Appellate Tribunal for Electricity
(Appellate Jurisdiction)

IA 262 of 2012
IN
RP(DFR) No.1311 of 2012
IN
APPEAL NO.57 of 2009

Dated: 17th April, 2013

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

In the Matter of:

Gujarat Electricity Regulatory Commission,
1st Floor, Neptune Tower,
Opp Nehru Bridge,
Ashram Road,
Ahmedabad-380 009

….Review Petitioner(s)

Versus

1. **Century Rayon**
   (A Division of Century Textiles & Industries Ltd.,)
   Post Box No.22, Shahad-421 303
   District Thane, Maharashtra

2. **Maharashtra Electricity Regulatory Commission**
   World Trade Centre No.1,
   13th Floor, Cuffe Parade,
   Mumbai-400 005

3. **Maharashtra Energy Development Agency,**
   MHADA Commercial Complex,
   2nd Floor, Opposite Tridal Nagar,
   Yerwada, Pune-411 006

4. **Maharashtra State Electricity Distribution Co Ltd.,**
   "Prakashgad", Bandra (East)
   Mumbai-400 051

….Respondents/ Appellant(s)

Counsel for the Review Petitioner(s) : Mr. Buddy A. Ranganadhan
Mr. Arijit Maitra
Ms. Richa Bharadwaja

Counsel for the Respondent(s): **Dr. Milind Sathe, Sr. Adv.**
Mr. Prakash Shah
Mr. O.P. Gaggar for R-1/Appellant
Mr. Mahesh Sahasranaman
Mr. R.Chandrachud
Mr. K.R. Sasipurabhu, Ms. Bindu K. Nair
Mr. M.G. Ramachandran
Ms. Ranjitha Ramachandran
Mr. Snehal K, Mr. Rahul Chandra for Intervenor for PCBL
Mr. Abhishek Mitra, Ms. Puja Priyadarshini for MSEDCL
Mr. Raunak Jain for INtervenor(CSIMA)

O R D E R

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

1. Gujarat Electricity Regulatory Commission (State Commission) is the Review Petitioner herein.

2. The Petitioner, the State Commission considering itself as an aggrieved person, over the judgment of this Tribunal dated 26.4.2010 in Appeal No. 57 of 2009, has filed this Review Petition.

3. In this Review Petition, the State Commission has sought for the review of the findings in the above judgment to the effect

that fossil based co-generation is to be treated at par with generation from the renewable energy source of energy for the purpose of Section 86 (1) (e) of the Electricity Act, 2003.

4. The main point urged by the learned Counsel for the Review Petitioner is that the judgment was rendered by this Tribunal giving interpretation of Section 86 (1) (e) of the Electricity Act without considering certain relevant materials which warrants the Review.

5. Though, the judgment, by this Tribunal was rendered on 26.4.2010, the Review Petitioner has filed the Review Petition only on 23.7.2012 i.e. after about 2 years 3 months.

6. In view of the delay in filing the Petition for Review, the Petitioner filed IA No.262 of 2012, along with Review Petition praying for condonation of delay of 818 days in filing this Review Petition.

7. Since we entertained doubt about the maintainability, we issued notice to the Respondent parties with reference to the maintainability of the Petition for condonation of delay and the maintainability of the Review Petition filed by the Review Petitioner who was not a party to the original proceedings in Appeal No.57 of 2009.

8. After receipt of the notice, the learned Counsel for the Respondents appeared and raised serious objections with reference to both the maintainability of the application for

condonation of delay as well as the maintainability of the Review Petition.

9. According to the learned Counsel for the Respondents, the Review Petition is time barred since the notification that was issued by the Tribunal has prescribed only 30 days' time for filing the Review and admittedly, the Review Petition was not filed within 30 days and when there is no provision either in the Electricity Act or in the Notification issued on 24.2.2012 providing for condonation of delay in filing the Review, the application for condonation of delay cannot be entertained. It is further contended by the Respondents that even assuming without admitting that Section 5 of the Limitation Act is applicable, the Review Petitioner has not shown sufficient cause to condone the inordinate delay of 818 days in filing the Review Petition. It is the further contention of the learned Counsel for the Respondents that the Review Petition also is not maintainable on two reasons: (1) that the Petitioner, the State Commission, who was not a party to the original Appeal proceedings, cannot be said to be "an aggrieved person" and (2) that the grounds of the Review Petition have no merits.

