

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Dated:01 Aug, 2014

Present:

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

DFR NO.1077 of 2014
IN
APPEAL No.100 of 2013

In the Matter of:

Uttar Haryana Bijli Vitran Nigam Ltd
Vidyut Sadan
Plot No.C-16, Sector-6,
Panchkula,
Haryana-134 112

Dakshin Haryana Bijli Vitran Nigam Ltd.,
Vidyut Nagar,
Vidyut Sadan, Hissar,
Haryana-125 005

..... Appellant(s)

Versus

- 1. Central Electricity Regualtory Commission**
3rd & 4th Floor,
Chanderlok Building,
36, Janpath,
New Delhi-110 001
- 2. Adani Power Limited,**
9th Floor, Shikhar,
Mithakali,Six Roads,
Navrangpura,
Ahmedabad-380 009

3. Gujarat Urja Vikas Nigam Limited
Sardar Patel Bhawan,
Race Course Circle,
Vadodara-390007

...Respondent(s)

Counsel for the Appellant(s) : Mr. M G Ramachandran
Mr. Ananand K Ganesan
Ms. Anushree Bardhan
Mr. Apoorve Karol
Mr. Vaibhav Tyagi

Counsel for the Respondent(s): Mr. Nikhil Nayyar
Mr. Dhananjay Bajjal
Mr. Nikhil Bajjal for R-1
Mr. Amit Kapur
Mr. Akshat Jain
Ms. Poonam Verma
Mr. Gaurav Dudeja for R-2

ORDER

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

1. This is the Petition filed by the Adani Power Limited raising Cross Objection in the Appeal filed by Uttar Haryana Bijli Vitran Nigam Limited and Dakshin Haryana Bijli Vitran Nigam Limited in Appeal No.100 of 2013 challenging the Impugned Order dated 2.4.2013.

2. The Appellants are the Haryana Utilities discharging the functions of Distribution and Retail Supply of Electricity in Northern Haryana and Southern Haryana.
3. When this Appeal filed by the Appellants is pending, Adani Power Ltd (the 2nd Respondent) filed Cross Objection challenging the portion of the Impugned Order. Since, the Maintainability of Cross Objection is questioned, we have heard both the parties and passed the present order.
4. The short facts are as under:
 - (a) Adani Power Limited (R-2) set-up the Mundra Power Project. It also entered into a Power Purchase Agreement with Haryana Utilities, the Appellants for generation and supply of the power on the tariff terms and conditions contained in the PPA. This is in pursuance of the competitive bidding held under Section 63 of the Act.
 - (b) In the competitive bidding, Adani Power Limited (R-2) was selected as a successful bidder.
 - (c) Letter of Intent was issued to Adani Power Limited (R-2). Thereafter, on 7.8.2008, the Power Purchase Agreement was entered into between the Appellant Haryana Utilities and the Adani Power

Limited. The State Commission adopted the tariff of Rs.2.94/- (levelized) and approved the Power Purchase Agreement u/s 63 of the Act, 2003.

(d) At that stage, the Indonesian Government notified the Regulations dealing with the coal benchmark selling price. In terms of the said Regulations, the export price of the coal mine in Indonesia was benchmarked to international market price of coal.

(e) In view of the above Regulations, the price of coal to Adani's Power Project was affected.

(f) Therefore, the Adani Power Limited (R-2) filed a Petition on 5.7.2012 in OP No.155 of 2012 seeking relief on account of the impact of the Indonesian Regulations by way of revised tariff.

(g) The Appellants in the above proceedings before the Central Commission filed a reply objecting to the exercise of the jurisdiction by the Central Commission as there was no composite agreement for invoking Section 79 (1) (b) of the Electricity, Act, 2003. The Appellant also objected on merits of the claims of Adani Power Limited.

(h) Ultimately, by the order dated 2.4.2013, the Central Commission decided that the claim of the Adani Power (R-2) for Force Majeure or Change in Law is not admissible.

(i) But even then, it held that the Central Commission in exercise of Section 79 of the Electricity Act, 2003, could provide redressal to the Generating Companies considering the public interest and accordingly, directed for the constitution of the Committee to set out a consultative process to find out an acceptable solution in the form of competitive tariff over and above the tariff decided under the PPAs and to submit the report to the Commission for issuing further directions.

