

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY  
AT NEW DELHI  
(APPELLATE JURISDICTION)**

**APPEAL NO.268 OF 2014**

**Dated : 20<sup>th</sup> January, 2016**

**Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson  
Hon'ble Mr. T. Munikrishnaiah, Technical Member.**

**In the matter of:-**

1. **PMC POWER PRIVATE )  
LIMITED, )  
10-3-152 / B 203, East )  
Marredpally, Secunderabad – 500 )  
026. )**
2. **BHAVANI HYDRO POWER )  
PROJECTS PRIVATE LIMITED, )  
6-3-347/17/5, Dwarakapuri )  
Colony, Punjagutta, Hyderabad – )  
500 082. )**
3. **NCL INDUSTRIES LIMITED )  
Raghava Ratna Towers, 7<sup>th</sup> Floor, )  
Chirag Ali Lane, Hyderabad – 500 )  
001. )** ... **Appellants**

**AND**

1. **ANDHRA PRADESH )  
ELECTRICITY REGULATORY )  
COMMISSION, )  
4<sup>th</sup> & 5<sup>th</sup> Floor, Singareni Bhavan, )  
Red Hills, Lakadi-ka-pul, )  
Hyderabad – 500 004. )**

2. **TRANSMISSION CORPORATION )  
OF ANDHRA PRADESH )  
LIMITED, )**  
Represented by its Chairman & )  
Managing Director, Vidyut )  
Soudha, Khairatabad, Hyderabad )  
– 500 049. )
3. **SOUTHERN POWER )  
DISTRIBUTION COMPANY OF )  
ANDHRA PRADESH LIMITED, )**  
Represented by its Chairman & )  
Managing Director, Behind )  
Srinivasa Kalyana Mandapam, )  
Tiruchanoor Road, Tirupati – 517 )  
501. )
4. **EASTERN POWER )  
DISTRIBUTION COMPANY OF )  
ANDHRA PRADESH LIMITED, )**  
Represented by its Chairman & )  
Managing Director, P&T Colony, )  
Seethammadhara, Near )  
Gurudwara Junction, )  
Visakhapatnam – 530 013. )
5. **NEW & RENEWABLE ENERGY )  
DEVELOPMENT CORPORATION )  
OF A.P. LIMITED (NREDCAP), )**  
Represented by its VC & )  
Managing Director, 5-8-207/2, )  
Pisgah Complex, Nampally, )  
Hyderabad – 500 001. )
6. **THE GOVERNMENT OF )  
ANDHRA PRADESH, )**  
Represented by the Principal )  
Secretary, Energy Department, )

A.P. Secretariat, Hyderabad – 500 )  
022. ) .... **Respondents**

Counsel for the Appellant(s) : Mr. Anand K. Ganesan  
Ms. Swapna Seshadri  
Ms. Ishan Mukherjee

Counsel for the Respondent(s) : Mr. K.V. Mohan  
Mr. K.V. Balakrishnan for **R-1**  
Mr. A. Subba Rao  
Mr. K.L.D.S. Vinober for **R-2**  
to **R-4**.

## **J U D G M E N T**

**PER HON'BLE (SMT.) JUSTICE RANJANA P. DESAI - CHAIRPERSON**

1. The Appellants are electricity generating companies in new and renewable energy sector, who have established Mini/Small Hydro Power Plants in the State of Andhra Pradesh in terms of the incentives granted from time to time by the Government of India and the Government of Andhra Pradesh. Respondent No.1 is the Andhra Pradesh Electricity Regulatory Commission (“**the State Commission**”). Respondent No.2 is the Transmission Corporation of Andhra Pradesh (“**APTRANSCO**”). Respondent No.3 is Southern Power

Distribution Company of Andhra Pradesh Limited and Respondent No.4 is Eastern Power Distribution Company of Andhra Pradesh Limited. Respondent No.5 is the New & Renewable Energy Development Corporation of Andhra Pradesh (“**NEDCAP**”). Respondent No.6 is the Government of Andhra Pradesh. In this appeal, the Appellants have challenged order dated 23/8/2014 passed by the State Commission whereby the State Commission has determined tariff for Mini Hydel Power Projects for 11<sup>th</sup> year to 20<sup>th</sup> year from the Commercial Operation Date (COD).

