

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

**DFR NO.2718 OF 2013**

**Dated: 2<sup>nd</sup> April, 2014.**

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

**In the Matter of:**

**VRL Logistics Ltd  
Corporate Office,  
Giriraj Annexe, Circuit House Road,  
Hubli,Karnataka-580 029**

**Appellant**

**Versus**

- 1. Hubli Electricity Supply Company Limited.,  
Navanagar, P.B Road,  
Hubli  
Karnataka-580 025**
- 2. Karnataka Electricity Regulatory Commission,  
Mahalaxmi Chambers,  
M.G Road,  
Bangalore-560 001**

**..... Respondent(s)**

**Counsel for the Appellant : Mr. Ranvir Singh  
Ms. Shruti Singh  
Mr. T Prasad,  
Ms. Priya**

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

**ORDER**

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

“Whether the Appeal u/s 111 challenging the Order passed by the State Commission dismissing the Review Petition in exercise of the powers u/s 94 (f) of the Act is barred by the provisions of the Order 47 Rule 7 of the Civil Procedure Code”?

**And**

“Whether the Order rejecting the Application for Condonation of Delay for filing a Review Petition can be said to be an Order passed in exercise of the Review Jurisdiction and whether such an Order can be prevented from being challenged in Appeal u/s 111 of the Electricity Act, 2003 before this Tribunal”?

1. These are the two questions posed before this Tribunal in this matter.
2. VRL Logistics Limited, the Appellant herein has filed this Appeal challenging the Order dated 17.10.2013 passed by the State Commission dismissing the Review Petition filed by the Appellant holding that the Review Petition could not be entertained not only because of the long delay which is not explained but also because of the invalid grounds raised in the Review Petition.

3. Since, we entertained a doubt with regard to maintainability of the Appeal as against the Review Order dismissing the Review Petition filed by the Appellant in the light of the objection raised by the Registry, we have asked the learned Counsel for the Appellant to make the submissions with reference to the maintainability of the Appeal.
4. Accordingly, the matter was argued elaborately.
5. On the basis of the said arguments, the above questions have been framed for consideration.
6. Before dealing with these questions, it would be appropriate to refer to the relevant facts of this case.
7. The relevant facts of this case are as under:
  - (a) The Appellant is a Wind Generator. It installed 34 Wind Turbine Generators with a total generation capacity of 42.5 MW.
  - (b) Hubli Electricity Supply Co. Ltd is a Distribution Licensee, the 1<sup>st</sup> Respondent.
  - (c) Both the Appellant and the Respondent Distribution Licensee entered into an Agreement for supply of power produced by the Appellant. As per the policy of the State and the terms and conditions in the Power Purchase Agreement, the entire quantity of

power generated by the Appellant was being sold by the Appellant to the Distribution Licensee.

(d) As per the PPA, the Respondent Company shall make the payment of the amount within 15 days from the date of receipt of the tariff invoice and if the payment from the Distribution Licensee is not paid within due date, the interest would be payable at the rate of SBI Medium Term Lending Rate per annum. Accordingly, the Appellant, after supply of power to the Distribution Licensee, raised the monthly bills in respect of the power generated and sold to the Respondent licensee. However, the Respondent Licensee continuously defaulted in making the payment of both the bills and interest amount.

(e) Several letters were sent by the Appellant to the Respondent Licensee but there was no response. Therefore, the Appellant on 20.4.2009, filed a Petition before the State Commission for issuing direction to the Respondent Licensee to pay a sum of Rs.91,68,198.00 to the Appellant towards the interest on delayed payment of energy bills from September, 2006 to January, 2009.

(f) When the proceedings were pending, the Distribution Licensee, the Respondent filed a Memo

before the State Commission on 28.4.2010 contending that entire payment had been made and prayed for the disposal of the Petition by giving the details of the payment made to the Appellant. Accordingly, the State Commission, on the basis of the said Memo, disposed of the Application by passing the Order on 29.4.2010 holding that the amount claimed had already been paid and as such, the issue did not survive for decision.

