

D11  
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  
RECORD OF PROCEEDINGS

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&#39;BLE MR. JUSTICE RANJAN GOGOI  
HON&#39;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 R

The 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]

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IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO. 800/2014  
M/S NANDI SAHAKARI SAKKARE  
KARKHANE NIYAMITA ...APPELLANT  
VERSUS  
KARTNATAKA ELECTRICITY REGULATORY  
COMMISSION & ORS. ...RESPONDENTS  
ORDER

1. This appeal seeks to challenge the  
order of the Appellate Tribunal for  
Electricity at New Delhi (â SAppellate  
Tribunalâ \235 for short) dated 18 th  
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 (â SPPAâ \235 for short)  
entered into between the appellant and  
Karnataka Power Transmission Corporation

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

2. The aforesaid PPA was terminated on  
3 rd  
May, 2010 and the same was approved by  
the Karnataka Electricity Regulatory  
Commission (â SState Commissionâ \235 for short)  
by its order dated 13 th  
January, 2011 though  
with effect from the date of termination  
i.e. 3 rd

May, 2010. The appellant was granted open access facility with effect from 12 th

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. 14 th

January, 2011 to 12 th

March, 2011 was decided in favour of the appellant.

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3. Though the appellant claims that as the termination of the PPA effected on 3 rd May, 2010 was validated by the State Commission on 13 th

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 24 th

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 then what was incurred under the PPA, the appellant would not be entitled to a higher

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rate for supply of electricity during the period in question. In this regard, a Government Order dated 3 rd

June, 2010 (paragraphs 8 and 9 thereof) has been indicated in support.

4. Reading the order of the State Commission dated 24 th

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 18 th

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 3 rd

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 3 rd

May, 2010. The absence of any

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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 3 rd June, 2010.

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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