2. Ms. Swapna Seshadri, learned counsel for the Appellants submitted that the basic grievance of the Appellants which goes to the root of the matter is that the State Commission has passed the impugned order without hearing the Appellants. Counsel submitted that the State Commission has delivered a common order without taking into account the individual costs and expenses of the Appellants. This course of action is contrary to the judgment of the Supreme Court in **Transmission Corporation of Andhra Pradesh Limited &**

**Anr. v. Sai Renewable Power Private Limited & Ors.**<sup>1</sup>

(“**Sai Renewable**”). To understand this grievance, it is necessary to give gist of the Appellants’ case.

3. The Government of Andhra Pradesh issued guidelines for promotion of non-conventional energy projects in Andhra Pradesh *inter alia*, specifying the power purchase price of Rs.2.25/kWh to be escalated at 5% with base year 1997-98 and to be reviewed after 3 years.

4. The Appellants signed Memorandum of Understanding to set up Mini Hydel Plants with Respondent No.5 (NEDCAP) and thereafter entered into Power Wheeling and Power Purchase Agreements with Respondent No.2 (APTRANSCO) to sell power to 3<sup>rd</sup> party H. T. consumers.

5. On 6/3/2000, the State Commission by an order fixed norms and parameters for the generation and sale of electricity from non-conventional energy sources in the State of Andhra

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<sup>1</sup> (2011) 11 SCC 34

Pradesh. Subsequently, the State Commission by order dated 20/6/2001 in a suo motu exercise in O.P. No.1075 of 2000 determined the price for purchase of electricity by Respondent No.2 from the non-conventional energy developers in the State of Andhra Pradesh. The relevant paragraph of the said order reads as under:

*“29. The existing incentives under G.O. Ms. No.93 dated: 18-11-1997, which are continued under the orders of the Commission from time to time till 24-06-2001 under our letter No.2473, Dated: 24-04-2001 are extended for the time being till 24-07-2001. (The temporary extension has been given to enable the developers to finalise agreements/arrangements relating to supply of power to APTRANSCO prior to 24-07-2001). With effect from the billing month of August 2001, all generators of non-conventional energy shall supply power to APTRANSCO only as per the following terms:*

- (i) Power generated by non-conventional energy developers is not permitted for sale to third parties.*
- (ii) Developers of non-conventional energy shall supply power generated to APTRANSCO/DISCOMS of A.P. only.*
- (iii) Price applicable for purchase by the supply licensee should be Rs.2.25 per unit with 5% escalation per annum with 1994-95 as the base year.*

*30. A suo moto review of the incentives to take effect from 1 April, 2004, will be undertaken by the*

*Commission after discussions with all the concerned parties. There will also be a review of the purchase price with specific reference to each developer on completion of 10 years from the date of commissioning of the project (by which time the loans from financial institutions would have been repaid) when the purchase price will be reworked on the basis of return on equity, O&M expenses and variable cost.”*

6. This order was not challenged by anybody and thus assumed finality. By this order, the State Commission prohibited any third party sales by non-conventional energy developers and directed to supply power to Respondent No.2. The State Commission further held that the tariff would be reworked only after the period of 10 years for the projects based on loan repayment, O&M Expenses and variable cost of each individual project. Thereafter, the Appellants entered into Power Purchase Agreements (PPAs) with Respondent No.2 for sale of electricity. Power purchase functions of Respondent No.2 then vested in the distribution licensees. The tariff as applicable in terms of order dated 20/6/2001 of the State Commission and as paid by Respondent No.2 is as under:

2001-02	Rs.3.16 per unit
2002-03	Rs.3.32 per unit
2003-04	Rs.3.48 per unit.

