

ITEM NO.101

COURT NO.13

SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CIVIL APPEAL NO(s). 3550 OF 2007

N T P C LTD.

Appellant (s)

VERSUS

CEN.ELECT REGUL.COMMN.& ORS.

Respondent(s)

(With appln(s) for stay)

Date: 02/12/2010 This Appeal was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA
HON'BLE MR. JUSTICE ANIL R. DAVE

For Appellant(s) Mr.M.G.Ramachandran,Adv.
Mr. K.V.Mohan,Adv.
Mr.Anand K.Ganesan,Adv.

For Respondent(s) Mr.Shail Kr.Dwivedi,AAG,
Mr. Pradeep Misra ,Adv

Mr. M.T. George,Adv.

Mr. A.S. Bhasme ,Adv
Mr.Brajesh Pandey,Adv.
Mr.Pankaj Singh,Adv.

Mr. H.K. Puri ,Adv

Ms.Yogmaya Agnihotri,Adv.
Mr. Ashok Kumar Singh ,Adv

Mr. R. Nedumaran ,Adv

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Mr.Vimal Dubey,Adv.

Mr. Suresh Chandra Tripathy ,Adv

Mr.Gaurav Pachnanda,Adv.
Mr.S.N.Mitra,Adv.
Mr.Sidhanth Goel,Adv.
Mr. Jagjit Singh Chhabra ,Adv

Mr.Disit Saikia,Adv.
Ms.Ruchi Gaur Narula,Adv.
Mr. Alok Gupta ,Adv

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

The appeal is disposed of in terms of the signed order.

(KUSUM SYAL)
SR.P.A.

(RENU DIWAN)
COURT MASTER

(Signed order is placed on the file)

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 3550 OF 2007

N T P C LTD.

Appellant (s)

VERSUS

CEN.ELECT REGUL.COMMN.& ORS.

Respondent(s)

O R D E R

This appeal is directed against the judgment and order dated 30.3.2007 passed by the Appellate Tribunal for Electricity (hereinafter referred to as the "Appellate Tribunal") whereby the Appellate Tribunal has held in the case of the appellant herein, namely NTPC, that it is too late in the day to claim capital expenditure of Rs.370.30 crores as on April 1, 2004 for determination of tariff and therefore, such a controversy could not be permitted to be raked up at such a belated stage.

By the aforesaid order, however, the Appellate Tribunal left open the question as to whether the appellant could claim capital expenditure incurred after 2004 on establishment of offices for managing the stations, since the said question was not raised and the appeal before the Appellate Tribunal was restricted only to claim of capital expenditure as on April 1, 2004.

The aforesaid order was passed by the Appellate Tribunal in view of the order passed by the Central Electricity Regulatory Commission on 26.4.2006, whereby the Commission has

rejected the claim of the appellant in entirety for booking the capital expenditure for establishing its corporate offices and various other offices in the tariff.

According to the appellant, it has incurred capital expenditure to the tune of Rs.370.30 crores as on April 1, 2004 for establishing its corporate offices, regional offices, transport and custom clearance offices and therefore, the benefit of the said capital expenditure was claimed by the appellant as being entitled to such benefit. The Commission,

however, refused to take the aforesaid amount into consideration for computation of tariff of the generating stations. The Appellate Tribunal refused to look into the aforesaid claim on the ground that the aforesaid capital expenditure for determination of tariff cannot be permitted to raked up at such a belated stage.

Counsel appearing for the appellant states that although the appellant may not be entitled to claim the benefit for the retrospective period yet it could always claim the offshoot of such benefit in the future years just after April 1, 2004 claiming such benefit as may be available to it in accordance with law.

Counsel appearing for the respondent, however, states that the appellant is not entitled to claim any such benefit not only on the ground on which the appeal was dismissed but also on the

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ground that the appellant is not entitled to claim any such benefit at all, in view of the Regulation which is applicable to the facts and circumstances of the present case. This aspect which is raised by the counsel appearing for the respondent was not considered by the Appellate Tribunal which is clear from a bare reading of the order passed by the Appellate Tribunal. As to whether or not the benefit which is claimed by the appellant on the capital expenditure incurred as on April 1, 2004 could be available in the future years and whether or not such benefit at all be available to the appellant in view of the extent

regulations were not considered by the Tribunal. These two issues are concurrent and inter-connected, and findings on the same are to be recorded specifically. Considering the said fact, we feel that this matter is required to be remitted back to the Tribunal for giving decisions on the aforesaid two issues, specifically, so as to effectively decide the dispute between the parties.

In terms of the aforesaid observation and findings, we remit back the matter to the Appellate Tribunal for giving its decision on the aforesaid two aspects as expeditiously as possible.

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The appeal stands disposed of in terms of the aforesaid order.

.....J
(DR.MUKUNDAKAM SHARMA)

.....J
(ANIL R.DAVE)

NEW DELHI
DECEMBER 2, 2010

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