

Appellate Tribunal for Electricity

(Appellate Jurisdiction)

**I.A. No. 46 of 2013 in (R.P) DFR No.165 of 2013 in Appeal
No.24 of 2011**

Dated: 28th May, 2013

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

In the Matter of:

**Odisha Power Transmission Corporation Ltd.,
Janapath, Bhubanesar, Odisha.**

...Applicant/Petitioner

Versus

- 1. Odisha Electricity Regulatory Commission
Bidyt Niyamak Bhawan, Unit-VIII
Bhubanesar-751012, Orissa**
- 2. Western Electricity Supply Company of Orissa Limited
Regd. Office – Plot No.N/22, IRC Village, Nayapalli,
Bhubaneswar-751015, Orissa.**
- 3. North Eastern Electricity Supply Company of Orissa
Limited
Regd. Office-Plot No.N/22, IRC Village, Nayapalli,
Bhubaneswar-751015, Orissa.**

4. **Southern Electricity Supply Company of Orissa Limited
Regd. Office-Plot No.N/22, IRC Village, Nayapalli,
Bhubaneswar-751015, Orissa.**
5. **Central Electricity Supply Utility of Orissa(CESU)
Regd. Office – 2nd Floor, IDCO Tower
Janpath,
Bhubanesar-751022,Orissa.**

...Respondent(s)

Counsel for the Appellant(s) : Mr.R.K. Mehta
Mr. Rajeev Ranjan Pathak
Mr. Antaryami Upadhyay
Mr. Rajeev Ramkam

Counsel for the Respondent(s):-

ORDER

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

1. Odisha Power Transmission Corporation Limited is the Petitioner/Applicant.
2. The Petitioner has filed the Review Petition as against the judgment of this Tribunal dated 18.10.2012.
3. The period of limitation for filing the Review Petition against the judgment of this Tribunal is prescribed as 30 days. However, the Petitioner has not filed the Review in time.

4. There was a delay of 47 days in filing Review after expiry of 30 days.
5. Hence, the Applicant/Petitioner filed this Application in I.A. No.46 of 2013 for condonation of delay of 47 days in filing the Review petition, giving the explanation for the delay.
6. This matter came up before the Tribunal on 20th March, 2013.
7. We raised a question of maintainability of the Application to condone the delay in filing the Review Petition on the basis of our earlier order dated 17.4.2013 in I.A. No.262 of 2012 passed on this point. Therefore, the learned Counsel for the Applicant/Petitioner sought time to go through the relevant provisions and the earlier order of this Tribunal and to make submissions on the question of maintainability of the Application to condone the delay in filing the Review Petition.
8. Accordingly, time was granted. Again, the matter was taken up on 01.4.2013. The learned Counsel for the Applicant/Petitioner has filed elaborate written notes on the question of maintainability of this Application for condonation of delay.
9. The learned Counsel for the Applicant/Petitioner also made effective and elaborate submissions on the question of maintainability on 01.4.2013.

10. We have gone through the written notes and carefully considered the submissions of the learned Counsel for the Applicant.

11. Let us refer to the submissions made by the learned Counsel for the Applicant/Review Petitioner which are as follows:-

“i) Electricity Act, 2003 by virtue of Section 120(2)(f) confers the same power to the Tribunal as are vested in the Civil Court for reviewing its decision. Therefore, this Tribunal also has got the same powers to entertain the Petition for Review as well as the Application to condone delay in filing the Review Petition, as are vested in the Civil Court.

ii) Under Section 111 and 125 of the Act, 2003, the period of limitation is prescribed to file an Appeal before this Tribunal and to file an Appeal before the Hon'ble Supreme Court respectively. But, there is no such period prescribed either in the Electricity Act, 2003 or in the Appellate Tribunal for Electricity(Procedure, form, fee and Record of Proceedings) Electricity Rules, 2007(hereinafter referred as Rules,2007) to file the Review Petition. Therefore, Section 5 of Limitation Act could be invoked to condone the delay in filing the Review Petition.

iii) There are two Notifications issued by this Tribunal with regard to the period within which the Review Applications should be filed. The first notification is dated 24.2.2012. The second notification is dated 14.9.2012. These notifications have been issued by this Tribunal in exercise of power conferred under the Electricity Act, 2003 as well as by the Rules, 2007. These Notifications are only practice directions. These notifications are not the statutes. Further, the Notifications have not expressly excluded the application of Section 5 of Limitation Act.

iv) Section 5 of the Limitation Act can be excluded only by the special or local law as provided under Section 29(2) of the Limitation Act. Neither the Electricity Act nor the Rules have excluded the application of Section 5 of the Limitation Act for entertaining the application to condone the delay in filing the Review Petition. The Practice Directions issued by this Tribunal also did not exclude the application of Section 5 of Limitation Act. Further, they are not special or local law. Therefore, this Tribunal has got the powers to condone the delay in filing the Review Petition under Section 5 of the Limitation Act.”

12. As mentioned in para-7 above, the very same point has been considered and decided by this Tribunal in I.A. No.262 of 2012 in the matter of GERC Vs Century Rayon and others by order dated 17.4.2013 and to the effect that the Application to condone the delay in filing the Review Petition was not maintainable.

