

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

Appeal No. 55 of 2009

Dated 6th May, 2010

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam,
Chairperson
Hon'ble Mr. H.L. Bajaj, Technical Member**

Appeal No. 55 of 2009

In the matter of:

**New Bombay Ispat Udyog Ltd.
At 1 Sundaram
M.G. Road, Ghatkopar
Mumbai-440 077**

...Appellant

Versus

**Maharashtra State Electricity Distribution Co. Ltd.
Prakash Garh, Bandra (E)
Mumbai-400 051**

... Respondent-1

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

... Respondent-2

**Counsel for the Appellant(s): Mr. Haresh Jagtiani, Sr. Adv.
Mr. Siddhesh Bhole
Ms. Ramni Taneja
Mr. Anil D'Souza
Mr. Banusri
Mr. Aashish Gupta
Mrs, Vandana Mehta
Mr. Hamed Kadiani
Mr. Vibhu Tiwari**

**Counsel for the Respondent(s) Mr. Abhishek *Mitra* ** &
Mr. Aashish Bernard
Mr. Raunak Jain
Mr. Varun Agarwal for R-1
Mr. Buddy A. Ranganadhan
for R.2**

JUDGMENT

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

**1. The short questions which arise for consideration in
this Appeal are:**

- (i) Whether the Appellate Tribunal is precluded
from invoking provisions of the Code of Civil
Procedure in a proceeding before the Tribunal, in
view of Section 120 of the Electricity Act, 2003?**

(ii) Whether the present Appeal is maintainable in view of the prohibition contained in Order 47, Rule 7 of the Code of Civil Procedure?

2. In order to appreciate these questions, it is necessary to refer to the relevant events which have led to the filing of this Appeal.

3. New Bombay Ispat Udyog Limited has filed this Appeal as against the order passed by the Maharashtra Electricity Regulatory Commission dismissing the Review Petition filed by the Appellant by the order dated 04.09.2008 in case No. 49 of 2008. The Appellant is a private limited company engaged in the business of foundry and melting unit in iron and steel. The Appellant is getting electricity supply from the Maharashtra State Electricity Distribution Co. Ltd, the first Respondent herein.

4. The Distribution Company as the first Respondent filed an application for approval of the Annual Revenue Requirement and multi year tariff petition for the FY 2004-2007 in case No. 54/2009. The State Commission through its order dated 20.10.2006 fixed the tariff with effect from 01.10.2006 up to 30.04.2007.

5. In respect of this order, some clarification was sought by the R-1 through an application. This application was disposed of by the order dated 26.2.2007 by issue of a clarification order.

6. Thereupon on the application filed by R-1 in case No. 65 of 2006 for their annual revenue requirement for the period from 2007-2010 and for determining of tariff for the year 2007-08. Accordingly, the State Commission determined the annual revenue requirement as well as the tariff by the order dated 18.05.2007. In this order also a clarification was sought by application filed by the R-1.

Accordingly, the clarification was issued by the order dated 24.08.2007.

7. At that stage the Appellant filed a Review Petition before the State Commission seeking for the review of the tariff order dated 20.10.2006 as well as the clarification order dated 24.08.2007 in respect of the earlier period in case No. 54 of 2005. The State Commission, after hearing the parties, dismissed the said Review Petition by the order dated 04.09.2008, holding that the Review Petition is not maintainable. As against this order, this Appeal has been filed under Section 111 of the Electricity Act, 2003. This Appeal was admitted by the order dated 02.04.2009 and notice was ordered to be served on the respondents.

8. When the matter came up for hearing on 11.2.2010, the Learned Counsel for the Distribution Company (R-1) raised a preliminary objection stating that the Appeal is not maintainable since the Appeal is not filed against the main

order but is against the Review Order. The Learned Counsel for the Appellant submitted that the Appeal is filed not only against the main order but also against the review order. In view of this rival contention, this Tribunal directed the parties to file their written submissions and adjourned the matter for hearing the parties in regard to the maintainability of the Appeal.

9. Accordingly, R-1 filed statement with respect to the preliminary objection. The Appellant also filed a reply to the same. The details of the preliminary objection raised by the R-1 with regard to the maintainability of the Appeal is as follows.

