

**COURT-I**

**Before the Appellate Tribunal for Electricity  
(Appellate Jurisdiction)**

**Appeal No. 127 of 2013**

**Dated :13<sup>th</sup> March, 2015**

**Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson  
Hon'ble Mr. Rakesh Nath, Technical Member  
Hon'ble Mr. Justice Surendra Kumar, Judicial Member**

**In the matter of :**

**M/s Lafarge India Pvt. Ltd.**

**... Appellant(s)**

**Versus**

**Chhattisgarh State Electricity Regulatory Commission & Anr. ... Respondent(s)**

Counsel for the Appellant (s) : Mr. Praveen Kumar

Counsel for the Respondent(s) : Mr. C.K. Rai for R.1

Mr. Buddy A. Ranganadhan  
Amicus Curiae

Ms. Suparna Srivastava  
Ms. Nishtha Sikroria with  
Mr. Kumar Harsh for R.2

## **JUDGMENT**

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

1. By Order dated 17.04.2014, a Division Bench of this Tribunal referred the issue as to ***“whether Limitation Act, 1963 would be applicable to the matters pending before the State Electricity Regulatory Commissions and Central Electricity Regulatory Commission”*** to a larger Bench. We may quote the referring order. It reads as under:

***“The matter in controversy before us is as to whether Limitation Act, 1963 would be applicable to the matters pending before the State Electricity Regulatory Commissions and the Central Electricity Regulatory Commission.***

***This Tribunal's Bench consisting of Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson and Hon'ble Mr. Rakesh Nath, Technical Member while deciding the Appeal No. 12 of 2010 and 116 of 2010 vide judgment dated 7.3.2011 reported in 2011 ELR (APTEL) 0458 held in para 50 thereof as under:***

***“50. SUMMARY OF OUR FINDINGS:***

*(I) It is settled law that the Limitation Act would apply only to Courts and not to the other bodies such as quasi-judicial Authorities as held by the Hon'ble Supreme Court. Therefore, the contention of the Appellant that the claim made by the Respondent before the State Commission which is a quasi judicial authority was barred by limitation does not merit consideration. Even with regard to the contention, that there was a delay and latches on the part of the Respondents in approaching the State Commission for making the claim for payment of arrears it is to be held that both the Respondents had consistently claimed their rates as well as escalated rates as per the Power Purchase Agreement (PPA) and they had regularly sent the invoices mentioning the PPA rates and the Appellant admittedly had received the same but did not choose to either to raise the objection or to return those invoices to the Respondents and only when the Appellant rejected their claims, the Respondents approached the Commission and sought the relief. Under those circumstances the plea that there was delay and latches on the part of the Respondents has got to be rejected. Accordingly the same is rejected.*

*(II) .....”*

*Accordingly, both the aforesaid appeals were dismissed inter-alia, on the ground of limitation upholding the views of the Tamil Nadu Electricity Regulatory Commission. Tamil Nadu Electricity Regulatory Commission took the view that the Limitation Act would not apply to the present proceedings. In the Appeal No. 12 of 2010 and 116 of 2010 decided by a common judgment dated 7.3.2011 by this Tribunal, this Tribunal completely had agreed with the State Commission's finding that the Limitation Act, 1963 does not apply to the proceedings before the State Regulatory Commission. This Tribunal also adopted the same principle to hold that the*

***Limitation Act would apply only to Courts and not to the other bodies such as quasi-judicial authorities like this Tribunal.***

***Contrary to the view adopted by this Tribunal in the aforesaid Appeals namely, 12 of 2010 and 116 of 2010 in the judgment dated 7.3.2011, this Tribunal consisting of Hon'ble Mr. Justice M. Karpaga Vinayagam, Chaiperson and Hon'ble Mr. H.L. Bajaj, Technical Member, in Appeal No. 77 of 2009 in its judgment dated 22.2.2010 in the matter Gujarat Urja Vikas Nigam Ltd. vs. Essar Power Ltd. reported at 2010 ELR (APTEL) 0359 in paras 25 & 26 has observed as under:***

***“25. Further, the decisions cited by the learned Counsel for the Appellant under Article 137 of the Limitation Act would apply only to the Application and not to the suit. The petition in question filed before the State Commission being one in the nature of a suit would attract Article 55 and as per the same, the petition is barred by time with respect to the claims made by the Appellant, with regard to the period prior to three years prior to the filing of the petition on the alleged wrong allocation of power and deemed generation incentive.***

