREET SINGH PURI, J. (Oral)

CM-18605-2025

The present application has been filed for placing on record
impugned order dated 31.07.2025 as Annexure A-1.

For the reasons recorded in the application, the same is allowed.
Impugned order dated 31.07.2025 is taken on record as Annexure A-1,
subject to all just exceptions.

**Main case**

1. The present writ petition has been filed under Article 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari* for quashing the impugned order dated 31.07.2025 (Annexure P-1) passed by learned Arbitral Tribunal.
2. Learned counsel for the petitioner submitted that in the main writ petition Annexure P-1, the impugned order was attached but inadvertently a short order was attached, however, the detailed order has now been filed along with *CM-18605-2025*, which may now be read as the impugned order.
3. Mr. Gurminder Singh, learned Senior Counsel for the respondent with Mr. Somesh Arora, Advocate submitted that he has no objection with regard to the same because it is only a technical defect. It is therefore ordered that Annexure A-1 be read and substituted in place of Annexure P-1.
4. Learned counsel for the petitioner submitted that there was an agreement between the petitioner and the respondent and the matter was referred to the learned Arbitral Tribunal which proceeded with the claim being raised by the petitioner. However, in the impugned order which has been passed by the learned Arbitral Tribunal, it was observed that the part of the claim pertaining to the plea of breach of coal obligation under PPA was not referred to the Arbitral Tribunal and therefore, the same does not fall within the scope of the present arbitration. He submitted that in this way, his rights regarding the claim have been foreclosed by the Arbitral Tribunal, which is contrary to the record because the claim put forth by the petitioner



before the Arbitral Tribunal was required to be adjudicated on merits by adducing evidence and the petitioner could not have been non-suited by foreclosing the claim raised by the petitioner before the learned Arbitral Tribunal.

5. Learned counsel submitted that the impugned order dated 31.07.2025 is not in the nature of an order passed under Section 16(3) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') because it is nowhere observed in the order that the order is being passed under Section 16(3) of the Act and therefore, the petitioner has chosen to file the present writ petition before this Court without resorting to the remedy of Section 37 of the Act. He also submitted that the impugned order is also bad in the eyes of law because the Arbitral Tribunal was required to take into consideration all the claims which were put forth by the petitioner in the claim petition and in this regard, an order was also passed by the Arbitral Tribunal dated 11.02.2024 in which it was observed that all the reliefs will be considered but now by way of the impugned order, the plea of the petitioner on the basis of the breach of coal obligation has been declined and the plea of the respondent has been accepted and therefore, the impugned order is also tainted with *mala fide* and is based on mis-representation on the part of the respondent and therefore, the same is liable to be set aside.

6. On the other hand, Mr. Gurminder Singh, learned Senior Counsel with Mr. Somesh Arora, Advocate, submitted that the present writ petition under Article 226 of the Constitution of India is neither maintainable nor entertainable. He submitted that the impugned order has been passed while deciding a plea raised as a preliminary issue under Section 16(3) of



the Act, which formed a part of the procedural order passed by the Arbitral Tribunal. He submitted that since the plea under Section 16(3) of the Act has been accepted as a preliminary issue, there was an alternative statutory remedy available to the petitioner under the Act including under Sections 37(2) and 34 of the Act and therefore, the present petition is liable to be dismissed on the ground of maintainability alone.

7. I have heard the learned counsels for the parties.

8. There was a dispute between the parties and the matter was referred to the learned Arbitral Tribunal, which proceeded with the arbitral proceedings. A plea was raised by the respondent i.e. Punjab State Power Corporation Limited, which was also the respondent before the learned Arbitral Tribunal, whereby a preliminary issue was raised by referring to the provisions of Section 16(3) of the Act and an order was passed vide Annexure P-33 dated 10.04.2025 in this regard. The aforesaid order dated 10.04.2025 (Annexure P-33) is reproduced as under:-

“1. During the sessions held from 04.03.2025 to 07.03.2025 the Tribunal heard Mr. Gurminder Singh, Ld. Senior Advocate on the jurisdictional plea raised by the Respondent under Section 16 (3) of the Arbitration and Conciliation Act, 1996. The jurisdictional plea was raised with regard to the permissibility of the Claimant's submissions premised on a plea of breach of obligation under the Power Purchase Agreement dated 01.09.2008 and an alleged consequential liability of the Respondent to compensate the Claimant by payment of deemed generation benefits and Capacity Charges as claimed.

