Chhatisgarh State Electricity Board vs Central Electricity Regul.Comm. & Ors on 15 April, 2010

Equivalent citations: AIR 2010 SUPREME COURT 2061, 2010 AIR SCW 2680, (2010) 90 ALLINDCAS 177 (SC), (2010) 1 CLR 861 (SC), AIR 2011 SC (CIVIL) 2191, (2011) 1 CIVLJ 47, (2010) 3 CAL HN 192, 2010 (3) SCALE 724, 2010 (5) SCC 23, (2010) 2 WLC(SC)CVL 725, (2010) 3 ALLMR 482 (SC), (2010) 4 ALL WC 3344, (2010) 3 JCR 173 (SC), (2010) 2 CAL LJ 154, (2010) 5 MAD LJ 105, (2010) 3 SCALE 724, (2010) 1 MAD LJ 1073, (2010) 2 CURCC 79, (2010) 1 MAD LW 289, 2010 (80) ALR SOC 30 (SC)

Author: G.S. Singhvi

Bench: Asok Kumar Ganguly, G.S. Singhvi

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL D. NO. 37598 OF 2007

Chhattisgarh State Electricity Board ...Appellant

Versus

Central Electricity Regulatory Commission ...Respondents
and others

JUDGMENT

G.S. Singhvi, J.

1. Whether Section 5 of the Limitation Act, 1963 (for short, `the Limitation Act') can be invoked by this Court for allowing the aggrieved person to file an appeal under Section 125 of the Electricity Act, 2003 (for short, `the Electricity Act') after more than 120 days from the date of communication of the decision or order of the Appellate Tribunal for Electricity (for short, `the Tribunal') is the question which requires determination in this appeal filed against order dated 17.5.2007 passed by the Tribunal in I.A. No.4 of 2007 in Appeal No.21 of 2006.

2. Appellant, Chhattisgarh State Electricity Board was established under Section 58 of the M.P. Reorganization Act, 2000. In a sense, it is a successor of Madhya Pradesh Electricity Board insofar as the State of Chhattisgarh is concerned. A dispute arose between the appellant and respondent No.3 - Madhya Pradesh State Electricity Board in the matter of payment of FLEE charges to the beneficiaries in the Western Region under the "Frequency Linked Energy Exchange" scheme, which was introduced with effect from 1.6.1992. The FLEE charges were payable to the beneficiaries on the basis of monthly advises issued by Western Regional Electricity Board (renamed as Western Regional Board Committee) (respondent No.5 herein). The matter was considered by respondent No.1 - Central Electricity Regulatory Commission, which passed an order dated 8.12.2005 fixing the liability of the appellant and respondent No.3 in the matter of payment of FLEE charges.

3. The appellant challenged the aforementioned order in Appeal No.21/2006, which was allowed by the Tribunal vide its order dated 14.11.2006. Soon thereafter, respondent No.3 filed IA No.4/2007 for issue of a direction to respondent No.5 to recalculate FLEE charges in accordance with the Tribunal's order in relation to post-reorganization period. By order dated 17.5.2007, the Tribunal allowed that application and directed respondent No.5 to recalculate FLEE charges in accordance with order dated 14.11.2006.

4. Feeling aggrieved by the last mentioned order of the Tribunal, the appellant filed this appeal on 24.12.2007. Along with the appeal, the appellant filed an application for condonation of 160 days' delay. The reasons for not filing appeal within the period of 60 days specified in Section 125 of the Electricity Act, as disclosed in the application are as under: -

> i) The impugned order had been pronounced by the Tribunal on 17.5.2007 but the counsel for the appellant did not receive intimation of the said pronouncement and as such he was not aware of the same.

ii) That the procedure which was being followed by the Tribunal at that time was that the Registry of the Tribunal used to telephonically give advance intimation to the counsel of the parties regarding pronouncement of the order.

iii) The appellant came to know about the order in July, 2007 when respondent No.5 sent intimation for payment of FLEE charges to the beneficiaries in the Western Region. Thereupon, the appellant informed its counsel about the impugned order who then sent letter dated 26.7.2007 to the Registrar of the Tribunal that intimation regarding pronouncement of the order had not been given to him (the date has been wrongly typed in paragraph 3 of the application as 26.11.2007).

iv) Respondent No.3 had filed a review petition against order dated 14.11.2006, which was not decided by the Tribunal along with I.A. No.4 of 2007 and the same was withdrawn on 25.10.2007.

v) Thereafter, the impugned order was considered and discussed by the appellant and after obtaining legal opinion, it was decided to file an appeal.

vi) In the light of the decision taken by the appellant, the counsel proceeded to prepare the appeal but some delay was caused due to extensive pleadings and voluminous documents.