(g) The above order was passed by the State Commission on 29.4.2010, in the presence of the learned Counsel appearing for both the parties, on the basis of the said Memo which was not disputed by the Appellant.

(h) However, the Appellant, thereupon, disputing the payment of the claim amount as mentioned in the Respondent's Memo, filed an Appeal before the Karnataka High Court on 7.7.2010. This Appeal was pending before the High Court for about two years. Ultimately, when it was brought to the notice of the Karnataka High Court that the Appeal would be maintainable only in the Tribunal and not in the High Court, the High Court passed an Order dismissing the Appeal as not maintainable on 13.2.2010. However, the High Court gave liberty to the Appellant to file an Appeal before the Appellate Tribunal.

(i) Despite this Order, the Appellant did not choose to come to this Tribunal immediately to file an Appeal and instead filed a Review Petition before the High Court.

(j) Ultimately, the Review Petition was dismissed by the High Court giving liberty to the Appellant to approach this Tribunal by way of Appeal.

(k) Accordingly, the Appellant preferred the Appeal in Appeal No.94 of 2013 before this Tribunal as against the Impugned Order of the State Commission dated 29.4.2010 along with an Application for condonation of delay.

(l) This Tribunal while condoning the delay dismissed the Appeal of the Appellant by the Order dated 20.5.2013 holding that the remedy for the Appellant lies elsewhere. Thereupon, the Appellant filed a Review Petition before the State Commission on 21.6.2013 as against the Main Order passed by the State Commission dated 29.4.2010 along with an Application to condone the delay in filing the Review Petition. However, the State Commission disposed the Petition holding that the delay has not been properly explained and the grounds have not been made out for Review.

(m) Aggrieved by this Order, passed in the Review Petition, now the Appellant has presented this Appeal.

8. As pointed out earlier, we have raised the question of maintainability of the Appeal since this Tribunal earlier held in several judgments that the Appeal against the Review Order dismissing the Review Petition is not maintainable in the light of the Order 47 Rule 7 of the Civil procedure Code.
9. The learned Counsel has argued contending that the decisions rendered by this Tribunal earlier were not correctly decided and therefore, the earlier decisions which are per incuriam, are required to be reconsidered in this Appeal.
10. On this point, the learned Counsel for the Appellant has urged the following grounds:

(a) The right of Appeal is a creation of a statute. That apart, once the right of Appeal has been conferred to the Appellate Forum, it cannot be circumscribed by a narrow or strict construction of the statute providing for the Appeal. If the statutes confer a right of Appeal, it should be liberally interpreted so as to enable complete and full realization of this right. Moreover, the statutes pertaining to the right of Appeal should be given a liberal construction in favour of the right since they are

remedial. Accordingly, the right will not be restricted or denied unless such a construction is unavoidable.

(b) The powers of the State Commission under the Electricity Act, 2003 are enumerated in Section 94. Section 94 (f) states that the appropriate Commission shall have powers to review its directions and orders. Section 94 confers on the State Commission same powers as are vested in the Civil Court under the Civil Procedure Code, 1908. The statute also creates an Appellate Tribunal which confers on a person aggrieved by an Order of the Commission, to prefer an Appeal before it. This right of Appeal cannot be restricted as the same is subject to such conditions as are provided u/s 111 of the Act.

(c) Section 120 of the Act stipulates the procedure and powers of the Tribunal. Section 121 states that the Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure.

(d) The Restriction with regard to preferring an Appeal against the order passed in the Review Petition as enumerated under Order 47 Rule 7 of the CPC cannot be imposed on the Appellate Forum exercising its jurisdiction under Section 96 of the CPC. The jurisdiction of the Appellate Tribunal is wide. Though

Section 94 (f) incorporates by reference Section 114 and Order 47 Rule, 1 CPC, this incorporation by reference should be read for the limited purpose of ascertaining the grounds for review and may not be stretched to include the provisions of Order 47 Rule 1 so as to control and whittle down the jurisdiction and powers of the Appellate Tribunal defined u/s 111 of the Electricity Act, 2003.