13. Before discussing the merits of the various submissions made by the learned Counsel for the Applicant/Petitioner, with regard to the maintainability of the present Application to condone delay, it would be appropriate to quote the discussions and finding of this Tribunal in our earlier order dated 17.4.2013 holding that the Application to condone the delay in filing the Review Petition was not maintainable. The said discussion is as follows:-

15. *Let us now consider the **First Question** relating to condonation of delay and the sufficient cause.*

16. *According to the Review Petitioner, the Tribunal has got the powers for review of its order or decision as it has got similar powers as available to a Civil Court and when this Tribunal has got all the powers of Civil Court to review its order, then equally this Tribunal will have the same powers to condone the delay in filing such review also and these powers cannot be curtailed through the Notification issued by this Tribunal which provided for a period of 30 days within which the review could be filed since the Notification is only a practice directions especially when there is no prohibition*

preventing the applicability of the Section 5 of the Limitation Act.

17. *On the other hand the Respondents have vehemently contended that there is no provision either in the Electricity Act, 2003 or in the Notification dated 24.2.2012 issued by this Tribunal providing for condonation of delay in filing a review by showing sufficient cause after expiry of 30 days and so, the petition to condone delay is not maintainable.*

18. *In regard to the maintainability of the Petition to condone the delay, the learned Counsel for the Review Petitioner has cited the following authorities in support of its contention:*

a. Chhattisgarh Electricity Board Vs Central Electricity Regulatory Commission (2010) 5 SCC, 23 Para 27;

b. Mukri Gopalan Vs Cheppilat Puthanpurayil Aboobacker (1995) 5 SCC 5 Para 9 & 10;

19. *On the other hand, the Respondents cited the following authorities to contend that the application to condone the delay is not maintainable and the Limitation Act could not be invoked in view of the provisions of the Act as well as the Notification issued by this Tribunal:*

a. Commissioner of Customs and Central Excise Vs Hongo India Pvt Ltd., reported in 2009 (5) SCC 791;

b. Punjab Fibers Limited (2008) 3 SCC 73;

c. K Ajit Babu and Ors Vs Union of India and Ors reported in 1997 (6) SCC 473;

d. Gopabandhu Biswal Vs Krishna Chandra Mohanty & Ors reported in 1998 (4) SCC 447;

20. *On the strength of above decisions cited by the learned Counsel for the Respondents, on the question of maintainability of the Petition, it is contended that even though in the Electricity Act or in the Notification issued by this Tribunal, there is no indication about the prohibition for filing the Review after a delay of 30 days before this Tribunal, **the Hon'ble Supreme Court has specifically held in various decisions that in the absence of any clause for condonation of the delay by showing sufficient cause after the prescribed period is expired, there is complete exclusion of Section 5 of the Limitation Act and as such, the application to condone the delay is not maintainable.***

21. *Placing reliance on the decisions cited by the Review Petitioner, this objection is stoutly opposed by the learned Counsel for the Review Petitioner by making the following submissions:*

a. *The power of review of this Tribunal is to be found in Section 120 (2)(f) of the Electricity Act, 2003. It provides that this Tribunal have the power to review as available to a Civil Court under the Civil Procedure Code.*

b. *Section 120 (2)(f) does not provide for any limitation period for filing a Review.*

c. *Therefore, this Tribunal has all the powers of a Civil Court to review its order. Then equally, this Tribunal also have the same powers as available to a Civil Court to condone the delay in filing such Review.*

d. *The notification issued by this Tribunal providing for filing the Review within a period of 30 days is only a practice direction for the purpose of regulating its own procedure subject to other*

provisions of the Act. Such a notification does not prevent the applicability of the Section 5 of the Limitation Act. On the other hand Section 29(2) of the Limitation Act itself provides that its applicability is subject to being expressly or impliedly excluded by the “special or local law”. Therefore, execution could be done only through the special law and not through the notification issued by this Tribunal which is a mere practice direction.

e. Even otherwise, there is no provision either in the Act or in the notification prohibiting the applicability of Section 5 read with Section 29 (2) of the Limitation Act to review the proceedings before this Tribunal.

22. *While dealing with this issue, it would be proper to refer to relevant portion of the judgment of the Hon’ble Supreme Court in the case of Chattisgarh State Electricity Board Vs CERC (2010) 5 SCC 23 which is as follows:*

“27. It is thus evident that the Electricity Act is a special legislation within the meaning of Section 29(2) of the Limitation Act, which lays down that where any special or local law prescribes for any suit, appeal or application, a period of limitation different from the one prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and provisions contained in Section 4 to 24 (inclusive) shall apply for the purpose of determining any period of limitation prescribed for any suit, appeal or application unless they are not expressly excluded by the special or local law....”.

23. *In this decision, the Supreme Court has held that Section 5 of the Limitation Act would not be applicable*

to condone the delay beyond the stipulated period in Section 125 of the Act, 2003 as it contains no provision to condone the delay beyond the said period.

24. *The Hon'ble Supreme Court in the case of Mukri Gopalan Vs Cheppilat Puthanpurayil Aboobacker reported in (1955) 5 SCC 5 cited by the learned Counsel for the Review Petitioner, **has held that unless there is a prohibition through a special or local law, there is no bar for invoking the Limitation Act. The relevant portion of the judgment is as follows:***

“It is therefore, necessary for us to turn to the aforesaid provisions of the Limitation Act. It reads as under:

“29”(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Section 4 to 24 (inclusive) shall apply only in so far as, and the extent to which they are not expressly excluded by such special or local law”.