10. Refuting these objections, the learned Counsel for the Petitioner for Review, submits that even though the Petitioner was not a party to the original proceedings, any person considering himself aggrieved, may maintain a

Review of the judgment under Order 47 Rule-1 CPC and that therefore, the Review filed by the Gujarat State Commission, the Petitioner who considers itself aggrieved, is maintainable.

11. The learned Counsel for the Review Petitioner would further contend that this Tribunal has the powers to condone the delay in filing the Review Petition since this Tribunal has got all the powers of Civil Courts to review its own order especially when the grounds of the Review, which has got the merits would show that there is an apparent error on the face of the record.

12. On the basis of these submissions, the following questions would arise for consideration:

(a) **Whether the Petition to condone the delay in filing the Review Petition is maintainable and even assuming that it is maintainable, whether sufficient cause has been shown to condone such a delay which is inordinate?**

(b) **Whether the Review Petition is maintainable at the instance of the party who was not a party to the original proceedings before this Tribunal and who cannot consider itself as an aggrieved person?**

(c) **In case the delay is condoned and if we come to the conclusion that the Review Petition is maintainable, whether the Review Petition contains the grounds which have the merits for reviewing the earlier decision taken in the judgment in Appeal No.57 of 2009 rendered by this Tribunal?**

13. Before dealing with these questions, it would be appropriate to give short facts of the case leading to the filing of this Review Petition:

(a) M/s. Century Rayon Maharashtra is a Textile Company. In its textile plant, it has installed a co-generation plant.

(b) Maharashtra State Commission passed the order dated 18.8.2006 directing the Distribution Licensees as well as the Open Access users and captive consumers to purchase renewable energy from the renewable source of energy. On the basis of this order, M/s. Century Rayon Company received a letter from the Maharashstra Energy Development Agency (MEDA), asking the Century Rayon Company to purchase the renewable energy from renewable energy sources.

(c) Challenging this letter, M/s. Century Rayon filed a Petition before the Maharashtra State Commission seeking for a declaration that the Appellant Company's

co-generation plant is not covered under the order dated 18.8.2006, passed by the State Commission. However, the State Commission by its order dated 19.12.2008, dismissed the said Petition holding that the order dated 18.8.2006 passed by the State Commission earlier would cover the Century Rayon's co-generation plant also and therefore, it was required to purchase renewable energy from the renewable energy generating units.

(d) Aggrieved by the said order, the Century Rayon Company filed an Appeal before this Tribunal in Appeal No.57 of 2009 seeking to quash the said order passed by the State Commission.

(e) The main questions before this Tribunal in Appeal No.57 of 2009 are as follows:

(i) Whether M/s. Century Rayon Company having a co-generation plant producing stream and electricity could be obligated to buy electricity from the renewable source of energy?

(ii) Whether Section 86(1) (e) requires users of co-generation plant also to purchase electricity from the renewable source of energy?

(iii) Whether Maharashtra State Commission was right in rejecting the contention of M/s. Century Rayon that co-generation based fossil fuel also needed to be promoted as per Section 86 (1) (e) of the Electricity Act?

(f) After hearing the parties, this Tribunal by the Judgment dated 26.4.2010 in Appeal No.57 of 2009, allowed the said Appeal and held that the use of fossil fuel based co-generation plant cannot cast upon an obligation to purchase the energy from renewable source of energy.

(g) In addition to that, this Tribunal was pleased to hold that Section 86(1)(e) of the Electricity Act contemplates co-generation plants irrespective of whether it is based on fossil fuel or non-fossil fuel, should also be promoted and therefore, the statutory obligations cannot be cast upon them to purchase a certain percentage of their consumption from renewable source of energy.

(h) The said impugned judgment was a judgment in rem as this Tribunal indicated general applicability of the impugned judgment to all.