(j) Aggrieved by the Order dated 2.4.2013, the Haryana Utilities have filed this Appeal in Appeal No.100 of 2013 challenging the exercise of the Regulatory Powers of the Central Commission to consider the redressal of the Adani Power notwithstanding the findings on the non applicability of the Force Majeure and Change in Law.

5. This Appeal was admitted on 17.5.2013 and notices were issued to the Respondents.

6. At that stage, i.e. while the Appeal No.100 of 2013 is pending, the Adani Power Limited (R-2) has filed this Petition raising the Cross Objection in DFR No.1077 of 2014 on 17.4.2014 challenging the very same Impugned Order dated 2.4.2013 passed by the Central Commission in respect of the portion of the specific findings rendered by the Central Commission with regard to Force Majeure and Change in Law.
7. When the DFR No.1077 of 2013 was taken-up, the Appellants in this Appeal have raised the objection to the maintainability of the Cross Objection filed by the Adani Power Limited (R-2) in the Appeal No.100 of 2013 filed by the Appellants.
8. Accordingly, as mentioned above, we have given opportunity to both the parties to file their respective written submissions on the question of maintainability of the Cross Objection.
9. In pursuance of our directions, both the parties have filed the Written Submission with regard to the said question. We have also heard their elaborate submissions to the question of the maintainability of the Cross Objection.

10. The Haryana Utilities, the Appellants have challenged the Maintainability of the Cross Objection on the following grounds:

(a) The provisions of Order 41 Rule-22 of the Code of Civil Procedure dealing with the Cross Objection will have no application to the present proceedings in the Appeal filed u/s 111 of the Electricity act, 2003. The Cross Objection like an Appeal is a substantive right and creature of a statute. Unless the statute provides for filing of Cross Objection either expressly or by necessary inference, there cannot be any Cross Objection. Section 111 of the Electricity Act, 2003 does not provide for filing of the Cross Objection. As such, there is no statutory provision in the Electricity Act, 2003 for Cross Objection. Section 120 (2) of the Electricity Act extends the provisions of the Code of Civil Procedure only to a limited extent as set out in sub clause (a) to (i) therein but, Order 41 Rule-22 of the Code of Civil Procedure is not one of the aspects referred in Section 120 (2) of the Electricity Act, 2003.

(b) The recent decision in the case of Dhanraj Singh Chaudhary Vs Nathulal Vishwakarma in 2012 (1) SCC 741 in regard to the provisions of Advocates Act, 1961,

the Hon'ble Supreme Court considered Section 42 of the Advocate Act, 1961 and decided the same issue holding that the Cross Objection is not maintainable. The said decision squarely applies to the present case as Section 120 (2) of the Act is similar to Section 42 of the Advocate Act, 1961.

(c) Even otherwise, the Cross Objection filed in the present Appeal is time barred as the same has been filed after about 303 days even without filing an Application for condonation of the delay.

11. On these three grounds, the learned Counsel for the Appellant strenuously contended that the Cross Objection cannot be entertained by this Tribunal in the Appeal proceedings initiated by the Appellant in Appeal No.100 of 2013.

12. In reply to the above objections, the learned Counsel for the Adani Power Limited (R-2) has made the following submissions:

(a) Adani Power Limited has filed the present Cross Objection as against the Impugned Order in regard to some specific findings in exercise of its substantive right of Appeal provided u/s 111 of the Electricity Act

read with principles of the Order 41 Rule-22 of the Code of Civil Procedure.

(b) Filing of an Appeal or Cross Objection is only a matter of form and procedure. If the statute confers the right to Appeal then there is no requirement of separate statute conferring a right to file Cross Objection separately. The right to Cross Objection flows from the right to file the Appeal itself.

(c) Order 41 Rule-22 provides that the Respondent may file a Cross Objection if (a) a decree is partly in favour of the Appellant and partly in favour of the Respondent and (b) the decree is entirely in favour of the Respondent though some findings are against the Respondent. In the present case, the Central Commission has allowed the relief on compensatory tariff sought by the Adani Power Limited. However, while allowing the said relief, the Central Commission dismissed the submissions of the Adani Power on the aspect of Force Majeure and Change in Law. Therefore, the Adani Power has filed the Cross Objections challenging the said findings. The substantive right is right of Appeal. The Cross Objection is a matter of procedure. Therefore, the right

to file Cross Objection is exercise of the substantive right of appeal conferred by the statute.

