

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

APPEAL NO. 145 OF 2019 & IA No. 1851 of 2019

Dated : 1st June, 2020

**Present: Hon'ble Mrs. Justice Manjula Chellur, Chairperson
Hon'ble Mr. S.D. Dubey, Technical Member**

IN THE MATTER OF:

**NLC India Limited
(Formerly Neyveli Lignite Corporation Limited)
First Floor, No. 8, Mayor Sathyamurthy Road, FSD,
Egmore Complex of Food Corporation of India,
Chetpet, Chennai-600 031, Tamil NaduAppellant**

Versus

- 1. Central Electricity Regulatory Commission
Through the Secretary,
3rd & 4th Floor, Chanderlok Building,
36, Janpath, New Delhi- 110001**
- 2. Tamil Nadu Generation and Distribution Corporation Ltd
Through the Chief Financial Controller (Regulatory),
144, Annasalai,
Chennai – 600002**
- 3. Power Company of Karnataka Ltd
Through the Director (Commercial),
KPTCL Complex, Kaveri Bhawan
Bangalore – 560009**
- 4. Bangalore Electricity Supply Company Ltd
Through the Managing Director
Krishna Rajendra Circle
Bangalore – 560001**
- 5. Mangalore Electricity Supply Company Ltd
Through the Managing Director**

**Paradigm Plaza, A.B Shetty circle
Mangalore – 560009**

- 6. Chamundeshwari Electricity Supply Company Ltd
Through the Managing Director
Corporate Office No. 927, L.J Avenue
New Kantharaj Urs Road,
Saraswathipuram
Mysore – 570009**
- 7. Gulbarga Electricity Supply Company Ltd
Through the Managing Director
Main Road, Gulbarga
Karnataka – 585102**
- 8. Hubli Electricity Supply Company Ltd
Through the Managing Director
P.B. Road, Navanagar
Hubli – 580025**
- 9. Kerala State Electricity Board
Through the Chief Engineer (Commercial)
Vaidyuthi Bavanam, Pattom
Thiruvananthpuram – 695004**
- 10. Puducherry Electricity Department
Through the Superintending Engineer I,
137, NSC Bose Salai Puducherry – 605001 Respondent**

Counsel for the Appellant (s) : Mr. M. G. Ramachandran, Sr. Adv.
 Ms. Ranjitha Ramachandran
 Ms. Poorva Saigal
 Ms. Anushree Bardhan
 Mr. Pulkit Agarwal
 Mr. Shubham Arya
 Mr. Arvind Kumar Dubey
 Ms. Tanya Sareen

Counsel for the Respondent(s) : Mr. S. Vallinayagam for R-2

ORDER

IA No. 1851 of 2019 IN APPEAL NO. 145 OF 2019

(CLARIFICATION OF THE ORDER DATED 23.09.2019 ON MAINTAINABILITY OF APPEAL)

PER HON'BLE MR. S. D. DUBEY, TECHNICAL MEMBER

1. The Appeal No. 145 of 2019 has been filed by M/s. NLC India Limited (**Appellant**) under Section 111 of the Electricity Act, 2003 against the order dated 19.12.2018 passed in Review Petition No. 39/RP/2017 for review of tariff of NLC Thermal Power Station-II Expansion Units I & II (2 x 250 MW) based on Circulating Fluidized Bed Combustion Technology for the period from its date of commercial operation till 31.3.2019 determined by the Central Electricity Regulatory Commission in Petition no. 146/GT/2015 vide order dated 24.7.2017.
 - 1.1 This Tribunal has passed an Order dated 23.09.2019 on Maintainability of the Appeal No. 145 of 2019.
 - 1.1 The Applicant has filed an IA No. 1851 of 2019 on 15.10.2019 in the instant Appeal for the clarification of the Order of this Tribunal dated 23.09.2019 regarding maintainability of the Appeal.
2. **Learned Counsel for the Applicant has filed the following submission for the clarification of the order dated 23.09.2019.**
 - 2.1 The Appellant has filed the above mentioned appeal against the order dated 19.12.2018 passed in Petition No. 39/RP/2017 by the Central Electricity Regulatory Commission. The Respondent No. 2, Tamil Nadu Generation and Electricity Distribution Company

Limited (TANGEDCO) raised the issue of the maintainability of the appeal on the ground that the appeal has been filed from the order of the Central Commission passed in the Review Petition and not from the initial/main order dated 24.07.2017, passed by the Central Commission in Petition No. 146/GT/2015.

