

COURT-II
IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

ORDER IN APPEAL NO. 52 OF 2016
ON THE FILE OF THE APPELLATE TRIBUNAL FOR ELECTRICITY,
NEW DELHI

Dated: 30th October 2018

Present: Hon'ble Mr. Justice N.K. Patil, Judicial Member
Hon'ble Mr. S.D. Dubey, Technical Member

In the matter of:

EID Parry (India) Limited

Dare House, 234, NSC Bose Road,
Parrys Corner,
Chennai – 600 001
Represented by its Manager Legal

... **Appellant(s)**

Versus

(1) Hubli Electricity Supply Company Limited
P.B. Road, Navnagar,
Hubballi – 580 025

(2) Chief Engineer (Electrical)
State Load Dispatch Centre,
28, Race Course Road,
Bengaluru – 560 009

(3) Karnataka Electricity Regulatory Commission
9.2, Mahalaxmi Chambers,
M.G. Road,
Bengaluru – 560 001
(Represented by its Chairperson)

... **Respondent(s)**

Counsel for the Appellant (s) : Mr. M.G. Ramachandran
Mr. Anantha Narayna M.G.
Mr. Shubham Arya

Counsel for the Respondent(s) : Ms. Pankhuri Bhardwaj for R-1

ORDER

PER HON'BLE MR. JUSTICE N. K. PATIL, JUDICIAL MEMBER

1. EID Parry (India) Limited, Chennai (Appellant herein), questioning the legality and validity of the impugned Order dated 19.03.2015 passed in OP No. 14/2013 on the file of the Karnataka Electricity Regulatory Commission, Bengaluru, has presented this appeal, being Appeal No.52 of 2016 for considering the following questions of law:

- (A) Whether PPA rate can be applied for the non PPA period?
- (B) Whether 3rd Respondent by extending the PPA rates for the non-PPA period indirectly validated the PPA?
- (C) Whether a party can be compelled to sell power at PPA rates even after the valid termination of the PPA?

2. The Appellant has sought the following reliefs in the instant Appeal:

- (A) Call for records; and upon perusal or records, be pleased to
- (B) Set aside the final order dated 19th March 2015, passed by the 3rd Respondent in OP N. 14 of 2015, produced herein as Annexure A-1;
- (C) Direct the 3rd Respondent to allow the Petition and consequently be pleased to direct the 1st and 2nd Respondents to jointly and severally pay the market rate for the power delivered by the Appellant for the period from July 2009 to June, 2011; and

- (D) Pass such other and further orders as this Hon'ble Tribunal deem fit to grant under the circumstances of the case.

3. The learned counsel, Mr. M.G. Ramachandran, appearing for the Appellant, at the outset submitted that, the subject matter involved in the instant appeal is directly covered by the Order dated 19.10.2016 passed by the Hon'ble Supreme Court in Civil Appeal No. 800/2014 [*M/s Nandi Sehakari Sakkare Karkhane Niyamita v Karnataka Electricity Regulatory Commission & Ors.*] wherein, the Hon'ble Supreme Court, has partly allowed the Appeal in terms of the directions contained therein. The matter may kindly be reconsidered afresh by the Karnataka Electricity Regulatory Commission in the light of the directions, as referred in para 4 of the aforementioned Order. Therefore, he submitted that, the instant appeal filed by the Appellant may kindly be disposed of in terms of the Order dated 19.10.2016 passed in Civil Appeal No. 800/2014 on the file of the Hon'ble Supreme Court of India (record of proceedings). The Order impugned dated 19.03.2015 passed by Karnataka Electricity Regulatory Commission in OP No. 14/2013 may kindly be set aside insofar it relates to the claim of the Appellant and the matter may kindly be remitted back for reconsideration afresh in accordance with law.

4. Further, he submitted that, an appropriate direction may kindly be issued to the State Regulatory Commission to dispose of the matter

expeditiously taking into consideration that the matter is pending for adjudication for several years between the parties.

5. *Per-contra*, learned counsel, Ms. Pankhuri Bhardwaj, appearing for the first Respondent submitted that, in the light of the submissions made by learned counsel appearing for the Appellant and following the Order passed by the Hon'ble Supreme Court dated 19.10.2016 in Civil Appeal No. 800/2014 and for the reasoning stated therein, the instant appeal may be disposed of.

6. Submissions made by learned counsel for the Appellant and learned counsel appearing for the first Respondent, as stated above, are placed on record.

7. We have heard learned counsel, Mr. M.G. Ramachandran, appearing for the Appellant, learned counsel, Ms. Pankhuri Bhardwaj, appearing for Hubli Electricity Supply Company Limited, Hubballi (1st Respondent herein) for quite some time. Respondent Nos. 2 and 3, though served, are unrepresented.

8. The reliance is placed by the learned counsel appearing for the Appellant on the Order dated 19.10.2016 passed by the Hon'ble Supreme Court in Civil Appeal No. 800/2014 [*M/s Nandi Sehakari Sakkare Karkhane Niyamita v Karnataka Electricity Regulatory Commission & Ors.*] in para 4, which thus reads hereunder:

“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.”

[Emphasis supplied]

9. In view of the submissions of the learned counsel appearing for the Appellant and learned counsel appearing for the first Respondent, as stated supra, and in the light of the Order of the Hon'ble Supreme Court dated 19.10.2016 passed in Civil Appeal No. 800/2014 [*M/s Nandi Sehakari Sakkare Karkhane Niyamita v Karnataka Electricity Regulatory Commission & Ors.*] in para 4, the instant appeal filed by the Appellant is disposed of in terms of the said Order and for the reasons stated therein with the following directions:

- (a) The instant Appeal filed by the Appellant is allowed insofar it relates to the claim of the Appellant.

- (b) Impugned Order dated 19.03.2015 passed in OP No. 14/2013 on the file of the Karnataka Electricity Regulatory Commission, Bengaluru, is hereby set aside.
- (c) The matter stands remitted back to the third Respondent/State Regulatory Commission for reconsideration a fresh in the light of the Order of the Hon'ble Supreme Court dated 19.10.2016 passed in Civil Appeal No. 800/2014, as held in para 4 of the said Order and disposed of the same as expeditiously as possible taking into consideration that the matter was pending for adjudication between the parties for several years.

All the contentions of the parties are left open.

Parties to bear their own costs.

With these observations the instant appeal stands disposed of.

(S.D. Dubey)
Technical Member

vt/js

(Justice N.K. Patil)
Judicial Member