

Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)

APPEAL No. 127 of 2008

Dated: 16th December, 2008

Present : Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. A.A. Khan, Technical Member

M.P. Power Trading Co. Ltd.,
(Erstwhile M.P. State Electricity Board),
Block No. 2, Shakti Bhawan, Rampur,
JABALPUR-482 008

-Appellant/(s)

AND

Maharashtra State Electricity
Distribution Company Ltd.,
Prakashgarh, 5th Floor,
Plot No. G-9, Bandara (East),
MUMBAI-400 051

AND

Gujarat Urja Vikas Nigam Ltd.,
Vidyut Bhawan, Race Course,
BARODA-390 007

AND

Tamilnadu Electricity Board,
800, Anna Salai.
CHENNAI-600 002

- Co-Appellants

V/s.

1. Central Electricity Regulatory Commission,
Through its Secretary, Core-3, 6th Floor,
Scope Complex, Lodhi Road,
NEW DELHI-110 003.
2. National Thermal Power Corporation of India Ltd.,
(Govt. of India Undertaking),
NTPC Bhawan, Scope Complex,
7-Institutional Area, Lodhi Road,
NEW DELHI-110 003.

3. The Chief Engineer (Commercial),
West Bengal State Electricity Distribution Co. Ltd.,
Vidyut Bhawan, (8th Floor) Block DJ, Sector-11,
Salt Lake City,
KOLKATA-700 091.
4. The Chief Engineer (Commercial),
Bihar State Electricity Board,
Vidyut Nagar, Baily Nagar,
PATNA-800 001.
5. The Chairman,
Jharkhand State Electricity Board,
Engineering Bhawan, HEC, Dhurwa,
RANCHI-834 004.
6. The Sr. General Manager (Power Procurement),
Grid Corporation of Orissa Ltd.,
4th Floor, Vidyut Bhawan, Janpath,
BHUBANESHWAR – 751 002 (ORISSA).
7. The Deputy Chief Engineer (Commercial),
Damodar Valley Corporation, Commercial Department,
DVC Towers, VIP Road,
KOLKATA-700 054.
8. The Commissioner & Secretary, Power Department,
Government of Sikkim,
GANGTOK-737 101.
9. The Chief Engineer (Corporate Planning),
Kerala State Electricity Board,
Vaidyuthi Bhawan, Pattom,
THIRUVANANTHAPURAM- 695 004 (KERALA)
10. The Superintending Engineer,
Electricity Department,
Union Territory of Pondicherry,
PONDICHERRY – 605 001
11. The Executive Engineer, Special Power Agreement & Tariff,
U.P. Power Corporation Ltd.,
10th Floor, Shakti Bhawan Extn.,
14, AShok Nagar,
LUCKNOW-226 001 (U.P.)

12. The Power Development Department,
Government of Jammu & Kashmir,
Mini Secretariat,
SRINAGAR-192 125 (J&K).
 13. The Chairman-Managing Director,
Delhi Transco Limited,
33 kV Substation Building, Pinto Road,
NEW DELHI-10 002.
 14. The Power Department,
Union Territory of Chandigarh,
Additional Office Building, Sector-9D,
CHANDIGARH-160 009.
 15. Secretary (Power),
Electricity Department, Daman and Diu,
DAMAN- 396 210.
 16. Secretary (Power),
Electricity Department, Dadra and Nagar Haveli UT,
SILVASSA-396 230
- Respondent(s)

Counsel for the Appellant (s) : Mr. Pradeep Misra
Counsel for the Respondent(s) : Mr. M.G. Ramachandran with
Mr. Anand K. Ganesan for NTPC – Resp.2
Mr. R.B. Sharma for BSEB – Resp.4

ORDER

The order dismissing the petition to condone delay in filing the Review Petition is sought to be challenged in this Appeal. The main order in petition No.120 of 2005 was passed by the Central Electricity Regulatory Commission (for short 'Commission') on 23.11.2006. The review Petition No.86 of 2007, seeking review of the order dated 23.11.2006, was filed by

the appellant-petitioner only on 25.06.2007, Thus there was a delay of 5 months, an application to condone the delay was filed.

2. According to Mr. Pradeep Mishra, the learned counsel for appellant-petitioner, though both the review application and the petition for condoning delay were admitted on 25th September, 2007, for considering both the merits of the matter in review as well as the limitation point, the Commission has chosen to pass an order dated 21.05.2008, dismissing the application for condoning the delay of 5 months, without considering the merits of the matter. This is the subject matter of the challenge in this appeal.

3. We have heard the learned counsel for the parties.

4. Admittedly, the merits of the matter in the Review Petition have not been considered by the Commission in the impugned order though the same was admitted earlier. The main point raised by the appellant-petitioner in the review petition filed before the Commission was that the Judgment rendered by this Tribunal, dated 04.10.2006, which is in his favour, was not considered by the Commission, while passing the main order in Petition No.120 of 2005, dated 23.11.2006, and as such the said order has to be reviewed.

5. On a perusal of the records, It is noticed that the Commission heard the matter on 09.03.2006, and rendered Judgment on 23.11.2006. It is true that reference to the order of this Tribunal dated 04.10.2006 could not have been made at the time when the matter was taken up for final hearing by the Commission on 9.3.06. However, it is to be pointed out that having admitted both the review petition and condone the delay petition, the Commission could have passed the order on consideration of both delay and merits of the matter. Admittedly, the Commission merely passed an order dismissing the application to condone the delay, on the ground that the delay has not been explained properly without considering the question whether it is fit case for review or not.

6. Now, it is pointed out by the learned counsel for the appellant-petitioner by filing an additional affidavit stating that in the application filed for review by NTPC in Petition No. 159 of 2004, a reply has been filed by the appellant-petitioner on 19.02.2007 referring to the order of this Tribunal dated 04.10.2006 and rejecting the said contention, the Commission gave liberty to the appellant-petitioner to make an appropriate application for review with reference to FERV amount between debt and equity in case of Corba STPS by the order dated 15.6.07. On the basis of the liberty given by the Commission, it is

contended that the appellant-petitioner decided to file the review and the same was filed on 25.06.2007 before the Commission.

7. Admittedly, the details which have been given in the additional affidavit filed before us have not been placed before the Commission. If these details had been placed before the Commission, definitely the Commission would have condoned the delay.

8. In the light of the above factual situation mentioned in additional affidavit filed before this Tribunal, we are of the view that it would be appropriate to remit the matter to the Commission for re-consideration of the application filed for condoning the delay occurred in filing the review application, by taking into consideration afresh the affidavit to be filed before the Commission by the appellant giving these details.

9. It is contended by Mr. M.G. Ramachandran, the learned counsel for 2nd respondent-NTPC, that the order passed on 04.10.2006 by this Tribunal has no relevance to the point in issue, and therefore, it cannot be said that there are merits in the point urged for review. This contention may be correct. But, this aspect may be considered by the Commission after condoning the delay. We are not expressing any opinion on the merits of the matter in the Review Petition.

10. We allow the appeal and remit the matter to the commission. After condoning the delay it is appropriate for the Commission to consider the Review Petition on merits and dispose of the same in accordance with law, after giving opportunity to both sides, preferably within six weeks from the date of receipt of the order.

11. The appeal allowed. No costs.

(A.A. Khan)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