7. Thereafter, the State Commission initiated suo motu proceedings for redetermination of purchase price of Respondent No.2 from non-conventional energy projects effective from 1/4/2004. The State Commission by order dated 20/3/2004 redetermined the power purchase price for the Mini Hydel Projects as a single part tariff of Rs.2.60 per unit for the first year of operation and gradually reducing the same to Rs.1.88 per unit for the 10<sup>th</sup> year of operation. The State Commission determined the tariff for the Plant Load Factor (PLF) of upto 35% PLF beyond which the project developer was entitled to a tariff of only 21.5 paise per unit.

8. Aggrieved by the order dated 20/3/2004 of the State Commission, the Association of Small Hydro Power Developers in the State filed a writ petition before the High Court of Andhra Pradesh. The High Court of Andhra Pradesh by its



order dated 27/4/2004 directed the project developers to approach the State Commission for review of the order dated 20/3/2004. Pursuant to this order, a review petition being Review Petition No.5 of 2004 was filed before the State Commission. By order dated 7/7/2004, the State Commission disposed of the said review petition after considering minor modifications of the capital cost and certain other aspects. The State Commission determined the tariff for the 1<sup>st</sup> to 10<sup>th</sup> year of operation of the Appellants. This order was made applicable with retrospective effect based on the year of the operation for the projects even commissioned prior to 31/3/2004.

9. The Small Hydro Power Developers Association filed Writ Petition No.16621 of 2004 in the Andhra Pradesh High Court challenging the State Commission's order dated 7/7/2004. By order dated 15/6/2005, the High Court disposed of the writ petition with a direction to the Appellants to file appeals before this Tribunal. Pursuant to this order, project developers filed various appeals in this Tribunal, being Appeal Nos.6, 7, 8, 9,

10, 18, 19 and 58 of 2005 and batch. On 2/6/2006, this Tribunal allowed the appeals and set aside the orders of the State Commission revising tariff applicable to non-conventional project developers.

10. Appeals carried from the order dated 2/6/2006 passed by this Tribunal were disposed of by the Supreme Court on 8/7/2010 in **Sai Renewable**. The Supreme Court set aside this Tribunal's order dated 2/6/2006 and remanded the matters to the State Commission. Following is the operative part of the said order:

*“52. (a) The order of the Tribunal dated 2-6-2006 is hereby set aside.*

*(b) We hold that the Andhra Pradesh Electricity Regulatory Commission has the jurisdiction to determine tariff which takes within its ambit the “purchase price” for procurement of the electricity generated by the non-conventional energy developers/generators, in the facts and circumstances of these cases.*

*(c) We hereby remand the matters 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.*

*(d) It shall also re-examine that in addition to the above or in the alternative, whether it would be in the larger interest of the public and the State, to permit sale of generated electricity to third parties, if otherwise feasible.*

*(e) The Andhra Pradesh Electricity Regulatory Commission shall consider and pronounce upon all the objections that may be raised by the parties appearing before it, except objections in relation to its jurisdiction, plea of estoppel and legitimate expectancy against the State and/or APTRANSCO and the plea in regard to PPAs being result of duress as these issues stand concluded by this judgment.*

*(f) We make it clear that the 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.*

*(g) We also hereby direct that the State of Andhra Pradesh shall be added as a party-respondent in the proceedings and the Andhra Pradesh Electricity Regulatory Commission shall grant hearing to the State during the pendency of proceeding before it.*

*In the facts and circumstances of the case parties are left to bear their own costs.”*

11. It is clear from this order that the Supreme Court did not disturb order dated 20/6/2001 passed by the State Commission and clarified that its judgment will not be in detriment to order dated 20/6/2001 which will operate independently and in accordance with law. Therefore, paragraph 30 of order dated 20/6/2001 which we have quoted above is still valid which states that there will also be a review of the purchase price with specific reference to each developer on completion of 10 years from the date of commissioning of the project (by which time the loans from financial institutions would have been repaid) when the purchase price will be reworked on the basis of return on equity, O & M expenses and variable cost.

