

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

IA NO.64 of 2013
IN
DFR No.2089 OF 2012

Dated: 17th April,2013

**Present: HON'BLE MR. JUSTICE M KARPAGA VINAYAGAM,
CHAIRPERSON
HON'BLE MR. V J TALWAR, TECHNICAL MEMBER**

In the Matter of:

**M/s. Madhya Pradesh Poorv Kshetra Vidyut
Vitran Company Limited.,
Shakti Bhawan, Rampur,
Jabalpur (M.P)**

...Applicant/Appellant

Versus

- 1. Madhya Pradesh Electricity Regulatory Commission
E-5, Area Colony,
Metro Plaza, 5th Floor,
Bittan Market, Bhopal-462 016**
- 2. M/s. Madhya Pradesh J P Minerals Limited.,
J P Nagar, Rewa (MP)
PIN-486 001**

.....Respondent(s)

Counsel for the Applicant(s) : Mr. Vikas Upadhyay

Counsel for the Respondent(s): -

ORDER

**PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM,
CHAIRPERSON**

1. Madhya Pradesh Poorv Kshetra Vidyut Vitran Company Limited is the Applicant/Appellant herein.
2. The Applicant/Appellant has filed the Appeal as against the order dated 25.9.2012 dismissing the Review Petition passed by the Madhya Pradesh Electricity Regulatory Commission.
3. The Registry after examining the Appeal Paper Book pointing out various defects issued the defect notice to the Applicant asking the Applicant to represent the Appeal after curing those defects within 7 days. There was some delay in rectification. After rectification of the defects, the Applicant/Appellant refiled this Appeal along with an application to condone the delay of 68 days in refiling the Appeal.
4. The matter came-up for hearing for consideration of the condonation of delay in refiling the Appeal in IA No.64 of 2013. While hearing, this Tribunal noticed that the Applicant/Appellant, instead of filing the Appeal as against the main order dated 22.12.2011, has chosen to file the

Appeal as against the dismissal order dated 25.9.2012 in the Review Application filed by the Applicant before the State Commission seeking for the Review of the main order dated 22.12.2011.

5. Therefore, this Tribunal pointed out to the learned Counsel for the Applicant, that the Appeal against the Review order is not maintainable as already in several orders and judgments, this Tribunal decided this issue and held that the Appeal as against the dismissal order in the Review Application confirming the main order was not maintainable, as there was a bar in the Civil Procedure Code. So the learned Counsel for the Applicant/Appellant sought for time for going through those judgments and for getting further instructions from his client Applicant/Appellant. Accordingly, time was granted and the matter was adjourned.
6. On the date of next hearing, the Appellant furnished a written note giving the grounds to plead that the Appeal against the Review Order is maintainable as in the earlier judgments, the law has not been correctly decided in view of the fact that this Tribunal failed to refer to and consider the relevant Section 120(1) of the Electricity Act which provides that the Appellate Tribunal is not bound by the

procedure under Civil Procedure Code, and so the earlier judgments require reconsideration.

7. The learned Counsel for the Applicant has made elaborate arguments by distinguishing the earlier judgments.
8. The crux of the arguments advanced by the learned Counsel for the Applicant/Appellant is that the earlier judgments holding that Appeal against the Review Order was not maintainable in this Tribunal requires reconsideration in view of Section 120(1) of the Electricity Act which has not been referred to in the earlier judgments.
9. Before dealing with this argument advanced by the learned Counsel on the strength of Section 120(1) of the Electricity Act, 2003, let us refer to the findings and the ratio made on this issue by this Tribunal in various judgments.

(a) **Appeal No.25 of 2009 dated 5.5.2009**

(ix) As correctly pointed out by the Ld.Counsel for the Respondents that the Order dismissing the Review is not Appealable as per the relevant provisions of the Act. Under Section 94 of the Electricity Act, the Central Commission has got the powers for Reviewing its own orders under the powers vested with the Civil Court under the Order 47 of Rule 7. The Order of Review is not Appealable under Order 47 of Rule 7. The said Order 47, Rule 7 of the CPC reads as under:

“Rule 7 Order of Rejection not Appealable. Objection to Order granting Application”

(i) The Order of the Court rejecting the Application shall not be Appealable, but an Order granting an Application may be objected to at once by an Appeal from the Order granting the Application or in an Appeal from the decree or an Order finally passed or made in the Suit.”