5. In the reply filed on behalf of respondent No.3, it has been averred that the impugned order was communicated by the Deputy Registrar of the Tribunal vide his letter dated 11.6.2007; that the appellant and the respondents before the Tribunal were informed by the said letter that the matter was disposed of on 14.5.2007 and the parties may request for a copy of the order in PDF format through e-mail at registrar-aptel@nic.in or apply for a certified copy and further that the order would also be available in the Tribunal's website (www.aptel.gov.in). It has been further averred that letter sent by the Deputy Registrar of the Tribunal was received by the appellant on 21.6.2007 which was entered in its receipt register at serial No. 2082 and subsequently, the same was received by the office of the Chief Engineer (Commercial) on 29.6.2007. Respondent No.3 has supported this assertion by placing on record photostat copies of the inward register maintained in the office of Secretary of the appellant, which were made available pursuant to an application filed under the Right to Information Act. Respondent No.3 has then relied upon the appellant's assertion that it came to know about order dated 17.5.2007 in July, 2007 and prayed that in the absence of any explanation by the appellant for remaining silent from July, 2007 to December, 2007, the appeal cannot be entertained. As regards the review application, respondent No.3 has averred that the same has no bearing on the appellant's grievance against order dated 17.5.2007 and in the absence of any explanation for the delay after 21.6.2007, the appeal should be dismissed as barred by time.

6. In the rejoinder affidavit filed on behalf of the appellant, it has been pleaded that in the absence of communication of order by the Tribunal in accordance with the provisions contained in Chapter XVI of Appellate Tribunal for Electricity (Procedure, Form, Fee and Record of Proceedings) Rules, 2007 (for short, `the Rules'), the appeal cannot be dismissed as barred by time. It has then been averred that letter dated 7.6.2007 of the Tribunal, which was signed by Deputy Registrar on 11.6.2007 cannot be treated as communication of order dated 17.5.2007. It has been further averred that letter dated 7.6.2007 was received in the secretariat of the appellant on 25.6.2007 and the same was forwarded to the concerned department on 28.6.2007. In paragraph 6 of the affidavit, it has been averred that officers of the appellant had no knowledge of the impugned order till the receipt of intimation from respondent No.5 in July 2007 regarding payment to the beneficiaries in the Western Region and, thereafter, steps were taken for filing appeal.

7. Shri Ravi Shankar Prasad, learned senior counsel for the appellant argued that even though the appeal was filed after more than 120 days counted from the date of the Tribunal's order and, in terms of proviso to Section 125 of the Electricity Act, this Court can extend the time for filing an appeal up to a maximum of 60 days only, power under Section 5 read with Section 29(2) of the Limitation Act can be exercised for condonation of delay beyond the period of 120 days. In support of this argument, Shri Prasad placed reliance on the judgment of this Court in Mukri Gopalan v. Cheppilat Puthanpurayil Aboobacker (1995) 5 SCC 5. Learned senior counsel laid considerable emphasis on the fact that by virtue of the impugned order huge liability has been created against the appellant and if the appeal is not entertained, it will suffer irreparable injury.

8. Shri C.S. Vaidyanathan, learned senior counsel appearing for respondent No.3 argued that in view of the plain language of the proviso to Section 125 of the Electricity Act, this Court has no power to extend the period for filing an appeal beyond 120 days and the provisions of the Limitation Act cannot be invoked for negating the legislative intendment to prescribe special limitation for filing an appeal against any decision or order of the Tribunal. Learned senior counsel further argued that letter dated 7.6.2007 sent by Deputy Registrar of the Tribunal informing the parties that the IA was disposed of on 17.5.2007 and they may request for a copy of the order in PDF format through e-mail or apply for a certified copy amounts to communication of the order within the meaning of Section 125 of the Electricity Act read with Rule 98 of the Rules and the appeal filed after more than 120 days from the date of receipt of letter dated 7.6.2007 is liable to be dismissed as barred by time. Learned senior counsel submitted that even if intimation given by the Deputy Registrar of the Tribunal vide letter dated 7.6.2007 is ignored, the appeal is liable to be dismissed because the appellant had become aware of the Tribunal's order on 17.7.2007 i.e., the day on which letter dated 6.7.2007 sent by respondent No.5 was received in the office of its Secretary. Learned senior counsel submitted that if the period of limitation is counted from 17.7.2007, the appeal could be filed by 15.9.2007 whereas the same was actually filed on 24.12.2007. Learned senior counsel then invited the Court's attention to the memo of appeal and application filed for condonation of delay to show that the same had been prepared on 7.9.2007 but were filed on 24.12.2007 i.e., after more than three and half months. In support of his argument that this Court cannot extend the time beyond 60 days in terms of proviso to Section 125 of the Electricity Act, Shri Vaidyanathan relied upon the judgments of this Court in Union of India v. Popular Construction Company (2001) 8 SCC 470, Singh Enterprises v. Commissioner of Central Excise, Jamshedpur and others (2008) 3 SCC 70 and Commissioner of Customs and Central Excise v. Hongo India Private Limited and another (2009) 5 SCC 791.