- 2.2 In response to the maintainability issue raised by the TANGEDCO, the Appellant had placed before the Hon'ble Tribunal the note of arguments inter alia relying on the principles laid down by the Hon'ble Supreme Court that there can only be one decree or order and accordingly when the order dated 24.07.2017 passed in Petition No. 146/GT/2015 was reviewed (partly) resulting in change in tariff, the decree or order contained in the same order gets modified with the order dated 19.12.2018 passed in Review Petition No. 39/RP/2017 and therefore the appeal would be maintainable only against the order passed in the Review Petition dated 19.12.2018 and not from the order dated 24.07.2017.
- 2.3 In this regard, the appellant had relied on number of decisions of the Hon'ble Supreme Court and more particularly, the decision in DSR Steel Pvt. Ltd. Vs. State of Rajasthan (2012) 6 SCC 782 (Paras 24-26). The Appellant had also relied on the decision of the Hon'ble Supreme Court in Tirumala Chetti Rajaram Vs. Tirumalachetti Radhakrishnayya Chetty 1962 (2) SCR 452 – Paras 7 and 10, on the aspect that there can be only one decree and there cannot be multiple decrees or orders.
- 2.4 In the proceedings the appellant had, amongst others, referred to the decisions of the Hon'ble Supreme Court in Sushil Kumar Sen Vs. State of Bihar AIR 1975 SC 1185 in which it has been held as

under :

2. *It is well settled that the effect of allowing an application for review of a decree is to vacate the decree passed. The decree that is subsequently passed on review, **whether it modifies, reverses or confirms** the decree originally passed, is a new decree superseding the original one (see *Nibaran Chandra Sikdar v. Abdul Hakim* [AIR 1928 Cal 418], *Kanhaiya Lal v. Baldeo Prasad* [ILR (1906) 28 All 240], *Brijbasi Lal v. Salig Ram* [ILR (1912) 34 All 282] and *Pyari Mohan Kundu v. Kalu Khan* [ILR (1917) 44 Cal 1011 : 41 IC 497]).*

3. *The respondent did not file any appeal from the decree dated August 18, 1961 awarding compensation for the land acquired at the rate of Rs 200 per katha. On the other hand, it sought for a review of that decree and succeeded in getting the decree vacated. When it filed Appeal No. 81 of 1962, before the High Court, it could not have filed an appeal against the decree dated August 18, 1961 passed by the Additional District Judge as at that time that decree had already been superseded by the decree dated September 26, 1961 passed after review. So the appeal filed by the respondent before the High Court could only be an appeal against the decree passed after review. When the High Court came to the conclusion that the Additional District Judge went wrong in allowing the review, it should have allowed the cross-appeal. Since no appeal was preferred by the respondent against the decree passed on August 18, 1961 awarding compensation for the land at the rate of Rs 200 per katha, that decree became final. The respondent made no attempt to file an appeal against that decree when the High Court found that the review was wrongly allowed on the basis that the decree revived and came into life again.*

4. *The High Court should have allowed the cross-appeal; and dismissed the appeal, which was, and could only be against the decree passed on September 26, 1961, after the review. We therefore set aside the judgment and decree passed by the High Court and allow the appeal. The effect of this judgment would be to restore the decree passed by the Additional District Judge on August 18, 1961. We make no order as to costs.*

2.5 In order dated 23.09.2019 this Tribunal has been pleased to refer to the decision in DSR Steel case (supra) and has held as under :

6. It is true that in a tariff petition the Commission concerned considers various elements of tariff and finally decides/determines the tariff. Such tariff arrived at is the decree or order. In this case, even in review petition some claims of the Appellant were answered in their favour and some were held against them. Therefore, we are of the opinion that the decision which reject the claim of the Appellant in the review petition would not change the order dated 24.07.2017 (main order) but as far as the claims which were initially not considered, in other words, which were now considered and modified in review petition, it can be considered as modification of initial order vis-à-vis those issues. It is well settled that for the purpose of appeal there is only one order and one decree. Even the format of appeal as contended by the Appellant under Section 111 of the Act provides for an appeal only in regard to the order but not in respect of each issue or reasoning given in the impugned order. In the light of modification of decision on certain issues in the review petition, we are of the opinion that the appeal is maintainable against such decision pertaining to those issues. It is made clear that so far as the decision on other issues in the initial order which were not sought for review and so also decisions of those issues which were sought for review but refused cannot form part of grounds/relief sought by the Appellant in the appeal.