A reading of this rule would indicate that the Final Order alone can be Appealed against, before the Appellate Authority and not the Order rejecting the Application for Review. In other words, in this case, the Original Order has been passed on 22/9/06 which is Appealable. The Application has been for seeking Review of the said Order was dismissed on 10/6/08 and this is not Appealable. The remedy available for the Appellants/Petitioners is to file an Appeal against the main Order dated 22/9/06 along with an Application to condone the delay explaining the delay by giving the appropriate reason. In that event, the Appellate Tribunal would consider the ground for delay and condone the same and entertain this Appeal. The Appellants have not adopted this Course”.

(b) Appeal No.58 of 2008 dated 22.7.2009

11.. ..

(i) The challenge has been made in this Appeal only against the Order in the Review Petition dated 8.8.2007 with reference to the ratio decided by the Central Commission for sharing of the transmission charges between the Eastern and

Western Regions. This was actually fixed by the Central Commission in the main Order dated 16.3.06. This main Order has not been challenged before this Tribunal by way of an Appeal. On the other hand, this Appeal has been filed by the Appellant as against the Order of dismissal of the Review Petition dated 8.8.2007. It is settled law that the Main Order alone can be Appealed before the Tribunal and the Appeal is not provided against the Order of dismissal of the Review Petition by the Central Commission which confirmed its earlier main Order.

(ii) The Appeal against the Order of dismissal of the Review is not maintainable under Order 47 Rule 7 CPC. The Appeal could be filed only against the main Order and not against the dismissal Order in the Review Petition. It is true that under Section 94 of the Electricity Act, the Central Commission has got its powers for Reviewing its own Orders as well as under the powers vested in Civil Court. But rejection of the Review Petition is not Appealable as per Order 47, Rule 7. The said Order 47, Rule 7 of CPC reads as follows:

“Rule 7: The Order of rejection is not Appealable objection to Order granting application.”

(i) The Order of the Court rejecting the application shall not be Appealable. The Order granting application can be objected to at once by an Appeal or the Order granting application or in an Appeal from the decree or Order finally passed or made in the suit.”

(iii) A reading of this rule would indicate that the final Order alone can be Appealed against before the appellate authority and not the order rejecting the application for Review.

(iv) In this case, the original Order has been passed on 16.3.06 which is Appealable. But this is not Appealed. Instead of filing an Appeal against this Order, the Appellant filed a Review of the said Order before the Central Commission which was dismissed on 8.8.2007. This alone has been Appealed though this is not Appealable. What the Appellant should have done is that it should have filed an Appeal against the main Order dated 16.3.06 along with an Application to condone the delay which was occurred due to the pendency of Review Petition before the Commission. In that event, the Appellate Tribunal would consider the said ground for delay and after condoning the delay, it would entertain the Appeal. The Appellant has neither filed an Appeal against the main Order passed earlier nor thought it fit to file the Appeal at least later i.e. after the disposal of the Review Petition as against the main Order along with the application to condone the delay. Therefore, this Appeal as against the Order passed in the Review Petition is not maintainable”.

(c) **Appeal No.24 of 2009 dated 5.11.2007**

25. Section 94 of the Electricity Act empowers the Central Commission for Reviewing its own Orders, as prescribed under the Order 47 of Rule 7 of the CPC. The said Order 47, Rule 7 of CPC reads as under:

“Rule 7 Order or Rejection not Appealable. Objection to Order granting Application”

(i) The Order of the Court rejecting the Application shall not be Appealable, but an Order granting an Application may be objected to at once by an Appeal from the Order granting the Application or in an Appeal from the decree or an Order finally passed or made in the Suit.”

26. *A reading of the above rule would indicate that the Final Order alone can be Appealed against, before the Appellate Authority and not the Order rejecting the Application for Review”.*

(d) **Appeal No.178 of 2009 dated 25.2.2010**

16. *Refuting the above preliminary objections the Learned Senior Counsel for the Appellant would make the following submissions to substantiate his plea that the Appeal is maintainable.*

(i) It is true that the Central Commission while exercising its power of Review under Section 94 of the Act, has to act in the same manner as are vested under the Code of Civil Procedure while passing order in the Review Petition. Only when the said order rejecting the Review is on merit the said order cannot be Appealed under order 47 Rule 7. But in the present case order impugned passed by the Central Commission is not the order rejecting the Review on merit but it is an order rejecting the Petition for merely condoning the delay in filing of the Review Petition. As such the Central Commission did not exercise the

power under section 94 of the Act to satisfy as to whether sufficient ground is made out to entertain the Review. It merely refused permission for the invocation of Review Jurisdiction. Hence, the dismissal of the Review Petition cannot be said to be in the exercise of jurisdiction in terms of Section 94 of the Act or under Order 47 Rule 1 and Rule 4(1) of the CPC. Therefore, the bar under Order 47 Rule 7 would not apply to the impugned order.