2. By Procedural Order dated 07.03.2025, the Tribunal, for reasons of expediency, had proposed to hear



the submissions of the Respondent on the merits of the other claims, reserving liberty to the Claimant to respond to the preliminary objections, in addition to making his submissions in Rejoinder to the arguments which are yet to be addressed on the part of the Respondent.

3. *Thereafter, the Tribunal members convened and discussed the procedure to be adopted, and have decided that it would be appropriate to adjudicate the jurisdictional issue raised by the Respondent as a preliminary issue. This would enable the Tribunal to correctly understand the scope of the present arbitration.*

4. *Accordingly, the following issue has been framed:*

Whether a plea of breach of obligation under the Power Purchase Agreement dated 01.09.2008 has been referred to this Arbitral Tribunal by the order dated 06.11.2015 of the Punjab State Electricity Regulatory Commission ("PSERC") and falls within the scope of the present arbitration?

5. *This issue will be treated as a preliminary issue and on the next date of hearing, the Tribunal would be hearing the remaining submissions, if any, of the Respondent on it. Then the Claimant shall respond to the Respondent's submissions on the preliminary issue. The Tribunal would be hearing the submissions of the parties on the merits of the claims only after adjudicating the preliminary issue.*

6. *The parties are also directed to exchange their written submissions on this preliminary issue running into not more than 5 pages each and file them before this Tribunal at least three days before the next date of hearing.*

7. *The matter shall be taken up from **28th to 30th April 2025 from 11:30 am to 4:30 pm.** i.e. the date and time already fixed.*



9. A perusal of the aforesaid would show that during the arbitral proceedings before the learned Arbitral Tribunal, a specific preliminary plea was raised under Section 16(3) of the Act on the jurisdictional issue with regard to permissibility of the claimant's submissions on the basis of the plea of breach of obligation under the Power Purchase Agreement dated 01.09.2008. Thereafter, a perusal of para No.4 would show that a specific issue was framed with regard to the aforesaid and a perusal of para No.5 would show that it was observed that this issue be treated as a preliminary issue and on the next date of hearing, the Tribunal would be hearing the remaining submissions, if any, of the respondent. Thereafter, the matter was heard by learned Arbitral Tribunal on the aforesaid preliminary issue and on the basis of the aforesaid preliminary issue being framed, the present impugned order was passed. A perusal of para No.10 of the impugned order would show that the aforesaid issue which was framed was again reproduced in the aforesaid para. Thereafter, vide para No.156, it was concluded that the plea of the breach of obligation under the PPA has not been referred to the learned Arbitral Tribunal and it does not fall within the scope of the present arbitration and a perusal of para No.157 would show that the preliminary issue was decided accordingly. In this way, the aforesaid preliminary issue which was framed by way of the aforesaid reproduced order was decided in favour of the respondent by accepting its plea under Section 16(3) of the Act.

10. Therefore, it is very clear that the plea of the respondent under Section 16(3) of the Act was accepted by the learned Arbitral Tribunal. The provisions of Section 37 of the Act, which deal with the appeals clearly



show that when a plea under Section 16(3) of the Act is accepted, then an appeal against the same would lie. The provisions of Section 16(3) of the Act are reproduced as under:-

“16(3) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.”