7. With these observations, we opine that the appeal is maintainable.

2.6 Thus the Tribunal has held the appeal to be maintainable based on the principles mentioned above namely that there can be only one decree or order. However, the Appellant submits that in the light

of the well settled principles taken into consideration by the Tribunal based on the decision of the Hon'ble Supreme Court the last part of para 6 of the order which reads 'It is made clear that so far as the decision on other issues in the initial order which were not sought for review and so also decisions of those issues which were sought for review but refused cannot form part of grounds/relief sought by the Appellant in the appeal.' should be construed to be applicable to circumstances where the decision is a rejection of the review petition as a whole and not where the decision partly allows the review petition in some issues. This will be consistent with the early part of para 6.

2.7 This Tribunal may, therefore, be pleased to clarify the above to avoid any wrong interpretation of the decision of this Tribunal in the said order. It is therefore respectfully prayed that this Tribunal may be pleased to clarify that the last part of para 6 of the order dated 23.09.2019 should be read as applicable only to cases where the final decision in the review petition is the rejection of the review petition in toto namely, refusal of the Tribunal to interfere with the decree or order earlier made and covered by para 25.3 of the decision in DSR Steel Pvt. Ltd. Vs. State of Rajasthan (2012) 6 SCC 782 and will not apply when the decision allows the review on some issues resulting in modification of the decree or order.

2.8 It is, therefore, respectfully prayed that this Hon'ble Tribunal may be pleased to:

- (a) Clarify the order dated 23.09.2019 to the extent mentioned above;
- (b) Pass such further order or orders as this Hon'ble Tribunal

may deem just and proper in the circumstances of the case.

3. Our Consideration:

- 3.1 We have considered the submissions of the Appellant and in context of various judgements of the Hon'ble Supreme Court which have been duly followed by this Tribunal on a number of occasions deciding the maintainability of the Appeals. Based on several authorities set out by the Apex Court and this Tribunal an Order dated 23.09.2019 in Appeal No. 145 of 2019 was passed under which the Appeal of the Appellant was held as maintainable.
- 3.2 Submittedly, the Appellant is not aggrieved by the said order dated 23.09.2019 and has only urged certain clarifications relating to the last part of the Para 6 of the reference order so as to constitute that the last part of Para 6 is applicable to the circumstances where the decision is a rejection of the Review Petition has held not for the decision partly allowed the Review Petition in some issues.
- 3.3 While taking note of various judgements of the Apex Court as well as this Tribunal, it is noted that it is a settled principle of law that the effect of allowing an application for review of decree is to vacate the decree passed. The decree i.e. subsequently passed on review whether it modifies or confirm the already passed is a new decree to proceeding of the original one.
- 3.4 Among other judgements relied upon by the appellant, the decision in DSR Steel Pvt. Ltd. Vs. State of Rajasthan (2012) 6 SCC 782 stated supra is quite elaborative in nature and covers almost all alterations and modifications leading to maintainability of appeals

with reference to the original decree verses the decree passed in review.

- 3.5 Though not necessary to issue the clarification to our order dated 23.9.2019 we are of the opinion that to remove any doubt and also to have consistency with the early part of Para 6, the following shall be added at the end of the Para 6 of the Order dated 23.09.2019.

“needless to mention that the same shall be applicable to circumstances where the decision is a rejection of the Review Petition as a whole and not where the decision partly allows the Review Petition on some issues.”

In the light of the above the IA No. 1851 of 2019 is disposed of.

List the matter for hearing on 01.07.2020.

Pronounced in the virtual Court on this 01.06.2020.

**(S.D. Dubey)
Technical Member**

**(Justice Manjula Chellur)
Chairperson**