9. For deciding the question framed at the threshold of this judgment, it will be useful to notice the relevant statutory provisions.

Electricity Act and the Rules

125. Appeal to Supreme Court.- Any person aggrieved by any decision or order of the Appellate Tribunal, may, file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal, to him, on any one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908 (5 OF 1908):

> Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

> 94. Pronouncement of order.-(1) The Bench shall as far as possible pronounce the order immediately after the hearing is concluded.

(2) When the orders are reserved, the date for pronouncement of order shall be notified in the cause list which shall be a valid notice of intimation of pronouncement". (3) Reading of the operative

portion of the order in the open court shall be deemed to be pronouncement of the order. (4) Any order reserved by a Circuit Bench of the Tribunal may also be pronounced at the principal place of sitting of the Bench in one of the aforesaid modes as exigencies of the situation require.

98. Transmission of order by the Court Master.- (1) The Court Master shall immediately on pronouncement of order, transmit the order with the case file to the Deputy Registrar. (2) On receipt of the order from the Court Master, the Deputy Registrar shall after due scrutiny, satisfy himself that the provisions of these rules have been duly compiled with and in token thereof affix his initials with date on the outer cover of the order. The Deputy Registrar shall thereafter cause to transmit the case file and the order to the Registry for taking steps to prepare copies and their communication to the parties.

106. Filing through electronic media. - The Tribunal may allow filing of appeal or petition or application through electronic media such as online filing and provide for rectification of defects by e-mail or net and in such filing, these rules shall be adopted as nearly as possible on and from a date to be notified separately and the Chairperson may issue instructions in this behalf from time to time.

Limitation Act

5. Extension of prescribed period in certain cases.- Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908) , may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation.-- The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.

29. Savings.- (1) Nothing in this Act shall affect section 25 of the Indian Contract Act, 1872 (9 of 1872).

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.

(3) Save as otherwise provided in any law for the time being in force with respect to marriage and divorce, nothing in this Act shall apply to any suit or other proceeding under any such law.

(4) Sections 25 and 26 and the definition of "easement" in section 2 shall not apply to cases arising in the territories to which the Indian Easements Act, 1882 (5 of 1882), may for the time being

extend.

10. The Electricity Act was enacted in the backdrop of dismal performance of various state electricity boards and alarming decline in the availability of power necessary for domestic, agricultural and industrial sectors. Before enactment of the Electricity Act, the electricity supply industry was governed by the Indian Electricity Act 1910, The Electricity (Supply) Act, 1948 and the Electricity Regulatory Commissions Act, 1998. The Electricity (Supply) Act, 1948 mandated the creation of electricity board for every state. The state electricity boards had the responsibility of arranging the supply of electricity in the state. Over a period of time, the performance of state electricity boards deteriorated on account of various factors including their inability to take decisions on tariffs in a professional and independent manner. In practice, the state governments started determining tariff and huge concessions were provided to various segments of the consumers, many of which were not deserving. Cross-subsidies had reached unsustainable level. To address this issue and to provide for independent determination of tariffs, the Electricity Regulatory Commissions Act, 1998 was enacted. Under that Act, the Central Government created the Central Electricity Regulatory Commission and most of the state governments created the State Electricity Regulatory Commissions either under the Central Act or under their respective state legislations with a view to implement the policy of encouraging private sector participation in generation, transmission and distribution of electricity and to harmonize and rationalize the provisions of the three Acts, the Electricity Act was enacted. Part II thereof contains provisions under which the Central Government is entitled to prepare the National Electricity Policy and tariff policy, in consultation with the state governments and the Central Electricity Authority for development of the power system based on optimal utilisation of resources such as coal, natural gas, nuclear substances or materials, hydro and renewable sources of energy. Under the same part, the Central Government can prepare and notify national policies, permitting stand alone systems for rural areas, for rural electrification and for bulk purchase of power and management of local distribution in rural areas through panchayat institutions, users' associations, co-operative societies, non-governmental organisations or franchisees. Part III contains provision relating to generation of electricity. Part IV regulates grant of licenses for transmission of electricity, distribution of electricity and trading in electricity. Part V deals with transmission of electricity including inter-state transmission. Part VI deals with distribution of electricity. Part VII contains provision relating to tariff. The provisions contained in Part IX provide for establishment of the Central Electricity Regulatory Authority and its functions and duties and those contained in Part X provide for establishment of the Central and State Electricity Regulatory Commissions and their functions. The Electricity Act also envisages establishment of Tribunal to hear appeals against the orders of adjudicating officers or regulatory commissions (Part XI). In terms of Section 111, any person aggrieved by an order made by an adjudicating officer except the one made under Section 127 or an order made by an appropriate Commission under this Act can prefer an appeal to the Tribunal. The composition of the Tribunal and qualifications prescribed for appointment of Chairperson and Member shows that the legislature intended to create a specialized adjudicatory forum for deciding various disputes emanating from the operation of the Act. Section 125 provides for an appeal to this Court against any order or decision of the Tribunal which can be filed within 60 days from the date of communication of the decision or order of the Tribunal. The limitation placed on the jurisdiction of this Court is that the appeal can be entertained only on one or more of the grounds specified in