**11.** On these grounds, the learned Counsel for the Appellant has cited the following authorities:

(a) Hoosein Kasam Dada (India) Ltd. Vs State of M.P (AIR1953 SC 221);

(b) Super Cassettes Industries Ltd. Vs State of U.P (2009) 10 SCC 531;

(c) Subal Paul Vs Manila Paul (2003) 10 SCC 361;

(d) Competition Commission of India Vs SAIL (2010) 10 SCC 744;

(e) U.P Power Corporation Ltd. v National Thermal Power Corporation Ltd. (2009) 6 SCC 235;

**12.** In addition to the above authorities, he has also relied upon the various comments contained in Principles of Statutory Interpretation by Justice G.P. Singh.

13. These decisions are cited by the learned Counsel for the Appellant in order to show that the principles laid down by this Tribunal earlier in respect of the point in question, has not been correctly laid down and as such, the decisions rendered by this Tribunal on this point requires reconsideration.
14. Before dealing with these submissions with regard to the interpretation on the strength of various authorities sought to be projected by the learned Counsel for the Appellant in the present Appeal, it would be better to refer to the principles laid down by this Tribunal in various judgments rendered earlier. They are as follows:

(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**

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 injection 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”.*

**(f) IA No.64 of 2013 in DFR No.2089 of 2012.**

*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”.*

**15.** In these judgments, the principles have been laid down by this Tribunal following the ratio decided by the Hon’ble Supreme Court with reference to maintainability of the Appeal as against the Review Order passed by the State Commission dismissing the Review Petition. Those principles 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.

- 16.** Keeping in view the above principles laid down, we shall now look into the present facts of the case.
- 17.** The Appellant Generating Company, aggrieved by the failure of the Distribution Licensee to make the payment towards the power supplied by the Appellant, filed a Petition before the State Commission on 20.4.2009 in Original Petition No.11 of 2009 seeking for a direction to be issued to the Distribution Licensee to make the payment

towards the interest on delayed payment of energy bills from September, 2006 to January, 2009.

- 18.** During the pendency of the said proceedings, the Distribution Licensee (Respondent) filed a Memo before the State Commission giving the details of the payments made to the Appellant and praying the State Commission to dispose of the matter as the amount of the claim has already been paid.
- 19.** Accordingly, on 29.4.2010, the State Commission took-up the matter and on that date, the learned Counsel for both the parties were present. On the basis of the Memo filed by the Respondent Licensee to the effect that the amount claimed has already been paid, the State Commission disposed of the Petition holding that no issue would survive for decision.
- 20.** The contents of the Order dated 29.4.2010 would show that both the parties were represented by the learned counsel and in their presence, the State Commission passed the Order. According to the Memo, the amount claimed by the Appellant has already been paid by the Distribution Licensees.
- 21.** If the facts mentioned in the Memo have been disputed by the Appellant it is for the Appellant to file a counter opposing the said Memo that the said amount claimed had not been paid.

But, the Appellant did not raise any objection by way of reply.

- 22.** On the other hand, it is the contention of the Appellant now in this Appeal that the said order requires to be reconsidered as the same was passed without affording an opportunity to the Appellant to verify the correctness of the statement made in the memo filed by the Respondent. This contention is misconceived as it has no basis.
- 23.** The Appellant must have filed a Review before the State Commission to correct the alleged error immediately thereafter if it had disputed the same. Instead, the Appellant filed an Appeal as against the Order dated 29.4.2010 that too before the High Court instead of filing an Appeal before this Tribunal which alone has got the jurisdiction.
- 24.** After pendency of two years, the High Court found that it has no jurisdiction and therefore on 13.2.2012 dismissed the Appeal as not maintainable giving liberty to the Appellant to file the Appeal before the Appellate Tribunal. Even this liberty was not availed of by the Appellant. Instead of filing the Appeal immediately before this Tribunal, the Appellant filed petition for Review before the High Court on 27.6.2012 praying to review its order dated 13.2.2012. However, the High Court dismissed the Review Petition on 5.2.2013. Thereupon, the Appellant filed the

Appeal in Appeal No.94 of 2013 before this Tribunal along with an Application to condone the delay.