A mere look at the aforesaid provisions shows for its applicability to the facts of a given case and for importing the machinery of the provisions containing Section 4 to 24 of the Limitation Act the following two requirements have to be

satisfied by the authority invoking the said provisions:

a. There must be a provision for period of limitation under any special or local law in connection with any suit, appeal or application;

b. The said prescription of period of limitation under such special or local law should be different from the period prescribed by the Schedule to the Limitation Act.

25. *Citing this judgment the learned Counsel for Review Petitioner contended that the said judgment proceeds on the basis of the fact that the different powers and treatment for the different Appellate authorities therein specifically had been conferred with the power to condone the delay in Appeals whereas the High Court has not been given such powers in the same series of Appeals, it was tantamount to an implied exclusion in terms of Section 29(2) of the Limitation Act. But in the present case, there is no such comparable situation under the Electricity Act, 2003.*

26. *However, the learned Counsel for the Respondents has cited the same judgment cited by the Petitioner i.e in the case of Chhattisgarh Electricity Board Vs Central Electricity Regulatory Commission (2010) 5 SCC, 23 in which it is held that Section 5 of the **Limitation Act cannot be invoked for condoning the delay in filing the Appeal before the Hon'ble Supreme Court from the order of this Tribunal beyond the period of limitation as prescribed in Section 125 of the Electricity Act,2003.***

27. *As pointed out by the learned Counsel for the Respondents, the Hon'ble Supreme Court in the said decision relied upon the said judgment in the case of Commissioner of Customs and Central Excise Vs Hongo India Pvt Ltd reported in 2009 (5) SCC 791 and the Punjab Fibre case (2008) 3 SCC 73.*

28. *In this judgment, the Hon'ble Supreme Court after examining the scheme of the Central Excise Act, 1944 held that the Application for reference to the High Court should be made within 180 days from the date of the communication of the order. It is further held that the language used in other provisions makes it clear that the legislature intended the Appellate Authority to entertain the Appeal by condoning the delay up to 30 days after expiry of 60 days which is preliminary limitation period for preferring the Appeal. According to the judgment of Hon'ble Supreme Court, in the absence of any clause for condoning the delay by showing sufficient cause after the prescribed period, there is complete exclusion of Section 5 of the Limitation Act.*

29. *In this context, it would be appropriate to refer to the relevant observations made by the Hon'ble Supreme Court in the case of Chattisgarh State Electricity Board Vs Central Electricity Regulatory Commission, 2010 (5) SCC 23 as under:*

"26. The object underlying establishment of a special adjudicatory forum i.e., the Tribunal to deal with the grievance of any person who may be aggrieved by an order of an adjudicating officer or by an appropriate commission with a provision for further appeal to this court and prescription of special limitation for filing appeals under Sections 111 and 125 is to ensure that disputes emanating from the operation and

implementation of different provisions of the Electricity Act are expeditiously decided by an expert body and not court, except this Court, may entertain challenge to the decision or order of the Tribunal”.

30. *The above observation would indicate that the specific prescription of period of limitation for filing the Appeals before the Tribunal u/s 111 and filing the Appeals before the Hon’ble Supreme Court u/s 125 is to ensure that the dispute emanating from the operation and the implementation of the various provisions of the Electricity Act, are expeditiously decided by an expert body.*

31. *The Hon’ble Supreme Court in the said decision further observed that the Electricity Act is a special legislation within the meaning of Section 29(2) of the Limitation Act which lays down that where any special or local law prescribed for any period of limitation different from the one prescribed under the Limitation Act, shall apply, unless they are not expressly excluded by the special or local law.*

32. *Let us now refer to the relevant observations made by the Hon’ble supreme Court in the case of Commissioner of Customs & Central Excise Vs Hongo (India) Private Limited 2009 (5) SCC 791. In the said decision the Hon’ble Supreme Court considered the question of Limitation Act and its applicability to the proceedings under the Excise Act which is a complete Act and held that in view of the Special Act, the provisions of Section 5 of the Limitation Act cannot be made applicable. The relevant observations are as follows:*

“34. Though, an argument was raised based on Section 29 of the Limitation Act, even assuming that Section 29(2) would be

attracted, what we have to determine is whether the provisions of this Section are expressly excluded in the case of reference to the High Court.

35. It was contended before us that the words “expressly excluded” would mean that there must be an express reference made in the Special or Local Law to the specific provisions of the Limitation Act of which the operation is to be excluded. In this regard, we have to see the scheme of the special law which here in this case is the Central Excise Act. The nature of the remedy provided therein is such that the legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If, on an examination of the relevant provisions, it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the act. In our considered view, that even in a case where the special law does not exclude the provisions of Section 4 to 24 of the Limitation Act by an express reference, it would nonetheless open to the court to examine whether and to what extent, the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation. In other words, the applicability of the provisions of the Limitation Act, therefore, is to be judged not from the terms of the Limitation Act but by the provisions of the Central Excise Act relating to filing of reference application to the High Court.

36. The scheme of the Central Excise Act, 1944 supports the conclusion that the time-limit prescribed under Section 35-H(1) to make a reference to the High Court is absolute and unextendable by a Court under Section 5 of the Limitation Act. It is well-settled law that it is the duty of the Court to respect the legislative intent and by giving liberal interpretation, limitation cannot be extended by invoking the provisions of Section 5 of the Limitation Act.”