10. “The present Appeal is arising from the order dated 04.09.2008 in case No. 49 of 2007, whereby the Appellant sought review of the earlier tariff order dated 20.10.2006, determining the tariff for FY 2006-07. The order passed by the State Commission in the Review Petition confirming the

earlier main order is not appealable under Order 47, Rule 7 of the CPC. This is held by this Tribunal in its judgment dated 05.05.2009 in Appeal No. 25 of 2009, in Judgment dated 13.07.2009 in Appeal No. 97 of 2009 and in Judgment dated 25.2.2010 in Appeal No. 178 of 2009. The very same principles have been enunciated by the Hon'ble Supreme Court in various decisions such as 1994 (2) SCC 753, 2004(13) SCC 675, 2004(13) SCC 677, 1992 (4) SCC 736, 1999(4) SCC 710, 1997(6) SCC 473 and AIR 2007 SC 2870."

11. The Learned Counsel for the Appellant in reply to the said preliminary objection made the following contentions.

- (1) This Appeal has been filed by the Appellant not only challenging the review order dated 04.09.2008 but also challenging the original order dated 20.10.2006. Therefore, the Appeal is maintainable.**

(2) Even assuming that the Appeal has been filed only against the review order dismissing the same, this Appeal is maintainable as per the provisions of the Electricity Act, 2003. The Electricity Act, 2003 is a special statute enacted for the purposes of regulating all the aspects of electricity supply. It lays down a complete procedure for filing complaints, applications for review, revision and appeals etc. before various forums/commissions/tribunal and it overrides any general statute i.e. Code of Civil Procedure unless expressly mentioned otherwise. The Electricity Act 2003 is a self-contained code with rules and regulations framed thereunder regulating practice and procedure. Section 111 of the Electricity Act 2003 lays down that an Appeal to this Tribunal is maintainable against all orders passed by the appropriate commission. Therefore, the right of Appeal as contemplated under Section 111 of the Electricity Act, 2003 is unrestricted and unfettered

right given to the aggrieved person to file Appeal to this Tribunal against any order passed by the Appropriate Commission under the Electricity Act, 2003. Any order includes order passed under review. Further, the provision of the Electricity Act, 2003 being a special statute containing special provisions, overrides and prevails over any general statute in the Code of Civil Procedure Code and as such the CPC cannot come into way of the Tribunal to entertain the Appeal under Section 111 of the Electricity Act, 2003.

- (3) Section 96 of the CPC dealing with appeals from original decree opens with “save where otherwise expressly provided in the body of this code or by any other law for the time being in force an appeal shall lie.....” This clearly shows that appeal is a substantive right provided under Section 111 of the Electricity Act, 2003 and cannot be abrogated unless**

specifically denied. Section 111 of the Electricity Act, 2003 does not in any way restrict the right of appeal to the Tribunal.

- (4) There are various regulations framed by the Commissions, one being the Code of Business Regulation 2004 (CBR 2004) where specific provisions relating to a particular issue are contained. In the present case regulation 85 of the CBR 2004 deals with the power of review. Therefore, Order 47 of CPC dealing with review cannot apply to the proceedings for review under the Electricity Act, 2003. Regulation 85 provides for limitation of 45 days whereas no such restriction is found in Order 47 of CPC. Regulation 85(c) states “The Commission shall for the purpose of any proceedings for review of its decisions, directions and orders be vested with the same powers as are vested in the civil court under the CPC 1908. Thus,**

it is only for the purpose of governing the procedural matter of review that the CPC may be resorted to and not otherwise.

(5) The right to appeal is not merely a matter of procedure. It is a matter of substantive right. Therefore, the special provisions contained in the Electricity Act, 2003 is in conflict with the CPC containing special provisions alone will prevail over the same. In support of the said submission, the Learned Counsel for the Appellant cited the following decisions:

- 1) 2009 (6) SCC 235 in UP Power Corporation Ltd. Vs. NTPC.**
- 2) 2008 (9) SCC 763 in KSL and Industries Ltd. Vs. Arihant Threads Ltd. and others.**
- 3) 1981 (1) SCC 315 in LIC vs. DJ Bahadur and others.**

4) 1997 (7) SCC 300 in Reliance Industries vs. Pravinbhai Jesbhai Patel and others.

12. In the light of the rival contentions of both the parties with reference to the maintainability of this Appeal, the following questions would arise for consideration:

- (i) Whether the Appellate Tribunal is excluded from invoking provisions of the Code of Civil Procedure in a proceeding before the Tribunal, in view of Section 120 of the Electricity Act, 2003.**
- (ii) Whether the present Appeal is maintainable in view of the prohibition contained in Order 47, Rule 7 of the Code of Civil Procedure.**

13. We have carefully considered the submissions made by both the parties and gone through the various judgments cited by both the parties.