(i) Against this judgment, the parties to the Appeal have not chosen to file any Appeal before the Hon'ble

Supreme Court. As such, the judgment has attained finality. At this stage, on 7.9.2011, one other co-generator using fossil fuel, filed a Petition before the Petitioner (Gujarat State Commission) seeking for the declaration relying upon the impugned judgment to the effect that not only they are not bound to comply with the Regulations with reference to the renewable purchase obligations, they are also entitled to a preferential tariff which would enable them to sell energy produced by them from fossil fuel on preferential basis.

(j) The State Commission felt that if the judgment of this Tribunal, in which it is held that not only the co-generators using the fossil fuel are not bound to comply with the RPO Obligations but also they are put at par with the renewable generators, is followed, it would lead to serious consequences and the State Commission would also likely to be faced with several Petitions on similar lines from time to time from other co-generation plants using fossil fuel for preferential tariff and other promotional benefits, at par with the Renewable Generators.

(k) The State Commission having considered that this interpretation made in this judgment, would be contrary to the purpose and intent of 2003 Act as well

as the policy for promoting generation from the renewable source of energy, has filed this Review Petition before this Tribunal seeking for proper interpretation in accordance with the policy as well as the provisions of the Act.

14. Bearing these facts in our mind, we shall now deal with three questions as referred to above:

(a) The first question relates to maintainability of the Petition for condonation of delay in filing the Review Petition as well as the requirement to show sufficient cause for condonation of delay.

(b) The second question relates to the maintainability of the Review Petition at the instance of the State Commission who was not a party to the original proceedings and who was not directly affected by the judgment.

(c) The third question would relate to the merits of the Review Petition which we would go into if the first two issues are decided in favour of the Review Petitioner.

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 doest 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.

38. Let us now take up the 2nd part of the 1st question. Though we hold that the Petition to condone the delay cannot be maintained for the above reasons, in view of the fact that the learned Counsel for the Respondents have made elaborate alternative submissions to the effect that even assuming the application to condone the delay is maintainable, the huge delay of 818 days cannot be condoned as the Petitioner for Review failed to explain this inordinate delay by showing the sufficient cause, we are inclined to go into this submission to find out as to whether the explanation for the delay offered by the State Commission has shown sufficient cause so as to condone the delay.

39. Let use deal with this issue.

40. It cannot be disputed that even though the judgment was rendered on 26.4.2010, the Review Petitioner has chosen to file this Petition only on 23.7.2012. Thus, there is a delay of 818 days.

41. It is contended by the Review Petitioner while explaining the said delay that one of the co-generators using fossil fuel, filed a petition before the Petitioner (State Commission) only on 7.9.2011 seeking for a declaration that he is entitled to all the benefits which Renewable Energy Generators are entitled to on the basis of the impugned judgment and only then, they felt that the said judgment has to be reviewed and therefore, they filed this Review Petition on 23.7.2012.

42. As mentioned above, the impugned judgment was rendered by this Tribunal on 26.4.2010. This judgment which constitutes as the law of land had been delivered as judgment in rem and has remained displayed on the website of this Tribunal. That apart, the Registry also had been directed to send the copy of this judgment to all the Commissions and accordingly all the Commissions including the Review Petitioner, had received the same. It is now pointed out that various State Commissions have framed Regulations for renewable purchase obligations exempting the co-generators as obligated entities in pursuance of the said judgement. They are (1) Maharasthra State Electricity Regulatory Commission (2) Jammu and Kashmir Electricity Regulatory Commission (3) Madhya Pradesh Electricity Regulatory Commission (4)

Tamil Nadu Electricity Regulatory Commission (5) Orissa Electricity Regulatory Commission.

43. Apart from these Commissions, Rajasthan State Commission as well as West Bengal Commission also had exempted the co-generators from renewable purchase obligations.

44. In view of the above, the State Commission, the Review Petitioner cannot plead ignorance of the said judgment and its effect and impact. As such, the explanation for the delay that the State Commission came to know about this judgment only on 7.9.2011 when another co-generator filed the application for the similar relief on the basis of the said judgment before the State Commission i.e. the Petitioner, cannot be accepted as a valid one.