(ii) The words “an order” occurring in section 111 of the Act conferring Appellate Power to the Tribunal means any order which is not subject to any qualification. This is because unlike the scheme of the CPC with regard to the maintainability of appellate/revisional powers provided under the CPC, the scheme of Appeals under the Electricity Act 2003 is entirely different and distinct.

Therefore, Order 47 Rule 7 cannot be said to have any control over any of the Appeal powers conferred on the Tribunal under the Electricity Act, 2003.

(iv) Section 94 of the Act gives the power of Review to the Central Commission. This cannot accommodate a provision relating to the Right of Appeal to the Appellate Tribunal. Section 111 is a substantive provision relating to Appeal. It does not provide for any such qualification as contained in Order 47 Rule 7. The meaning and scope of this provision under section 111 cannot be said to be governed by some other part of the statute. Therefore, the Appeal powers given to

the Tribunal cannot be curtailed. Hence the Appeal is maintainable.

18. *The question that arises for consideration is as follows:*

“whether the Appeal is barred in terms of the provision of Order 47 Rule 7 of the Code of Civil Procedure when the order impugned was said to be passed by the Central Commission rejecting the Review Petition on the ground that it is time barred under section 94(1) of the Electricity Act?

19.....*This Review jurisdiction of the Central Commission is provided under section 94(1)(f) of the Act 2003. This provision is as follows:*

“94 – Powers of the Appropriate Commission (1) the Appropriate Commission shall for the purposes of any inquiry or proceedings under this Act have the same powers as are vested in the civil court under the Code of Civil Procedure 1908 in respect of the following matters namely.

..... (f) Reviewing its decision, directions and orders” Thus, section 94(1)(f) incorporates by reference to the provisions of the Code of Civil Procedure in regard to exercise of power over the Review of its own decision, directions and orders. Accordingly, the relevant provisions of CPC 114 and Order 47 Rule 7 deal with Review as if it has been provided for in Section 94 of the Electricity Act including the provision of Order 47 Rule 7.

20. *The provision of the Order 47 Rule 7 reads as under:*

“Rule 7 – Order of rejection not Appealable, objections to order granting application (1) An order of the court rejecting application shall not be Appealable; but an order granting an application may be objected to at once by an Appeal from the order granting the application or in an Appeal from a decree or order finally passed or made in the suit.

21. So, a reading of section 94 of the Act would indicate that it incorporates the provision of the CPC not only in respect of Rule 1 but also in respect of Rule 7 of Order 47. If the intention of Parliament was to restrict the incorporation of the Review only to the extent that the Central Commission exercises powers and not to deal with any other incident of Review such as Rule 7 of Order 47, the same would have been incorporated for separately.

22. In other words, the Parliament would have provided for a separate provision stating that the Appropriate Commission shall have the powers to Review its decision, directions and orders dehorse the CPC . As a matter of fact, section 94(2) deals with the powers of the Commission to pass interim orders. In this section, the Parliament has chosen to say that provision of the CPC will not apply but has specifically recognized the power to pass interim orders under section (2) of 94 of the Act. So the distinction in approach adopted in the case of interim orders under Section 94(2) of the Act and in the case of Review under Section 94(1)(f) is quite relevant. In the case of Review Parliament had decided that the application shall be in total consonance with the provision of the Order 47 Rule 7 of the CPC but not in the case of interim

order under Section 94(2) of the Act. Therefore, the implication mentioned in Rule 7 of Order 47 will certainly apply.

23. It is contended on behalf of the Appellant that the scope of Section 111 is wider and it provides for an Appeal against any order including the order rejecting the Review made by the Appropriate Commission. In elaboration of this plea, the Appellant has made a distinction to the effect that the Appeal power of this Tribunal does not envisage any restriction and therefore, Appeal is maintainable. This contention in our view is not tenable. It is quite relevant to note in this context that under the CPC the following Appeal provisions are provided:

Order 41 Rule 1 read with Section 96 provides for the Appeal arising out of original decrees.