(d) Though Section 120 (1) of the Electricity Act, 2003 provides that this Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure but it shall be guided by the principles of the natural justice subject to the other provisions of the Electricity Act, 2003. This Tribunal have the powers to regulate its own procedure. The various provisions of the APTEL Rules 2007 provide the procedure under which the Tribunal can regulate its own procedure. There is no provision either in the Electricity Act, 2003 or Rules there under which restricts the right of the Respondent to file the Cross Objection.

(e) Order 41 Rule-22 does not provide for any consequences in the event the Respondent defaults in filing of Cross Objection within a period of 30 days. On the contrary, it provides that the Cross Objection can be filed within such time as the Court may deem fit to allow.

(f) There is no infeasible divestment of right of the Cross Objector in case of a delay. Thus, the right to file the Cross Objection is protected even at a belated

stage by the discretion vested with the Court. The statutes relating to the remedies and procedures must receive liberal construction to secure more effective, speedier, simpler and less expensive administration of law.

13. On these points, the learned Counsel for the Respondent elaborately argued in support of its plea that the Cross Objection filed in this Appeal, is maintainable.
14. The learned Counsel for both the parties cited various authorities on this point.
15. In the light of the above rival contentions referred to the above, the question which may be framed in this matter is as follows:

“Whether the provisions of the Order 41 Rule-22 of the Code of Civil Procedure in the matter of entertaining the Cross Objection can be invoked by the Adani Power Ltd, the Respondent in regard to an Appeal filed by the Haryana Utilities, the Appellants u/s 111 of the Electricity Act, 2003?”

16. According to the Appellants, the provisions of Order 41 Rule-22 of the Code of Civil Procedure dealing with the Cross Objection will have no application to the proceedings

in the present Appeal filed u/s 111 of the Electricity Act since Section 111 of the Electricity Act, 2003 which deals with the First Appeal to this Tribunal does not provide for filing of Cross Objection and unless a statute provides for filing of a Cross Objection like an appeal which is substantive right and creature of the statute either expressly or by necessary inference, there could not be any Cross Objection and therefore, this Cross Objection Petition has to be rejected.

17. On the other hand, the Adani Power (R-2) strenuously submitted that the partially successful party can challenge the relevant findings of the Impugned Order rendered against either by two modes (a) by filing an Appeal and (b) or by preferring a Cross Objection in the Appeal filed by the other side. When the statute confers the right to Appeal, then there is no requirement of conferring a right to file Cross Objection separately in as much as the right to file Cross Objection flows from the right to file the Appeal.
18. The learned Counsel for both the parties cited cartload of authorities in support of their respective submissions.
19. Having regard to the submissions made by both the parties and also having gone through all the judgments referred to by the parties, we are constrained to uphold the objection raised by the Appellants with regard to the Cross Objection

and hold that the Petition for Cross Objection is not maintainable. The following are the reasons for our above conclusion:

(a) The Scope of Order 41 Rule-22 of the Civil Procedure Code is to allow the Respondent in an Appeal to support the decree of the lower Court by asserting that the matter decided against him should have been decided in his favour.

(b) Section 120 (2) of the Electricity Act, 2003 applies the Code of Civil Procedure only for a limited aspect as set out in Sub clause (a) to (i) therein. Admittedly, Order 41 Rule-22 of the Code of Civil Procedure is not one of the aspects referred to in Section 120 (2) of the Electricity Act, 2003. Therefore, the provisions of Order 41 Rule-22 of the Civil Procedure Code cannot be held applicable in the present Appeal proceedings initiated by the Appellants.

(c) The Cross Objection filed by the Respondent cannot be held to be maintainable under the Electricity Act. The right to file the Cross Objection is a statutory right conferred upon an aggrieved party under Order 41 Rule-22 of the CPC.

(d) The Cross Objection is supposed to be filed by the party against any part of the decree passed under the Code of Civil Procedure. Filing of Cross Objection being the creation of the statute cannot be extended to the powers to be exercised u/s 111 of the Electricity Act, 2003.