33. As referred to above, the Hon'ble Supreme Court in the case of *Chattisgarh State Electricity Board Vs Central Electricity Regulatory Commission*, 2010 (5) SCC 23 has held that the Electricity Act is a special legislation within the meaning of Section 29(2) of the Limitation Act. The Electricity Act prescribes its own limitation period for various matters. There is a period of limitation prescribed for an Appeal to the Appellate Tribunal u/s 111 for which period of limitation is prescribed as 45 days, with the power of condonation of delay under the proviso to sub- Section (2) of Section 111.

34. Similarly, there is a period of limitation prescribed for filing the Appeal before the **Hon'ble Supreme Court within a period of 60 days. Through the said Section, the power was conferred to Hon'ble Supreme Court to condone the delay not exceeding further 60 days. Thus, there is a specific power conferred on the Tribunal to condone the delay without any limitation, whereas there is limitation on the power of Hon'ble Supreme Court to condone the delay beyond the further period of 60 days. Thus, the Electricity Act is clearly a special law within the meaning of Section 29 prescribing its own set of limitations which excludes the applicability of the Limitation Act.**

35. This Tribunal in the Notification issued under the powers conferred u/s 120 (1) read with Section 120 (2) and (f), has prescribed the Limitation for filing of review Petition as 30 days. The said Notification does not confer any power for condonation of delay for the further period.

36. From the above, it is clear that the Electricity Act and the Notification issued under the said special Act would certainly be construed to be a special law within the meaning of Section 29 of the Limitation Act. In view of the above, it has to be held that the Limitation Act would not apply to the Electricity Act. The limitation period prescribed for filing a review before this Tribunal under the powers conferred by the special Act is only 30 days without giving any power for condonation of the delay.

37. In view of the absence of any provisions either in the Act or in the Notification to condone the delay in filing the review especially when it is held that Limitation Act would not apply to this Special Act, we are constrained to hold that Application to condone the delay in filing the Review Petition beyond the period of 30 days is not maintainable.”

14. The gist of the findings in our above order dated 17.4.2013 is reproduced below:

(a) Even though either in the Electricity Act or in the Notification issued by this Tribunal there is no indication about the prohibition for filing the Review Petition after delay of 30 days before this Tribunal, in the absence of any clause for condonation of delay for showing

sufficient cause after prescribed period is expired, it must be held that there is exclusion of Section 5 of the Limitation Act. As such, Application for condonation of delay in filing Review is not maintainable.

(b) The specific prescription of period of limitation for filing the Appeals before the Tribunal u/s 111 and period of limitation for filing the Review as per the notification is with a view to ensure that the dispute emanating from the operation and implementation of the various provisions of the Electricity Act are expeditiously decided by an expert body.

(c) The Electricity Act is clearly a special law within the meaning of Section 29 of the Limitation Act prescribing its own set of limitation period which includes the applicability of the Limitation Act.

(d) This Tribunal in the notifications issued under powers under Section 120 (1) read with Section 120 (2) (f) has prescribed the Limitation period for filing of Review Petition as 30 days. The said Notification does not confer any power for condonation of delay for the further period.

(e) The Electricity Act as well as the Notification issued by this Tribunal under the powers conferred under the Electricity Act would be certainly construed to

be a special law within the meaning of Section 29 of the Limitation Act. Therefore, Section 5 of the Limitation Act would not apply to the Electricity Act.

(f) In view of the absence of any provisions either in the Act or in the Notification to condone the delay in filing the Review Petition especially when it is a settled law that Limitation Act would not apply to this Special Act, we have to hold that Application to condone the delay in filing the Review beyond the period of 30 days is not maintainable.

15. Now let us discuss the main crux of the points raised by the learned Counsel for the Applicant/Petitioner. The main plank of the arguments advanced by the learned Counsel for the Applicant/Petitioner is that in the absence of the express exclusion by any special or local law, Section 5 of the Limitation Act would be applicable and the practice directions issued by this Tribunal cannot be considered to be special or local law. He cited the following authorities in support of his plea.

- i) Samsthana Vs. State of Kerala(2006) 4 SCC 327.
- ii) Mukri Vs. Cheepilat –(1995) 5 SCC 5.
- iii) Chahattisgarh State Electricity Board Vs CERC (2010) 5 SCC 23.

- iv) Union of India Versus Popular Construction Company 2001(8) SCC 470.
- v) Singh Enterprises Versus Commissioner Central Excise 2008(3) SCC 70.
- vi) Commissioner of Customs Versus Hongo India 2009(5) SCC 791.
- vii) Shaikh Salim, Vs. Kumar(2006) 1 SCC 46.
- viii) Thirumalai Chemicals Vs. Union of India(2011) 6 SCC 739.

16. The following principles have been laid down in the above decisions.

- i) A subordinate legislation must conform not only to the provisions of the Parent Act but also to the provisions of any other Act.
- ii) Even where any Special Law prescribes different period of limitation than the schedule to the Limitation Act, the provisions of Section 5 would be applicable by virtue of Section 29(2) of the Limitation Act.
- iii) It is sufficient if on a consideration of the language of its provisions relating to limitation, the intention to exclude can be necessarily implied.

iv) Even when the Special Law does not exclude the provisions of Section 4 to 24 of the Limitation Act by an express reference, it would be open to the Court to examine as to whether and as to what extent, the nature of those provisions or the nature of subject matter and the scheme of special law exclude their operation impliedly.