14. At the outset it shall be stated that the contention of the Learned Counsel for the Appellant that the Appellant has not only filed an Appeal as against the order passed in the review by the order dated 04.09.2008 but also challenging the main order dated 20.10.2006, is patently wrong because in the appeal no such prayer has been made. The relevant paragraph indicating the prayer of the Appellant in the Appeal are to be quoted in this context, which are as follows.

“Reliefs sought:

- a) the Hon’ble Tribunal be pleased to set aside the impugned order dated 4th September 2008.**
- b)**

15. From the above prayer sought for in the Appeal filed by the Appellant, it is abundantly clear that the Appellant has consciously chosen not to file an Appeal as against the main order dated 20.10.2006 passed by the State Commission but have chosen to file an appeal only against

the dismissal order of the review petition passed on 04.09.2008.

16. Further, a reading of the grounds of appeal would also clearly indicate that the Appeal has been filed only as against the order passed in the review petition and not against the main order dated 29.10.2006. If the claim of the Appellant that he has filed not only against the review order but also filed the appeal against the main order, is accepted, then the question arises as to whether he has filed any application to condone the delay in filing the appeal against the main order. It cannot be disputed in this case that such an application to condone the delay in filing the appeal against the main order has not been filed and as such it shall be construed that this Appeal has been filed consciously only against the order dated 4.9.2008 passed by the Commission dismissing the review petition filed by the Appellant not against the Main Order dated 20.10.2006.

17. Now let us come to the other main questions. The first question is as to whether the Appellate Tribunal is precluded from invoking provisions of the Code of Civil Procedure in a proceeding before the Tribunal, in view of Section 120 of the Electricity Act, 2003. In this context it is necessary to refer to Section 120(1) of the Electricity Act, 2003. Section 120(1) of the Electricity Act is reproduced below:

“The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice and, subject to the other provisions of this Act. The Appellate Tribunal shall have powers to regulate its own procedure.”

18. In the light of the wordings contained in the said section which says that the Tribunal shall not be bound by the procedure laid down by the CPC, it is contended by the Appellant that the right of appeal as contemplated under

Section 111 of the Electricity Act 2003 is an unrestricted and unfettered right given to the aggrieved person to file an appeal to this Tribunal as against any order passed by the State Commission under the Electricity Act, 2003. Under those circumstances, the right of appeal provided under Section 111 of the Electricity Act, 2003 cannot be abrogated unless specifically denied. He has quoted Section 111 of the Electricity Act, 2003 which reads as follows:

“Any person aggrieved by an order made by an adjudicating officer under this Act (except under section 127) or an order made by the Appropriate Commission under this Act may prefer an appeal to the Appellate Tribunal for Electricity: Provided that any person appealing against the order of the adjudicating officer levying any penalty shall, while filling the appeal, deposit the amount of such penalty: Provided further that where in any particular case, the Appellate Tribunal is of the opinion that the deposit of such penalty would cause undue hardship to such person, it may dispense with

such deposit subject to such conditions as it may deem fit to impose so as to safeguard the realization of penalty.”

19. In reply to the said submission, the Counsel for R-1 would submit that Section 120(1) of the Electricity Act, 2003 only states that the Tribunal shall not be bound by the procedure laid down by the CPC but the said section does not state that the Tribunal shall be precluded or prohibited from invoking provisions of the CPC. In order to substantiate this plea, he has cited the various decisions. Let us refer to those decisions:

(1) In 1992 (4) SCC 736 in A.A. Haja Muniuddian vs. Indian Railways, the Hon’ble Supreme Court while referring to the analogues provisions of the Railways Claim Tribunal Act, 1987 has held as under:

“Nowhere in the Act is there any provision which runs counter to or is inconsistent with the provisions of the Order XXXIII of the Code. Although the Act and the rules do not provide for application of Order XXXIII of

the Code, there is nothing in the Act or in the rules which preclude the Tribunal from following that procedure if the ends of justice so require.”

“Section 18(1) only says that the Claim Tribunal shall not be bound by the procedure laid down by the Code but does not go so far as to say that it shall be precluded from invoking the provisions laid down by the Code even if the same is not inconsistent with the Act and the Rules.”

