

COURT - I

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)**

**IA Nos. 196 & 194 of 2017 in
DFR NO. 1945 OF 2011**

Dated: 10th April, 2017

**Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson
Hon'ble Mr. I.J. Kapoor, Technical Member**

In the matter of :

Tamilnadu Generation & Distribution Corp. Ltd.

...Appellant(s)

Vs.

PPN Power Generating Co. Pvt. Ltd. & Anr.

...Respondent(s)

Counsel for the Appellant(s) : Mr. S. Vallinayagam

Counsel for the Respondent(s) : Mr. Jayant Bhushan, Sr. Adv.
Mr. Rahul Balaji
Mr. Senthil Jagdissan

ORDER

IA NO.196 OF 2017

(Appn. for condonation of delay in re-filing)

In this appeal, the applicant/appellant has challenged Order dated 02.03.2011 passed by the Tamil Nadu Electricity Regulatory Commission (“**State Commission**”). The appeal was presented before the Registry only on 22/12/2011. There is 249 days’ delay in filing the appeal. On scrutiny, a defect note dated 05/01/2012 was issued to the appellant’s advocate asking him to cure the defects within seven days. As no steps were taken by the appellant’s advocate, the Registry listed the matter for “Directions” before the Court on 22/12/2016. On that day, the counsel for the appellant took two weeks time to obtain instructions from the appellant whether the appellant wants to prosecute the matter or not. Accordingly,

the matter was adjourned to 18/01/2017. On 18/01/2017, counsel for the appellant took two weeks time to cure the defects. On 28/02/2017, the defects were cured by learned counsel for the appellant. However, there was a delay of 1879 days in curing the defects. Hence, the present application is filed praying that the delay of 1879 days in re-filing the appeal may be condoned.

In the application, the only reason given for the delay in re-filing the appeal is that the counsel for the appellant had shifted his office from Delhi to Ghaziabad in the year 2012-2013 and in that process, the copy of the appeal and relevant documents required for curing the defects in the appeal got misplaced and could not be traced in his office. It is submitted that the delay in re-filing the appeal is not intentional. Counsel for the appellant has reiterated the same explanation. Mr. Bhushan, learned senior counsel for respondent No.1 submitted that the condonation of delay in re-filing the appeal is between the court and the appellant. However, the fact remains that respondent No.1 has a good case on merits and the appellant is guilty of negligence.

We find that this is a case of gross negligence. We do not want to express any opinion on the merits of the case at this stage, but it must be mentioned that the appellant's case before the State Commission was about wrongful payment of FCC amounting to Rs. 32.57 Crores to the respondent. It is noticed from the impugned order that before the State Commission, Advocate General had appeared for the appellant. It is distressing to note that in a matter like this, no action was taken by the counsel and the appeal was kept pending in our Registry for a period of 1879 days for removing the defects. Had the Registry not listed the matter, it would have not seen the light of the day. We would like to examine this

aspect in more detail. The appellant is a Government Company and huge amount of public money is involved in this matter. Therefore, for the time being, in the circumstances of the case and looking to the nature of the issue involved, we deem it appropriate to condone the delay in re-filing the appeal. Accordingly, the delay of 1879 days in re-filing the appeal is condoned subject to payment of cost of Rs.30,000/- (Rupees thirty thousand only) to a charitable organization, namely, "**National Association for the Blind, Delhi State Branch, Sector -5, R.K. Puram, New Delhi – 110 022**" within a period of three weeks from today. In case this amount is not paid, we may have to summon the Chairman/highest officer of the appellant. The Application is disposed of.

On receipt of compliance report, Registry is directed to list the application for condonation of delay in filing the appeal on 08.05.2017. Registry is also directed to send a copy of this order to the said charitable organization.

(I. J. Kapoor)
Technical Member
ts/kt

(Justice Ranjana P. Desai)
Chairperson