

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NOS. 1376-1385 OF 2013

TRANSMISSION CORP. OF A.P. LTD. & ORS. ETC. Appellant (s)

VERSUS

SLS POWER LTD. & ORS. ETC. Respondent(s)
(With appln(s) for stay and directions and taking additional document on record)

[FOR FINAL DISPOSAL]

WITH

Civil Appeal No. 11331 of 2013

(With appln.(s) for condonation of delay in filing appeal and office report)

[FOR FINAL DISPOSAL]

Civil Appeal NO. 7860-7861 of 2013

(With office report)

[FOR FINAL DISPOSAL]

Civil Appeal No. 11333 of 2013

(With appln.(s) for condonation of delay in filing appeal and office report)

[FOR FINAL DISPOSAL]

Civil Appeal No. 11335 of 2013

(With appln.(s) for condonation of delay in filing appeal and c/delay in re-filing appeal and office report)

[FOR FINAL DISPOSAL]

Civil Appeal No. 11336 of 2013

(With appln.(s) for condonation of delay in filing appeal and office report)

[FOR FINAL DISPOSAL]

Civil Appeal No. 11337 of 2013

(With appln.(s) for condonation of delay in filing appeal and office report)

[FOR FINAL DISPOSAL]

Civil Appeal No. 11339 of 2013

(With appln.(s) for condonation of delay in filing appeal and c/delay in re-filing appeal and office report)

[FOR FINAL DISPOSAL]

Civil Appeal No. 11340 of 2013

(With appln.(s) for condonation of delay in filing appeal and c/delay in re-filing appeal and office report)

[FOR FINAL DISPOSAL]

Date: 11/03/2014 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SURINDER SINGH NIJJAR

HON'BLE MR. JUSTICE A.K. SIKRI

For Appellant(s)

CA 1376-1385/13 & rr in
CA 11331/13, 7860-61/
2013, 11333/13,
11336/13, 11337/13,
11339/13 & 11340/13

Mr. A.K. Ganguly, Sr. Adv.
Mr. A. Mariarputham, Sr. Adv.
Mr. A. Subba Rao, Adv.
Mr. Yusuf Khan, Adv.

C.A. 11331/13

Mr. Amarendra Sharan, Sr. Adv.
Mr. S. Sadasiva Reddy, Adv.
Mrs. S. Usha Reddy, Adv.

C.A. 7860-61/13 &
11333/13, 11335/13,
11336/13 & rr
in CA 1376-85/13 Ms. Liz

Dr. Abhishek Manu Singhvi, Sr. Adv.
Mr. Gopal Choudhary, Adv.
Mr. Amit Bhandari, Adv.
Mathew, Adv.
Mr. M.F. Philip, Adv.
for M/s Mclm & Co.

C.A. Nos. 11337/13,
11339/13, 11340/13 &
rr in C.A.1376-85/13

Mr. V. Giri, Sr. Adv.
Mr. Y. Raja Gopala Rao, Adv.
Mr. Challa Gunaranjan, Adv.
Mr. Hitendera Nath Rath, Adv.

For Respondent(s)

Mr. V. Giri, Sr. Adv.
Ms. Swapna Seshadri, Adv.
Mr. Pramod Dayal, Adv.
Mr. Nikunj Dayal, Adv.
Ms. Payal Dayal, Adv.
Mr. Anand Ganesan, Adv.

Mr. K.V. Mohan, Adv.
Mr. K.V. Balakrishnan, Adv.

State of A.P.

Mr. G.N. Reddy, Adv.
Mr. Debojit, Adv.
Mr. M. Bala Shivudu, Adv.
Mr. Sidhartha Reddy, Adv.

Mr. Mrigank Prabhakar, Adv.
Mr. Ejaz Maqbool, Adv.
Mr. Faraz Maqbool, Adv.
Ms. Prity Kunwar, Adv.

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

We have heard the learned counsel for the parties at length. We have also perused the record. In our opinion, it would not be appropriate to express any views on the merits of the controversy involved. However, we are mindful of the fact that this Court, in the earlier round of litigation, has rendered an exhaustive judgment in Transmission Corporation of

Andhra Pradesh Limited & another vs. Sai Renewable Power Private Limited and others [(2011) 11 SCC 34]. In the aforesaid judgment, this Court has noticed that the applicants herein had established the generating stations in furtherance to the scheme and the guidelines provided by the Central Government which, in turn, were adopted with some modification by the

State Government. The basic policy of both the Central as well as the State Government was to encourage private sector participation in generation, transmission and distribution of electricity on the one hand and to further the objective of distancing the regulatory responsibilities of the Regulatory Commission from the Government. The purpose was also to harmonize and rationalize the provisions of the existing laws relating to electricity in India as well. The Court also noticed that unless the generators are given the appropriate tariff, their very survival would be at stake.

Keeping in view the aforesaid, this Court in Civil Appeal No.2926 of 2006 passed a common order in a batch of connected appeals on 8.7.2010.

The matters were remanded back to the Andhra Pradesh Electricity Regulatory Commission with a direction that it shall hear the non-Conventional energy generators afresh and fix/determine the tariff for purchase of electricity in accordance

with law, expeditiously. It was further made clear that order dated 20.6.2001 passed by the Andhra Pradesh Electricity Regulatory Commission has attained finality and was not challenged in any proceedings so far. "This judgment shall not, therefore, be in detriment to that order which will operate independently and in accordance with law".

Unfortunately, on remand, three members of the Regulatory Commission, gave three individual opinions with regard to the fixation of tariff. This again led to filing of appeals before the Appellate Tribunal for Electricity by both the sides. As an interim measure, the Appellate Tribunal directed that the tariff as determined by the Chairmans of the State Commission shall be made effective in the interim period till the final disposal of the appeals. Now the tariff has been determined by the Appellate Tribunal on 20.12.2012, which has again been challenged in the present appeals. The end result of all this is that the amount which is due and payable to

the applicants, that is, all three kinds of generators i.e. Biomass, Hydro and Bagasse generators have not been paid the full amount which has been found due and payable to them on the basis of the orders passed by the Regulatory Commission as well as the Appellate Tribunal.

Keeping in view the equities of both the sides, we have proposed to the appellants herein in Civil Appeal Nos.1376-1385 of 2013 to pay at least 75% of the amount due, excluding the interest on arrears @ 12% to be compounded on quarterly basis, as directed in the order dated 12.12.2012 of the Appellate Tribunal, for the time being. Learned counsel appearing for the appellants has submitted that they would be able to persuade the appellants to deposit 50% of the amount due. For this purpose, the appellants are directed to supply the actual facts and figures of the amount which will be due and payable individually to the three different kinds of generators and the amount that will be paid to

each of them. Let the figures be supplied by tomorrow i.e. 12th March, 2014 to the respondents/applicants.

List the matters on 13th March, 2014.

| (VINOD LAKHINA)
| COURT MASTER

| | (INDU BALA KAPUR)
| | COURT MASTER

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