

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

**Appeal No. 50 of 2010**

**Dated 24<sup>th</sup> May 2010**

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson  
Hon'ble Mr. Rakesh Nath, Technical Member**

**Appeal No. 50 of 2010**

**In the matter of:**

**Tamil Nadu Electricity Board  
144. Anna Salai  
Chennai-600 002**

**... Appellant(s)**

**Versus**

**Neyveli Lignite Corporation Ltd.  
135-E.V.R. Periyar Road  
Kilpauk  
Chennai-600 010**

**... Respondent-1**

**Central Electricity Regulatory Commission  
3<sup>rd</sup> & 4<sup>th</sup> Floor  
Chanderlok Building  
36, Janpath  
New Delhi-110 001**

**... Respondent-2**

**Counsel for the Appellant(s) Mr. Parvin H. Parekh, Sr. Adv. With  
Mr. E.R. Kumar, Mr. Shakun  
Sharma, Mr. Shashank Kumar &  
Mr. Debojoyti Bhattacharya**

**Counsel for the Respondent(s) Mr. N.A.K. Sharma, Sr. Adv with  
Ms. Raji Joseph & Mr. R. Suresh for  
NLC**

**JUDGMENT**

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

1. **Tamil Nadu Electricity Board (TNEB) is the Appellant**
  
2. **As against the order dated 17.12.2009, passed by the Central Commission dismissing the Review Petition filed by the Appellant in RP 98 of 2009 and R.P. No. 99 of 2009, this Appeal has been filed.**
  
3. **This Appeal was admitted by this Tribunal and a notice was issued. The Learned Counsel for the Respondent on receipt of notice, appeared before this Tribunal and raised his objection to the maintainability of the Appeal before considering the same on merits.**
  
4. **Accordingly, we have posted the matter to hear the Appellant and the Respondent and permitted both the**

**parties to file their respective written submissions on the question of maintainability.**

**5. Accordingly, both the parties filed their written submissions. We have heard the Learned Counsel for both the parties and also perused their respective Written submissions .**

**6. Admittedly, this Appeal has been filed as against the dismissal order dated 17.12.2009 passed by the Central Commission in the Review Petition filed by the Appellant in R.P. No. 98 of 2009 and 99 of 2009 seeking to review the Main Orders dated 19.10.2005 and 14.09.2006. As such the main orders dated 19.10.2005 and 14.09.2006 by which the Appellant was really aggrieved have not been challenged by the Appellant through the Appeal at the appropriate stage. Thus, it is clear that the Appellant is only praying to set aside the order passed by the Central Commission on**

**17.12.2009 rejecting the Review Petition and not against the main orders dated 19.10.2005 and 14.09.2006.**

**7. According to the Learned Counsel for the Respondent Neyveli Lignite Corporation Ltd. (NLC), this Appeal is not maintainable in view of the bar contained in the Order 47, Rule 7 of the CPC, as held by this Tribunal in its various judgments. On the other hand, it is contended by the Appellant that the order 47, Rule 7 has no application to the Appeal before this Tribunal filed under section 111 of the Electricity Act, 2003 which would lie as against any order including the order of rejection of Review Petition.**

**8. We have carefully considered the rival contentions with reference to the maintainability of the Appeal and gone through the various judgments rendered by this Tribunal on this issue.**

**9. On going through the judgments and the Written Submissions, it is clear that the contention urged by the Learned Counsel for the Appellant that section 111 of the Electricity Act gives powers to this Tribunal to entertain the Appeal as against any order of the Central Commission including the order rejecting the Review Petition has no substance .**

**10. Section 111 is not a stand-alone provision. It is the cardinal principle of interpretation of statutes that sections ought not to be read or interpreted in isolation. Section 111 of the Act has to be read in conjunction with other provisions of the Act, particularly sections 94(1), 173, 174 and 175 of the Act. Of course, section 111 makes any ‘order’ made by the Appropriate Commission amenable to be subjected to be reviewed by this Tribunal, but it cannot be contended that section 111 does not include directions and decisions which partake the character of an order more so**

because section 94(1)(f) includes ‘decisions and directions’ in addition to ‘orders’.