(e) The right of Appeal is a creature of statute. There is no inherent right of Appeal. No Appeal can be heard or determined on merits unless a statute confers a right on the Appellant and confers the powers on the Court to do so. Cross Appeal and Cross Objection provide two different remedies for the same purpose. That is why under Order 41 Rule-22 Cross Objection can be preferred in respect of such point on which the party should have preferred an Appeal.

(f) The Respondent has got a right to file a separate Appeal as against the specific findings rendered against them. However, the Respondent in the present case, did not choose to file an Appeal in this Tribunal even after the Appeal filed by the Appellants was admitted.

(g) Section 111 does not refer to filing of Cross Objection like Order 41 Rule-22. If there is no right of

Cross Objection given under the Act, it cannot be read into Section 111 of the Act. Therefore, the Respondents must have preferred an Appeal in time u/s 111 of the Electricity Act instead of resorting to Order 41 Rule-22 which is not applicable to Section either 111 of the Act or any of the provisions of the Electricity Act, 2003. In other words, there is nothing in the Electricity Act making the provisions of an Order 41 Rule 22 applicable to an Appeal u/s 111 of the Electricity Act, 2003.

(h) Except Section 111 of the Electricity Act, there is no other Section under which a person aggrieved as against the Order of the Central Commission can come up to the Tribunal by invoking Section 111 of the Electricity Act, 2003. This section specifically provides for an Appeal by the aggrieved person to the Tribunal as against the findings rendered against partially successful party. In other words, under the Act, no right to file Cross Objection has been conferred. In other words, there is no provision in the Act, 2003 analogous to that Order 41 Rule-22 of the Code of Civil Procedure. The right of Cross Objection like right of an Appeal is a creature of statute.

(i) Section 111 of the Electricity Act provides for a remedy of an Appeal to any person aggrieved by an Order of the appropriate Commission within 45 days of the date of the communication of the Order to him. As a matter of law, Section 111 of the Electricity Act, 2003 does not contemplate the Cross Objection. Same Section of the Electricity Act makes applicable provisions of the Civil Procedure Code in respect of the some matters contained therein. In those provisions, it is mentioned that the Appropriate Commission and the Tribunal shall have the same powers as are vested in a Civil Court. Those provisions including Section 111 do not refer to the Cross Objection. Thus, the provisions contained in Order 41 Rule-22 have no applicability to the Appeal proceedings pending before the Tribunal u/s 111 of the Electricity Act, 2003.

(j) As referred to in Section 120 (1) of the Electricity Act, the Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure. It is specifically mentioned in the said Section that this Tribunal shall have the powers to regulate its own procedure. As such, there is no mandate that this Tribunal has to follow Order 41 Rule-22 of the Civil

Procedure Court in the absence of the analogous provisions contained in the Appeal provisions.

20. The learned counsel for the Appellant in support of his submission that the Cross Objection is not maintainable, mainly relied upon the decision reported in (2012) 1 SCC 741 Dhanraj Singh Choudhary v Nathulal Vishwakarma case.
21. In this case, the Hon'ble Supreme Court considered various provisions of the Advocates Act, 1961. Section 42 of the Advocates Act, is a pari-materia with Section 120 (2) of the Electricity Act, 2003. Section 120 (2) of the Electricity Act, 2003 applies the Code of Civil Procedure only for a limited aspect as set out in Sub Clause (a) to (i) therein.
22. Section 120 (2) of the Electricity Act, 2003 is reproduced below:

"120. (1)

(2) The Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) reviewing its decisions;

(g) dismissing a representation of default or deciding it ex parte;

(h) setting aside any order of dismissal or any representation for default or any order passed by it ex parte;

(i) any other matter which may be prescribed by the Central Government.

23. In these provisions namely (a) to (i), the Order 41 Rule-22 of the Code of Civil Procedure is not one of the aspects referred to.

24. Order 41 Rule-22 of the Civil Procedure Code is as follows:

“22. Upon hearing Respondent may object to decree as if he had preferred a separate Appeal-

(1) Any Respondent, though he may not have appealed from any part of the decree, may not only support the decree [but may also state that the finding against him in the Court below in respect of any issue

ought to have been in his favour; and may also take any cross-objection] to the decree which he could have taken by way of Appeal provided he has filed such objection in the Appellant Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the Appeal, or within such further time as the Appellate Court may see fit to allow.