17. The Learned Counsel for the Applicant/Petitioner requested this Tribunal to reconsider our earlier order deciding this issue by looking at the same from a different angle.
18. According to the learned Counsel for the Applicant/Petitioner, if the period of limitation of 30 days for filing the Review Petitioner is prescribed under the Electricity Act itself, the decision earlier taken by this Tribunal would be possible but in the absence of express legislative intent, giving the time frame for filing the Review in the Electricity Act, the right of the parties seeking for condonation of delay in filing the Review Petition can not be curtailed.
19. In elaboration of this point, the learned Counsel for the Applicant/Petitioner has made the following detailed submissions:

“(a) Electricity Act which confers the right to file the Review petition does not exclude the application of

Section 5 of the Limitation Act to the Review Petitions.

(b) Even the Practice Directions through the Notification dated 24.2.2012 and 14.9.2012 do not expressly exclude the application of the provisions of Section 5 of the Limitation Act to the Review Petitions to be filed before this Tribunal.

(c) The term “express exclusion” of Section 5 of the Limitation Act has been referred to in Section 29 (2) of the Limitation Act cannot be inferred by implication.”

20. As indicated above in para-11, we have held in our earlier order in I.A. No.262 of 2012 dated 17.4.2013 that the Practice Directions in the form of notification could be construed to be a special law within the meaning of Section 29(2) of the Limitation Act since the said notification have been issued by this Tribunal under its powers conferred by the Electricity Act, which is a Special Law.

21. Now, in the light of the point raised by the learned Counsel for the Applicant/Petitioner that since there is no express exclusion of the Limitation Act either by the Electricity Act or by the Notification, Section 5 of the Limitation Act can be invoked, it has become necessary to reconsider the said issue in somewhat detail.

22. To deal with this point, it may be worthwhile to refer to some of the decisions rendered by the Hon'ble Supreme Court

with reference to the interpretation of the term “Express Exclusion”. Those decisions are as follows:-

- i) 2001(8) SCC 470 Union of India Versus Popular Construction Company.
- ii) 2008(3) SCC 70 Singh Enterprises Versus Commissioner Central Excise.
- iii) 2009(5) SCC 791 Commissioner of Customs Versus Hongo India.
- iv) 2010 (5) SCC 23 Chhattisgarh State Electricity Board Vs CERC.
- v) (2008) 3 SCC 73 Punjab Fibre Case

23. In these cases, it has been specifically held that there need not be express exclusion of the Limitation Act and it is sufficient if on consideration of the language of this provision relating to the limitation, the intention to exclude can be necessarily implied.

24. Those relevant observations made by the Hon’ble Supreme Court in the above cases are as under:

- (a) 2001(8) SCC 470 Union of India Vs Popular Construction Company

“5. The issue will have to be resolved with reference to the language used in Sections 29(2)

of the Limitation Act, 1963 and Section 34 of the 1996 Act. Section 29(2) provides that:

"29.2: Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law."

6. *On an analysis of the section, it is clear that the provisions of Section 4 to 24 will apply when :*

(1) there is a special or local law which prescribes a different period of limitation for any suit, appeal or application; and

(ii) the special or local law does not expressly exclude those Sections.

10. *This decision (AIR 1964 SC 1099) recognises that it is not essential for the special or local law to, in terms, exclude the provisions of the Limitation Act. It is sufficient if on a consideration of the language of its provisions relating to limitation, the intention to exclude can be necessarily implied. As has been said in Humumdev Narain yadav V Lalit Narain Mishra (SCC P 146 Para 17):*

"If on an examination of the relevant provisions it is clear that the provisions of

the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act"

11. Thus, where the legislature prescribed a special limitation for the purpose of the appeal and the period of limitation of 60 days was to be computed after taking the aid of Sections 4, 5 and 12 of the Limitation Act, the specific inclusion of these sections meant that to that extent only the provisions of the Limitation Act stood extended and the applicability of the other provisions, by necessary implication stood excluded.

12. As for as the language of Section 34 of the 1996 Act is concerned, the crucial words are 'but not thereafter' used in the proviso to sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the Court could entertain an application to set aside the Award beyond the extended period under the proviso, would render the phrase 'but not thereafter' wholly otiose. No principle of interpretation would justify such a result.

13. Apart from the language, 'express exclusion' may follow from the scheme and object of the special or local law:

"Even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the Court to examine whether and to what

extent the nature of those provisions or the nature of the subject matter and scheme of the special law exclude their operation (SCC p 146 Para 17”.

(b) 2008 (3) SCC 70 Singh Enterprises Versus Commissioner Central Excise

“8. The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of Statute are vested with jurisdiction to condone the delay beyond the permissible period provided under the Statute. The period upto which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Indian Limitation Act, 1963 (in short the Limitation Act) can be availed for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only upto 30 days after the expiry of 60 days which is the normal period for preferring appeal.

Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days period.”

(c) 2009 (5) SCC 791 Commissioner of Customs Vs Hongo India

“31. In this regard, it is useful to refer to a recent decision of this Court in Punjab Fibres Ltd., Noida (supra). Commissioner of Customs, Central Excise, Noida is the appellant in this case. While considering the very same question, namely, whether the High Court has power to condone the delay in presentation of the reference under Section 35H(1) of the Act, the two-Judge Bench taking note of the said provision and the other related provisions following Singh Enterprises vs. Commissioner of Central Excise, Jamshedpur and Others, (2008) 3 SCC 70 (Punjab Fibres Ltd case) concluded that

"8.....the High Court was justified in holding that there was no power for condonation of delay in filing reference application."

