

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3764 OF 2016

THE ELECTRICITY DEPARTMENT, REP. BY ITS  
SUPERINTENDING ENGINEER, PORT BLAIR AND ANR. APPELLANTS

VERSUS

M/S SURYACHAKRA POWER CORPORATION LIMITED  
AND ANR. RESPONDENTS

J U D G M E N T

NARIMAN, J.

1. The present appeal is a sequel to Civil Appeal No. 1652 of 2015. By our judgment and order dated 22<sup>nd</sup> September, 2016, against the judgment of the Appellate Tribunal dated 28<sup>th</sup> November, 2014, we disposed of the aforesaid appeal allowing the appeal only to a limited extent and setting aside the judgment of the Appellate Tribunal insofar as it allowed an increase in interest during construction (IDC), financing charges (FC) and incidental expenses during construction (IEDC) incurred for the delay in execution of the project for reasons beyond the control of the respondent.

2. In the second round of litigation, the implementation of the aforesaid order of the Appellate Tribunal has taken place,

and the impugned judgment of the Appellate Tribunal dated 14<sup>th</sup> March, 2016 has been placed before us. In particular, a chart extracted in paragraph 9.13 has been supplied by the Appellate Tribunal indicating how it has arrived at a total project cost of Rs. 77.64 crores. We find that Shri Rakesh Khanna, learned senior counsel appearing on behalf of the appellants has raised various submissions before us, most of which have been raised and turned down earlier. We find that item nos. 1,2,3 & 4 of the said chart are unexceptionable for the reason that they strictly conform to paragraphs 25 and 36 of the Appellate Tribunal judgment dated 28<sup>th</sup> November, 2014. However, item no.5 consists of a sum of Rs.1.84 crores and 0.84 crores, being additional interest during construction, financing cost, and incidental expenses during construction. Since the earlier appeal i.e. Civil Appeal No. 1652 of 2015 has been allowed to a limited extent, these figures will have to be deleted and consequently the project cost will now stand as Rs.74.96 crores.

JUDGMENT

3. We have been informed that a sum of Rs.15 crores is lying in deposit having been invested by the Registry of this Court. This sum has been provided by appellant No.1 on 12<sup>th</sup> July, 2016 pursuant to an interim order of this Court. The disbursement of this sum is dependent upon adjudication proceedings pending before the Joint Electricity Regulatory Commission, Gurgaon.

4. We direct the said Commission to complete the exercise necessary in these proceedings positively within six weeks from today. If the Commission directs payment of Rs.15 crores or more to be made by the appellants to the respondents, the Registry of this Court is directed to disburse the amount of Rs. 15 crores with accrued interest, if necessary, to the Respondents without further reference to this Court. In case a sum of less than Rs.15 crores is ordered to be disbursed to the Respondents, the said sum shall be paid by the Registry to the Respondents, and the balance lying in deposit, with accrued interest, shall be returned to appellant No.1. In case no amount is payable to the Respondents, the Registry shall return the amount in deposit with accrued interest to appellant No.1.

5. With the above observations, the appeal is disposed of.

No costs.

JUDGMENT

.....J.  
[KURIAN JOSEPH]

.....J.  
[ROHINTON FALI NARIMAN]

NEW DELHI;  
OCTOBER 18, 2016