- 25.** In view of the fact that the time had been spent by the Appellant to approach wrong forum, this Tribunal condoned the delay in filing the Appeal. However, the Appellate Tribunal in Appeal No.94 of 2013 dismissed the Appeal by the Order dated 20.5.2013 giving the reasons for the dismissal. The reasons for the dismissal are given as below:

*“A perusal of the Impugned Order dated 29.4.2010 would show that both the Counsel were present and in their presence only this order was passed. If the Applicant/Appellant felt that the Memo did not contain the correct particulars, the remedy before the Appellant is to file a Review against the said Order before the Commission itself, immediately thereafter. Without doing so, this Appeal had been filed firstly before the High Court and then before this Tribunal.*

*The Impugned Order is passed with the consent of both the parties. Therefore, we do not find any ground to admit this Appeal as the remedy for the Applicant is not before the Tribunal, but it lies elsewhere”.*

- 26.** So, even in this Order, the Tribunal went into the facts of the case and held that the Appellant ought to have filed the Review of the order dated 29.4.2010 immediately thereafter and the ground of the Appeal that the opportunity was not given to the Appellant to verify the contents of Memo, could not be considered to be valid one especially when the

remedy of the Appellant lies elsewhere. Holding so, this Tribunal dismissed the Appeal.

- 27.** Thereupon, the Appellant filed a Review before the State Commission in RP No.4 of 2013 on 21.7.2013 along with the Petition to condone the delay. The State Commission, after hearing both the parties, dismissed the Petition to condone the delay as well as the Review Petition on 17.10.2013 on the ground that there was no satisfactory explanation for the delay and there was no valid ground for Review.
- 28.** Against this order, the present Appeal has been filed on 2.12.2013 stating that the Appeal is within the time limit as there was no delay in filing the Appeal as the Appellant has challenged the order dated 17.10.2013 passed in the Review petition. That is how the question has now been raised whether the Appeal against dismissing the Review petition filed by the Appellant is maintainable or not.
- 29.** The decision rendered by this Tribunal as quoted above would clearly provide that the Appeal before the Tribunal against the Review order dismissing the Review Application is barred under Order 47 Rule-7 of the CPC.
- 30.** The learned Counsel for the Appellant has now submitted the decisions rendered by this Tribunal on this point is per incuriam and therefore, the principles laid down by this

Tribunal in the above decisions are required to be reconsidered.

- 31.** In order to substantiate this plea, the learned Counsel for the Appellant has cited various authorities which have been quoted above along with the Principles of Statutory Interpretation.
- 32.** At the outset, it shall be stated, that these decisions would be of no help to the Appellant because in yet another matter i.e. in IA No.64 of 2014, we have considered the same question raised by the Appellant praying for reconsideration of these judgments and held by interpreting various sections as well as the provisions of CPC that Appeal was not maintainable. In that case, the main ground urged by the Appellant was that the Appeal power of this Tribunal does not envisage any restrictions on the Tribunal in the light of Section 120 (1) of the Act and since earlier orders passed by this Tribunal have been rendered holding that the Appeal was not maintainable without referring to relevant Section 120 (1) of the Electricity Act, it requires the reconsideration of the above judgments. Thus, the very same question is now being argued now on the basis of various authorities.
- 33.** Let us now quote the observations made in the decision in IA No.64 of 2014 dated 17.4.2013 which are as under:

“  
.....