(ii) Order 43 Rule 1 provides for an Appeal arising out of the orders.

(iii) Section 100 CPC provides for the second Appeal.

24. These provisions which are Appeal provisions do not provide for any prohibition that there shall be no Appeal against the order passed in the Review Petition but this prohibition of an Appeal as against the order rejecting the Review Petition alone has been specifically provided in Order XLVII Rule 7. Therefore, despite the other provision which provides for an Appeal against the order passed by the Appropriate Commission, the restriction in section 94(1)(f) read with Order 47 Rule 7 CPC will have application to the present case”.

(e) **Appeal No.124 of 2011 dated 20.11.2012**

23. *It is clear that the Appeal against the order passed in the Review petition confirming the main order is not Appealable under order 47, Rule-7 of CPC. We will quote the same as under:-*

“Order 47, Rule 7: Order of rejection not Appealable. Objections to order granting applicable – (1) An order of the court rejecting the application for Review shall not be Appealable; but an order granting an application may be objected to at once by an Appeal from the order granting the application or in an Appeal from the decree or order finally passed or made in the suit.”

24. *Under section 94(1)(f), the State Commission has been conferred with the powers specifically to Review its decision under the powers as are vested with Civil Court under the Code of Civil Procedure. Therefore, the State Commission can exercise its powers of Review only under the CPC. The decision of the Hon’ble Supreme Court in 1963(1) SCR Page-1 cited by the Sugar Mills(R1) is not applicable to the present facts of the case because in the said judgment, a statutory injunction was imposed upon a Court to Review the order regarding the assessment made by the authority as the assessment had been validated in the judgment.*

28. *As pointed out by the Appellant, the Hon’ble Supreme Court in 1994(2) SCC 753, Shanker Moti Ram Nale Vs. Shislal Singh Gannu Singh Rajpur also had held that since the Review*

Petition has been dismissed and the main order had not been challenged, the Appeal against the Review order was not maintainable.

29. In view of the above, we are of the opinion that the Appeal is maintainable only as against the main order and the Appeal against the Review Order is not maintainable. Thus, the first question is answered accordingly in favour of the Appellant”.

10. The perusal of the above judgments would reveal that the ratio and principles have been laid down by this Tribunal following the dictums decided by the Hon'ble Supreme Court with reference to maintainability of the Appeal as against the order passed by the State Commission dismissing the Review Petition. They are as follows:-

(a) The order of the court rejecting the Application for Review shall not be Appealable under Order 47, Rule 7 of the Code of Civil Procedure.

(b) The main order alone can be Appealed before the Tribunal and the Appeal has not been provided as against the order of dismissal of Review petition by the Commission which confirmed the main order earlier passed.

(c) The course open to the Appellant whose application for the Review of the main order has been dismissed is to file an Appeal as against the main order along with an application to condone the delay which occurred due to the pendency of the Review petition before the Commission. The Appellate Tribunal, in such an event, would decide the condoning delay application taking into consideration the pendency of the Review petition before the Commission during that period. The Tribunal after condoning the delay would then entertain the Appeal. Without doing so, the Appellant cannot straightaway file an Appeal as against the dismissal order passed by the Review petition alone.

(d) Under the Civil Procedure Code(CPC) , the Appeal is provided as against the orders mentioned below:

(i) Order 41, Rule 1 read with section 96 provides for the Appeal arising out of original decree.

(ii) Order 43, Rule 1 provides for an Appeal arising out of the orders passed under CPC

(iii) Section 100 of CPC provides for the second Appeal.

These provisions do not provide for any prohibition for the Appeal against the orders referred to above. But the prohibition of an Appeal as against the order rejecting the Review petition has been specifically provided in Order 47 Rule 7.

(e) Therefore, restriction contained in Order 47, Rule 7 will have application to the orders passed by the Commission dismissing the Review petition concerning the main order.

(f) Section 94(1)(f) incorporates by reference to the provisions of the Code of Civil Procedure in regard to exercise of power over the Review of its own decision, directions and orders. Accordingly, the relevant provisions of CPC 114 and Order 47 Rule 7 deal with Review as if it has been provided for in Section 94 of the Electricity Act,2003 including the provision of Order 47 Rule 7.