[Explanation- A Respondent aggrieved by a finding of the Court in the judgment on which the decree appealed against is based may, under this Rule, file Cross Objection in respect of the decree in so far as it is based on that finding, notwithstanding that by reason of the decision of the Court on any other finding which is sufficient for the decision of the suit, the decree, is, wholly or in part, in favour of that Respondent]

25. As per this provision, the Respondent in the Appeal filed by the other party, though he might not have filed the Appeal against the part of the decree, as against him, he may file Cross Objection to the decree which he would have taken by way of Appeal provided he has filed such objection within one month from the date of the receipt of the notice in the Appeal as a Respondent. This power of entertaining Cross Objection has not been referred to in any of the provisions (a) to (i) of Section 120 (2) of the Electricity Act, 2003.
26. The analogous provision of Section 120 (2) is provided in Section 42 of the Advocates Act, 1961 which has been dealt

by the Hon'ble Supreme Court in the Dhanraj Singh Choudhary v Nathulal Vishwakarma case.

27. Section 42 of the Advocate Act, 1961 provides as follows:

“(1) The disciplinary committee of the Bar Council shall have the same powers as are vested in a civil Court under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of any person and examining him on oath.

(b) requiring discovery and production of any documents;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copies thereof from any court or office;

(e) issuing commissions for the examination of witnesses or documents;

(f) any other matter which may be prescribed;

28. Here also, the Order 41 Rule-22 of the Civil Procedure Code has not been referred to as one of the aspects in Section 42 (1) (a) to (f).

29. In the above case, an Advocate was found guilty for the misconduct by the Disciplinary Committee State Bar Council, Madhya Pradesh. However, he was awarded only with the punishment of reprimand. Not satisfied with this

punishment, the complainant filed an Appeal before the Bar Council of India u/s 37 of the Advocates Act, 1961. During the said Appeal proceedings, the Advocate filed a Cross Objection as against the findings of the Disciplinary Committee as against the Advocate holding him Guilty.

30. Ultimately, the Bar Council of India rejected this Cross Objection as not maintainable and enhanced the punishment as suspension from practice for a period of one year. This order passed by the Bar Council of India was challenged in the Appeal in the Hon'ble Supreme Court by the Appellant Advocate.
31. In that Appeal, it was submitted before the Hon'ble Supreme Court on behalf of the Appellant Advocate that the Appellate Authority namely State Bar Council should have entertained the Cross Objections as Cross Appeal by invoking the provisions under Order 41 Rule-22 of the Code of Civil Procedure which is applicable to the proceedings before the Bar Council of India u/s 42 of the 1961 Act.
32. In that context, the following ratio rejecting the submission of the Appellant Advocate, has been laid down by the Hon'ble Supreme Court:

“16. We do not agree with the submission of Mr. S.B Sanyal, learned Senior Counsel for the Advocate Appellant. The Code has not been made applicable as it is to the proceedings before the disciplinary committee. Section 42 of the 1961 Act makes applicable provisions of the Code in respect of matters contained therein while providing that the disciplinary committee of a Bar Council shall have the same powers as are vested in a Civil Court. The matters contained in Section 42 do not refer to the Appeals. Thus, the provisions contained in Order 41 of the Code, including Rule 22 thereof, have no applicability to the proceedings before a Disciplinary Committee.

17. Appeal is a creature of statute. The extent and scope of an Appeal is governed by statutory provision for an Appeal to the Bar Council of India from the order of the disciplinary Committee of the State Bar Council. Section 39 of the 1961 Act, however, makes Section 5 and 12 of the Limitation Act, 1963 applicable to the Appeals preferred under Section 37 and Section 38 of the 1961 Act. There is no provision like Order 41 Rule 22 of the Code in the 1961 Act. The cross-objections titled ‘cross appeal’ preferred by the Advocate Appellants being wholly mis-conceived have rightly been held to be not maintainable by the Disciplinary Committee of the Bar Council of India.