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.*

- 34.** The above finding had been rendered by this Tribunal in IA No.64 of 2013 dated 17.4.2013 while considering the prayer for reconsideration of the earlier judgments. In this matter, we have specifically held that Section 111 is not a standalone provision and the same is to be read in conjunction with other provisions of the Act particularly Section 94 (1), 173, 174 and 175 of the Act and quoting

Section 120, this Tribunal has specifically held that 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 its powers to regulate its own procedure as against the specific prohibition contained in the CPC.

- 35.** Therefore, the question of reconsideration of these judgments in the light of the detailed interpretation would not arise in this Appeal especially when the very same question had been answered in IA No.64 of 2013 dated 17.4.2013.
- 36.** One another argument which has been advanced by the learned Counsel for the Appellant is that the Order passed by the State Commission dismissing the Application to condone the delay holding that there was no proper explanation of the long delay could not be constrained to be the order passed in exercise of Review Jurisdiction and therefore, there is no prohibition in entertaining the Appeal as against the Order rejecting the Petition for condonation of delay. This contention urged by the Counsel for the Appellant is not tenable.
- 37.** The Impugned order admittedly, has been passed by the State Commission only in the Review petition in RP No.4 of 2013 filed by the Appellant to review the order dated

29.4.2010 passed by the State Commission in OP No.11 of 2009. Therefore, it cannot be said that the order Impugned shall not be construed to be the Order passed in the Review Petition.

- 38.** That apart, it is noticed that the State Commission not only dealt with the question of delay which was said to be not explained, but also went into the merits of the Review petition also and concluded that no ground was made out for the Review.
- 39.** Relevant portion of the order which dealt with the merits of the Review is as follows:

“ .....

*9. It is the contention of the Review petitioner that the Order passed by this Commission on 29.4.2010 based on the Memo filed by the Respondent, requires to be reconsidered as the same was passed without affording an opportunity to it to verify the correctness of the statement made in the Memo filed by the Respondent, as the statements made in the Memo were false and without reference to the claim made in OP No.11 of 2009 by the Petitioner.*

*10. In our view, the submissions made on behalf of the Petitioner are liable to be rejected as when the Order was passed by this Commission on 29.4.2010, the learned Counsel for the Review Petitioner was very much present and the matter was disposed of in his presence and he did not ask for time to verify the statement made in the Memo. If the Review Petitioner was of the view that the facts contained in the Memo*

*filed by the Respondent therein were not correct, nothing prevented the Review petitioner from immediately filing an Application before this Commission to that effect for recalling the Order or for reviewing the Order...”.*

40. Thus, it is clear that the State Commission while passing the Order in the Review Petition has not only held that Application for review was filed after long delay which was not satisfactorily explained but also concluded that the order dated 29.4.2010 could not be reviewed as the same was passed after giving opportunity to other side and order was passed in the presence of both the parties and therefore, there was no apparent error.
41. Therefore, the contention that the Impugned order cannot be construed to be the Order while exercising the Review Jurisdiction is liable to be rejected.
42. As mentioned earlier, in the earlier decisions, all the relevant provisions of the Act as well as the CPC have been considered and interpreted in detail and held correctly that the Appeal against the dismissal order passed in the Review petition is not maintainable.
43. In view of the above, those decisions cannot be construed to be per incuriam which is required to be reconsidered.

**44. Summary of Our Findings**

**(1) Appeal against the dismissal order passed in the Review Petition is not maintainable.**

**(2) The Order Impugned has not only rejected the prayer for condonation of delay but also found that no valid ground was made out for Review. Thus, the State Commission has rejected the prayer of the Review petitioner to condone delay and dismissed the Review Petition while exercising the Review jurisdiction. Hence, the Appeal is barred.**

**45. Thus, the Appeal filed by the Appellant is liable to be rejected as not maintainable.**

**46. Accordingly, the same is rejected.**

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

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

Dated: 2<sup>nd</sup> April, 2014

✓ ~~REPORTABLE/NON-REPORTABLE~~