12. Learned counsel for the Appellants has pointed out that in **Sai Renewable**, while remanding the matter to the State Commission the Supreme Court directed that the State Commission shall hear the non-conventional energy generators afresh and fix/determine the tariff for purchase of electricity in accordance with law, expeditiously. The State

Commission was also directed to consider and pronounce upon all the objections that may be raised by the parties appearing before it, except certain objections like plea of estoppel, etc.

13. For the disposal of this Appeal, it is not necessary to go into all the subsequent proceedings. We can straightaway go to petition filed by M/s. APEPDCL before the State Commission under Sections 62 and 86(1)(b) of the Electricity Act, 2003 for determination of tariff from 11<sup>th</sup> year of operation for the energy purchases from M/s. Manihamsa Power Projects Limited for the period from 17/1/2011 to 16/1/2021 vide O.P. No.10 of 2012. In this petition, the State Commission issued notice to the Mini Hydel Developers of plants who had completed 10 years of operation and called for several details in prescribed formats. These included operational, financial, commercial and generation details, supported by the relevant Balance Sheets and Profit and Loss Accounts from the date of commercial operations till 31/3/2013 as well as projections into the future. It is the

case of the Appellants that letter dated 19/3/2014 from Director (Engg.) of the State Commission calling for information was received only by Appellant No.1. No notice was issued to Appellant No.2. Appellant No.3 did not receive the notice and, hence, did not furnish any information to the State Commission. After calling for data from Appellant No.1, no further notice was issued either for clarification or for any hearing and the State Commission passed the impugned order dated 23/8/2014 applying it to all the Appellants. Relevant paragraph of the said order reads as under:

*“9. Since all the essential elements of the tariff frame work for Mini Hydel Projects which have completed 10 years will be similar, the Commission has decided to dispose of the petition filed by APEPDCL in O.P.No. 10 of 2012 referred to supra, by a common order applicable to all the Mini Hydel power projects which have completed 10 years of operation. In pursuance thereof, the Commission issued notice to all Mini Hydel developers requesting for information relating to (1) Performance indications of the projects over the last 10 years to be filled up in two prescribed annexures (2) Projections by developer of these parameters for the next ten years (3) Copies of Balance Sheets and Profit & Loss Accounts of the developer for the period from COD till 31/3/2013. The Commission despite pursuance and follow up received information from only 6 out of 12*

*operational Mini Hydel projects to whom this was sent. The Commission felt that the data received was an adequate sample based on which the operational history of Mini Hydel Projects in Andhra Pradesh could be fruitfully extracted. Accordingly, the Commission used this data received from the Mini Hydel Projects in its analysis. In addition, the Commission considered the averments mentioned by APEPDCL in O.P.No.10 of 2012; counter/reply filed by M/s. Manihamsa Power Projects Pvt. Ltd. therein; submissions of the parties concerned therein during the hearing before the Commission, Study Report of independent consultant instituted by Commission and all the other relevant material available on record.*

*10. Based on its analysis, Commission decided to issue a common order in respect of all Mini Hydel Power Projects which have completed 10 years of operation.”*

14. It is the case of the Appellants that none of the Appellants had filed a tariff petition before the State Commission. The only petition which was filed was in respect of Manihamsa Power Limited which, according to the Appellants, has nothing to do with the Appellants.

15. By the impugned order, the State Commission has determined generic tariff for Mini Hydel Plants for 11<sup>th</sup> year to

20<sup>th</sup> year from the year of operation. According to the Appellants, the State Commission has failed to consider individual cases of the Appellants as specified in the PPA and order dated 20/6/2001 and decided common tariff for all Mini-Hydel Projects, which is contrary to the judgment of the Supreme Court in **Sai Renewable**. Several points have been raised in the appeal memo on the merits of the Appellants' case. It is contended that because the Appellants were not heard, attention of the State Commission could not be drawn to certain vital points which were peculiar to the Appellants' case. Counsel for the Appellants submitted that this is a fit case where the order needs to be set aside so far as it relates to the Appellants and the State Commission needs to be directed to consider the case of each of the Appellants and determine the Appellants' tariff.