45. Similarly, even though the said application filed by one other co-generator was filed as early as on 7.9.2011 before the Review Petitioner, who claims that it came to know about the judgment only on 7.9.2011, the present review petition had been filed only on 23.7.2012. This period namely the period between 7.9.2011 and 23.7.2012 has not been duly explained.

46. In view of the above, the contention of the Respondents that there is no satisfactory explanation for this huge delay

to show sufficient cause in filing the Review Petition deserves acceptance.

47. Let us now come to the 2nd question. Although the objection raised by the Respondent that the application to condone the delay cannot be entertained especially when there is an inordinate delay which was not duly explained, the learned Counsel for the Respondent made an alternative elaborate submission to the effect that even assuming that the delay could be condoned, even then, the State Commission i.e. the Petitioner, has no locus-standi to file the review as it was not a party to the original proceedings and it was not affected in any way by the said judgment. On this point, we have permitted the learned Counsel for both the parties to argue. Accordingly, we are inclined to go into the aspect of the locus-standi which involves the 2nd question as framed above.

48. According to the Review Petitioner, the Review Petition is maintainable at the instance of a person, who consiers himself aggrieved, although he was not a party to the original proceedings. In elaborating this submission, the learned counsel for the Review Petitioner has made the following submissions:

(a) The power of Review by this Tribunal is contained in Section 120 (2) (f) of the Electricity Act, 2003. Under this provision, the Tribunal has got the

powers of a Civil Court in respect of reviewing its decision.

(b) The power of the Civil Court to review its own decision is contained in Section 114 of the Civil Procedure Code and Order 47 and Rule 1 and 2 of the same Code.

(c) Though the Order 47, Rule-2 contemplates a Review by a person who was a "party" to the original proceedings, in contrast, Order 47, Rule-1 provides that any person "considering himself aggrieved" may file the Review Petition for review of a decision or an order.

(d) The different wordings contained in these two different rules would bring out that under Order 47, Rule-1 even though a person who was not a party to the original proceedings, may maintain a review when he considers himself aggrieved by such a decision.

(e) The meaning of the expression "person considering himself aggrieved" is different from the meaning of the "person aggrieved" as referred in Rule-2. Hence, the expression "considering himself aggrieved" would include a person who may not fall within the ambit of a person aggrieved but could include a person who feels or considers himself aggrieved. Therefore, the Review Petition u/s 120

(2)(f) of the Electricity Act read with order 47, Rule-1, filed by the State Commission who considers itself aggrieved, though it was not a party to the original proceedings in the Appeal, is maintainable.

49. In support of these submissions, the learned Counsel for the Petitioner has cited the following judgments:

(a) AIR 2003 Bombay 228 titled Shapoorji Data Processing Vs Amir Trading Corporation

(b) AIR 2003 Guwahati 119 titled M/s. Numaligarh Refinery Limited Vs Assam Board of Revenue.

50. This submission of the Petitioner is stoutly opposed by the learned Counsel for the Respondents contending that the Review Petitioner cannot consider itself as a person feeling aggrieved by the judgment under Review. They have cited the following judgments in support of its plea:

(a) Gopalbandhu Biswal Vs Krishna Chandra Mohanty & Ors reported in (1998) 4 SCC 447.

(b) K Ajit Babu and Ors Vs Union of India and ors reported in 1997 (6) SCC 473

(c) Nalakant Sainuddin Vs Kuri kandan Suleman 2002 (6) SCC 1

(d) Grid Corporantion of Orissa Limtied Vs Gajendra Haldea & Ors 2008 (13) SCC 414

51. The term “person aggrieved” has been interpreted in the judgment in Gopalbandhu Biswal Vs Krishna Chandra Mohanty & Ors reported in (1998) 4 SCC 447.

52. According to this decision, “an aggrieved person” must be a person who suffered legal grievance or legal injury or one who has been unjustly deprived and denied of something which he should be entitled to obtain in usual course.