32. As pointed out earlier, the language used in Sections 35, 35B, 35EE, 35G and 35H makes the position clear that an appeal and reference to the High Court should be made within 180 days only from the date of communication of the decision or order. In other words, the language used in other provisions makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning the delay only up to 30 days after expiry of 60 days which is the preliminary limitation period for preferring an

appeal. In the absence of any clause condoning the delay by showing sufficient cause after the prescribed period, there is complete exclusion of Section 5 of the Limitation Act. The High Court was, therefore, justified in holding that there was no power to condone the delay after expiry of the prescribed period of 180 days.

34. Though, an argument was raised based on Section 29 of the Limitation Act, even assuming that Section 29(2) would be attracted what we have to determine is whether the provisions of this section are expressly excluded in the case of reference to High Court.

35. It was contended before us that the words "expressly excluded" would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. In this regard, we have to see the scheme of the special law here in this case is Central Excise Act. The nature of the remedy provided therein are such that the legislature intended it to be a complete Code by itself which alone should govern the several matters provided by it. If, on an examination of the relevant provisions, it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our considered view, that even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the court to examine whether and to what extent, the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation. In other

words, the applicability of the provisions of the Limitation Act, therefore, to be judged not from the terms of the Limitation Act but by the provisions of the Central Excise Act relating to filing of reference application to the High Court.

36. The scheme of the Central Excise Act, 1944 support the conclusion that the time limit prescribed under Section 35H(1) to make a reference to High Court is absolute and unextendable by court under Section 5 of the Limitation Act. It is well settled law that it is the duty of the court to respect the legislative intent and by giving liberal interpretation; limitation cannot be extended by invoking the provisions of Section 5 of the Act.”

(d) (2008) 3 SCC 73 Punjab Fibres Ltd case

"8.....the High Court was justified in holding that there was no power for condonation of delay in filing reference application."

(e) (1974) 2 SCC 133 Hukumdev Narain Yadav V Ialil Narain Mishra

*In **Hukumdev Narain Yadav v. L.N. Mishra** (1974) 2 SCC 133, this Court interpreted Section 29(2) of the Limitation Act in the backdrop of the plea that the provisions of that Act are not applicable to the proceedings under the Representation of the People Act, 1951. It was argued that the words “expressly excluded” appearing in Section 29(2) would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. While rejecting the argument, the three-Judge Bench observed:*

“17.....what we have to see is whether the scheme of the special law, that is in this case the

Act, and the nature of the remedy provided therein are such that the Legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If on an examination of the relevant provisions it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our view, even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the Court to examine whether and to what extent the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation.”

24. In the above decisions, the interpretation and meaning of the term “Express Exclusion” have been given. The same is as follows:

(a) It is not essential for the special or local law to expressly exclude the provisions of Limitation Act. It is sufficient if on a consideration of the language of its provisions relating to limitations, the intention to exclude can be impliedly inferred.

(b) Even in a case where the special law does not exclude the provisions of Section 5 of the Limitation Act by an expression exclusion, it would be nonetheless be opened for the Court to examine as to whether and as to what extent, the nature of those provisions or the nature of subject matter and scheme of special law exclude their operation impliedly.

(c) Since the provision of the Act provide for condonation of delay in cases of the Appeals, in the absence of any clause providing for condonation of delay for Review, there is complete exclusion of Section 5 of the Limitation Act in view of the scheme of the Act.”

25. In the light of the above principles laid down by the Hon’ble Supreme Court as well as the scheme of the Act, we have to find out as to whether the special law namely Electricity Act has excluded the operation of the Section 5 of the Limitation Act expressly or impliedly.
27. As laid down by the Hon’ble Supreme Court, it cannot be said that there must be the Express exclusion of the Limitation Act in the Electricity Act and the Rules but it may be sufficient to examine whether there is implied exclusion and if it is so, as to what extent the nature of those provisions and the scheme of the special law excludes the operation of the Limitation Act impliedly.
28. In this process we have to refer to the interpretation of the scheme of the Electricity Act as **found in the judgment of the Hon’ble Supreme Court in 2010 (5) SCC 23 Chhattisgarh State Electricity Board Vs CERC as under:**

“19. The Electricity Act also envisages establishment of Tribunal to hear appeals against the orders of

adjudicating officers or regulatory commissions (Part XI). In terms of Section 111, any person aggrieved by an order made by an adjudicating officer except the one made under Section 127 or an order made by an appropriate Commission under this Act can prefer an appeal to the Tribunal. The composition of the Tribunal and qualifications prescribed for appointment of Chairperson and Member shows that the legislature intended to create a specialized adjudicatory forum for deciding various disputes emanating from the operation of the Act.

20. Section 125 provides for an appeal to this Court against any order or decision of the Tribunal which can be filed within 60 days from the date of communication of the decision or order of the Tribunal. The limitation placed on the jurisdiction of this Court is that the appeal can be entertained only on one or more of the grounds specified in Section 100 of the Code of Civil Procedure. Proviso to Section 125 empowers this Court to entertain the appeal within a further period not exceeding 60 days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period. In other words, an appeal under Section 125 can be filed within a maximum period of 120 days if this Court is satisfied that there was sufficient cause for not filing the same within 60 days from the date of communication of the decision or order appealed against.

