

Introduction

The Supreme Court of Nepal recently issued a landmark ruling on a public interest litigation (PIL) challenging the government's authority to enter into long-term Power Purchase Agreements (PPAs) for energy exports.

This decision is vital for the country's approach to managing international agreements involving its natural resources and sets a significant precedent for Nepal's energy sector.



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Case Background

In the case of Suryanath Upadhyay v. Government of Nepal, former Chief Commissioner of the Commission for the Investigation of Abuse of Authority, Suryanath Upadhyay, led a petition alongside other individuals. They argued that the PPA with India would allow excessive foreign influence over Nepal's water resources without bringing sufficient benefits to Nepal itself. According to petitioners, such agreements should require parliamentary approval to protect national sovereignty, particularly given that they involve the use of natural resources.

The petitioners emphasized the need for legislative oversight to ensure that Nepal's vital resources, like water, are managed in a way that benefits the nation.



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Supreme Court Ruling

The Supreme Court dismissed the petition, ruling that the executive branch has the authority to negotiate and enter into energy export agreements, including PPAs, without requiring parliamentary ratification unless specifically mandated by law. The court clarified that such agreements do not undermine national sovereignty, provided that regulatory oversight of resource management remains with the state.

This ruling solidifies the executive's ability to directly engage in long-term energy export deals, affirming that parliamentary approval is not a necessity for such contracts under existing legal frameworks.



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Implications for Nepal's Energy Sector

This decision paves the way for Nepal to more actively participate in international energy trade, as it removes bureaucratic obstacles to engaging in PPAs. The ruling enhances Nepal's appeal to international investors, supporting the country's ambition to become a reliable partner in regional energy exports.

Legally, the decision clarifies the government's role in shaping the future of Nepal's hydropower sector, aligning with policy goals for resource development and export.



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Resource Management and Compliance

The Supreme Court also highlighted that although executive agreements for energy exports are permissible, they must still adhere to environmental and regulatory standards to ensure sustainable management of resources. This ruling supports hydropower development in Nepal within a framework that safeguards environmental and public interests, balancing economic growth with responsible resource use.



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Relevant Case Law in Support of the Ruling

This decision aligns with previous Supreme Court rulings on hydropower PPAs, underscoring a consistent judicial interpretation:

- **Gorakh Bahadur BC et al. v. Office of the Prime Minister and Council of Ministers (NKP 2070, Decision No. 8982, Page 2356):**

In this precedent-setting case, the court upheld an agreement between Nepal's government and GMR LTD Consortium (India) for the Upper Karnali Hydropower Project under the Build, Operate, Own, Transfer (BOOT) model. The court found that long-term PPAs focused on export did not require parliamentary approval, as such agreements fall within the government's executive purview.

This ruling supports a long-standing judicial stance that the executive has the authority to engage in hydropower PPAs intended for export, without the need for legislative endorsement



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- Real Estate Law
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Our team delivers corporate legal services to both national and international clients, offering reliable, expert counsel across diverse fields.



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