Section 100 of the Code of Civil Procedure. Proviso to Section 125 empowers this Court to entertain the appeal within a further period not exceeding 60 days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period. In other words, an appeal under Section 125 can be filed within a maximum period of 120 days if this Court is satisfied that there was sufficient cause for not filing the same within 60 days from the date of communication of the decision or order appealed against. Part XII contains provisions relating to investigation leading to assessment of electricity charges payable by the consumer and enforcement of the orders of assessment. It also contains provisions for appeal against the final order passed under Section 126. Part XIV contains provisions to deal with theft of electricity, electric lines and materials, interference with meters and work of licensees and also provides for fiscal penalties and substantive punishments. Section 145 declares that no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an assessing officer referred to in Section 126 or an appellate authority referred to in Section 127 or the adjudicating officer appointed under the Act is empowered by or under the Act to determine and no injunction shall be granted in such matters.

11. The brief analysis of the scheme of the Electricity Act shows that it is a self-contained comprehensive legislation, which not only regulates generation, transmission and distribution of electricity by public bodies and encourages public sector participation in the process but also ensures creation of special adjudicatory mechanism to deal with the grievance of any person aggrieved by an order made by an adjudicating officer under the Act except under Section 127 or an order made by the appropriate commission. Section 110 provides for establishment of a Tribunal to hear such appeals. Section 111(1) and (2) lays down that any person aggrieved by an order made by an adjudicating officer or an appropriate commission under this Act may prefer an appeal to the Tribunal within a period of 45 days from the date on which a copy of the order made by an adjudicating officer or the appropriate commission is received by him. Section 111(5) mandates that the Tribunal shall deal with the appeal as expeditiously as possible and endeavour to dispose of the same finally within 180 days from the date of receipt thereof. If the appeal is not disposed of within 180 days, the Tribunal is required to record reasons in writing for not doing so. Section 125 lays down that any person aggrieved by any decision or order of the Tribunal can file an appeal to this Court within 60 days from the date of communication of the decision or order of the Tribunal. Proviso to Section 125 empowers this Court to entertain an appeal filed within a further period of 60 days if it is satisfied that there was sufficient cause for not filing appeal within the initial period of 60 days. This shows that the period of limitation prescribed for filing appeals under Sections 111(2) and 125 is substantially different from the period prescribed under the Limitation Act for filing suits etc. The use of the expression `within a further period of not exceeding 60 days' in Proviso to Section 125 makes it clear that the outer limit for filing an appeal is 120 days. There is no provision in the Act under which this Court can entertain an appeal filed against the decision or order of the Tribunal after more than 120 days. The object underlying establishment of a special adjudicatory forum i.e., the Tribunal to deal with the grievance of any person who may be aggrieved by an order of an adjudicating officer or by an appropriate commission with a provision for further appeal to this Court and prescription of special limitation for filing appeals under Sections 111 and 125 is to ensure that disputes emanating from the operation and implementation of different provisions of the Electricity Act are expeditiously decided by an expert body and no court, except this Court, may entertain challenge to the decision or order of the Tribunal. The exclusion of the jurisdiction of the

civil courts (Section 145) qua an order made by an adjudicating officer is also a pointer in that direction. It is thus evident that the Electricity Act is a special legislation within the meaning of Section 29(2) of the Limitation Act, which lays down that where any special or local law prescribes for any suit, appeal or application a period of limitation different from the one prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and provisions contained in Sections 4 to 24 (inclusive) shall apply for the purpose of determining any period of limitation prescribed for any suit, appeal or application unless they are not expressly excluded by the special or local law.

12. In Hukumdev Narain Yadav v. L.N. Mishra (1974) 2 SCC 133, this Court interpreted Section 29(2) of the Limitation Act in the backdrop of the plea that the provisions of that Act are not applicable to the proceedings under the Representation of the People Act, 1951. It was argued that the words "expressly excluded" appearing in Section 29(2) would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. While rejecting the argument, the three-Judge Bench observed:

> ".....what we have to see is whether the scheme of the special law, that is in this case the Act, and the nature of the remedy provided therein are such that the Legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If on an examination of the relevant provisions it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our view, even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the Court to examine whether and to what extent the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation."