(g) The reading of section 94 of the Act,2003 would indicate that it incorporates the provision of the CPC not only in respect of Rule 1 but also in respect of Rule 7 of Order 47. If the intention of

Parliament was to restrict the incorporation of the Review only to the extent that the Appropriate Commission exercises powers and not to deal with any other incident of Review such as Rule 7 of Order 47, the same would have been incorporated for separately.

(h) Section 94(2) of the Act,2003 deals with the powers of the Appropriate Commission to pass interim orders. In this section, the Parliament has chosen to say specifically that provisions of the CPC would not apply but has recognized the power to pass interim orders under section (2) of 94 of the Act. Hence, there is no bar provided for Appeal in those cases. But, in the case of Review, the Parliament had decided that the application must be in total consonance with the provision of the Order 47 Rule 7 of the CPC but not in the case of interim orders under Section 94(2) of the Act as stated above.

11. Keeping in view of the above mandates, we can now look at the present facts of the case.
12. In this case, the main order had been passed by the Madhya Pradesh State Commission on 22.12.2011. The

Applicant/Appellant filed the Review Petition on 29.8.2012 seeking for the Review of the main order dated 22.12.2011.

13. The State Commission after hearing the Applicant dismissed the said Petition by the order dated 25.9.2012 on the main ground that the Petition was not maintainable as no ground was made out for the Review. As against this Review Order dated 25.9.2012, the Appellant has filed this Appeal which was registered in DFR No.2089 of 2012 on 17.11.2012. The Registry on noticing some defects issued a defect notice to the Applicant requiring the Applicant to rectify the defects, and file the same within seven days. But it had taken time for rectification and re-filed the same only on 14.2.2013 along with an Application to condone the delay of 68 days in refiling the Appeal which is numbered as IA No.64 of 2013. In this Application, the Applicant has given some explanation for such delay.
14. Before considering the explanation regarding delay in re-filing the Appeal, it would be better to consider the question of maintainability of the Appeal as against the Review Order.
15. The main contention of the Applicant/Appellant as indicated above is that all the earlier orders and judgments of this Tribunal have been rendered holding that the Appeal was

not maintainable without referring Section 120 (1) of the Electricity Act and therefore, it requires reconsideration of the above judgments.

16. According to the Applicant/Appellant, the scope of Section 111 is wider as it provides for an Appeal as against any order including the order rejecting the Review made by the Appropriate Commission. The learned Counsel for the Applicant has made a distinction to the effect that the Appeal power of this Tribunal does not envisage any restriction on the Tribunal in the light of Section 120(1) of the Act and therefore, the Appeal against the Review order is maintainable and Section 94(1)(f) of the Act would not put a bar on the Appeal powers of the Tribunal.
17. Let us now refer to Section 120(1) of the Electricity Act:

“120. Procedure and powers of Appellate Tribunal.- (1) The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Appellate Tribunal shall have powers to regulate its own procedure”.

18. Section 94(1)(f) of the Electricity Act, 2003 provides as under:

“94. Powers of Appropriate Commission.- (1) The Appropriate Commission shall, for the purposes of any

inquiry or proceedings under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely:--

(f) Reviewing its decisions, directions and orders”.

19. On the strength of these provisions, it is contended by the learned Counsel for the Applicant that Section 94 gives the power of the Civil Court only to the Appropriate Commission for Reviewing its decision and it does not say that the said powers would be the same in case of hearing the Appeal as against the Review Order. This contention is not tenable:

20. Section 111 is not a stand-alone provision. It is the cardinal principle of interpretation of statutes that sections ought not to be read or interpreted in isolation. Section 111 of the Act has to be read in conjunction with other provisions of the Act, particularly sections 94(1), 173, 174 and 175 of the Act. Of course, section 111 makes any ‘order’ made by the Appropriate Commission amenable to be subjected to be Reviewed by this Tribunal, but it cannot be contended that section 111 does not include directions and decisions which partake the character of an order more so because section 94(1)(f) includes ‘decisions and directions’ in addition to ‘orders.