53. On the basis of these principles, it is contended by the Respondents that the Review Petitioner, being a quasi-judicial authority, is meant to decide the disputes between different stake holders and it cannot consider itself as aggrieved over the judgment of this Tribunal and as such, the State Commission cannot be considered to be aggrieved or considering itself aggrieved.

54. However, the learned counsel for the Petitioner has strenuously submitted that in view of the difference between the wordings contained in Order 47 Rule-1 and Rule-2; any person who was not a party to the original proceedings even though he is not directly affected, can maintain the Review Petition if the party feels and considers itself as an aggrieved.

55. It is true that the Review Petitioner need not be the party to the original proceedings to maintain the review. However, the Petitioner should establish the circumstances and

reasons warranting for the Petitioner to consider itself or to feel itself that it is aggrieved. An aggrieved person or a person who feels aggrieved must mean a person who suffers some legal injury.

56. In other words, a person who was not a party to the proceedings when he feels or considers himself aggrieved can maintain the review but he must show to the Court as to how he feels or considers himself aggrieved. For that he must establish that he suffered a legal injury out of the judgment or directly or indirectly affected by the said decision.

57. In the present case, the Review Petitioner claims itself as aggrieved by the judgment of this Tribunal on the only ground that one of the co-generators in the State of Gujarat filed a Petition before the Petitioner (State Commission) by seeking preferential tariff at par with the renewable energy generations. The prayer in the Review Petition, filed by the State Commission, is as follows:

> ***"****However, relying on the impugned judgment the co-generators are seeking for their entire co-generation plant to be treated at par with the generators using renewable sources of energy. It is submitted that there are sufficient reasons for the impugned judgment to be reviewed/suitable clarifications to be issued by the Hon'ble Tribunal".*

58. The prayer simply shows that one of the co-generators was seeking for the entire co-generation plant to be treated at

par with the generators using renewable source of energy on the strength of the impugned judgment. Nothing more. No circumstances have been shown in the Petition for Review as to how it felt aggrieved or considered itself aggrieved and in what manner they are affected due to the said judgment.

59. Mere filing of the Petition before the State Commission on the strength of the judgment of the Appellate Tribunal seeking for some relief could not be considered to be the valid ground for the State Commission to claim that it feels or considers aggrieved.

60. The Petitioner, being the statutory authority, which is a quasi judicial authority, has to consider the merits of the Petition as well as the judgment of this Tribunal and find out whether the said findings of this Appellate Tribunal would apply to the said Petition and dispose of the said Petition. If the State Commission is able to distinguish the said judgment and rejected the prayer of the co-generator by giving reason, then this Tribunal, on an Appeal would consider the validity of the said reasons in the said order passed by the State Commission. The question of feeling itself aggrieved does not arise when the Petition was filed by one of the Co-generators before the State Commission.

61. The phrase "a party" is used in Sub Rule-2 in a different context that such a party who has not appealed, may file the review despite the pendency of the Appeal.

62. The fundamental theme found in both Rule-1 and Rule-2, Order 47 demands that a person filing review must be an aggrieved person. A person considering himself aggrieved cannot be on a fanciful consideration on a mere subjective satisfaction. There has to be a "legal injury". Without demonstrating a legal injury, a person cannot claim that he considers himself as "an aggrieved person".

63. The Hon'ble Supreme Court has considered the question as to who should be considered as an "aggrieved person" or "any person considering himself aggrieved".

64. The Hon'ble Supreme Court of India has held in the case of Grid Corporation of Orissa Vs Gajendra Haldea & Others 2008 (13) SCC 414 as follows:

> *"It is pointed out that the expression "any person aggrieved" must be a person who suffered legal grievance or legal injury or one who has been unjustly deprived and denied of something which he would entitle to obtain in the usual course".*

65. In other decision i.e. Nalakath Sainuddin Vs Koorikadan Sulaiman 2002 (6) SCC 1, the Honb'le Supreme Court has held that the expression 'any person aggrieved means a

person feeling aggrieved by the ultimate decision i.e. the operation part of the order.