18. There may not be any difficulty in treating the ‘cross appeal’ preferred by the advocate Appellant as an Appeal under Section 37 of the 1961 Act, but then such Appeal is hopelessly time barred. The order was passed by the Disciplinary Committee of the State Bar Council on April, 22, 2002. The advocate appellant presented his appeal (titled ‘cross appeal’) before the Disciplinary Committee of the Bar Council of India on

October, 30, 2004, i.e., after more than two years. No application for condonation of delay has been made. In this view of the matter also the cross appeal preferred by the Advocate Appellant was liable to be dismissed and has rightly been dismissed.”

33. The gist of the ratio given in this decision is as follows:

(a) The Appeal, is a creature of the Statute. The scope of the Appeal is governed by the statutory provisions. Section 37 of the 1961 Act provides for the Appeal to the Bar Council of India from the Order of the State Bar Council.

(b) Order 41 Rule-22 of the Code provides for the Cross Objection but there is no provision provided under any of the Sections of 1961 Act like 41 Rule-22 of the Code. As such, the Civil Procedure Code has not been made applicable to the proceedings before the disciplinary Committee. Of course, Section 42 of the 1961 Act makes applicable provisions of the Civil Procedure Code in respect of some matters while providing that the Disciplinary Committee of the Bar Council shall have the same powers as are vested in the Civil Court.

(c) Section 42 does not refer to the Appeal. Therefore, the provisions of the Order 41 Rule-22 have no applicability to the proceedings before the Disciplinary Committee under the 1961 Act. Even assuming that the Cross Objections could be treated as a Cross Appeal, as the Appeal u/s 37 of the Act, 1961 but then such an Appeal is hopelessly time barred as the said Cross Objection was filed after more than 2 years. Therefore, the Cross Objection is not maintainable in any event so the findings given by the Appellate authority i.e. Bar Council of India that the Cross Objection could not be entertained is well justified.

34. This judgment in our view, would squarely apply to the present facts of the case.
35. The learned Counsel for the Respondent who filed the Cross Objection while contending that the Dhanraj Singh Choudhary judgment is not applicable to the present case raises a strange proposition that this judgment is per incuriam as it is contrary to the earlier judgment of Hon'ble Supreme Court in Municipal Corporation of Delhi case which was passed by the Larger Bench.

36. We are unable to accept this preposition. It is to be noticed that the Hon'ble Supreme Court in the case of Superintendent Engineer and Others v V B Subba Reddy (1999) 4 SCC 423 has interpreted Section 41 of the Arbitration Act to the effect that section 41 only provides for procedure specified in Code of Civil Procedure and not the substantive provisions of Order 41 Rule-22 of the Code of the Civil Procedure.
37. In that decision, the Hon'ble Supreme Court of two judges bench observed that filing of Cross Objection is not procedural in nature and Section 41 of the Arbitration Act merely prescribes that the procedure of the Court would be applicable to the Appeal under relevant Sections of the Act and therefore Cross Objection by the Respondent was not maintainable.
38. While dealing with this observation, the Hon'ble Supreme Court in the Municipal Corporation of Delhi and Others Vs International Security and Intelligence Agency Limited (2004) 3 SCC 250 held that it was not correct as observed as follows:

“.....Firstly, form of Cross Objection is procedural and is only a manner of exercising right of Appeal which is substantive, as we have already stated.”

We may hasten to add that to the extent of our disagreement with the law laid down in B Subba Reddy's case, the proposition appears to have been rather widely stated in that case. In fact, the question before the Court in B Subba Reddy's case was whether Cross Objection seeking the relief of award of interest at a higher rate was maintainable though such an order did not fall within the purview of Section 39(1) of the Act."

39. The reading of the Municipal Corporation case would make it clear that the Hon'ble Supreme Court has not questioned the principle of law laid down by the Hon'ble Supreme Court in Subba Reddy case with regard to Cross Objection being a substantive right and creature of a statute. But the point is whether such a right has been conferred by this statute. Specifically what was differentiated is in regard to the scope and application of Section 41 of the Arbitration and Conciliation Act, 1940.
40. In Subba Reddy's case Section 41 of the Act, 1940 was interpreted to the effect that Section 41 only provides for procedure specified in the Code of Civil Procedure and not the substantive provisions of Order 41 Rule-22 of the Code of Civil Procedure.
41. In the Municipal Corporation Case, the Hon'ble Supreme Court differentiated the above inference drawn in the Subba

Reddy's case and came to the contrary conclusion that Section 41 of the Arbitration Act would bring in force the entire provisions of the Code of Civil Procedure unless any such provisions of the Code of Civil Procedure is inconsistent with the provisions of the Arbitration Act, 1940.

