

Court-II
Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)

IA No.284 of 2015
IN
DFR No.1255 of 2015

Dated : 08 October, 2015

Present : Hon'ble Mr. Justice Surendra Kumar, Judicial member
Hon'ble Mr. T. Munikrishnaiah, Technical Member

In the matter of:

Punjab State Power Corporation Ltd.
Versus

.... Appellant(s)

Punjab State Electricity Regulatory Commission & Anr.

.... Respondent(s)

Counsel for the Appellant (s) : Ms. Swapna Seshadri
Ms. Akshi Seem

Counsel for the Respondent (s) : Ms. Charu Singhal for
Mr. Sakesh Kumar for R-1

ORDER

Interlocutory Application No. 284 of 2015 has been filed by the applicant/appellant in DFR No. 1255 of 2015 praying therein for condonation of delay of 824 days in filing the Appeal against the impugned order dated 07.01.2013 passed by the State Commission. Notices have been served upon the respondents. Learned counsel for the State Commission submits that she could not file objections as notice has recently been served. The ground for condonation of delay is that the instant Appeal has been filed against the impugned order dated 07.01.2013 passed by the State Commission in Petition No. 57 of 2012 (Suo Motu) whereby the State Commission has purported to implement the judgment dated 18.10.2012 delivered in Appeal Nos. 07, 46 & 122 of 2011 by this Appellate Tribunal.

Aggrieved by the order dated 07.01.2013, which had not implemented the judgment dated 18.10.2012 of this Appellate Tribunal in letter and spirit, the appellant filed Review Petition No. 10 of 2013 in February, 2013 before the State Commission.

The State Commission vide its order dated 28.03.2013 passed in Review Petition No. 10 of 2013, partly allowed the same and modified the main impugned order dated 07.01.2013 which is under challenge in the instant Appeal. The main submission of the learned counsel for the appellant is that the appellant has been prosecuting the matter before the State Commission in Review Petition under bona fide and legitimate belief and there was no negligence or carelessness on behalf of the appellant in filing the instant Appeal against the impugned order. The appellant cannot be non-suited just on the ground that the Appeal has been filed with a long delay. The appellant also filed a Review Petition No. 21 of 2015 in Appeal No. 174 of 2015 before us expressing the same apprehension which had been allowed by us by the Review Order dated 25.08.2015 with the following observations:

"Subsequently, the Review Petitioner/Appellant is being non-suited just on the ground that he has not filed any Appeal against the main Tariff Order dated 07.01.2013 passed by the State Commission. Learned Counsel further submits that he has filed a separate Appeal against the main Tariff Order dated 07.01.2013 before this Appellate Tribunal after passing the judgment dated 22.04.2015 by this Tribunal. His main apprehension is that since the Appeal filed against the main Tariff Order has been time barred though he was prosecuting in this Tribunal in the Appeal under bona fide belief.

We may at this moment simply observe that in case the Appeal against the main Tariff Order dated 07.01.2013 is filed and the Appeal is time barred then delay condonation application filed on behalf of the Review Petitioner/Appellant may be considered sympathetically giving due consideration to the fact that the Appeal No.174 of 2013 was prosecuted by the Appellant under bona fide and legitimate belief. With this remark, we dispose of the Review Petition at the stage of admission itself".

In view of the above observations made by us in the aforesaid Review Petition, we find sufficient and cogent ground to condone the said delay of 824 days in filing the instant Appeal. We are very much conscious of the fact that there is a

delay of 824 days in filing the Appeal but the said delay has been properly explained by the applicant/Appellant in the aforesaid IA No. 284 of 2015.

The settled law of Hon'ble Supreme Court on the point of delay condonation in filing the Appeal is that if there is a bona fide, legitimate and properly explained delay, the delay should be condoned without shutting the aggrieved party from raising the issue on merits in the Appeal.

In view of the circumstances, we hereby condone the aforesaid delay and allow IA No. 284 of 2015.

The Registry is directed to number the Appeal.

Heard. Admit. There is no need to issue notice to the sole Respondent i.e. State Commission herein for whom learned Counsel has appeared today.

Learned counsel for the respondent prays for and is granted four weeks time to file counter-affidavit/reply and rejoinder, if any, may be filed by the appellant within two weeks thereafter.

Post this Appeal for hearing on **08.12.2015**.

(T. Munikrishnaiah)
Technical Member
hcj/rkt

(Justice Surendra Kumar)
Judicial Member