20. In another decision 1999 (4) SCC 710 in the case of Industrial Credit and Investment Corporation of India vs. Grapco Industries Ltd & Ors., the Hon’ble Supreme Court has held as follows:

“When section 22 of the Act says that the Tribunal shall not be bound by the procedure laid by the CPC, it does not mean that it will not have jurisdiction to exercise powers of a Court as contained in the CPC. Rather, the Tribunal can travel beyond the CPC and the only fetter

that is put on its power is to observe the principles of natural justice”.

21. In another decision in 1997 (6) SCC 473 in the case of Ajith Babu and Ors vs. Union of India and Ors., the Hon’ble Supreme Court has held as follows:

*“The right of Review** is not right to appeal where all questions decided are open to challenge. The right of review is possible only on limited grounds, mentioned in Order 47 of the CPC. Although strictly speaking the Order 47 of the CPC may not be applicable to the Tribunal, but the principles contained therein surely have to be extended. Otherwise their being no limitation on the power of review, it would be an appeal and there would be no certainty of the finality of the decision”.*

22. A careful perusal of these judgments would make it abundantly clear that provisions of Section 120(1) of the Electricity Act, 2003 was not enacted with the intention to

curtail the power of Tribunal with reference to the applicability of the Code of Civil Procedure to the proceedings before the Tribunal. On the contrary, the Hon'ble Supreme Court has clearly held that the words "shall not be bound by" do not imply that the Tribunal is precluded or prevented from invoking the procedure laid down by the CPC. It further, says the words "shall not be bound by the procedure laid down by CPC" only imply that the Tribunal can travel beyond the CPC and the only restriction on its power is to observe the principles of natural justice.

23. Under those circumstances, the submission made by the Appellant that the person aggrieved is entitled to challenge any order passed by the Commission including the dismissal order in the review petition since the right of Appeal as under Section 111 of the Electricity Act, 2003 is an unrestricted and unfettered right, is misplaced. The right of appeal provided to an aggrieved person under Section 111 of

the Electricity Act, 2003 cannot be read in isolation as the said section shall necessarily be read harmoniously along with the other provisions in the Electricity Act, 2003 namely Section 120 of the Act. The conjoint reading of both Section 111 along with Section 120 would make it clear that the right of Appeal available to an aggrieved person under Section 111 of the Electricity Act 2003 is subject to the procedure adopted by this Tribunal under Section 120 of the Electricity Act, 2003 and as such it cannot be said that the Tribunal is precluded from invoking procedure and provisions contemplated under the CPC. It is to be stated that the Tribunal is well within its right to adopt its own procedure as well as the procedures contemplated under the CPC.

24. The Learned Counsel for the Appellant would submit that the Electricity Act, 2003 is a special statute containing special provisions whereas CPC contains general provision and procedures and they cannot override or prevail over the special provision as contemplated under the

Act, 2003 being the special statute and therefore CPC cannot be invoked. Pointing out various regulations framed by the Commission as Conduct of Business Regulations (CBR 2004, the learned counsel for the Appellant submitted that the regulations provide for the power of review prescribing limitation period of 45 days whereas no such restriction has been found in Order 47 of the CPC and therefore the special procedure and special regulations framed by the Commission under the Act alone shall be applicable and not CPC. On this issue the Learned Counsel for the Appellant cited the following authorities:

- 1) 2009 (6) SCC 235 in UP Power Corporation Ltd. Vs. NTPC.**
- 2) 2008 (9) SCC 763 in KSL and Industries Ltd. Vs. Arihant Threads Ltd. and others.**
- 3) 1981 (1) SCC 315 in LIC vs. DJ Bahadur and others.**
- 4) 1997 (7) SCC 300 in Reliance Industries vs. Pravinbhai Jasbhai Patel and others.**

25. There is no dispute regarding the settled position of law that general provisions must yield to the special provisions. But this principle would apply only when there is a conflict between the provisions of the special statutes and the general provisions. In this case there is nothing to indicate that the provisions of the CPC are in conflict with the provisions of the Electricity Act. As a matter of fact it is held in Gujarat Urja Vikas Nigam Ltd. Versus Essar Power in 2008 (4) SCC 755 by the Hon'ble Supreme Court as follows:

“This can be done by holding that when there is any express or implied conflict between the provisions of the Electricity Act and any other Act that the provisions of the Electricity Act, 2003 would prevail but when there is no conflict, express or implied, both the acts are to be read together”.