11. During the course of arguments, when a query was raised to the learned counsel for the petitioner with regard to the maintainability of the present petition, he while referring to the judgment of Hon’ble Supreme Court in ***Bhaven Construction through Authorized Signatory Premji Bhai K. Shah Vs. Executive Engineers, Sardar Sarovar Narmada Nigam Limited and another, (2022)1 SCC 75*** submitted that the powers of the High Court under Articles 226 and 227 of the Constitution of India cannot be taken away even in the existence of any other alternative remedy. He referred to para No.12 and 18 of the aforesaid judgment, which are reproduced as under:-

“12. We need to note that the Arbitration Act is a code in itself. This phrase is not merely perfunctory, but has definite legal consequences. One such consequence is spelled out under section 5 of the Arbitration Act, which reads as under:-

5. Extent of judicial intervention.- Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part.”

(emphasis supplied)



The non-obstante clause is provided to uphold the intention of the legislature as provided in the Preamble to adopt UNCITRAL Model Law and Rules, to reduce excessive judicial interference which is not contemplated under the Arbitration Act.

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18. In any case, the hierarchy in our legal framework, mandates that a legislative enactment cannot curtail a Constitutional right. In Nivedita Sharma v. Cellular Operators Association of India, (2011) 14 SCC 337, this Court referred to several judgments and held:

"11. We have considered the respective arguments/submissions. There cannot be any dispute that the power of the High Courts to issue directions, orders or writs including writs in the nature of habeas corpus, certiorari, mandamus, quo warranto and prohibition under Article 226 of the Constitution is a basic feature of the Constitution and cannot be curtailed by parliamentary legislation - L. Chandra Kumar v. Union of India, (1997) 3 SCC 261. However, it is one thing to say that in exercise of the power vested in it under Article 226 of the Constitution, the High Court can entertain a writ petition against any order passed by or action taken by the State and/or its agency/instrumentality or any public authority or order passed by a quasi judicial body/authority, and it is an altogether different thing to say that each and every petition filed under Article 226 of the Constitution must be entertained by the High Court as a matter of course ignoring the fact that the aggrieved person has an effective alternative remedy. Rather, it is settled law that when a statutory forum is created by law for redressal of



grievances, a writ petition should not be entertained ignoring the statutory dispensation.”

(emphasis supplied)

It is therefore, prudent for a Judge to not exercise discretion to allow judicial interference beyond the procedure established under the enactment. This power needs to be exercised in exceptional rarity, wherein one party is left remediless under the statute or a clear 'bad faith' shown by one of the parties. This high standard set by this Court is in terms of the legislative intention to make the arbitration fair and efficient.

12. However, this Court is of the considered view that there is no dispute with regard to the aforesaid proposition of law that the powers of the High Court under Article 226 of the Constitution of India cannot be taken away even in the existence of an alternative remedy but the case has to fall in exceptional rarity cases, wherein there is a lack of inherent jurisdiction etc. Similar proposition was also considered by Hon'ble Supreme Court in a judgment passed by a three Judge Bench in ***Deep Industries Ltd. Versus Oil and Natural Gas Corporation Ltd. and another, (2020) 15 SCC 706***. The relevant portion of the aforesaid judgment is reproduced as under:-

“16. Most significant of all is the non-obstante clause contained in Section 5 which states that notwithstanding anything contained in any other law, in matters that arise under Part I of the Arbitration Act, no judicial authority shall intervene except where so provided in this Part. Section 37 grants a constricted right of first appeal against certain judgments and orders and no others. Further, the statutory mandate also provides for one bite at the cherry, and interdicts a second appeal being filed (See Section 37(2) of the Act).



17. 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 provision 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.

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24. Mr Rohatgi is also correct in pointing out that the legislative policy qua the general revisional jurisdiction that is contained by the amendments made to Section 115 CPC should also be kept in mind when the High Courts dispose of petitions filed under Article 227. The legislative policy is that no revision lies if an alternative remedy of appeal is available. Further, even when a revision does lie, it lies only against a final disposal of the entire matter and not against interlocutory orders. These amendments were considered in Tek Singh v. Shashi Verma 18 in which this Court adverted to these amendments and then stated: (SCC p. 681, paras 5-6)

"5.A reading of this proviso will show that, after 1999, revision petitions filed under Section 115 CPC are not maintainable against interlocutory orders.