***26. In view of the discussions made in the foregoing paragraphs we feel that there is no merit in this Appeal. In our considered opinion, the State Commission has given a clear and categorical finding with reference to the period of limitation and has rightly held that the Appellant's claim against the EPL for any period up to 14<sup>th</sup> September, 2002, i.e. three years period prior to filing of the petition are barred by time except to the extent of Rs.64 crores paid by the EPL to the Appellant pursuant to the full and final settlement of 11 claims for the period from 1998 up to September 2004. In this context, we would like to mention that in regard to the full and final settlement, we would make further discussion in the other Appeal.”***

*In the aforesaid judgment dated 22.2.2010, this Tribunal has endorsed and reaffirmed the State Commission's view that the Appellant's claim having being filed beyond the period of three years was barred by time.*

*The Bench of this Tribunal consisting of Hon'ble Mr. Justice M. Karpaga Vinayagam, Chaiperson and Hon'ble Mr. Rakesh Nath, Technical Member in Appeal No.240 of 2013 in the case of Tamil Nadu Generation and Distribution Corporation Ltd. vs. M/s Lanco Tanjore Power Company Ltd. & Anr. vide its recently pronounced judgment dated 3.4.2014 while dismissing the Appeal and affirmed the State Commission's order, held that claim of the Appellant is barred by limitation. The State Commission took the view that the Limitation Act is applicable to the proceedings before the State Commission and held the Appellant's claim barred by the limitation.*

*Thus, after hearing the learned counsel for the rival parties on the point of applicability of Limitation Act to the proceedings before the State Commission or Central Electricity Regulatory Commission and in view of the above noted contrary judgment, which adopted different and contradictory views on the said point, we deem it proper to refer this matter to the Larger Bench so as to settle the controversy finally and giving an end to the present impasse because the learned counsel are feeling uncomfortable with the existence of contradictory propositions of law laid down by this Tribunal. Accordingly, this matter is a fit matter to be referred to Larger Bench.*

***Registry of this Tribunal is directed to put up this order before the Hon'ble Chairperson for passing suitable orders and for constituting a Full Bench."***

2. We have heard learned counsel appearing for the parties at some length. In our considered opinion, the question whether Limitation Act, 1963 is applicable to the matters pending before the State Electricity Regulatory Commissions and Central Electricity Regulatory Commission is no more *res integra* inasmuch as in ***T.N. GENERATION & DISTRIBUTION CORPN. LIMITED V. PPN POWER GEN. CO. PVT. LTD.***<sup>1</sup> the Supreme Court had held that the Limitation Act, 1963 is inapplicable to proceedings before the State Commission. The Respondent therein was a generating company, which entered into a Power Purchase Agreement with the Appellant therein for the supply of entire electricity to be generated by the Respondent for a period of 30 years. The Supreme Court was seized *inter alia* with the

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<sup>1</sup> Ed: MANU/SC/0271/2014 : 2014 (2) ArbLR 97 (SC) : 2014v AD (S.C.) 137 : 2014 (2) J.L.J.R. 248

dispute between parties as to whether the Appellant was entitled to avail a 2.5 % rebate on part payment of the monthly invoices within five business days. It would be appropriate to quote relevant portion of the judgment, which gives some idea about the State Commission's order which was challenged before this Tribunal.

***“10. Upon completion of the pleadings and after hearing the parties, the State Commission, by an Order dated 17<sup>th</sup> June, 2011, allowed the petition filed by the respondent for refund of the excess rebate availed by the appellant contrary to the terms of PPA and also ordered the respondent to redraw the monthly invoices in accordance with the directions issued by the State Commission. The State Commission held that it is competent to adjudicate upon the dispute. The limitation period prescribed in the Limitation Act, 1963 would not apply to the proceedings before the Commission, delay and laches would apply.....”***

***Certain other directions were also issued. The petition was accordingly disposed of.”***

It is clear therefore that the State Commission had held that Limitation Act was not applicable to the proceedings before it.

3. This Tribunal by its Order dated 22.02.2013 dismissed the appeal preferred by the Appellant challenging the State Commission's order. The said judgment was challenged by the Appellant in the Supreme Court.

4. While dealing with the appeal, the Supreme Court reproduced the issues, which were raised by the Appellant before this Tribunal. Relevant paragraph reads as under:

***“11. Aggrieved by the aforesaid directions, the appellant filed Appeal No. 176 of 2011 before the APTEL. Before the APTEL, in the appeal, the appellant raised the following issues:***

- (a) *Entitlement of the appellant to rebate.***
- (b) *Jurisdiction of the State Commission under Section 86 (1) (i) of the Act, 2003.***
- (c) *First in first out method; for adjustment of payment.***
- (d) *Limitation, delay and laches.***
- (e) *Bar under Order 2 Rule 2, CPC***

