

ITEM NO.103

COURT NO.5

SECTION XVII

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

CIVIL APPEAL NO. 800/2014

M/S NANDI SAHAKARI SAKKARE KARKHANE NIYAMITA

APPELLANT(S)

VERSUS

KARTNATAKA ELECTRICITY REGULATORY COMMISSION
& ORS.

RESPONDENT(S)

(WITH APPLN. (S) FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT AND OFFICE REPORT)

Date : 19/10/2016 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI

HON'BLE MR. JUSTICE ABHAY MANOHAR SAPRE

For Appellant(s)

Mr. Chirag Joshi, Adv.

Mr. Ghanshyam Joshi, Adv.

For Respondent(s)

Mr. Saurabh S. Sinha, Adv.

Mr. Prashant Kumar, Adv.

Mr. Dhawesh Pahuja, Adv.

for M/s. AP & J Chambers, Adv.

UPON hearing the counsel the Court made the following
O R D E RThe appeal is partly allowed in terms of the signed
order.[VINOD LAKHINA]
COURT MASTER[INDU POKHRIYAL]
COURT MASTER

[SIGNED ORDER IS PLACED ON THE FILE]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 800/2014

M/S NANDI SAHAKARI SAKKARE
KARKHANE NIYAMITA . . . APPELLANT
VERSUS

KARNATAKA ELECTRICITY REGULATORY
COMMISSION & ORS. . . RESPONDENTS

ORDER

1. This appeal seeks to challenge the order of the Appellate Tribunal for Electricity at New Delhi ("Appellate Tribunal" for short) dated 18th February, 2013 passed in Appeal No.142 of 2012 by which the claim of the appellant to a higher rate for supply of electricity has been rejected and the appellant has been held entitled to the rates under the Power Purchase Agreement ("PPA" for short) entered into between the appellant and Karnataka Power Transmission Corporation

Limited (KPTCL), the predecessor-in-interest of the second respondent on 9th June, 2005.

2. The aforesaid PPA was terminated on 3rd May, 2010 and the same was approved by the Karnataka Electricity Regulatory Commission ("State Commission" for short) by its order dated 13th January, 2011 though with effect from the date of termination i.e. 3rd May, 2010. The appellant was granted open access facility with effect from 12th March, 2011 and its entitlement for payment of energy supplied for the period following the approval of the termination of the PPA to date of grant of the open access i.e. 14th January, 2011 to 12th March, 2011 was decided in favour of the appellant.

3. Though the appellant claims that as the termination of the PPA effected on 3rd May, 2010 was validated by the State Commission on 13th January, 2011 with effect from the date of termination, the appellant cannot be bound by the rates under the terminated PPA and, therefore, its claim for enhanced rate i.e. Rs.5.50 per unit on the basis of an order of the State Commission dated 24th March, 2011 passed in OP No.16 of 2010 and connected cases should have been allowed. The aforesaid claim of the appellant is resisted by the respondents on the ground that notwithstanding the termination of the PPA and its approval from the date of such termination, unless materials are brought on record by the appellant to show that it had incurred a higher cost of generation than what was incurred under the PPA, the appellant would not be entitled to a higher

rate for supply of electricity during the period in question. In this regard, a Government Order dated 3rd June, 2010 (paragraphs 8 and 9 thereof) has been indicated in support.

4. Reading the order of the State Commission dated 24th May, 2012 (paragraph 12 thereof), rejecting the aforesaid claim of the appellant, which has been approved by the Appellate Tribunal by the impugned order dated 18th February, 2013, it appears that the basis for declining any higher rate to the appellant is the absence of materials in support of its claim as required in terms of the Government Order dated 3rd June, 2010. But that is not how the case had proceeded. The claim of the appellant was not based on the terms of the Government Order but on the basis that the PPA itself stood terminated with effect from 3rd May, 2010. The absence of any

materials can be construed to be on account of the above. In the above situation we are of the view that for the ends of justice the appellant should be allowed a further opportunity to lay before the concerned authority materials in support of its claim for a higher rate, if such materials are so available. We, therefore, interfere with the orders of the State Commission and the Appellate Tribunal and remand the matter to the State Commission (Karnataka Electricity Regulatory Commission) for a de novo adjudication in the light of the present directions after affording both sides an opportunity to lay before the State Commission full materials in support of their respective cases as required in terms of the Government Order dated 3rd June, 2010.

5. Consequently and in the light of the above the appeal is partly allowed in terms of the above directions. The matter be considered afresh by the State Commission in the light of the present directions.

.....,J.
(RANJAN GOGOI)

.....,J.
(ABHAY MANOHAR SAPRE)

NEW DELHI
OCTOBER 19, 2016