16. Since it is the case of the Appellants that no notice was served on Appellant Nos.2 and 3 and though notice was served on Appellant No.1 calling for information, and it furnished certain details, no further notice was received by it, we wanted



to know from the counsel for the State Commission whether this statement made on behalf of the Appellants is true. However, though the State Commission was served as far back as on 27/11/2014, it did not choose to appear before this Tribunal. On 14/5/2015, we directed the office to issue fresh notice to the State Commission. Counsel for the Appellants was directed to serve notice on the State Commission. Accordingly, counsel for the Appellants served notice on the State Commission. However, again on 14/8/2015, the State Commission was not represented in this Tribunal. We expressed our anguish in our order dated 14/8/2015, adjourned the appeal to 28/9/2015 and directed the Appellants' counsel to serve copy of the order dated 14/8/2015 on the State Commission. On 28/9/2015, Mr. Balakrishnan appeared for the State Commission. He sought two weeks' time to file written submissions. Time was granted and the appeal was adjourned to 15/10/2015. On 15/10/2015, no written submissions were filed. Counsel for the State Commission again requested for time. As a last chance, the appeal was adjourned to 18/11/2015. We made

it clear that no further time will be granted. The appeal was then listed on 18/12/2015. On that day, counsel for the State Commission submitted that an unaffirmed copy of the affidavit which is to be filed on behalf of the State Commission has been served on the counsel for the Appellants. He stated that affirmed copy will be filed within two weeks. Counsel also submitted that affidavit could not be filed because of difficulties created by the bifurcation of the State of Andhra Pradesh, due to which the residuary State of Andhra Pradesh reconstituted State Commission which started functioning from 3/11/2014. Considering these facts, we adjourned the appeal to 15/1/2016 in the interest of justice. Dr. A. Srinivas Rao, Secretary in Charge of the State Commission has now filed affidavit on behalf of the State Commission to bring on record certain facts. The relevant paragraphs of the affidavit could be quoted.

*“3. I submit that as seen from the record, a petition for determination of fixed charges payable to M/s. Manihamsa Power Projects Ltd., a Mini-hydel power project was filed by the Eastern Power Distribution of Company of Andhra Pradesh Limited. The said*

*petition was taken on the file of the erstwhile Commission, vide O.P.No.10 of 2012.*

*4. I submit that during the hearing on 03/07/2013 in O.P. No.10 of 2012, the erstwhile Commission decided to take up all applications relating to determination of tariff of NCE Projects from 11<sup>th</sup> year onwards together. I submit that in respect of Mini-hydel power projects, notice were issued to several project developers, including M/s. PMC Power Pvt. Ltd., the Appellant No.1 herein requesting them to furnish Balance Sheets and Profit & Loss Accounts from their respective Commercial Operation Dates (COD) till 31/03/2013, vide letter dated 19/3/2014.*

*5. I submit that as seen from the record, notice to furnish such information was not given to Appellant No.2.*

*6. I submit that by letter dated 22/4/2014, five more Mini-hydel project developers, including Appellant No.3 herein were requested to furnish information in Annexure I & II together with Balance Sheets and Profit & Loss Accounts from their respective Commercial Operation Dates (COD) till 31/03/2013. Further, by the same letter, the said project developers were requested to attend a meeting with the erstwhile Commission on 28/4/2014 at 3.00 PM in the Commission's office with all the relevant data.*

*7. I submit that in pursuance of above mentioned notices, several Mini-hydel project developers furnished information as per the Annexures I & II together with Balance Sheets and Profit & Loss Accounts etc., to the erstwhile Commission, including Appellant No.1 herein. I further submit that Appellant No.3 did not furnish information to the erstwhile Commission.*