(emphasis supplied)

13. Section 34(3) of the Arbitration and Conciliation Act, 1996, which is substantially similar to Section 125 of the Electricity Act came to be interpreted in Union of India v. Popular Construction Company (2001) 8 SCC 470. The precise question considered in that case was whether the provisions of Section 5 of the Limitation Act are applicable to an application challenging an award under Section 34 of the Arbitration and Conciliation Act, 1996. The two-Judge Bench referred to earlier decisions in Mangu Ram v. Municipal Corporation of Delhi (1976) 1 SCC 392, Vidyacharan Shukla v. Khubchand Baghel AIR 1964 SC 1099, Hukumdev Narain Yadav v. L.N. Mishra (supra), Patel Naranbhai Marghabhai v. Dhulabhai Galbabhai (1992) 4 SCC 264 and held:

> "12. As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are "but not thereafter" used in the proviso to sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of

> that Act. Parliament did not need to go further. To hold that the court could entertain an application to set aside the award beyond the extended period under the proviso, would render the phrase "but not thereafter" wholly otiose. No principle of interpretation would justify such a result.
>
> 16. Furthermore, Section 34(1) itself provides that recourse to a court against an arbitral award may be made only by an application for setting aside such award "in accordance with"

sub-section (2) and sub-section (3). Sub-section (2) relates to grounds for setting aside an award and is not relevant for our purposes. But an application filed beyond the period mentioned in Section 34, sub-section (3) would not be an application "in accordance with" that sub-section. Consequently by virtue of Section 34(1), recourse to the court against an arbitral award cannot be made beyond the period prescribed. The importance of the period fixed under Section 34 is emphasised by the provisions of Section 36 which provide that "where the time for making an application to set aside the arbitral award under Section 34 has expired ... the award shall be enforced under the Code of Civil Procedure, 1908 in the same manner as if it were a decree of the court".

This is a significant departure from the provisions of the Arbitration Act, 1940. Under the 1940 Act, after the time to set aside the award expired, the court was required to "proceed to pronounce judgment according to the award, and upon the judgment so pronounced a decree shall follow" (Section 17). Now the consequence of the time expiring under Section 34 of the 1996 Act is that the award becomes immediately enforceable without any further act of the court. If there were any residual doubt on the interpretation of the language used in Section 34, the scheme of the 1996 Act would resolve the issue in favour of curtailment of the court's powers by the exclusion of the operation of Section 5 of the Limitation Act."

(emphasis supplied)

14. In Singh Enterprises v. C.C.E., Jamshedpur and others (supra), the Court interpreted Section 35 of Central Excise Act, 1944, which is pari materia to Section 125 of the Electricity Act and observed:

> "The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of statute are vested with jurisdiction to condone the delay beyond the permissible period provided under the statute. The period up to which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Limitation Act, 1963 (in short "the Limitation Act") can be availed for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60

> days but in terms of the proviso further 30 days' time can be granted by the appellate authority to entertain the appeal. The proviso to sub- section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only up to 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days' period."

(emphasis supplied) The same view was reiterated in Commissioner of Customs, Central Excise v. Punjab Fibres Ltd. (2008) 3 SCC 73.

15. In Commissioner of Customs and Central Excise v. Hongo India Private Limited and another (2009) 5 SCC 791, a three-Judge Bench considered the scheme of the Central Excise Act, 1944 and held that High Court has no power to condone delay beyond the period specified in Section 35-H thereof. The argument that Section 5 of the Limitation Act can be invoked for condonation of delay was rejected by the Court and observed:

> "30. In the earlier part of our order, we have adverted to Chapter VI-A of the Act which provides for appeals and revisions to various authorities. Though Parliament has specifically provided an additional period of 30 days in the case of appeal to the Commissioner, it is silent about the number of days if there is sufficient cause in the case of an appeal to the Appellate Tribunal. Also an additional period of 90 days in the case of revision by the Central Government has been provided. However, in the case of an appeal to the High Court under Section 35-G and reference application to the High Court under Section 35-H, Parliament has provided only 180 days and no further period for filing an appeal and making reference to the High Court is mentioned in the Act.
>
> 32. As pointed out earlier, the language used in Sections 35, 35- B, 35-EE, 35-G and 35-H makes the position clear that an appeal and reference to the High Court should be made within 180 days only from the date of communication of the decision or order. In other words, the language used in other provisions makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning the delay only up to 30 days after expiry of 60 days which is the preliminary limitation period for preferring an appeal. In the absence of any clause condoning the delay by showing sufficient cause after the prescribed period, there is complete exclusion of Section 5 of the Limitation Act. The High Court was, therefore, justified in holding that there was no power to condone the delay after expiry of the prescribed period of 180 days.