23. The brief analysis of the scheme of the Electricity Act shows that it is a self-contained comprehensive legislation, which not only regulates generation, transmission and distribution of electricity by public bodies and encourages public sector participation in the process but also ensures creation of special adjudicatory mechanism to deal with the grievance of

any person aggrieved by an order made by an adjudicating officer under the Act except under Section 127 or an order made by the appropriate commission. Section 110 provides for establishment of a Tribunal to hear such appeals.

24. Section 111(1) and (2) lays down that any person aggrieved by an order made by an adjudicating officer or an appropriate commission under this Act may prefer an appeal to the Tribunal within a period of 45 days from the date on which a copy of the order made by an adjudicating officer or the appropriate commission is received by him. Section 111(5) mandates that the Tribunal shall deal with the appeal as expeditiously as possible and endeavour to dispose of the same finally within 180 days from the date of receipt thereof. If the appeal is not disposed of within 180 days, the Tribunal is required to record reasons in writing for not doing so.

25. Section 125 lays down that any person aggrieved by any decision or order of the Tribunal can file an appeal to this Court within 60 days from the date of communication of the decision or order of the Tribunal. Proviso to Section 125 empowers this Court to entertain an appeal filed within a further period of 60 days if it is satisfied that there was sufficient cause for not filing appeal within the initial period of 60 days. This shows that the period of limitation prescribed for filing appeals under Sections 111(2) and 125 is substantially different from the period prescribed under the Limitation Act for filing suits etc. The use of the expression 'within a further period of not exceeding 60 days' in Proviso to Section 125 makes it clear that the outer limit for filing an appeal is 120 days. There is no provision in the Act under which this Court can entertain an appeal filed against the

decision or order of the Tribunal after more than 120 days.

26. The object underlying establishment of a special adjudicatory forum i.e., the Tribunal to deal with the grievance of any person who may be aggrieved by an order of an adjudicating officer or by an appropriate commission with a provision for further appeal to this Court and prescription of special limitation for filing appeals under Sections 111 and 125 is to ensure that disputes emanating from the operation and implementation of different provisions of the Electricity Act are expeditiously decided by an expert body and no court, except this Court, may entertain challenge to the decision or order of the Tribunal. The exclusion of the jurisdiction of the civil courts (Section 145) qua an order made by an adjudicating officer is also a pointer in that direction.”

- 29.** As per the above decision, the Electricity Act is a self contained code and comprehensive legislation which ensures creation of special adjudicatory mechanism to deal with the grievance of any person aggrieved by an order made by an adjudicating officer under this Act and also to ensure that disputes emanating from the operation and implementation of different provisions of the Electricity Act are expeditiously decided and disposed of by the expert body.
- 30.** In this Act, the jurisdiction of the Civil Court is ousted in respect of an order made by an adjudicating officer under this Act and this also would indicate that there must be expeditious disposal by the authorities appointed under the

Act. This is the reason as to why various time frames have been fixed for the disposal of the matter by various Authorities and Forums for expeditious disposal in respect of any grievance of any person who suffers at the order of the adjudicating officer.

31. Under Section 64 of the Electricity Act, 2003, the appropriate Commission shall issue a tariff order within 120 days from the receipt of an application for the determination.
32. Under Section 111 of the Electricity Act any person aggrieved by an order passed by an appropriate Commission may prefer an Appeal with the Appellate Tribunal for Electricity within 45 days from the date on which the copy of the order is received by the aggrieved person.
33. However, the Appellate Tribunal, under provision to Section 111(2) can condone the delay in filing the Appeal if it is satisfied that there is sufficient cause for not filing the Appeal within the said period.
34. Under Section 111 (5) the Appellate Tribunal shall dispose the Appeal as expeditiously as possible and endeavour to dispose of the Appeal finally within 180 days from the date of the receipt of the Appeal. If the said period is extended,

the Appellate Tribunal shall record its reasoning in writing for not disposing the said Appeal in the said period.

35. Under Section 125, the aggrieved person as against the judgment of the Appellate Tribunal, may file an Appeal to Hon'ble Supreme Court within 60 days from the date of the communication of the judgment and beyond 60 days, the Hon'ble Supreme has got the powers to condone the delay in filing the Appeal for a further period not exceeding 60 days. This provision makes it clear that the Appeal shall be filed within 60 days before the Hon'ble Supreme Court. If not filed within 60 days, the aggrieved person shall show sufficient cause to condone the delay for the further 60 days before the Supreme Court. It is beyond further 60 days, the Hon'ble Supreme Court cannot entertain the application to condone the delay in filing the Appeal.
36. The perusal of these provisions make it evident that the proceedings under the Electricity Act must be disposed of as expeditiously as possible since the scheme of the Act is to ensure that the dispute emanating from the operation and implementation of the various provisions of the Electricity Act are expeditiously decided and disposed by the expert body so that it may end in finality within the time frame.
37. Under Section 120 (2) of the Electricity Act, the Appellate Tribunal has been conferred with same powers as are

vested in Civil Court. By virtue of clause (f) of Section 120 (2), the Appellate Tribunal has the same powers for reviewing its own decision as referred to in the Civil Court under Cr.PC.