8. *I submit that some of the Mini-hydel power project developers submitted information as required by the erstwhile Commission and also attended the meeting on 28/4/2014. The information received from 6 out of 12 operational Mini-hydel projects, coupled with the material available on record in respect of the petition in O.P. No.10 of 2012, was analysed by the erstwhile Commission and a generic order for fixed cost for 11 to 25 years period of operation of Mini-hydel power projects was issued by the erstwhile Commission on 23/8/2014 wherein the erstwhile Commission directed that the fixed cost determined by it will be payable by the respective DISCOMs for all Mini-hydel based NCE projects which have completed 10 years irrespective of whether they have approached the Commission or not for such determination.”*

17. Regrettably, there is no definite data made available to us indicating that the Appellants were given a clear and unambiguous notice asking them to furnish details and informing them as to for what purpose the details were called for. The Appellants have admitted that one letter signed by the Director (Engg.) of the State Commission on 18/3/2014 was received by Appellant No.1. A copy of the said letter is produced by the Appellants as Appendix B to their Written Submission. On the said letter, there is a reference to letter dated 19/03/2014. It is not understood how reference of

letter dated 19/03/2014 is made on letter signed on 18/03/2014. This letter seeks information as per Annexures-I and II enclosed therewith. It requests the addressees to furnish the Balance Sheet and Profit and Loss Account from the Commercial Operation Date upto 31/03/2013. This information was directed to be furnished within a week's time from the date of issue of this letter. It is not clear as to whom this letter is addressed but it is found on the said letter that it is addressed to "persons as per list". However, the list is not produced before us. It must be noted here that by this letter, which was signed by Director (Engg.) on 18/3/2014, Appellant No.1 was not called for any hearing. This letter only sought certain information as per Annexures-I and II. The Appellants have stated that the said letter was received by Appellant No.1, however, Appellant Nos.2 and 3 have not received it. It is also the case of the Appellants that Appellant No.1 furnished the details on 19/4/2014 vide its letter dated 18/4/2014. Thereafter, Appellant No.1 was not contacted by the State Commission. It must also be stated that it is the case of the

Appellants that no public notice was issued and no discussion paper was floated.

18. It is stated in the Affidavit filed by the Secretary of the State Commission that by letter dated 22/4/2014, Appellant No.3 was requested to furnish information in Annexures-1 and II together with the Balance Sheet and Profit and Loss Account from its Commercial Operation Date upto 31/3/2013. It is further stated in the affidavit that by the same letter, Appellant No.3 was requested to attend the erstwhile State Commission on 28/4/2014 at 3.00 p.m. in its office with all the relevant data. This letter is not produced. Though we had requested counsel for the State Commission to get the record of the case, the same is not produced. Counsel for the Appellants has denied that any such letter was received by Appellant No.3. The State Commission ought to have substantiated its case that Appellant No.3 was called for hearing by producing the relevant record. It is therefore difficult to accept the submission of the State Commission that in spite of letter dated 22/4/2014, Appellant No.3 did not

furnish information to the erstwhile Commission. It is pertinent to note that the Appellants have frankly admitted that Appellant No.1 did receive one letter from the State Commission. However, there was no further correspondence between Appellant No.1 and the State Commission. We have no reason to disbelieve the Appellants' counsel's statement that Appellant No.3 did not receive notice. This could have been controverted by the State Commission by producing the record which it has not done.

19. It was contended by counsel for the State Commission that Appellant No.2 has not been issued any notice because Appellant No.2 had not completed 10 years from the date of Commercial Operation Date. We do not want to go into that aspect because counsel for the Appellants has submitted that in any case Appellant No.2 has now completed 10 years from the Commercial Operation Date.