> 35. It was contended before us that the words "expressly excluded" would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. In this regard, we have to see the scheme of the special law which here in this case is the Central Excise Act. The nature of the remedy provided therein is such that the legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If, on an examination of the relevant provisions, it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our considered view, that even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the court to examine whether and to what extent, the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation. In other words, the applicability of the provisions of the Limitation Act, therefore, is to be judged not from the terms of the Limitation Act but by the provisions of the Central Excise Act relating to filing of reference application to the High Court."

(emphasis supplied)

16. In view of the above discussion, we hold that Section 5 of the Limitation Act cannot be invoked by this Court for entertaining an appeal filed against the decision or order of the Tribunal beyond the period of 120 days specified in Section 125 of the Electricity Act and its proviso. Any interpretation of Section 125 of the Electricity Act which may attract applicability of Section 5 of the Limitation Act read with Section 29(2) thereof will defeat the object of the legislation, namely, to provide special limitation for filing an appeal against the decision or order of the Tribunal and proviso to Section 125 will become nugatory.

17. The judgment in Mukri Gopalan v. Cheppilat Puthanpurayil Aboobacker (supra) on which reliance has been placed by Shri Ravi Shankar Prasad has no bearing on this case. The issue considered in that case was whether Section 5 of the Limitation Act can be invoked for condoning the delay in filing an appeal under Section 18 of the Kerala Rent Control Act. A two-Judge Bench interpreted Section 18 of the Kerala Rent Control Act and held that even though that section is a special provision, in the absence of any indication of maximum period within which the appeal can be entertained by the Appellate Authority, Section 5 of the Limitation Act would get attracted. It is significant to note that there is no provision in the Kerala Rent Control Act similar to the one contained in proviso to Section 125 of the Electricity Act, Section 34(3) of the Arbitration and Conciliation Act and Section 35(1) or 35-H of the Central Excise Act, 1944. Therefore, the ratio of Mukri Gopalan v. Cheppilat Puthanpurayil Aboobacker (supra) cannot be invoked for declaring that this Court has the power to entertain an appeal under Section 125 of the Electricity Act after 120 days counted from the date of communication of the decision or order of the Tribunal.

18. 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. 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. 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.

19. 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.

20. In Raja Harish Chandra Raj Singh v. Deputy Land Acquisition Officer AIR 1961 SC 1500, this Court considered whether an award made under the Land Acquisition Act, 1894 can be treated to have been communicated on the date of its making. The application filed by the respondent for making reference under Section 18 of the Land Acquisition Act was rejected by the Collector on the ground that the same had been made after more than six months from the date of award i.e., 25.3.1951. The High Court dismissed the writ petition filed by the appellant. This Court noted that no notice of the award was given to the appellant as per the requirements of Section 12(2) and it was only on or about January, 1953 that he received the information about making of the award. He then filed application on 24.2.1953 for reference. This Court considered the nature of the award made by the Collector under Section 12(2) and held that the period of six months prescribed for making application would commence from the date the award was made known to the party. Paragraph 6 of

the judgment which contains discussion on the issue of communication of award reads as under:

> "There is yet another point which leads to the same conclusion. If the award is treated as an administrative decision taken by the Collector in the matter of the valuation of the property sought to be acquired it is clear that the said decision ultimately affects the rights of the owner of the property and in that sense, like all decisions which affect persons, it is essentially fair and just that the said decision should be communicated to the said party. 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 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 fairplay 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 Section 18 in a literal or mechanical way."

(emphasis supplied)

21. In Assistant Transport Commissioner, Lucknow v. Nand Singh (1979) 4 SCC 19, this Court considered a somewhat similar question in the context of filling an appeal under Section 15 of the U.P. Motor Vehicles Taxation Act, 1935. The Allahabad High Court held that the date of the communication of the order will be the starting point for limitation of filing an appeal. While approving the view taken by the High Court, this Court observed as under:

> "In our opinion, the judgment of the High Court is right and cannot be interfered with by this Court. Apart from the reasons given by this Court in the earlier judgment to the effect that the order must be made known either directly or constructively to the party affected by the order in order to enable him to prefer an appeal if he so likes, we may give one more reason in our judgment and that is this: It is plain that mere writing an order in the file kept in the office of the Taxation Officer is no order in the eye of law in the sense of affecting the rights of the parties for whom the order is meant. The order must be communicated either directly or constructively in the

> sense of making it known, which may make it possible for the authority to say that the party affected must be deemed to have known the order. In a given case, the date of putting the order in communication under certain circumstances may be taken to be the date of the communication of the order or the date of the order but ordinarily and generally speaking, the order would be effective against the person affected by it only when it comes to his knowledge either directly or constructively, otherwise not.
>
> On the facts stated in the judgment of the High Court, it is clear that the respondent had no means to know about the order of the Taxation Officer rejecting his prayer until and unless he received his letter on October 29, 1964. Within the meaning of Section 15 of the U.P. Motor Vehicle Taxation Act that was the date of the order which gave the starting point for preferring an appeal within 30 days of that date."

