

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

IA 278 of 2012
IN
DFR 1229 OF 2012

Dated: 20th Dec, 2012

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

In the Matter of:

**Brihanmumbai Electric Supply and Transport Undertaking
(BEST)**

**BEST Bhawan, BEST Marg,
Post Box No.192,
Mumbai-400 001
Maharashtra, India**

...Applicant/Appellant

Versus

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

...Respondent(s)

**Counsel for the Appellant(s) : Mr.Hrinder Toor
Mr. Mukesh Kumar
Mr. Suresh Bhosle
Mr. Nitin Bhandari
Ms. Pallavi Mohan,**

Counsel for the Respondent(s): Mr. Buddy A. Ranganadhan
Mr. Arijit Maitra for R-1
Ms. Richa Bharadwaja

ORDER

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

1. **“Whether the limitation period for filing the Appeal before the Appellate Tribunal would commence from the date of the pronouncement of the impugned order by the Appropriate Commission or from the date on which the Appellant, the party to the proceedings, received the certified copy of the said impugned order sent by the Commission?”**. This is the question raised in this Application to condone the delay in filing the Appeal.
2. As per Section 111 of the Act, 2003, the Appeal has to be filed within 45 days from the date of the communication of the impugned order. In this case, the impugned order was passed on 16.3.2012 and the Appellant has filed the Appeal on 13.7.2012 along with an Application to condone the delay of 28 days.
3. According to the Appellant, though the impugned order was passed on 16.3.2012, the certified copy of the said order sent by the State Commission was received by the Appellant only on 3.5.2012 and therefore, the period of limitation to file

this Appeal had commenced only from 3.5.2012 and as such, the period of limitation namely 45 days expires on 16.6.2012 but, the Appeal could not be filed within the said period due to various circumstances and hence the Appeal was filed on 13.7.2012, along with an application to condone the delay of 28 days by calculating the period between the date of the receipt of the communication i.e. 3.5.2012 and the date of filing of the Appeal on 13.7.2012.

4. It is the case of the Applicant/Appellant, that the period of limitation would commence not from the date of the pronouncement of the impugned order i.e. on 16.3.2012 but from the date of the receipt of the certified copy of the order by the Appellant i.e. the date of communication by the State Commission i.e. on 3.5.2012 and when the period of limitation is calculated from that date i.e. 3.5.2012 to the date of filing the Appeal, the period of delay would come about 28 days only and therefore, this Application has been filed to condone the delay of 28 days.
5. On entertaining the doubt with regard to the question as to when actually the limitation period commences for filing the Appeal, we issued notice to the State Commission for clarification.
6. Accordingly, the State Commission has appeared through the Learned Counsel. We have heard Mr. Toor, the learned

Counsel for the Applicant/Appellant as well as Mr. Buddy A. Ranganadhan, the learned Counsel for the State Commission.

7. Both the learned Counsel have analysed the question meticulously and made their submissions elaborately.
8. According to the Applicant/Appellant, the limitation period would commence for filing the Appeal only from the date of communication i.e. from the date of the receipt of the certified copy of the order sent by the State Commission and not from the date of the order. Therefore, the question as framed above, would arise in this matter which is quoted below:

“Whether the limitation period for filing the Appeal before the Appellate Tribunal would commence from the date of the pronouncement of the impugned order by the Appropriate Commission or from the date on which the Appellant, the party to the proceedings received the certified copy of the said impugned order sent by the Commission?”

9. If the date of the order is to be reckoned as the date of commencement for limitation period, the delay between the date of the order i.e. 16.3.2012 and 13.7.2012 i.e. the date of the filing of the Appeal would come about 75 days. If the

date of receipt of the order namely 3.5.2012 sent by the State Commission is to be reckoned as the date of commencement of the period of limitation, then the delay between 3.5.2012 and 13.7.2012, the date of filing the Appeal would come about 28 days only.