20. Pertinently, the impugned order mentions only one hearing which took place on 3/7/2013. It does not mention any meeting of 28/4/2014 which is said to have been attended by some of the Mini-Hydel Project developers. As we have already noted, letter dated 22/4/2014 allegedly calling Appellant No.3 and others to attend the meeting was a very vital piece of evidence and that ought to have been produced before us. We had adjourned this matter a number of times to make it possible for the State Commission to furnish the record. The State Commission failed to do so.

21. We must at this stage revert to the judgment of the Supreme Court in **Sai Renewable**, where while remanding the matter to the State Commission to hear the Non-conventional Energy Generators afresh and fix / determine the tariff for purchase of electricity in accordance with law, the Supreme Court made it clear that Order dated 20/6/2001 passed by the State Commission had attained finality as it was as not challenged in any proceedings and that its judgment shall, therefore, not be in detriment to that order which will operate



independently and in accordance with law. Thus, the Supreme Court expressly kept order dated 20/6/2001 passed by the State Commission untouched and made it clear that that order shall operate independently. As stated above, in that order, the State Commission has observed that *“there will also be a review of the purchase price with specific reference to each developer on completion of 10 years from the date of commissioning of the project (by which time the loans from financial institutions would have been repaid) when the purchase price will be reworked on the basis of return on equity, O&M expenses and variable cost.”* Thus, it was necessary for the State Commission to follow its order dated 20/6/2001 and conduct review of the purchase price with specific reference to each developer. In this case, we feel that such exercise has not been done. It is admitted that Appellant No.2 has not been served. It is not clear as to whether Appellant No.3 has been served at all. One notice was sent to Appellant No.1 and Appellant No.1 supplied information pursuant thereto. However, no letter was issued to Appellant No.1 calling upon Appellant No.1 to attend the proceedings.

The State Commission interpreted the record furnished by Appellant No.1 without giving Appellant No.1 chance to explain its case. As per the impugned order, only one hearing took place i.e. on 3/7/2013 which is much prior to the notice dated 18/3/2013 received by Appellant No.1 on 19/3/2014.

22. Allegedly, a meeting was held on 28/4/2014 in which some of the Mini-Hydel Project Developers including Appellant No.3 was called. If that is so, it is not understood as to why such a notice was not given to Appellant Nos.1 and 2. In the aforementioned circumstances, we feel that this is a fit case where in the interest of justice the matter needs to be remanded to the State Commission with a direction to review the purchase price in the light of paragraph 30 of the order dated 20/6/2001 of the State Commission.

23. In the circumstances, the impugned order is set aside qua the Appellants to the extent it fixes the Appellants' tariff. The matter is remanded to the State Commission. The

Appellants shall furnish such data to the State Commission as they feel necessary within one month from today. If any further data is required, the State Commission shall call upon the Appellants to furnish the same within two weeks thereafter. The said data shall be furnished by the Appellant within two weeks of receipt of such letter. The State Commission shall complete the entire exercise of determination of the Appellants' tariff in the light of paragraphs quoted hereinabove of Order dated 20/6/2001 of the State Commission within a period of five months from today. The State Commission shall conduct the entire exercise independently and in accordance with law. We have expressed no opinion on the merits of the case. All the contentions of both sides are kept open.

24. Till such time as the State Commission conducts the entire exercise as directed by us, Respondent Nos.2 to 4 shall pay the tariff as per the impugned order without prejudice to the rights and contentions of all parties. Needless to say that the State Commission shall ensure that its order is given effect to by making necessary adjustments as regards the difference,

if any, in the tariff received under the impugned order and the order that may be passed by the State Commission.

25. We make it clear that this order shall create no equities in favour of other Mini/Small Hydro Power Projects which have not challenged the impugned order and have accepted it.

26. The appeal is allowed to the above extent.

27. Pronounced in the Open Court on this 20<sup>th</sup> day of January, 2016.

**T. Munikrishnaiah**  
**[Technical Member]**

**Justice Ranjana P. Desai**  
**[Chairperson]**

✓ **REPORTABLE/~~NON-REPORTABLE~~**