- (f) Non-filing of annual invoices.**
- (g) Determination of capital cost.**
- (h) Deduction on the monthly invoices.**
- (i) Excess claims in the monthly invoice – unjust enrichment.**
- (j) Interest on late payments.”**

***(emphasis supplied)***

The Supreme Court noted that this Tribunal had held that the Limitation Act, 1963 would not apply to the proceedings under the Electricity Act. It appears from the judgment that arguments were advanced before the Supreme Court as to whether the Limitation Act, 1963 or the principles of delay and laches would apply to the case which the Supreme Court was dealing with. Relevant portion of the judgment needs to be quoted. It reads as under:

**“29 .....**

***On the issue of limitation it is submitted that neither the Limitation Act nor the principles of delay and laches would apply to the present case. It is submitted by Mr. Salve and Mr. Bhushan that the provisions of Limitation Act, 1963***

*would not be applicable to the proceedings before the State Commission. The Electricity Act, 2003 being a complete code, which is self contained and comprehensive, the provisions of Limitation Act, 1963 would not apply. Mr. Salve and Mr. Bhushan relied on Consolidation Engineering Enterprises Vs. Principal Secretary, Irrigation Department and others, (2008) 7 SCC 169 = 2008 SCACTC 207 (SC) = 2008 (2) Arb. LR 139 (SC) in support of the submission that Limitation Act would be inapplicable to tribunals and quasi-judicial authorities. Replying to the submission of Mr. Nariman that in arbitration proceedings, the appellant would be entitled to the benefit of Limitation Act, 1963 Mr. Salve and Mr. Bhushan submit that in view of the specific provisions contained in Section 2 (4) of the Arbitration and Conciliation Act, 1996, Section 43 of the Arbitration Act would not be applicable. In any event, the matter is squarely covered by the judgment in Gujarat Urja. Mr. Salve and Mr. Bhushan reiterated that the issue of limitation does not even arise in the present dispute due to the FIFO adjustment effected by the respondent.*

5. Having considered the entire matter in its proper perspective, the Supreme Court observed that the Limitation Act, 1963 is inapplicable to proceedings before the State Commission. Relevant paragraph reads thus:

***“48. The next submission of Mr. Nariman is that the claim of the respondent would have been held to be time barred on reference to arbitration. We are not able to accept the aforesaid submission of Mr. Nariman. On the facts of this case, in our opinion, the principle of delay and laches would not apply, by virtue of the adjustment of payments being made on FIFO basis. The procedure adopted by the respondent, as observed by the State Commission as well as by the APTEL, would be covered under Sections 60 and 61 of the Contract Act. APTEL, upon a detailed consideration of the correspondence between the parties, has confirmed the findings of fact recorded by the State Commission that the appellant had been only making part-payment of the invoices. During the course of the hearing, Mr. Salve has pointed out that the payment of entire invoice was to be made each time which was never adhered to by the appellant. Therefore, the respondent were constrained to adopt FIFO method. Learned senior counsel also pointed out that there was no complaint or objection ever raised by the appellant. The objection to the method adopted by the respondent on the method of FIFO, was only raised in the courier affidavit to the petition filed by the appellant before the State Commission. According to learned senior counsel, the plea is an afterthought and has been rightly rejected by the State Commission as well as the APTEL. We also have no hesitation in rejecting the submission of Mr. Nariman on this issue. In any event, the Limitation Act is inapplicable to proceedings before the State Commission.” (emphasis supplied)***

6. We must note the submission of learned Amicus Mr. Buddy A. Ranganadhan that inasmuch as the Supreme Court has held that the Tribunals such as State Commission has trappings of the Court, the Limitation Act would be applicable to the proceedings before the State Commission. Relevant paragraph on which reliance is placed by the learned Amicus could be quoted.

***“43. In view of the aforesaid categorical statement of law, we would accept the submission of Mr. Nariman that the tribunal such as the State Commission in deciding a lis, between the appellant and the respondent, discharges judicial functions and exercises judicial power of the State. It exercises judicial functions of far-reaching effect. Therefore, in our opinion, Mr. Nariman is correct in his submission that it must have essential trapping of the court. This can only be achieved by the presence of one or more judicial members in the State Commission which is called upon to decide complicated contractual or civil issues which would normally have been decided by a civil court. Not only the decisions of the State Commission have far-reaching consequences, they are final and binding between the parties, subject, of course, to judicial review.”***

7. On the other hand, Mr. Praveen Kumar, learned counsel for the Appellant has drawn our attention to the Constitution Bench judgment in ***UNION OF INDIA Vs. R. GANDHI***<sup>2</sup> where the Constitution Bench discussed the difference between the Courts and Tribunals. The Constitution Bench recorded its conclusion as under:

***“45. Though both courts and tribunals exercise judicial power and discharge similar functions, there are certain well recognised differences between courts and tribunals. They are:***