21. It can not be debated that the Review Petition is to be entertained by the appropriate Commission only under the powers conferred by the Act as well as under Order 47 Rule 7 of CPC. Similar provisions have been given under order 41 (1) and Order 43(1) and Section 100 CPC providing for the second Appeal before the Appellate Forum.
22. In fact, these provisions do not provide for any prohibition from filing Appeals before the Appellate Forum. But the prohibition of an Appeal as against the order rejecting the Review Petition has been specifically provided in Order 47 Rule 7 alone. When such a prohibition is provided for filing an Appeal as against the Review Order passed by the State Commission through the order 47 Rule-7, this Tribunal being the Appellate Authority cannot circumvent the said provisions provided under Order 47 Rule-7 by entertaining the Appeal under Section 111 of the Act.
23. As a matter of fact, this Tribunal has also been conferred with the CPC powers like that of the Appropriate Commission for entertaining the Review as against the judgment or order passed by it. The relevant provisions under Section 120(2) of the Electricity Act, 2003 are as under:

“120 Procedure and powers of Appellate Tribunal:

.....

(2) *The Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely:--*

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872) requisitioning any public record or document or copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) Reviewing its decisions;

(g) dismissing a representation of default or deciding it ex parte;

(h) setting aside any order of dismissal or any representation for default or any order passed by it ex parte;

(i) any other matter which may be prescribed by the Central Government.

(3) An order made by the Appellate Tribunal under this Act shall be executable by the Appellate Tribunal as a decree of civil court and, for this purpose, the Appellate Tribunal shall have all the powers of a civil court.

(4) Notwithstanding anything contained in sub-section (3), the Appellate Tribunal may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.

(5) All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code and the Appellate Tribunal shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973 (2 of 1974).

24. So, these provisions would clearly indicate that the powers have been vested with the Tribunal also under CPC for adopting various courses and also for entertaining the Petitions for Review. Therefore, Section 120(1) of the Electricity Act which provides that the Tribunal has got the powers to regulate its own procedure, would not mean that this Tribunal can exercise the powers to regulate its own procedure as against the specific prohibition contained in CPC.
25. In other words, when the specific prohibition is provided from entertaining the Appeal under CPC, it cannot be said

that the powers which have been given to the Tribunal either u/s 111 or 120 of the Electricity Act, 2003 can be exercised to circumvent the embargo put on the Appellate Forum from entertaining the Appeal as against the Review Order passed by the State Commission.

26. As held in the earlier judgments, Section 111 of the Electricity Act, 2003 which provides for the Appeal as against the orders passed by the appropriate State Commission is not to be read in isolation.
27. On the other hand, it has to be read in conjunction with other provisions of the Act particularly Section 94(1), 173, 174 and 175 of the Act.
28. Therefore, we have to hold that there is a bar as contained in the order 47 Rule-7 to entertain an Appeal as against the order passed by the appropriate Commission in the Review, and this bar would apply to the Appellate Forum namely Tribunal also and hence, this Tribunal is not entitled or empowered to bypass or circumvent the said bar to entertain the Appeal.
29. There is one more aspect to be noticed. Even assuming that this Tribunal has got the powers to entertain the Appeal as against the Review Order on the ground that it is not legally valid, only that order alone can be set aside and

not the main order. Consequently, the main order will be intact without being disturbed. If that is the position, no purpose would be achieved in entertaining the Appeal to go into the legality of Review Order alone.

30. In view of the above, we have to hold that the arguments of learned Counsel for the Applicant/Appellant lacks substance as in our view the earlier orders and judgments do not require reconsideration. Consequently, we reject the argument of the learned Counsel for the Applicant and thereby we reiterate that the present Appeal as against the Review dismissal, order is maintainable.
31. In view of the above finding, we need not go into explanation for condonation of delay of 68 days in refilling the Appeal. However, we would like to refer to the same to show that that conduct of the Applicant which reflects the lack of diligence throughout.
32. It is noticed that the Applicant/Appellant filed Review Petition before the State Commission not within time but with a huge delay of 180 days in filing the Review. Here also, he has filed an application for condonation of the delay in refilling the Appeal. The details of the explanation given in the above application also has not shown that the Applicant has been taking prompt steps to refile the Appeal

within time, which indicates that the Applicant has not been vigilant through out.

33. Hence, the Application to condone the delay in refilling the Appeal is dismissed. Consequently, Appeal as against the Review order also is rejected as not maintainable.

(V J Talwar)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated: 17th April,2013

√REPORTABLE/~~NON-REPORTABLE~~