26. It is contended by the Appellant that the regulations framed by the Commission i.e. MERC (CBR 2004) are in conflict with CPC and therefore, these will override the provisions of the general provision contained in CPC. This contention, in our opinion, is not tenable. The MERC (CBR 2004) are framed by the Commission under the powers vested in it under the Electricity Act, 2003 to frame its own regulations. It is noticed that all the State Electricity Commissions situated in different States in India have the same powers under the Electricity Act, 2003 and have framed their respective CBR regulations to regulate the procedure. Each of the State Commission has provided different procedures in respect of its power to review etc. In some States limitation period for filing a review is fixed as 30 days and in some other States it is fixed as 45 days. These Regulations are subordinate regulations framed by the State Commissions to regulate their own procedure and these regulations have a bearing on the appeal before this Tribunal. On the other hand, as indicated above, this

Tribunal can establish its own separate procedure or it may invoke the provisions of the CPC in respect of the same for which there is no bar.

27. Therefore, it has to be held in answering the first question that this Tribunal is adequately empowered to regulate its own procedure and that there is no embargo on this Tribunal from invoking provisions of the CPC.

28. Let us come to the second question. The second question is whether the present Appeal is maintainable in view of the prohibition contained in Order 47, Rule 7 of the Code of Civil Procedure.

29. The Appropriate Commissions have been empowered to set aside the petition to review its own orders either by cancelling the order earlier passed or by rejecting the prayer for review. This power is provided to the Commissions

under Section 94(1)(f) of the Electricity Act, 2003. The said section reads as follows:

“ The Appropriate Commission shall, for the purpose of any enquiry or procedure under this Act, have the same powers as are vested in the Civil Court under the CPC 1908 in respect of the following matters namely –

.....

(f) review its decisions, directions and orders”.

30. A reading of this section would indicate that this section incorporates by reference to the provision of the CPC in regard to exercising the power over the review of its own decisions, directions and orders. Since the said powers as are vested in civil court under the CPC are conferred to the Commission, we will refer to the relevant provisions of CPC relating to this power. The relevant provision of the CPC are 114 and Order 47, Rule 7.

“114. Review- Subject as aforesaid, any person considering himself aggrieved-

- a) **By a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred.**
- b) **By a decree or order from which no appeal is allowed by this Court, or**
- c) **By a decision on a reference from a Court of Small Causes, may apply for a review of judgment to the Court which pass the decree or made the order, and the Court may make such order thereon as it thinks fit.”**

31. The provision of the Order 47 Rule 1 reads as under:

“1. Application for review of judgment- (1) Any person considering himself aggrieved-

a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred.

b) by a decree or order from which no appeal is allowed, or

c) By a decision on a reference from a Court of Small Causes,

And who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be procured by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the

Appellate Court the case on which he applies for the review”.

32. The provision of the Order 47 Rule 7 reads as under:
- “Rule 7 – Order of rejection not appealable., Objections to order granting application (1) An order of the court rejecting 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 a decree or order finally passed or made in the suit.”*
- (2) When the application has been rejected in consequence of the failure of the applicant to appear, he may apply for an order to have the rejected application restored to the file, and, where it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from appearing when such application was called on for hearing, the Court shall order it to be restored to the file upon such terms as to*

costs or otherwise as it thinks fit, and shall appoint a day for hearing the same.

(3) No order shall be made under sub-rule (2) unless notice of the application has been served on the opposite party”.

33. A reading of section 94 of the Act would indicate that it incorporates the provision of the CPC not only in respect of Rule 1 but also in respect of Rule 7 of Order 47. If the intention of Parliament was to restrict the incorporation of the review only to the extent that the Appropriate Commission exercise powers and not to deal with any other incident of review such as Rule 7 of Order 47, the same would have been incorporated separately.

34. In other words, the Parliament would have provided for a separate provision stating that the Appropriate Commission shall have the powers to review its decision, directions and orders de hors the CPC. As a matter of fact,

Section 94(2) deals with the powers of the Commission to pass interim orders. In this section, the Parliament has chosen to say that provision of the CPC will not apply but has specifically recognised the power to pass interim orders under Section (2) of 94 of the Act. So the distinction in approach adopted between the case of interim orders under Section 94(2) of the Act and in the case of Review under Section 94(1)(f) is quite relevant. In the case of Review Parliament had decided that the application shall be in total consonance with the provision of the Order 47 Rule 7 of the CPC but not in the case of interim order passed under Section 94(2) of the Act. Therefore, the implication mentioned in Rule 7 of Order 47 will certainly apply.