(emphasis supplied)

22. In Muthiaha Chettiar v. I.T. Commissioner, Madras AIR 1951 Madras 2004, a two-Judge Bench of Madras High Court considered the question whether the limitation of one year prescribed for filing revision under Section 33-A (2) of the Income Tax Act, 1922 is to be computed from the date when the order was signed by the Income-tax Commissioner or the date on which the petitioner had an opportunity of coming to know of the order. It was argued on behalf of the department that other provisions of the Act have been amended to provide for appeal within specified time to be counted from the date of the receipt of the order sought to be appealed against, but no such amendment was made in Section 33-A and therefore, the period of limitation will start from the date of order. While rejecting the argument, Rajamannar, C.J., referred to earlier decisions in Secretary of State v. Gopisetti Narayanasami 34 Madras 151 and Swaminatha v. Lakshmanan AIR 1930 Madras 490 and observed:

> ".....The only question that we have to decide is as to whether there is anything in the reasoning of the learned Judges in Secretary of State v. Gopisetti Narayanasami, 34 Mad. 151 :
>
> (8 I.C. 398) & Swaminatha v. Lakshmanan, 53 Mad. 491:(A.I.R. (17) 1930 Mad. 490) which makes the application of the rule laid down by them dependent on the provisions of a particular statute. We think there is none. On the other hand, we consider that the rule laid down by the learned Judges in the above two decisions - & we are taking the same view - is based upon a salutary & just principle, namely that, if a person is given a right to resort to the remedy to get rid of an adverse order within a prescribed time, 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 & therefore, must be presumed to have had knowledge of the order."

23. In Collector of Central Excise, Madras v. M/s. M.M. Rubber and Co., Tamil Nadu (1992) Supp 1 SCC 471, a three-Judge Bench highlighted a distinction between making of an order and

communication thereof to the affected person in the context of Section 35-E (3) and (4) of the Central Excise Act, 1944. The Bench noted the scheme of Section 35, distinction between sub-sections (3) and (4) thereof and held that in case where the order is subject to appeal, the same is required to be communicated to the affected person. Relevant portions of that judgment are extracted below:

> "5. Before we discuss the arguments of the learned counsel, it is necessary to set out some relevant provisions in the Act. Section 35 of the Act provides for an appeal by a person aggrieved by any decision or order passed under the Act by a Central Excise Officer lower than a Collector of Central Excise and that such an appeal will have to be filed "within three months from the date of the communication to him of such decision or order". Sub-section (5) of Section 35-A requires that on the disposal of the appeal, the Collector (Appeals) shall communicate the order passed by him to the appellant, the adjudicating authority and the Collector of Central Excise. Section 35-B provides for a right of appeal to any person aggrieved by, among other orders, (1) an order passed by the Collector (Appeals) under Section 35-A and (2) a decision or order passed by the Collector of Central Excise as an adjudicating authority. Such an appeal will have to be filed "within three months from the date on which the order sought to be appealed against is communicated to the Collector of Central Excise or as the case may be the other party preferring the appeal". The Appellate Tribunal also is required to send a copy of the order passed in the appeal to the Collector of Central Excise and the other party to the appeal..... .....
>
> 8. At this stage itself we may state that sub-section (4) of the Act provides that the adjudicating authority shall file the application before the Tribunal in pursuance of the order made under sub-section (1) or sub-section (2) "within a period of three months from the date of communication of the order under sub-section (1) or sub-section (2) to the adjudicating authority".

9. The words "from the date of decision or order" used with reference to the limitation for filing an appeal or revision under certain statutory provisions had come up for consideration in a number of cases. We may state that the ratio of the decisions uniformly is that in the case of a person aggrieved filing the appeal or revision, it shall mean the date of communication of the decision or order appealed against. However, we may note a few leading cases on this aspect.

10. Under Section 25 of the Madras Boundary Act, 1860 the starting point of limitation for appeal by way of suit allowed by that section was the passing of the Survey Officer's decision and in two of the earliest cases, namely, Annamalai Chetti v. Col. J. G. Cloete and Seshama v. Sankara it was held that the decision was passed when it was communicated to the parties. In Secretary of State for India in Council v. Gopisetti Narayanaswami Naidu Garu construing a similar provision in the Survey and Boundary Act, 1897 the same High Court held that a decision cannot properly be said to be passed until it is in some way pronounced or published under such circumstances the parties affected by it have a reasonable opportunity of knowing what it contains. "Till then though it may be written out, signed and dated, it is nothing but a decision which the officer intends to pass. It is not passed so

long it is open to him to tear off what he has written and write something else." In Raja Harish Chandra Raj Singh v. Deputy Land Acquisition Officer construing the proviso to Section 18 of the Land Acquisition Act which prescribed for applications seeking reference to the court, a time-limit of six weeks of the receipt of the notice from the Collector under Section 12(2) or within six months from the date of the Collector's award whichever first expires, this Court held that the six months period will have to be calculated from the date of communication of the award. In Asstt. Transport Commissioner, Lucknow v. Nand Singh construing the provision of Section 15 of the U.P. Motor Vehicles Taxation Act, it was held that for an aggrieved party the limitation will run from the date when the order was communicated to him.