11. The applicability of the CPC in relation to maintainability of the Appeal as against the dismissal order passed by the Central Commission has been considered by this Tribunal in various judgments in detail. In those judgments, it has been held that the Appeal as against the dismissal order passed in the Review Petition seeking to set aside the main orders without directly filing the Appeal as against the said main order, is not maintainable. The relevant judgments rendered by the Tribunal are as follows:

- (i) Judgment dated 05.05.2009 in Appeal No. 25/09 in the case of *Transmission Corporation of A.P. Versus NTPC* as reported in 2009 ELR (APTEL) 0445
- (ii) Judgment dated 22.07.2009 in Appeal No. 58 of 2008 in the case of *Madhya Pradesh Power Trading Co.*

***Ltd. Versus Central Commission as reported in 2009 ELR (APTEL) 0533.***

**(iii) Judgment dated 13.07.2009 in Appeal No. 97 of 2009 in the case of *Rajasthan Rajya Vidyut Prasaran Nigam Limited Versus CERC* as reported in ELR (APTEL) 260.**

**(iv) Judgment dated 05.11.2009 in Appeal No. 24/09 in the case of *TNEB Versus Central Commission* as reported in 2009 ELR (APTEL) 0856.**

**(v) Judgment dated 25.02.2010 in Appeal No. 178 of 2009 in the case of *TNEB Versus Central Commission*.**

**12. It is curious to note that the Appellant (TNEB) herein is also the Appellant in the cases indicated at S.No. (iv) and (v) above. Even then, the very same Appellant TNEB has chosen to re-agitate by raising the same contention which has been rejected by this Tribunal earlier.**

**13. The relevant observations made by this Tribunal in the above judgments are as under:**

**(i) Judgment dated 05.05.2009 in Appeal No. 25 of 2009:**

*“As correctly pointed out by the Ld. Counsel for the Respondents that the Order dismissing the Review is not appealable as per the relevant provisions of the Act. Under section 94 of the Electricity Act, the Central Commission has got the powers for reviewing its own orders under the powers vested with the Civil Court under the Order 47 of Rule 7. The said Order 47, Rule 7 of the CPC reads as under –*

*“Rule 7 Order of Rejection not appealable. Objection to Order granting Application”*

*(i) The Order of the Court rejecting the Application shall not be appealable, but an Order granting an Application may be*



*objected to at once by an Appeal from the Order granting the Application or in an Appeal from the decree or an Order finally passed or made in the Suit.”*

(ii) **Judgment dated 22.07.2009 in Appeal No. 58 of 2008:**

*“ (i) The challenge has been made in this Appeal only against the Order in the Review Petition dated 08.08. 2007 with reference to the ratio decided by the Central Commission for sharing of the transmission charges between the Eastern and Western Regions. This was actually fixed by the Central Commission in the main Order dated 16.03.2006. This main Order has not been challenged before this Tribunal by way of an Appeal. On the other hand, this Appeal has been filed by the Appellant as against the Order of dismissal of the Review Petition dated 08.08.2007. It*

*is settled law that the Main Order lone can be appealed before the Tribunal and the Appeal is not provided against the Order of dismissal of the Review Petition by the Central Commission which confirmed its earlier Order.*

*(ii) Rejection of the Review Petition is not appealable as per Order 47, Rule 7. The said Order 47, Rule 7 of CPC reads as follows:*

*“Rule 7 Order of Rejection not appealable. Objection to Order granting Application”*

*(i) The Order of the Court rejecting the Application shall not be appealable, but an Order granting an Application may be objected to at once by an Appeal from the Order granting the Application or in an Appeal from the decree or an Order finally passed or made in the Suit*

*(iii) .....”*

*(iv) In this case, the original Order has been passed on 16.03.2006 which is appealable. But this is not appealed instead of filing an Appeal against this Order, the Appellant filed a Review of the said Order before the Central Commission which was dismissed on 08.08.2007. This alone has been appealed though this is not appealable. What the Appellant should have done is that it should have filed an Appeal against the main Order dated 16.03.2006 along with an application to condone the delay which was occurred due to the pendency of Review Petition before the Commission. In that event, the Appellate Tribunal would consider the said ground for delay and after condoning the delay, it would entertain the Appeal. The Appellant has neither filed an Appeal against the main Order passed earlier nor thought it fit to file the Appeal at least later i.e. after the disposal of the Review Petition as against the main Order along with the*

*application to condone the delay. Therefore, this Appeal as against the Order passed in the Review Petition is not maintainable.”*

(iii) **Judgment dated 05.11.2007 in Appeal No. 24 of 2009:**

*“Section 94 of the Electricity Act empowers the Central Commission for reviewing its own Orders, as prescribed under the Order 47 of Rule 7 of the CPC. The said Order 47, Rule 7 of CPC reads as under.*

*“Rule 7 Order of Rejection not appealable. Objection to Order granting Application”*

*(i) The Order of the Court rejecting the Application shall not be appealable, but an Order granting an Application may be objected to at once by an Appeal from the Order granting the Application or in an*