***(i) Courts are established by the State and are entrusted with the State’s inherent judicial power for administration of justice in general. Tribunals are established under a statute to adjudicate upon disputes arising under the said statute, or disputes of a specified nature. Therefore, all courts are tribunals. But all tribunals are not courts.***

***(ii) Courts are exclusively manned by Judges. Tribunals can have a Judge as the sole member, or can have a combination of a judicial member and a technical member who is an “expert” in the field to which the tribunal relates.***

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<sup>2</sup> (2010) 11 SCC 1

*Some highly specialised fact finding tribunals may have only technical members, but they are rare and are exceptions.*

*(iii) While courts are governed by detailed statutory procedural rules, in particular the Code of Civil Procedure and the Evidence Act, requiring an elaborate procedure in decision making, tribunals generally regulate their own procedure applying the provisions of the Code of Civil Procedure only where it is required, and without being restricted by the strict rules of the Evidence Act.”*

8. We are really not inclined to go into this debate inasmuch as in our opinion the Supreme Court has in **T.N. GENERATION & DISTRIBUTION CORPN. LIMITED** settled the controversy as to whether Limitation Act would be applicable to the State Commissions or not. It was strenuously argued that the Supreme Court was not concerned with the issue of limitation. Our attention was drawn to paragraph 29, which we have quoted here-in-above where the submission of the counsel was recorded that the issue of limitation did not even arise in the case before the Supreme Court. We find that though submission of the

counsel to the effect that question of limitation does not arise was recorded, there is no affirmative finding of the Supreme Court that it did not arise before it at all. In fact as we have already noted in paragraph 11 the Supreme Court has noted that limitation, delay and laches were raised before this Tribunal whose order was challenged before it. It appears to us therefore that the Supreme Court has upon considering rival contentions advanced before it on the question of limitation observed that the Limitation Act was not applicable to the proceedings before the State Commission. Needless to say that this conclusion will apply with equal force to the proceedings before the Central Commission. Assuming however that the above mentioned observation of the Supreme Court is to be treated as obiter dictum, it is well settled that even obiter dictum of the Supreme Court is binding on subordinate courts. In this connection, we may usefully refer to the Judgment of the Supreme Court in **MINICIPAL COMMITTEE, AMRITSAR**

**V. HAZARA SINGH**<sup>3</sup> wherein the Supreme Court quoted an extract from the Kerala High Court Judgment in **STATE OF KERALA V. VASUDEVAN NAIR**<sup>4</sup>. The relevant paragraph reads as under:

**“4. ....**

***Judicial propriety, dignity and decorum demand that being the highest judicial tribunal in the country even obiter dictum of the Supreme Court should be accepted as binding. Declaration of law by that Court even if it be only by the way has to be respected. But all that does not mean that every statement contained in a judgment of that Court would be attracted by Art.141. Statements on matters other than law have no binding force. Several decisions of the Supreme Court are on facts and that Court itself has pointed out in Gurcharan Singh v State of Punjab (1972 FAC 549) and Prakash Chandra Pathak v State of Uttar Pradesh,(AIR 1960 SC 195) that as on facts no two cases could be similar, its own decisions which were essentially on questions of fact could not be relied upon as precedents for decision of other cases.”***

**X**

**X**

**X**

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<sup>3</sup> (AIR 1975 SC 1087)

<sup>4</sup> (1975 Cri LJ 97)

*The standard fixed under the Act is one that is certain. If it is varied to any extent, the certainty of a general standard would be replaced by the vagaries of a fluctuating standard. The disadvantages of the resulting unpredictability, uncertainty and impossibility of arriving at fair and consistent decisions are great.”*

9. It may also be mentioned here that this Tribunal in **GRIDCO LIMITED ODISHA VS. BHUSHAN POWER & STEEL LIMITED<sup>5</sup>**, after referring to **Tamil Nadu Generation and Distribution Corporation Limited** held that the Limitation Act, 1963 is not applicable to the proceedings before the State Commission.

**10. Hence, we answer the reference as under:**

**The Limitation Act 1963 is inapplicable to the matters pending before the State Electricity Regulatory Commissions and Central Electricity Regulatory Commission.**

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<sup>5</sup> (2014 ELR (APTEL) 1344)

11. Office is directed to place this matter before the Division Bench of the Tribunal for appropriate decision on the merits of the case.

12. List the matter before the Division Bench hearing this Appeal on **26.03.2015.**

**(Justice Surendra Kumar)**  
**Judicial Member**

**(Rakesh Nath)**  
**Technical Member**

**(Justice Ranjana P. Desai)**  
**Chairperson**

Ts/dpk