42. Therefore, it may not be correct on the part of Adani Power (R-2) to contend that Subba Reddy case has been over ruled on the basic principle of law to the effect that the Cross Objection is a substantive right and unless the statute provides for it, there cannot be any Cross Objection in Appeal under the statutes.
43. Therefore, the ratio laid down by the Hon'ble Supreme Court in Dhanraj Singh case on the basis of the interpretation of Section 42 of the Advocates Act, 1961 cannot be held to be Per in-curiam in the light of the decision of the 3 Judges Bench in Municipal Corporation Case which dealt with the question relating to Section 41 of the Arbitration Act, 1940 in regard to its scope and applicability whether it applies to the entire Code of Civil Procedure or applies only as procedural provisions and not substantive provisions.
44. Admittedly, there are no such provisions as the case under Section 40 of the Arbitration Act, 1940 in Section 120 (2) of the Electricity Act, 2003.

45. There is one more decision cited by the Appellant which is worth mentioning.
46. In fact in this decision i.e. Jamshed Hormusji Wadia v Board of Trustees, Port of Mumbai and Another (2004) 3 SCC 214, both Subba Reddy case and Municipal Corporation case have been considered.
47. The relevant observations are as follows:

“37. Right to file cross-objection is the exercise of substantive right of Appeal conferred by law. Cross Objections partake of the right of preferring an Appeal. The procedure is different and so is the rule of limitation (See, Municipal Corporation of Delhi & Ors Vs. Intl. Security & Intelligence Agency Ltd. and Superintending Engineers & Ors Vs B Subha Reddy) against a decision by the High Court or Tribunal which is partly in favour of one and partly in favour of the other, both the parties are aggrieved and each one of them has a right to move an application in this Court seeking leave to Appeal. One who does not do so and allows the prescribed period of limitation to lapse, cannot come up by way of cross-objections on the other party coming up in Appeal, though we must qualify our statement of law by reference to Sri Babu Ram Vs Shrimati Prasanni & Ors.”

48. In this judgment, the Hon'ble Supreme Court having considered Subba Ready decision and Municipal Corporation case did not observe that Subba Reddy decision was over ruled by the Municipal Corporation case

on the aspect of Cross Objection being a substantive right to be conferred by the Statute.

49. On this point, the learned Counsel for the Appellant has cited various judgments of various High Courts relating to the subject Act as well as the applicability of Order-41 Rule-22.
50. We feel that it is unnecessary to refer to those cases as in our view, the ratio decided by the Hon'ble Supreme Court in the Dhanraj Singh case while interpreting the Section 42 of the Advocates Act, 1961 would squarely be applicable to the present case as Section 42 of the Advocates Act, 1961 is exactly similar to Section 120 (2) of the Electricity Act, 2003.
51. Though the learned Counsel for the Respondent would refer to so many other judgments with reference to the limitation point as well as the powers of this Tribunal to modify the Impugned Order in favour of the Respondent in the very same Appeal, those aspects need not be considered in the light of our view that Order 41, Rule-22 would not be applicable to the proceedings under the Electricity Act and as such those provisions of the Civil Procedure Code cannot be invoked in regard to an Appeal u/s 111 of the Act.

52. The learned Counsel for the Appellant would make alternative submission stating that even assuming that the Cross Objection is maintainable, the Cross Objection filed in this case cannot be entertained as it is hopelessly time barred since it has been filed after 303 days even though the Cross Objection need to be filed within a period of 30 days from the service of the Notice of the Appeal by the opposite party.
53. Since we have taken the view that the Cross Objection filed by the Respondent is not maintainable in the Appeal filed by the Appellant; we need not go into the question of limitation.
54. In view of our above discussion, we hold that the Cross Objection by the Respondent in the Appeal filed by the Appellant is not maintainable.
55. Accordingly, the Petition raising Cross Objection is dismissed.

(Rakesh Nath)
Technical Member

Dated:01 August, 2014

(Justice M. Karpaga Vinayagam)
Chairperson

✓ ~~REPORTABLE/NON-REPORTABLE~~