*Appeal from the decree or an Order finally passed or made in the Suit.”*

**(iv) Judgment dated 25.02.2010 in Appeal No. 178 of 2009**

*“23. It is contended on behalf of the Appellant that the scope of Section 111 is wider and it provides for an Appeal against any order including the order rejecting the review made by the Appropriate Commission. In elaboration of this plea, the Appellant has made a distinction to the effect that the Appeal power of this Tribunal does not envisage any restriction and therefore, Appeal is maintainable. This contention in our view is not tenable. It is quite relevant to note in this context that under the CPC the following Appeal provisions are provided:*

*(i) Order 41 Rule 1 read with Section 96 provides for the Appeal arising out of original decrees.*

*(ii) Order 43 Rule 1 provides for an Appeal arising out of the orders.*

*(iii) Section 100 CPC provides for the second appeal.*

*These provisions which are Appeal provisions do not provide for any prohibition that there shall be no appeal but this prohibition of an Appeal as against the order rejecting the Review Petition alone has been specifically provided in Order XLVII Rule 7. Therefore, despite the other provision which provides for an appeal against the order passed by the Appropriate Commission, the restriction in section 94(1)(f) read with Order 47 Rule 7 CPC will have application to the present case.”*

**14. From the various judgments quoted above, it is evident that the following guidelines have been given in those judgments with reference to maintainability of the Appeal, as against the order passed by the Commission dismissing the review petition.**

- (i) The order of the court rejecting the application for review shall not be appealable under Order 47, Rule 7 of the Code of Civil Procedure.**
- (ii) The main order alone can be appealed before the Tribunal and the Appeal is not provided as against the order of dismissal of review petition by the Commission which confirmed the main order earlier passed.**
- (iii) The course open to the Appellant whose application for the review of the main order has been dismissed is to file an appeal as against the main order along with an application to condone the delay which occurred due to the pendency of the review**

**petition before the Commission. The Appellate Tribunal in such an event would decide the condoning delay application taking into consideration the pendency of the review petition before the Commission during that period. The Tribunal after condoning the delay would then entertain the application. Without doing so, the Appellant cannot file an appeal as against the dismissal order passed by the review petition alone.**

- (iv) Under the CPC, the appeal is provided as against the orders mentioned below:**
  - (a) Order 41, Rule 1 read with section 96 provides for the appeal arising out of original decree.**
  - (b) Order 43, Rule 1 provides for an appeal arising out of the orders passed under CPC**
  - (c) Section 100 of CPC provides for the second appeal.**



**These provisions do not provide for any prohibition for appeal against the orders referred to above. But the prohibition of an appeal as against the order rejecting the review petition has been specifically provided in Order 47 Rule 7.**

**V. Therefore, restriction contained in Order 47, Rule 7 will have application to the orders passed by the Commission dismissing the review petition concerning the main order.**

**15. Keeping in view the above guidelines, if we look at the present facts of the case, it is clear that the Appeal against the order passed by the Commission dismissing the review petition is not maintainable under section 111 of the Electricity Act, 2003. In the present case, it is noticed that the main order had been passed on 19.10.2005 and 14.09.2006. Admittedly, these main orders have not been**

**challenged by the Appellant. On the other hand they filed review petitions No. 98/09 and 99/09 as against the main orders before the Commission, which in turn, dismissed the same by the order dated 17.12.2009. Thus, it is clear the Appellant did not choose to file the Appeal as against the main orders dated 19.10.2005 and 14.09.2006 but has chosen to file an Appeal only as against the order dated 17.12.2009 passed by the Commission rejecting the review petition.**

**16. Of course, section 111 of the Electricity Act, 2003 gives powers to the Tribunal to entertain the appeal as against any order passed by the Commission. However, Section 111 of the Electricity Act, 2003 which provides for the Appeal against the orders is not to be read in isolation. On the other hand, it has to be read in conjunction with the other provisions of the Act particularly, sections 94(1), 173, 174 and 175 of the Act.**

**17. These provisions permit the Appellate Tribunal to invoke the procedure contained in the CPC in the matter of entertaining the Appeal as well as in condoning the delay in filing the Appeal against the orders passed by the Commission. Once there is a bar as contained in Order 47, Rule 7 to entertain the appeal as against the order passed in the review, this Tribunal is not entitled to bypass or circumvent the said bar and entertain the Appeal.**

**18. In view of the above reasons, we are of the opinion that the Appeal is not maintainable and the same is liable to be dismissed. Accordingly, the same is dismissed. No costs.**

**(Rakesh Nath)  
Technical Member**

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

**Dated: 24<sup>th</sup> May, 2010.**

**INDEX; REPORTABLE/NON-REPORTABLE.**