35. 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 submission 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.**

36. These provisions which are Appeal provisions do not provide for any prohibition that there shall be no Appeal as against the order passed in the Review Petition but this prohibition of an Appeal as against the order rejecting the Review Petition alone has been 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.”

37. It is clear from the order 47, Rule 7 of CPC, which could be invoked by this Tribunal, only the main and final order alone could be appealed against and not the order rejecting the application for review. When the review petition is dismissed by the Commission, it means that the main order is confirmed. If the appeal has been filed against the review order, confirming the main order, the Appellant is not entitled to assail the main order which has been confirmed in the dismissal order of Review Petition. In other words, even if the review order is set aside, the main order will be intact and as such the effect of the order passed in the Appeal as against the dismissal of review petition will not have an impact on the main order. On the other hand, if the Commission in the review modified the main order then the main order which was modified by the review order, gets

merged with the review order and in that event the limitation period will be reckoned from the date of review order and the appeal as against the main order and the review order is maintainable. This is settled law.

38. This ratio has been laid down by this Tribunal in its judgment dated 05.05.2009 in Appeal No. 25/09 and judgment dated 25.02.2010 in Appeal No. 178 of 2009.

39. The above principle has also been enunciated by the Hon'ble Supreme Court in various decisions such as (i) 1994 (2) SCC 753 in the case of *Shankar Motiram Nale v. Shiolalsing Gannusing Rajput*, (ii) 2004(13) SCC 675 in the case of *Suseel Finance & Leasing Co. v. M. Lata and Ors.*, (iii) 2004(13) SCC 677 in the case of *M.N. Haider and Ors. V. Kendriya Vidyalaya Sangathan and Ors.* and (iv) 2006(8) SCC 555 in the case of *Kumaran Silks vs. Devendra*. The relevant observations made by the Supreme Court in 2006(8) SCC 555, which quoted all the earlier conclusions are as follows:

“The first of the petitions for Special Leave to Appeal, as indicated, challenges the order of the High Court refusing to review its earlier decision. No petition for Special Leave to Appeal under Article 136 of the Constitution of India could be entertained against such an order. It has been so held by the Court in Shankar Motiram Nale v. Shiolalsingh Gannusing Rajput MANU/SC/0676/1994: (1994) 2 SCC 753. The said decision has been followed by another Bench of which one of us (H.K. Sema, J.) was a party in Suseel Finance & Leasing Co. v. M. Lata and Ors, 2004(13) SCC 675 wherein this Court held that a petition for special leave to appeal against an order dismissing a petition for review is not maintainable. This Court distinguished two cases cited in which the question itself had not been adverted to or decided. Another Bench of this Court in M.N. Haider and Ors. V. Kendriya Vidyalaya Sangathan and Ors. 2004(13) SCC 677 again considered the question and held that a petition for special leave to appeal is not

maintainable. This Court also held that once a petition for special leave to appeal is found not maintainable, no order can or should be passed thereon except an order of dismissal of the same.”

“This appeal is obviously incompetent. It is against the order of the Division Bench of the High Court rejecting the application for review of a judgment and decree passed by a Learned Single Judge. It is not against the basic judgment. Order 47, Rule 7 of the CPC bars an appeal against the order of the court rejecting the review. On this basis we reject the appeal. No cost.”

“By these Special Leave Petitions, the order dismissing the review petition have been challenged. In the case of *Shankar Motiram Nale v. Shilalsing Gannusing Rajput* as reported in 1994(2) SCC 753, it has been held by this court that against the order rejecting an application for review, the special leave petition is not maintainable. This authority is strictly on the point in issue. Not only we are bound by it but we are also in agreement with it.

On this ratio in *Shankar Motiram Nale v. Shilalsing Gannusing Rajput* we hold that these special leave petitions are not maintainable. They are dismissed as such.”

40. In view of the law quoted above, we are constrained to conclude that the present Appeal is not maintainable in view of Order 47, Rule 7 of CPC. With these observations, the Appeal is dismissed as not maintainable. No costs.

**(H.L. BAJAJ)
TECHNICAL MEMBER**

**(JUSTICE M. KARPAGA VINAYAGAM)
CHAIRPERSON**

DATED: 6TH MAY, 2010.

INDEX: REPORTABLE/NON- REPORTABLE.

NOTE:- CORRECTIONS AT PAGE NOS. 2 & 19 SHOWN IN ITALICS AND MARKED WITH TWO STARS ARE DONE AS PER THE ORDER OF HON’BLE CHAIRPERSON DATED 20.5.2010.