10. The Applicant/Appellant reckoning the date of the receipt of the order as the date of the commencement of limitation has filed this Application to condone the delay of 28 days.
11. Therefore, we have to consider as to whether the date of commencement for limitation period is to be reckoned from the date of the passing of the order as the date of communication or the date on which the Applicant received the impugned order as the date of communication.
12. To analyse this question, it is appropriate to refer to various provisions of the Act, 2003, relevant Rules and Regulations.
13. Let us first look into the wordings contained in Section 111 of the Electricity Act, 2003 under which the Appeal is filed.

“111 Appeal to Appellate Tribunal-

- (1) 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 filing 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 realisation of penalty.

- (2) Every Appeal under sub section (1) shall be filed within a period of forty five days from the date on which a copy of the order made by the adjudicating officer or the Appropriate Commission is received by the aggrieved person and it shall be in such form, verified in such manner and be accompanied by such fee as may be prescribed;

Provided that the Appellate Tribunal may entertain an Appeal after the expiry of the said period of forty five days if it is satisfied that there was sufficient cause for not filing it within that period.

14. The perusal of the above Section would reveal that U/S 111 of the Act, every Appeal as against the order of the State Commission shall be filed within a period of 45 days from the date on which the copy of the impugned order is received by the aggrieved person namely the Appellant. If the period of 45 days expires from the date of the receipt of the said order, then the Appellant has to file an application to

condone the delay for the period on expiry of 45 days along with the Appeal.

15. In this case, the impugned order had been passed on 16.3.2012 by the State Commission and the said order had been despatched through letter dated 27.4.2012 by the State Commission to the Appellant and the same was received by the Appellant only on 3.5.2012. On the basis of this admitted fact, the Applicant submits that the date of the communication of the order i.e. 3.5.2012 has to be reckoned as the date of commencement of the period of limitation.

16. Let us now look into other provisions of the Electricity, Act, 2003.

17. Section 64 of the Act deals with the procedure for passing tariff order. Section 64 (4) provides that the appropriate Commission shall send the copy of the impugned order to the person concerned or the licensee within 7 days from the date of the order. Section 64 (4) is quoted below:

“Procedure for tariff order-

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.....
.....

64(4) The Appropriate Commission shall, within seven days of making the order, send a copy of the order to

the Appropriate Government, the Authority, and the concerned licensees and to the person concerned”.

Thus, in this Section, the time frame has been fixed for despatching the order copy to the licensee or the person concerned.

18. Let us see Section 92 (5) of the Electricity Act, 2003 which is quoted below:

“Proceedings of Appropriate Commission-

.....

.....

(5) All orders and decisions of the Appropriate Commission shall be authenticated by its Secretary or any other Officer of the Commission duly authorised by the Chairperson in this behalf”.

19. This provision makes it clear that the orders of the Commission shall be authenticated by the Secretary of the Commission or any other authorised officer of the Commission and only then, the said orders are required to be sent to the person concerned.

20. The next relevant Section is Section 171 of the Electricity Act, 2003 which is as under:

(171) “Services of notices, orders or documents-

- (1)** *Every notice, order or document by or under this Act required, or authorised to be address to any person may be served on him by delivering the*

same after obtaining signed acknowledgement receipt therefor by registered post or such means of delivery as may be prescribed.

- (2)** *Every notice, order or document by or under this Act required or authorized to be addressed to the owner or occupier of any premises shall be deemed to be properly addressed if addressed by the description of the owner or occupier of the premises (naming the premises), and may be served by delivering it, or a true copy thereof, to some person on the premises, or if there is no person on the premises to whom the same can with reasonable diligence be delivered, by affixing it on some conspicuous part of the premises.”*

21. In terms of this Section, the mode and procedure of service of orders under the Act, 2003 is specified.

22. The above provision i.e. Section 171 (1) deals with the modes prescribed for sending the communication to the person concerned. These modes are as follows:

(a) Where the Appropriate Government is the addressee, at the office of such officer as the Appropriate Government may prescribe in this behalf;

(b) Where the Appropriate Commission is the addressee, at the office of the Appropriate Commission;

(c) Where a company is the addressee, at the registered office of the company or, in the event of the registered office of the company not being in India, at the head office of the company in India;

(d) Where any other person is the addressee, at the usual or last known place of abode or business of the person.

23. U/S 171 (2) of the Act, 2003, every order is required or authorised to be addressed to the owner or occupier of any premises shall be deemed to be properly addressed if addressed by the description of the owner or occupier of the premises and may be served by delivering to some person on the premises or if there is no person on the premises to whom the same can be delivered by affixing it on some conspicuous part of the premises.

24. We will now refer to the definition of the term “person” and term “prescribed”. The term “person” has been defined in Section 2 (49) of the Act, 2003 which reads as under:

“(49) “person” shall include any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person;

This definition would indicate that the person includes any company or association or judicial person.

25. The term “prescribed” has been defined under Section 2 (52) of the Act which is given as under:

“(52) “prescribed” means prescribed by rules made by the Appropriate Government under this Act;”

Under this Section, the “prescribed” means the rules framed by the Government under this Act.

26. Let us now refer to Section 180 (1) and Section 180 (2)(n) of the Act, 2003, which provides that the State Government may make rules regarding the manner of delivery of order under sub-section (1) of Section 171. Section 180 (1) and 180 (2) (n) are quoted below:

“Powers of State Governments to make rules-

(1) The State Government may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular and without prejudice to the generality of foregoing power, such rules may provide for all or any of the following matters namely:-

.....

.....

.....

(n) the manner of delivery of every notice, order or document under sub-section (1) of Section 171;”.

27. Even though the powers have been vested with the State Government under Section 180 to make rules regarding the manner of delivery of the order to the person concerned, the State Government has not made any rules so far.

28. Let us now refer to the Regulations which have been framed by the Maharashtra State Commission relating to the mode of service of orders on the person concerned. These regulations are Regulations 76 and 77 of the Maharashtra

Electricity Regulatory Commission (Conduct of Business) Regulations, 2004 which are as under:

“Orders of the Commission:

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.....
.....

76. All orders and decisions issued or communicated by the Commission shall be certified by the signature of the Secretary or an Officer empowered in this behalf by the Chairperson and shall bear the official seal of the Commission.

77. All the orders of the Commission shall be communicated as expeditiously as possible from the date of passing thereof to all parties in the proceedings under the signature of the Secretary or an Officer empowered in this behalf by the Chairperson or the Secretary.”

29. In this context, it should be stated that even though, Section 64 (4) of the 2003 Act provides for sending a copy of the order by the Appropriate Commission to the person concerned within seven days of making the order, the State Commission’s Regulations provide for communication of the order of the Commission as expeditiously as possible and does not provide specifically for sending a copy of the order within seven days.

30. It is noticed that the Central Government also has the powers to make rules regarding the filing of the Appeal before the Appellate Tribunal.
31. In exercise of the powers conferred by Section 176 (1) and Section 176 (2) (q), (t), (z) of the Act, 2003, the Central Government has made rules in the year 2007. This is called the Appellate Tribunal for Electricity (Procedure, Form, Fee and Record of Proceedings) Rules, 2007.
32. Under Rule 20 (2) of the above Rules, 2007, every Appeal shall be accompanied by a certified copy of the impugned order. The said rule 20 (2) is extracted herewith:

“Presentation of Appeal or Petition-

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.....
.....

(2)Every appeal or petition shall be accompanied by a certified copy of the impugned order.”

33. Thus, the relevant provisions of the Act, 2003 as well as the Rules and Regulations clearly specify that every order passed by the Appropriate Commission shall be appropriately authenticated and sealed and thereafter, to be served by delivering the same to the person concerned after obtaining signed acknowledgement receipt therefor or the

registered post or such means of delivery as may be prescribed.

34. It is pointed out by the learned Counsel for the State Commission that there are catena of judgments of Hon'ble Supreme Court which indicated that the limitation period for filing the Appeal would begin to run from the date of the receipt of the impugned order by the Appellant and not from the date of the order. These decisions are as under:

(a) Raja Harish Chandra Raj Singh Vs The Deputy Land Acquisition Officer & Another (1962 SCR 676);

(b) Housing Board Haryana Vs Housing Board Colony Welfare Association & Others (1995) 2 SCC 672;

(c) D Saibaba Vs Bar Council of India & Anr. (2003) 6 SCC 186;

35. Let us refer to the relevant observations made by the Hon'ble Supreme Court while dealing this issue:

(a) Raja Harish Chandra Raj Singh Vs The Deputy Land Acquisition Officer & Another (1962 SCR 676);

"The knowledge of the party affected by such a decision, either actual or constructive, 'is an essential element which must be satisfied before the decision can be brought into force. Thus considered the making of the award cannot consist merely in the physical act of writing the award or signing it or even filing it in the office of the Collector; it must involve the communication of the said award to the party concerned either

actually or constructively. If the award is pronounced in the presence of the party whose rights are affected by it can be said to be made when pronounced. If the date for the pronouncement of the award is communicated to the party and it is accordingly pronounced on the date previously announced the award is said to be communicated to the said party even if the said party is not actually present on the date of its pronouncement. Similarly if without notice of the date of its pronouncement an award is pronounced and a party is not present the award can be said to be made when it is communicated to the party later. The knowledge of the party affected by the award, either actual or constructive, being an essential requirement of fair-play and natural justice the expression "the date of the award" used in the proviso must mean the date when the award is either communicated to the party or is known by him either actually or constructively. In our opinion, therefore, it would be unreasonable to construe the words "from the date of the Collector's award" used in the proviso to s. 18 in a literal or mechanical way.

In other words, in prescribing limitation s. 33(1) expressly provides for the commencement of the period from the date of the communication of the order, whereas s. 33A(2) does not refer to any such communication; and naturally the argument was that communication was irrelevant under s. 33A(2) and limitation would commence as from 'the making of the order without reference to its communication.

The relevant clause under s. 33A(2) of the Indian Income-tax Act has also been similarly construed

by the Madras High Court in O.A.O.A.M. Muthia Chettiar v. The Commissioner of Income-tax, Madras (2). "If a person is given a right to resort to a remedy to get rid of an adverse order within a prescribed time", observed Rajamannar, C.J., "limitation should not be computed from a date earlier than that on which the party aggrieved actually knew of the order or had an opportunity of knowing the order, and therefore must be presumed to have the knowledge of the order". In other words the Madras High Court has taken the view that the omission to use the words "from the date of communication" in s. 33A(2) does not mean that limitation can start to run against a party even before the party either knew or should have known about the said order. In our opinion this conclusion is obviously right.

It was held that in a case where an order was not passed in the presence of the parties or after notice to them of the date when the order would be passed the expression "within thirty days after the making of the order" used in the said sections means within thirty days after the date on which the communication of the order reached the parties affected by it. These decisions show that where the rights of a person are affected by any order and limitation is prescribed for the enforcement of the remedy by the person aggrieved against the said order by reference to the making of the said order, the making of the order must mean either actual or constructive communication of the said order to the party concerned.

(b) Housing Board Haryana Vs Housing Board Colony Welfare Association & Others (1995) 2 SCC 672;

“10. Reading of the provisions of Section 15 reproduced above goes to show that any person aggrieved by an order made by the District Forum may prefer an appeal to the State Commission within a period of 30 days from the date of the order. But under the proviso the State Commission is enjoined with the discretion to entertain the appeal even after the expiry of the period of 30 days if it is satisfied that there was sufficient cause for not filing the appeal within 30 days from the date of order. Section 15 does not prescribe any other requirement for the purposes of filing a proper and valid appeal to the State Commission. The other requirements for a properly constituted appeal are contained in Sub-rule (3) of Rule 8 which contemplates that each Memorandum of Appeal shall be accompanied by a certified copy of the order of the District forum appealed against and such other documents as may be required to support the grounds of objection mentioned in the Memorandum of Appeal. Sub-rule (10) of Rule 4 further makes it obligatory that the order of the District Forum shall not only be signed and dated by the members of the District Forum constituting the Bench but it enjoins a duty to communicate the order so passed signed and dated by the members of the District Forum, to the parties free of charge.

11. From the scheme of the Act it becomes apparent that the Consumer Protection Act 1986 has been enacted with the object to provide for better protection of the interest of the consumers, as a measure for economical and speedy remedy for the settlement of their disputes and matters connected therewith. It is with this object in view that Rule 4 (10) has also been made. It provides for communication of the order of the district Forum to

the parties free of charge in order to avoid the delay as well as to save the parties from the burden of expenses that may be incurred for obtaining the certified copy. If the rule itself enjoins a duty for communicating the order of the District Forum duly signed and dated to the parties free of charge, there will hardly be an occasion for the parties to make an application for obtaining a certified copy thereof. Thus, Section 15 of the Act cannot be read in isolation but it has to be read alongwith Rules 4 (10) and 8 (3) of the Rules and a combined reading of Section 15 and the Rules reproduced above gives an impression that the purposes, object and intention of these statutory provisions is to protect the interest of the parties before the District Forum by making it obligatory on the District Forum to provide a copy of the order duly signed and dated by the members of the Bench and the period of limitation prescribed with regard to the filing of an appeal shall be computed as commencing from the date of communication of the order in the manner laid down in sub-rule (10) of the Rule 4.

12. In the facts and circumstances stated above. The date of pronouncement of the order in the open Court by itself cannot be the starting point of determining the period of limitation under Section 15 of the Act. It has also to be shown that the order of the District Forum so pronounced was duly signed and dated by the members of the District Forum constituting the Bench and the same was communicated to the parties free of the charge. That being so, it has to be appreciate that mere pronouncement of an order in the open Court will not be enough but under the scheme of the Rules a copy of the said order has also to be communicated to the parties affected by the aid order so that the

party adversely affected therefrom may have a fair and reasonable opportunity of knowing that text, reasons and contents thereof so as to formulate grounds of attack before the appellant or higher forums. In the absence of such communication of signed and dated order, the party adversely affected by it will have no means of knowing the contents of the order so as to challenge the same and get it set aside by the appellate authority or the higher Forums.

(c) D Saibaba Vs Bar Council of India & Anr. (2003) 6 SCC 186;

“So far as the commencement of period of limitation for filing the review petition is concerned we are clearly of the opinion that the expression 'the date of that order' as occurring in Section 48AA has to be construed as meaning the date of communication or knowledge of the order to the review-petitioner. Where the law provides a remedy to a person, the provision has to be so construed in case of ambiguity as to make the availing of the remedy practical and the exercise of power conferred on the authority meaningful and effective. A construction which would render the provision nugatory ought to be avoided. True, the process of interpretation cannot be utilized for implanting a heart into a dead provision; however, the power to construe a provision of law can always be so exercised as to give throb to a sinking heart.

14. How can a person concerned or a person aggrieved be expected to exercise the right of review conferred by the provision unless the order is communicated to or is known to him either actually or constructively? The words 'the date of

that order', therefore, mean and must be construed as meaning the date of communication or knowledge, actual or constructive, of the order sought to be reviewed.

36. The ratio decided by the Hon'ble Supreme Court in the above cases is as follows:

(a) The knowledge of the party affected by the impugned order is an essential element which must be satisfied before the decision can be brought into force.

(b) If the date for the pronouncement of the impugned order is communicated to the party and it is accordingly pronounced on the date as previously announced, the impugned order is said to be communicated to the said party on that date even if the said party is not actually present.

(c) If without notice of the date of its pronouncement, the impugned order is pronounced and the party was not present on the date of pronouncement, the impugned order can be said to have been passed only when it is communicated to the party.

(d) Where the rights of a person are affected by any order and limitation is prescribed for the enforcement of the remedy by the person aggrieved against the said order, the making of the order must mean either actual or constructive communication of the said order to the party concerned.

(e) The expression "the date of the order" has to be construed as meaning the date of communication of the order to the party concerned.

(f) Where the law provides a remedy to a person concerned, the provision has to be so construed in case of ambiguity as to make availing meaningful and effective. Therefore, the words “the date of the impugned order” must be construed as meaning the date of communication or knowledge of the order sought to be reviewed.

37. From this, it is clear that the limitation period for filing the Appeal would begin to run from the date of the receipt of the impugned order by the party concerned and not from the date of the order.
38. However, in the another recent decision i.e. Chhattisgarh State Electricity Board Vs Central Electricity Regulatory Commission, (2010) 5 SCC 33, the Hon’ble Supreme Court has interpreted the words “the limitation period commences on the date of the communication of the order” would mean the date of pronouncement of the order in the open court. This decision of the Hon’ble Supreme Court has given rise to the present question as to what is the date of communication of the impugned order which led us to seek clarification from the learned Counsel for the parties.
39. For understanding the meaning of the said term, as interpreted by the Hon’ble Supreme Court, it would be better to refer to the relevant paragraphs of the above decision:

“34. The next question which requires consideration is as to what is the date of communication of the decision or order of the Tribunal for the purpose of Section 125 of the Electricity Act. The word ‘communication’ has not been defined in the Act and the Rules. Therefore, the same deserves to be interpreted by applying the rule of contextual

interpretation and keeping in view the language of the relevant provisions.

35. *Rule 94(1) of the Rules lays down that the Bench of the Tribunal which hears an application or petition shall pronounce the order immediately after conclusion of the hearing. Rule 94(2) deals with a situation where the order is reserved. In that event, the date for pronouncement of order is required to be notified in the cause list and the same is treated as a notice of intimation of pronouncement.*

36. *Rule 98(1) casts a duty upon the Court Master to immediately after pronouncement transmit the order along with the case file to the Deputy Registrar. In terms of Rule 98(2), the Deputy Registrar is required to scrutinize the file, satisfy himself that provisions of rules have been complied with and thereafter, send the case file to the Registry for taking steps to prepare copies of the order and their communication to the parties. If Rule 98(2) is read in isolation, one may get an impression that the registry of the Tribunal is duty bound to send copies of the order to the parties and the order will be deemed to have been communicated on the date of receipt thereof, but if the same is read in conjunction with Section 125 of the Electricity Act, which enables any aggrieved party to file an appeal within 60 days from the date of communication of the decision or order of the Tribunal, Rule 94(2) which postulates notification of the date of pronouncement of the order in the cause list and Rule 106 under which the Tribunal can allow filing of an appeal or petition or application through electronic media and provide for rectification of the defects by e-mail or net, it becomes clear that once the factum of pronouncement of order by the Tribunal is made known to the parties and they are given opportunity to obtain a copy thereof through e-mail etc., the order will be deemed to have been*

communicated to the parties and the period of 60 days specified in the main part of Section 125 will commence from that date.

37. *The issue deserves to be considered from another angle. As mentioned above, Rule 94(2) requires that when the order is reserved, the date of pronouncement shall be notified in the cause list and that shall be a valid notice of pronouncement of the order. The counsel appearing for the parties are supposed to take cognizance of the cause list in which the case is shown for pronouncement. If title of the case and name of the counsel is printed in the cause list, the same will be deemed as a notice regarding pronouncement of order. Once the order is pronounced after being shown in the cause list with the title of the case and name of the counsel, the same will be deemed to have been communicated to the parties and they can obtain copy through e-mail or by filing an application for certified copy.*

40. In this case, the Honble Supreme Court while dealing with the Appeal filed before the Hon'ble Supreme Court as against the judgment of this Tribunal under Section 125 of the Act, 2003 has interpreted the rules of this Tribunal which provided for the notification from the date of the pronouncement of the order in the cause list of this Tribunal. The ratio of the decision is as follows:

(a) Section 125 of the Act provides that any aggrieved party may file an Appeal as against the judgment of this Tribunal in the Hon'ble Supreme Court within 60 days from the date of the communication of the decision or the order of the Tribunal.

(b) Rule 94 (2) of the Tribunal rules provide the notification of the date of the pronouncement of the order in the cause list.

(c) The conjoint reading of Rule 98 (1) and 2 and Rule 94 (2) as well as Section 125 of the Act, would make it clear that once the factum of pronouncement of the order by the Tribunal is made to the parties and they are given opportunity to obtain a copy through e-mail etc., the order is deemed to have been communicated to the parties and so the period of limitation would commence from the date of the pronouncement of the order.

41. Thus, it is clear that the ratio in the above case that once the date of the pronouncement of the order of the Tribunal is made known to the parties through the cause list and they are given opportunity to obtain a copy of the judgment through e-mail etc., the order will deemed to have been communicated to the parties on the date of pronouncement of the order and as such, the limitation period will commence from the date of the pronouncement of the impugned order.

42. In the above case, though the Hon'ble Supreme Court accepted the principle that the limitation would commence from the date of the receipt of the communication of the order, the Hon'ble Supreme Court interpreted the rules of this Tribunal which provided for the notification of the date of the pronouncement of the order in the cause list of this Tribunal to give the meaning for the term 'the date of the communication'.

43. Interpreting the said rules, the Hon'ble Supreme Court concluded that when such pronouncement of the order or judgment was notified in the cause list of this Tribunal, then the same would constitute adequate communication of the factum of the pronouncement of the judgment to the party concerned.
44. This decision of the Hon'ble Supreme Court as correctly pointed out by both the Learned Counsel for the parties would not apply to the Appeals filed before this Tribunal as against the impugned orders of the State Commission.
45. It is pointed out that most of the State Commissions have provided modes in their respective Regulations for communication of the order of the Commission to the party concerned. These Regulations framed by the most of the State Commissions provide for communication of the order not through the pronouncement of the order through a cause list as done by the Tribunal. The relevant provisions of the Act, 2003 also indicate that the communication must be through the said modes of service.
46. Therefore, the other judgments namely Raja Harish Chandra Raj Singh Vs The Deputy Land Acquisition Officer & Another (1962 SCR 676), Housing Board Haryana Vs Housing Board Colony Welfare Association & Others (1995) 2 SCC 672 and D Saibaba Vs Bar Council of India & Anr (2003) 6 SCC 186 would apply to the Appeals filed before this Tribunal.
47. So, from the discussion made in the above paragraphs, the following mandates are culled out from the Act, 2003 as well as the Rules and Regulations:

(a) In terms of Section 111 of the Act, the party aggrieved, shall file the Appeal before the Appellate Tribunal as against the impugned order of the Appropriate Commission, within a period of 45 days from the date on which the party concerned received the copy of the order sent by the Appropriate Commission.

(b) In terms of Section 64(4) of the electricity Act 2003, the Appropriate Commission is duty bound to send a copy of the order to the authority, to the person concerned and the concerned licensee within 07 days from the date of passing of the order.

(c) In terms of Regulations 76 and 77 of the Maharashtra Electricity Regulatory Commission (Conduct of Business) Regulations, 2004, the orders shall be communicated to all the parties in the proceedings by the Commission certified by the signature of the Secretary or an authorised officer of the Commission and the same shall be communicated as expeditiously as possible from the date of the passing of the order. These Regulations 76 and 77 have been framed in line with Section 92(5) of the Electricity Act, 2003 which provides that the orders of the Appropriate Commission shall be authenticated by the Secretary or authorised officer of the Commission.

