

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI**

(APPELLATE JURISDICTION)

**IA No. 138 of 2014 in DFR (RP) 798 of 2014
in Appeal No. 153 of 2012**

Dated: 2nd May, 2014

Present: **Hon'ble Mr. Rakesh Nath, Technical Member**
Hon'ble Mr. Justice Surendra Kumar, Judicial Member

IN THE MATTER OF

East Coast Railway
Rail Sadan, Chandrasekharapur,
Bhubaneswar-751017, Odisha

Through:

Shri R.K. Jain, son of Late Nem Chand Jain

Aged 59 years, working as

Chief Electrical Distribution Engineer

.... Review Petitioner/
Appellant

VERSUS

1. Odisha Electricity Orissa Electricity
Regulatory Commission (OERC),
Bidyut Niyamak Bhawan, Unit-VIII,
Bhubaneswar-751 012
2. Central Electricity Supply Utility of Odisha,
(CESU), 2nd Floor, IDCO Tower, Janapath,
Bhubaneswar-751 022
3. North Eastern Electricity Supply Company
of Odisha Limited (NESCO), Januganj,
Balasore-756 019
4. Southern Electricity Supply Company
of Odisha Limited (SOUTHCO), Courtpetta,
Berhampour-760 004
5. Western Electricity Supply Company
of Odisha Limited (WESCO), Burla-768 017,
Sambalpur, Odisha

.... Respondents

Counsel for the Appellant(s) ... Ms. Geetanjali Mohan

Counsel for the Respondent(s) ... Mr. R.K. Mehta
Ms. Ishita C. Dasgupta for R-2

Mr. Hasan Murtaza

ORDER

PER HON'BLE MR. JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER

The Appellant/Review Petitioner, East Coast Railway has filed this Petition under Section 120 of the Electricity Act, 2003 seeking review of the judgment dated 29.1.2014 passed by this Appellate Tribunal in Appeal No. 153 of 2012 on the following grounds:

- (a) that no finding, on the metering issue, has been given in the impugned judgment, inspite of recording of the submissions of both the parties.
- (b) that the views of the learned Orissa Commission, expressed in the impugned order, against which the aforesaid Appeal No. 153 of 2012 was filed before this Appellate Tribunal are against CEA Regulations, OERC Regulations and Forum of Regulator of Model Supply Code and the earlier verdict of this Appellate Tribunal. The submissions raised during the hearing of the Appeal before this Appellate Tribunal have again been reiterated in the body of the instant Review Petition. Thus, the instant Review Petition is confined to the metering issue alleging that no finding on the metering issue has been recorded by this Appellate Tribunal in its judgment dated 29.1.2014.
- (c) that the settled law on the issue before us, for the purposes of this Review Petition is that, lack of findings of any Appellate Authority or Appellate Court on any issue in a particular way as desired by either of the parties, can never be a ground for review of the said judgment/order. No counsel or party can compel to any Appellate Tribunal or Appellate Court to record findings on the said issue in a particular or specified manner. If any of the parties feels aggrieved by the said judgment/order, the same can be challenged

before the higher Forum or Authority but the same cannot be the ground of review.

- (d) that, since, the Review Petition is time barred, the Review Petitioner has filed an application, for delay condonation in filing review petition under Section 151 of the CPC, averring that delay of 12 days has been caused in filing time barred Review Petition and the delay has occurred due to the reason that the decision to file the review petition by the Railway Administration had to be taken from the higher level officials after taking legal opinion. Thus, the ground of delay, as pleaded by the Review Petitioner, in the delay condonation application is the delay of the Railway Administration in taking final decision to file review petition, which in our opinion, cannot be said to be bonafide, unintentional or genuine. The judgment was pronounced by this Appellate Tribunal on 29.1.2014 and the review petition has been filed on 12.3.2014 before this Appellate Tribunal with the delay of 12 days.

2. We have heard Ms. Geetanjali Mohan, the learned counsel for the Review Petitioner/Appellant and Mr. R.K. Mehta, the learned counsel for the Respondent No.2/Central Electricity Supply Utility of Orissa (CESU). The main objection of Mr. R.K. Mehta is that this Appellate Tribunal, in the various judgments/orders namely; (i) Order dated 17.4.2013 in IA-262 of 2012 in RP(DFR) No.1311 of 2012 in Appeal No.57 of 2009 - Gujarat Electricity Regulatory Commission vs. Century Rayon; (ii) Order dated 28.5.2013 in IA-46 of 2013 in RP(DFR) No.165 of 2013 in Appeal No.24 of 2011 - Orissa Power Transmission Corporation Limited vs. Orissa Electricity Regulatory Commission & Ors.; repeatedly observed that this Appellate Tribunal does not has jurisdiction to condone any delay in filing of the Review Petition. This legal preposition, propounded by this Appellate Tribunal in the aforesaid cases has not been opposed and disputed by Ms. Geetanjali Mohan, the learned counsel for the Appellant/Review Petitioner.

3. This Appellate Tribunal in Order dated 17.4.2013 in IA-262 of 2012 in RP(DFR) No.1311 of 2012 in Appeal No.57 of 2009 - Gujarat Electricity Regulatory Commission vs. Century Rayon in para 74 thereof, has held as under:

“74. *Summary of Our Findings*

- 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 cannot 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 judgment, cannot be a justifiable ground to claim that the State Commission is considering itself or feeling itself as “an aggrieved person”. Therefore, the Review Petitioner 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.”*

4. This Appellate Tribunal again in Order dated 28.5.2013 in IA-46 of 2013 in RP(DFR) No.165 of 2013 in Appeal No.24 of 2011 – Orissa Power Transmission Corporation Limited vs. Orissa Electricity Regulatory Commission & Ors. in paras 50 and 51 thereof, has held as under:

“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.”*

5. After considering the aforesaid two earlier orders of this Appellate Tribunal by the coordinate Benches, we also reiterating the same view and hold that the application to condone the delay, in filing the Review Petition beyond the period of 30 days, is not maintainable. As discussed above, since the Review Petition is time barred and having being filed after the expiry of 30 days, the same is not maintainable and delay condonation application is liable to be rejected.

6. In view of the above, the Application to condone the delay in filing the review, being IA-138 of 2014 in DFR (RP) No. 798 of 2014 in Appeal No. 153 of 2012, is not maintainable and is accordingly dismissed. Consequently, the Review Petition is also rejected. No order as to costs.

PRONOUNCED IN OPEN COURT ON THIS 2ND DAY OF MAY, 2014.

**(Justice Surendra Kumar)
Judicial Member**

**(Rakesh Nath)
Technical Member**

√ REPORTABLE/NON-REPORTABLE

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