11. The ratio of these judgments were applied in interpreting Section 33-A(2) of the Indian Income Tax Act, 1922 in Muthia Chettiar v. CIT with reference to a right of revision provided to an aggrieved assessee. Section 33-A(1) of the Act on the other hand authorised the Commissioner to suo moto call for the records of any proceedings under the Act in which an order has been passed by any authority subordinate to him and pass such order thereon as he thinks fit. The proviso, however, stated that the Commissioner shall not revise any order under that sub- section "if the order (sought to be revised) has been made more than one year previously". Construing this provision the High Court in Muthia Chettiar case held that the power to call for the records and pass the order will cease with the lapse of one year from the date of the order by the subordinate authority and the ratio of date of the knowledge of the order applicable to an aggrieved party is not applicable for the purpose of exercising suo moto power. Similarly in another decision reported in Viswanathan Chettiar v. CIT construing the time-limit for completion of an assessment under Section 34(2) of the Income Tax Act, 1922, which provided that it shall be made "within four years from the end of the year in which the income, profit and gains were first assessable," it was held that the time-limit of four years for exercise of the power should be calculated with reference to the date on which the assessment or reassessment was made and not the date on which such assessment or reassessment order made under Section 34(2) was served on the assessee.

13. So far as the party who is affected by the order or decision for seeking his remedies against the same, he should be made aware of passing of such order. Therefore courts have uniformly laid down as a rule of law that for seeking the remedy the limitation starts from the date on which the order was communicated to him or the date on which it was pronounced or published under such circumstances that the parties affected by it have a reasonable opportunity of knowing of passing of the order and what it contains. The knowledge of the party affected by such a decision, either actual or constructive is thus an essential element which must be satisfied before the decision can be said to have been concluded and binding on him. Otherwise the party affected by it will have no means of obeying the order or acting in conformity with it or of appealing against it or otherwise having it set aside. This is based upon, as observed by Rajmannar, C.J. in Muthia Chettiar v. CIT "a salutary and just principle". The application of this rule so far as the aggrieved party is concerned is not dependent on the provisions of the particular statute, but it is so under the general law."

(emphasis supplied)

24. Reverting to the facts of this case, we find that even though the name of the counsel for the appellant was not shown in the cause list of 14.5.2007 i.e., the date on which the impugned order was pronounced by the Tribunal, the factum of pronouncement was conveyed to the parties including the appellant vide letter dated 7.6.2007, which was signed by the Deputy Registrar on 11.6.2007 and they were informed that they can obtain copy through e-mail or make an application for certified copy. Undisputedly, that letter was received in the secretariat of the appellant on 21.6.2007. The appellant had come to know about the impugned order in July 2007 from another source i.e., respondent No.5, which had sent communication for payment of FLEE charges. The communication sent by respondent No.5 was received by the appellant on 17.7.2007. It is, thus, evident that on 21.6.2007 or at least on 17.7.2007, the appellant had come to know through proper channel that the order has been pronounced by the Tribunal in I.A. No.4/2007. It is not clear from the record whether the appellant had applied for certified copy or obtained the one through e-mail, but this much is evident that the appellant did obtain/receive a copy of order dated 17.5.2007. If that was not so, the appellant could not have filed appeal under Section 125 of the Electricity Act. The preparation of appeal, which bears the date 7.9.2007 is a clinching evidence of the fact that the appellant had not only become aware of the order of the Tribunal, but had obtained copy thereof. However, instead of filing appeal within 60 days from the date of receipt of letter dated 7.6.2007 sent by the registry of the Tribunal or the communication sent by respondent No.5, the appellant chose to file appeal only on 24.12.2007 and that too despite the fact that the same was prepared on 7.9.2007. The appellant has not offered any tangible explanation as to why the appeal could not be filed for more than three and half months after its preparation. Thus, there is no escape from the conclusion that the appeal has been filed after more than 120 days from the date of communication of the Tribunal's order and, as such, the same cannot be entertained.

25. In the result, the appeal is dismissed. However, the parties are left to bear their own costs.

.....J. [G.S. Singhvi] .....J. [Asok Kumar Ganguly] New Delhi April 15, 2010.