(d) In terms of Section 171 of the Act, 2003 every order passed by the Appropriate Commission may be served on the person concerned by delivering the same on the person concerned after obtaining the signed acknowledgement receipt from the person concerned either through registered post or such means of

delivery as may be prescribed. The Communication must be made to the party concerned as per the modes prescribed in terms of Section 171 (1) of the Electricity Act, 2003. The modes are as follows:

i. Where the Appropriate Government is the addressee, at the office of such officer as the Appropriate Government may prescribe in this behalf;

ii. Where the Appropriate Commission is the addressee, at the office of the Appropriate Commission;

iii. Where a company is the addressee, at the registered office of the company or, in the event of the registered office of the company not being in India, at the head office of the company in India;

iv. Where any other person is the addressee, at the usual or last known place of abode or business of the person.

(e) Further under Section 171(2) every, notice, order or document by or under this Act required or authorized to be addressed to the owner or occupier of any premises shall be deemed to be properly addressed if addressed by the description of the owner or occupier of the premises (naming the premises), and may be served by delivering it, or a true copy thereof, to some person on the premises, or if there is no person on the premises to whom the same can with reasonable diligence be delivered, by affixing it on some conspicuous part of the premises.

(f) Under Rule 20(2) of the Appellate Tribunal for Electricity (Procedure, Form, Fee and Record of

Proceedings) Rules, 2007 which has been framed by the Central Government under Section 176 of the Act, 2003, provides that every Appeal shall be accompanied by a certified copy of the impugned order while filing the Appeal.

48. In view of the above, it has to be held that the limitation period by the person concerned for preferring an Appeal under Section 111 of the Act, 2003 before this Tribunal would commence only from the date of the receipt of the authenticated copy of the impugned order by the person concerned from the Commission as per the procedure contemplated under the Regulations, Rules and provisions of the Act, 2003 and not from the date of the impugned order. This order would apply only to the person concerned i.e. the person participated in the proceedings.

49. In this application, the Applicant/Appellant who participated in the proceedings, correctly calculated the period of delay of 28 days in filing the Appeal by calculating the period between the date of the receipt of the copy of the order from the Commission and the date of filing of the Appeal before this Tribunal and gave reasons to show that there is sufficient cause to condone the said delay.

50. Hence, we deem it fit to condone the delay. Accordingly, the application to condone the delay is allowed and the delay is condoned.

51. Before parting with this case, on this issue, we would like to give general directions to all the Commissions by invoking the powers under Section 121 of the Act, 2003.

52. We notice that while Section 64 (4) of the Act provides for sending a copy of the order by the Appropriate Commission within seven days from the date of the order to the Appropriate Government, the Authority and the concerned licensees and to the person concerned, the Regulations of some of the Commissions including the Maharashtra State Commission do not provide the time frame of seven days within which a copy of the order has to be sent to the concerned persons. It provides that copy shall be sent as expeditiously as possible. This is not in consonance with section 64(4) of the parent Act.

53. In the present case, though the impugned order was passed on 16.3.2012, copy of the order was dispatched only on 27.4.2012 and the same was received on 03.5.2012. Thus, the copy of the order was sent not

within 7 days but after expiry of more than 40 days. This can not be said to be in accordance with section 64(4) of the Act, 2003.

54. We would, therefore, direct all the State Commissions and the Central Commission to modify their Regulations in line with the provisions of Section 64 (4) of the Act providing the time frame and follow the same scrupulously.

55. We further direct that the Commissions may send the copy of the order within the time frame only to the persons who participated in the proceedings. Similarly, the order copy may be put on website, so that public at large may be able to know the nature of order. Accordingly ordered.

56. While concluding, we deem it appropriate to record our appreciation for the effective assistance rendered by both Mr. Buddy Ranganadhan, the learned Counsel for the Commission as well as Mr. Harinder Toor, the learned Counsel for the Applicant.

57. The Registry is directed to send a copy of this order to all the State Commissions, Joint Commissions and the Central Commission.

58. The Registry is directed to number the Appeal and post the Appeal for admission on **03.01.2013.**

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated: Dec, 2012

✓ ~~REPORTABLE/NON-REPORTABLE~~