

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

**Appeal No. 97 of 2009 &
IA No. 192 of 2009**

Dated: 13th July, 2009

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

**S.E. (SO&LD), Rajasthan Rajya Vidyut Prasan
Nigam Ltd. & Anr.**

.... Appellant (s)

Versus

Central Electricity Regulatory Commission & Anr.

... Respondent (s)

Counsel for the Appellant/ (s) : Mr. JK Choudhary

Counsel for the Respondent (s) : Mr. Aashish Bernard for Resp. No. 2

ORDER

1. The main Order in this case has been passed on 27.8.2008. This Order has been appealed against in the Appeal No. 66 of 2009 on 15.10.2008 which has been admitted on 23.4.2009. The Appellant in the meantime has chosen to file a Review Petition before the Commission assailing the main order passed on 27.8.2008 on 6.10.2008 itself.

2. The Appellant did not pursue the Appeal filed on 15.10.2008. On the other hand, he argued the matter before the Commission in the Review Petition which was ultimately dismissed on 3.2.2009.

3. Now the Appellant wants to challenge the said order also before this Tribunal through the Appeal. As held by this Tribunal in the Appeal No. 25/09 dated 5.5.2009 and Order 47 Rule 7, the Appeal against the order in the Review confirming the original order passed in the main order is not maintainable.

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4. As correctly pointed out by the learned counsel for the Appellant, the main order which has been passed on 27.8.2008 is already the subject matter of challenge in Appeal No. 66/09 which has been admitted on 23.4.2009. When the said Appeal was admitted on 23.4.2009, the Appellant has attempted to amend the Appeal by way of IA No. 162/09 seeking to set aside this Order passed in the Review which ultimately we did not allow. To overcome this difficulty, this Appeal has been filed along with an application for condonation of delay. Prima facie we are of the view that the Appellant having chosen to file a Review before the Commission on 6.10.2008 ought not to have filed an Appeal on 15.10.2008. Even otherwise, he should have pursued the Appeal by arguing the matter before this Tribunal for admission. This has not been done. On the other hand, it was kept pending.

5. Instead the Appellant has brought up the Appeal for admission before this Tribunal only after getting the order dated 3.2.09 of the Commission dismissing the Review Petition and confirming the earlier main order. This is not proper.

6. Therefore, we dismiss both the application for condonation of delay as well as the Appeal on the ground that it is not only not maintainable but also on the ground that the Appellant has not come with clean hands. However, it is open to the counsel for the Appellant to refer to the Review application and the Order in the other Appeal No. 66 of 2009 while assailing the main order dated 27.8.2008.

(A.A. Khan)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson