

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

**Dated:11<sup>th</sup> November, 2014.**

**Present:**

**HON'BLE MR. JUSTICE M KARPAGA VINAYAGAM, CHAIRPERSON**  
**HON'BLE MR. RAKESH NATH, TECHNICAL MEMBER**

**APPEAL NO.212 OF 2014**

**In the Matter of:**

**Chhattisgarh State Power Distribution Co. Ltd.,**  
**4<sup>th</sup> Floor, Vidyut Seva Bhavan,**  
**Daganiya,**  
**Raipur-492 013**  
**Chhattisgarh**

**..... Appellant**

**Versus**

**Chhattisgarh State Electricity Regulatory Commission**  
**Irrigation Colony,**  
**Shanti Nagar,**  
**Raipur-492 001**

**...Respondent(s)**

Counsel for the Appellant(s) : Mr. K Gopal Chowdhary

Counsel for the Respondent(s): -----

**/ O R D E R /**

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

1. Chhattisgarh State Power Distribution Company Limited, the Distribution Licensee has filed this Appeal in Appeal No.212 of 2014 as against the Impugned Order dated 12.6.2014 regarding the disallowance of various claims.
2. When the Appeal is posted for admission, it is brought to our notice that on the very same issues, the Appellant has filed the Review Petition before the State Commission challenging the Impugned Order dated 12.6.2014.
3. When the Maintainability of the Appeal was questioned by this Tribunal on the strength of our judgment in Appeal No.41 of 2014 in which it was held that when the very same issues have been raised in this Appeal before this Tribunal as well as in the Review Petition pending before the Commission, the Appeal could not be entertained.
4. The learned Counsel for the Appellant has requested to reconsider the said judgment in Appeal No.41 of 2014 on the basis of various points raised by him. He has been asked to file the Written Notes on "Maintainability" before this Tribunal. Accordingly, he has filed the Written Notes

on the question of “Maintainability” and argued the matter on 17.10.2014.

5. After hearing the arguments, the matter was posted for pronouncement of the order on 10.11.2014.
6. At this point of time, the learned Counsel for the Appellant stated that they would consider for taking steps to withdraw the said Review Petition so that the Appeal could be admitted. Accordingly, we gave time till 10.11.2014.
7. Today, when the matter was taken up, the learned Counsel for the Petitioner stated that the proceedings in the Review Petition has already started and public hearing also is being held and therefore, the Appellant is unable to get the Review Petition withdrawn.
8. On this basis, we are pronouncing this Order considering the question of “Maintainability”.
9. This Tribunal in Appeal No.41 of 2014 has held that the Appeal is maintainable only on such issues that are not raised in the Review Petition and the Appeal is not maintainable when such issues are raised both in the Appeal and the Review mainly relying upon Section 10 of the CPC and Regulations of Practice framed u/s 120 of the Electricity Act, 2003.

10. The learned Counsel for the Appellant has elaborately argued that the findings given on the aspect of Section 10 of the CPC is not applicable to the present case as Section 10 applies in the case of two suits and the Review Proceedings and the Appeal proceedings are not suits.
11. In respect of Section 120 of the Electricity Act, 2003 it is submitted that right to Appeal is statutory right and there is no bar on the restrictions in the Act for the Appeal to be filed after Application for Review is filed.
12. Elaborating these points, the learned Counsel for the Appellant has filed the detailed written notes and also made the detailed submissions.
13. We have carefully considered the submissions of the learned Counsel and also gone through the notes submitted by him.
14. As indicated above, the very same issues had been raised before this Tribunal in Appeal No.41 of 2014 wherein a decision has been arrived at by holding that the Appeal is not maintainable on the same issues when those issues are raised in the Review Petition before the Commission. The findings rendered in the above judgment are as under:

**“To Sum-Up**

(a) *In the present case, the issues raised by the Appellant in the Appeal and the issues and relief sought for in the Review Petition are substantially the same. Since both the Appeals and the Review Petitions have been filed by the Appellant before the respective Forums raising the very same issues and having regard to the fact the Review Petition is still pending adjudication before the Central Commission this Appeal could not be maintained.*

(b) *The Appellant has failed to demonstrate that the issues raised in the Review Petitions are distinct from those raised in the present Appeal. The Appellant itself admitted in the Appeal that same grounds have been raised both in the Review Petition as well as in the Appeal. Having regard to the fact that the identical issues have been raised before both the Forums, the outcome of the Review Petition pending before the Regulatory Commission will bare the direct impact on the present Appeal and vice versa. Hence, the Appellant cannot be allowed to pursue the same cause of action on the same issues before the two Forums at the same time.*

(c) *It is open to the Appellant to file a Review with regard to the issues which satisfy the ingredients of the apparent error committed in the Impugned Order before the Regulatory Commission. While the said Review Petition is pending, the Appellant is at liberty to file the Appeal against the Impugned Order raising the various other issues as the grounds of Appeal other than the issues which could be raised in the Review Petition. However, the Appeal during the pendency of the Review Petition on the very same*

*issues could not be entertained or otherwise so many practical difficulties would arise as explained in detail in the earlier paragraphs.*

*(d) If the issues raised before the Appellate Forum are distinct from those raised before the Review Forum then, in that case, the Appeal as well as the Review proceedings may simultaneously proceed. In other words, if the issues raised before the State Commission in the Review Petition and before this Tribunal in the Appeal are substantially the same and not distinct from each other, then the Appeal could not be maintained. In the present case, as admitted by the Appellant, the issues raised in the Appeal have been raised before the Review Forum also. Therefore, we are not inclined to admit the Appeal‘.*

15. These findings, in our view would squarely apply to the present case as well.
16. In the present case also the very same issues which have been raised in the Appeal have been urged in the Review Petition also which is now pending before the Commission.
17. The points raised in this written note would give the details of the points challenging or for reconsidering the order on the ground that the Order passed in Appeal No.41 of 2014 was wrong.
18. We are unable to accept the arguments of the learned Counsel for the Appellant since those points could be

considered only when the Appeal is filed against that order in Appeal No.41 of 2014.

19. Therefore, we reiterate in this order that this Appeal is not maintainable on the ground that all the issues raised in the Appeal have been raised in the Review Petition in which public hearing being held and the suggestions are being heard by the Commission from the public. Hence, it would be appropriate to allow the Commission to pass the Order in the Review Petition.
20. Therefore, the Appeal is dismissed as “Not Maintainable”. However, we make it clear that after disposal of the Review, the Appellant is at liberty to file the Appeal against the main order subject to the outcome of the Review proceedings and subject to the aspect of condonation of delay.
21. Thus, we reject the Appeal as not maintainable.

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

**(Justice M. Karpaga Vinayagam)**  
**Chairperson**

**Dated :11<sup>th</sup> November, 2014**



**REPORTABLE / ~~NON-REPORTABLE~~**