6.Even otherwise, it is well settled that the revisional jurisdiction under Section 115 CPC is to be exercised to correct jurisdictional errors only. This is well settled. In *DLF Housing & Construction Co. (P) Ltd. v. Sarup Singh* 19 this Court held: (SCC pp. 811-12, para 5)

“5. ...The position thus seems to be firmly established that while exercising the jurisdiction under Section 115, it is not competent to the High Court to correct errors of fact however gross or even errors of law unless the said errors have relation to the jurisdiction of the Court to try the dispute itself. Clauses (a) and (b) of this section on their plain reading quite clearly do not cover the present case. It was not contended, as indeed it was not possible to contend, that the learned Additional District Judge had either exercised a jurisdiction not vested in him by law or had failed to exercise a jurisdiction so vested in him, in recording the order that the proceedings under reference be stayed till the decision of the appeal by the High Court in the proceedings for specific performance of the agreement in question. Clause (c) also does not seem to apply to the case in hand. The words "illegally" and "with material irregularity" as used in this clause do not cover either errors of fact or of law; they do not refer to the decision arrived at but merely to the manner in which it is reached. The errors contemplated by this clause may, in our view, relate either to breach of some provision of law or to material defects of procedure affecting the ultimate decision. and not to errors either of fact or of law, after the prescribed formalities have been complied



with. The High Court does not seem to have adverted to the limitation imposed on its power under Section 115 of the Code. Merely because the High Court would have felt inclined, had it dealt with the matter initially, to come to a different conclusion on the question of continuing stay of the reference proceedings pending decision of the appeal, could hardly justify interference on revision under Section 115 of the Code when there was no illegality or material irregularity committed by the learned Additional District Judge in his manner of dealing with this question. It seems to us that in this matter the High Court treated the revision virtually as if it was an appeal.”

13. In ***Bhaven Construction's case (supra)***, the application under Section 16 of the Act was rejected and therefore, no appeal was maintainable under Section 37 of the Act and therefore, the writ petition was filed under Article 226 of the Constitution of India and otherwise also, the aforesaid judgment of ***Bhaven Construction's case (supra)*** is totally distinguishable from the facts of the present case because in the present case, the preliminary plea of Section 16(3) of the Act was accepted and against such an order of acceptance, a specific and express statutory remedy is available under Section 37 of the Act and therefore, even on facts, the aforesaid judgment is distinguishable. Section 37 of the Act is reproduced as under:-

“37. Appealable orders. (1)*[Notwithstanding anything contained in any other law for the time being in force, an appeal shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely:*



- (a) refusing to refer the parties to arbitration under section 8;*
 - (b) granting or refusing to grant any measure under section 9;*
 - (c) setting aside or refusing to set aside an arbitral award under section 34.*
- (2) An appeal shall also lie to a Court from an order of the arbitral tribunal.*
- (a) accepting the plea referred to in sub-section (2) or sub-section (3) of section 16; or*
 - (b) granting or refusing to grant an interim measure under section 17.*
- (3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court.*

14. In view of the aforesaid facts and circumstances, this Court is of the considered view that the present writ petition which has been filed under Article 226 of the Constitution of India is neither entertainable nor maintainable in view of the express statutory remedy available to the petitioner.

15. Consequently, the present petition is dismissed. The petitioner is also burdened with costs of Rs.50,000/- (Rupees Fifty Thousand), which the petitioner is directed to deposit with the High Court Legal Services Committee, within a period of three months from today.

16. Put up for compliance purposes after three months.

12.12.2025

rakesh

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking	:	Yes/No
Whether reportable	:	Yes/No