66. In another decision in the case of Ajit Babu Vs Union of India (1997)6 SCC 473 the Hon'ble Supreme Court considered interpretation of Section 22(3)(f) of the Administrative Tribunal's Act and considered the question of maintainability of review and held that even if the wider meaning is given to the phrase "a person feeling aggrieved", the right of review for such a person cannot be extended as a right of appeal.

67. So, in the light of the decisions rendered by the Hon'ble Supreme Court, the decisions cited by the Review Petitioner are of no use especially when those decisions do not hold that "any person" who claims himself as an aggrieved, is entitled to file a review as a matter of right.

68. Therefore, mere fact that some co-generator has approached the State Commission seeking relief relying on the impugned judgment, cannot be a justifiable ground to claim that the State Commission is considering itself or feeling itself as "an aggrieved person".

69. In view of the above, we are unable to accept the contention of the Review Petitioner, being the quasi judicial authority, may either be considered as the person aggrieved or as a person considering itself as aggrieved.

70. In view of the above legal position, we conclude that the objection raised by the Respondents questioning the locus-standi and the maintainability of the Review Petition filed by the State Commission on the ground that the Review Petitioner, cannot be the person considering itself as an aggrieved person, has to be upheld.

71. In view of our findings on the basis of the discussion made in the foregoing paragraphs, disallowing the Application for condonation of delay and holding that the Review Petition is not maintainable, we need not deal with the question of merit. However, we would like to make some observation in view of the submissions made by the Review Petitioner that one of the co-generators in the State of Gujarat filed a Petition before the Petitioner (State Commission) for seeking preferential tariff at par with Renewable Energy Generators.

72. It is noticed in this case that the Appellant and the other co-generators are only praying for treating the co-generation based on fossil fuel or non-fossil fuel, at par with the renewable sources of energy only for the purpose of Renewable Purchase Obligation for obligated entities to purchase a part of the electricity consumed by them from renewable sources. Even according to the co-generators, they are not praying for any preferential tariff or fixation of

short or long term tariff for co-generation for purchase by the distribution utilities.

73. In fact, the Century Rayon, the original Appellant in its reply has specifically mentioned that their claim was only that the power generated by co-generation process should at least be considered to be outside the RPS obligation. The relevant averment made by M/s. Century Rayon in their reply to the Review is mentioned as below:

> *"The Appellant was not seeking the relief that the power generated by it should be clubbed in the RPS Power and the benefit available to the RPS power be conferred on it but the claim was that the power generated by the co-generation process should at least be considered to be outside the RPS Obligation".*

It is open to the Review Petitioner to consider the said aspect while dealing with the petition.

74. **<u>Summary of Our Findings</u>**

i) The limitation period prescribed in filing of review in this Tribunal under the powers conferred by the special Act is only 30 days without giving any power for condonation of the delay. 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 cannot

hold that application to condone the delay in filing the review beyond the period of 30 days is maintainable. Further, the huge delay of 818 days cannot be condoned as the Petitioner has failed to explain this inordinate delay by showing sufficient cause.

ii) The fundamental theme found in both Rule 1 and Rule 2 of order 47 demands that a person filing review must be an aggrieved person. A person considering himself aggrieved cannot be a fanciful consideration on a mere subjective satisfaction. There has to be a "legal injury". Without demonstrating a legal injury, a person can not claim that he considers himself as "an aggrieved person". Therefore, mere fact that some co-generator has approached the State Commission seeking relief relying on the impugned judgement, cannot be a justifiable ground to claim that the State Commission is considering itself or feeling itself as "an aggrieved person". Therefore, the Review Petition is not maintainable.

iii) In view of our findings about condonation of delay in filing the Review Petition and maintainability of the Review Petition, we are not inclined to go into

the other question with regard to the merits of the case.

iv) In view of the above, IA No.262 of 2012 for condonation of delay is rejected and the Review Petition is dismissed as not maintainable.

75. **Pronounced in the open Court on 17th day of April,2013.**

(Rakesh Nath) ***(Justice M. Karpaga Vinayagam)***
Technical Member ***Chairperson***

Dated: 17th April, 2013

√REPORTABLE/~~NON-REPORTABALE~~