38. Article 124 of the Schedule to the Limitation Act provides a Limitation Period of 30 days for filing of a Review Petition. But no period of Limitation has been prescribed for filing the Review Petition under the Electricity Act. Similarly, the Appellate Tribunal for Electricity (Procedure, Form, Fee and Record of Proceedings) Rules, 2007 framed by the Central Government under the Electricity Act, also do not provide any period of Limitation for filing of a Review Petition. Under Section 120(1) of the Electricity Act, this Tribunal has the powers to regulate its own procedure. Accordingly, this Tribunal issued two Notifications on 24.2.2012 and 14.9.2012 respectively prescribing the time limit for filing the Review Petition.
39. Already, we have given our finding in the earlier order dated 17.4.2013 to the effect that these Notifications can also be construed to be a special law since they were issued by this Tribunal under the powers conferred by the Electricity Act being a special law.
40. It is the contention of the learned Counsel for the Appellant that even though Notifications do not provide for condonation of delay in filing the Review petition and even

assuming that the Notifications would be construed to be a special law, there is no exclusion of the Limitation Act, and therefore, Section 5 of the Limitation Act can be invoked to condone the delay in filing the Review.

41. While dealing with this point, it would be better to refer to both the Notifications issued by this Tribunal dated 24.2.2012 and 14.9.2012 to consider the wordings contained. In the Notification dated 24.2.2012, the following clauses are provided:

“(i) No Application for review shall be entertained unless it is filed within thirty days from the date of receipt of copy of the order sought to be reviewed.”

.....

(vi) The Review filed before the Appellate Tribunal shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the Review finally within Ninety days (90 days) from the date of receipt of the review in order by the Registry and 60 days from the date of Admission of the Review.”

42. The wordings contained in the above clause would indicate that the application to review should be filed only within 30 days and the application for review filed beyond that date, cannot be entertained and this review petition also should be expeditiously disposed of by the Appellate Tribunal within the time frame.

43. Let us refer to the 2nd Notification dated 14.9.2012 which reads as under:

“In exercise of powers conferred under Rule 107 of the Appellate Tribunal for Electricity (Procedure, Form, Fee and Record of Proceedings) Rules, 2007 read with Section 120 of the Electricity Act, 2003, the Hon’ble Chairperson is pleased to issue the following procedural directions, which shall come into effect immediately.

.....

.....

13. Review to be filed within 30 days from the date of the judgment/order. The earlier Notification No.APTEL/Registry /procedure/2012 dated 24.2.2012 is reiterated.”

44. So, the reading of the relevant clauses in this notification would reveal that the time frame fixed by this Tribunal by the earlier notification within which the Review to be filed and beyond that period, no review could be entertained has been reiterated.
45. In the light of these clauses, we have to decide as to whether the application for condonation of delay I filing the Review after expiry of 30 days could be entertained.
46. As mentioned above, there is no time frame prescribed the Act or Rules for filing the Review. Similarly, there is no provision in the Act or Rules with regard to condonation of delay in filing the Review. But the Notifications issued by the powers conferred under this Act to this Tribunal would

definitely prescribe the specified period within which the review to be filed and also to make it manifestly clear that after the expiry of 30 days for Review the Application to condone the delay in filing the Review Petition could not be entertained.

47. As referred to earlier, Section 125 of the Act also specifically provided that the Hon'ble Supreme Court cannot entertain the Appeal after expiry of 60 days in the absence of application to condone delay and cannot entertain even the application to condone the delay after expiry of further 60 days. The Hon'ble Supreme Court has held in Chhattisgarh case that this is express exclusion of Section 5 of the Limitation Act. Similarly, there is an express exclusion in the Notification issued by this Tribunal to the effect that no application for condonation of delay could be entertained by this Tribunal after expiry of 30 days. This is the time limit prescribed for filing review petition. In other words, there is express exclusion of Section 5 of the Limitation Act in the Notification.
48. The reading of the Section 64, 111 and 125 and also the reading of the Hon'ble Supreme Court judgment in 2010 (5) SCC 23 Chhattisgarh State Electricity Regulatory Commission Vs Central Commission, would show that the scheme as well as the object or the Special Act has been interpreted and explained to ensure that the disputes

between the parties arising out of the Electricity Act must be allowed to attain the finality by disposing the matter as expeditiously as possible by the expert body.

49. If such a scheme or object has not been taken into account before entertaining the Application to condone the delay, we are of the considered view that it would not only defeat the object of the Act but also would amount to creating an artificial extension of the period of limitation as prescribed under the Act,2003 for filing an Appeal before the Hon'ble Supreme Court within a period of 60 days and within a further period of 60 days along with an application to condone the delay. This is not permissible under law.

50. **To sum up:-**

“ In our view, the intention to exclude the application of Section 5 of the Limitation Act has not only been expressly referred to in the Notifications issued by the Tribunal but also the same can be inferred from the provisions of the Electricity Act, 2003 impliedly. Under those circumstances, this application to condone the delay in filing the Review is not maintainable.”

51. In view of our above findings, the Application to condone the delay in filing the Review is dismissed. Consequently, the Review petition is also rejected.

52. Before parting with this case, we would like to record our deep appreciation for the effective assistance rendered by Mr. R.K. Mehta, the learned Counsel for the Applicant, who took pains in preparing the detailed written notes making an elaborate analysis on this question and argued the matter at length before this Tribunal effectively and efficiently to enable this Tribunal to re-consider the issue again from a different angle as prayed by him and to decide the same.

(V.J. Talwar)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated: 28th May, 2013

✓ ~~REPORTABLE/NON-REPORTABLE~~