

COURT-I

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

**IA NO. 523 OF 2017 IN
DFR NO. 1797 OF 2017**

&

**IA NO. 527 OF 2017 IN
DFR NO. 1796 OF 2017**

Dated: 8th November, 2017

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

In the matter of:

TANGEDCO	Appellant(s)
Vs.		
Tanmilnadu Electricity Regulatory Commission & Ors.	Respondent(s)

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

Counsel for the Respondent(s) : Mr. Senthil Jagadeesan
Ms. Sonakshi Malhan for R-2

Mr. Kumar Mihir for R-3

ORDER

These two applications can be disposed of by a common order as they arise out of similar facts. The averments made in these applications and the prayers made therein are similar. We shall deal with I.A. No. 523 of 2017. Our order in the said application shall govern I.A. No. 527 of 2017.

2. I.A No. 523 of 2017 is filed in DFR No. 1797 of 2017. There is 376 days' delay in filing the appeal and hence in this application the Appellant has prayed that the said delay may be condoned.

3. In support of the application, additional affidavit has been filed by M. Balasubramanian, Chief Engineer of the Appellant. It is stated in the affidavit that the impugned order dated 31.03.2016 was received by the Appellant on 02.04.2016. Following explanation is offered in the application for not filing the appeal within the period of limitation.

- “4. The appellant organization discussed the issue involved in the above impugned order and its adverse financial implications with various departments. The Revenue Department of the organization suggested that the impugned order had an adverse financial impact on the finances of the appellant.*
- 5. The department of the appellant dealing with the Non-Conventional energy sources was involved in promoting Solar Generators during the period April 2016 to February 2017. The appellant was adding capacity in the solar sector. The Solar Developers had issues relating to Solar Energy Tariff determined by the State Commission, which are pending before this Hon'ble Appellate Tribunal in A. No. 1/2017. The appellant in a bonafide attempt to bring as much solar capacity addition as possible by the end of 2017, was involved in the implementation of the policy of the Central Government.*
- 6. The appellant's department dealing with the Non-Conventional Energy sources had a meeting on 10.01.2017 wherein the order dated 09.12.2016 in Review Petition No. 1/2016 in T.O. No. 3/2016 dated 31.03.2016 passed by the State Commission and the suggestions of the department*

dealing with the Revenue were considered and sent to the Accounts Department for its consent to file appeal against the impugned order.

- 7. The issue relates to the promotional schemes extended exclusively to the wind energy generators from the year 1989, for promoting non-conventional sources of generation at that time; it involves concessional transmission and wheeling charges to the wind energy generators in addition to the facility of banking. The accounts department after due deliberation accorded its approval to file an appeal against the impugned order on 23.02.2017.*
- 8. The appellant, sought legal advice for filing appeal against the above impugned order from its Standing Counsel in first week of March 2017.*
- 9. The issue of banking facility to the wind energy generators is an unwarranted and unjustified financial burden on the distribution licensee. This being a pass through in tariff, is ultimately borne by the consumers. The banking facility, initially introduced as a promotional facility in 1989 has now become a technical and financial problem to the appellant. Considering all the aspects, the Legal Department of the appellant, accorded its approval on 25.03.2017 to file an appeal against the impugned order.*
- 10. The series of litigations by wind energy generators insisting on zero backing down of wind energy generated by them by filing contempt petition before the High Court in the months; September 2016 till date had led to a situation wherein the appellant decided to challenge the Tariff Order extending banking facility to the wind energy generators. A copy of High Court order directing the appellant not to back down any wind generation is annexed with this affidavit as **Annexure A.***
- 11. On 30.03.2017 the department of non-conventional energy sources pointed out yet another relevant factor of consistent refusal by the wind energy generators to comply with the Renewable Energy Obligation Regulations by obtaining a*

stay order from the Hon'ble High Court at Chennai in spite of the promotional benefits enjoyed by the wind generators at the cost of consumers. This coupled with the fact that certain private conventional generators also moved the Hon'ble High Court getting stay orders against the distribution licensee with a prayer; not to back them down, has resulted in serious grid security problem, necessitating the distribution licensee to take a decision to challenge the banking facility extended to the wind energy generators under the impugned order in view of the grid security and larger public interest.

12. *Papers relating to the appeal were forwarded to the counsel at Delhi for getting the draft appeal ready in the second week of April 2017.*
13. *The counsel for appellant at Delhi sent the draft appeal to the appellant for its approval and the appellant after due consideration of the facts and grounds raised in the appeal, approved the same for filing before this Hon'ble Appellate Tribunal. The Court fee and the signed appeal with affidavit were received by the counsel on 11.05.2017.....”*

4. After the duly signed appeal with affidavit were received by the counsel on 11.05.2017, the appeal is filed on 29.05.2017.

5. Counsel for the Respondents have strenuously opposed the condonation of delay. Counsel drew our attention to the reply filed by Respondent No.3. Counsel submitted that the additional affidavit shows that the impugned order was received by the Appellant on 02.04.2016. However, the Appellant's department convened a meeting to discuss the matter only on 10.01.2017. There is no explanation for this delay. Counsel submitted that there is complete lack of diligence on the part of the Appellant and hence the application be dismissed.

6. Perusal of the explanation given by the Appellant indicates that time was taken by the Appellant to consider the impact of the impugned order. The financial implications of the impugned order appear to have been discussed with various departments. Time was also taken in obtaining legal advice and preparing the appeal memo. We also notice that four appeals filed by the contesting Respondents against the same impugned order are pending before this Tribunal. In DFR No. 390 of 2017 where the same order is challenged by Indian Wind Power Association, delay of 307 days is condoned by this Tribunal. In the circumstances in our opinion delay in filing the appeal deserves to be condoned after directing the Appellant to pay cost quantified at Rs.15,000/- (Rupees fifteen thousand only) to be paid to “**National Association for the Blind, Delhi State Branch, Sector – 5, R.K. Puram, New Delhi – 110 022**” within two weeks from today. Order accordingly. On the proof of payment of cost, Registry is directed to number the appeal. I.A. No. 523 of 2017 accordingly disposed of. Needless to say that this order covers I.A. No. 527 of 2017. I.A. No. 527 of 2017 is disposed of in terms of the order in I.A. No. 523 of 2017.

List the matters on **04.12.2017.**

(I. J. Kapoor)
Technical Member

(Justice Ranjana P. Desai)
Chairperson