

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI
(APPELLATE JURISDICTION)**

**I.A. NO.194 OF 2017
IN
DFR NO.1945 OF 2011**

Dated : 11th MAY, 2017.

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

IN THE MATTER OF:

Tamil Nadu Electricity Board) ... Appellants

AND

**PPN Power Generating Company)
Pvt. Ltd. & Anr.) ... Respondents**

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

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

ORDER

1. There is a delay of 249 days in filing this appeal. Hence, the present application is filed by the Appellant praying that the delay in filing the appeal may be condoned.

2. It is necessary to narrate certain crucial facts. The impugned order dated 02/03/2011 is passed by the Tamil Nadu Electricity Regulatory Commission (**“the State Commission”**). The case of the Appellant before the State Commission was that Article 13.5(iii) of the PPA between the Appellant and Respondent No.1 clearly states that for Non-Political Force Majeure events, no fixed capacity charges (**“FCC”**) will be paid by the Appellant to Respondent No.1.

3. Respondent No.1 by letter dated 01/04/2005 requested the Appellant to release the FCC for the period of tsunami – a Non-Political Force Majeure event. On 16/04/2005, the amount was released to Respondent No.1. The matter would have rested there. But according to the Appellant, in an audit enquiry conducted on 22/05/2007, it was realized that the said amount of FCC paid to Respondent No.1 to the tune of Rs.32.57 crores was wrongly paid. It is the case of the Appellant that after obtaining opinion of the former Advocate General, the Appellant sent communication dated 20/03/2010 to Respondent No.1 for recovery of Rs.32.57 crores.

Respondent No.1 challenged the said action in the State Commission. By the impugned order, the State Commission has set aside the said communication.

4. The Appellant is a public body. A huge amount of public money is involved in this case. Perhaps, that is the reason why the Advocate General represented the Appellant before the State Commission. In such a case, the Appellant should have shown promptitude. The appeal should have been filed within the period of limitation. However, the appeal was presented before the Registry of this Tribunal only on 22/12/2011. On scrutiny, a defect letter 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 advocate 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, advocate for the Appellant took two weeks'

time, to cure the defects. On 28/02/2017, the defects were cured by the advocate for the Appellant. However, there was a delay of 1879 days in curing the defects.

5. An application praying for condoning the delay of 1879 days in re-filing the appeal was also filed by the advocate for the Appellant. The said application was listed before this Tribunal on 10/04/2017. While disposing of the said application, in order dated 10/04/2017, this Tribunal noted that the only explanation given by the advocate for the Appellant for condoning the delay in re-filing the appeal was that the advocate 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. This Tribunal expressed its dissatisfaction about the approach of the Appellant. This Tribunal noted that, had the Registry not listed the matter, it would not have seen the light of the day. Considering the importance of the matter and fact that the huge amount of

public money is involved in this case, this Tribunal condoned the said delay in re-filing after saddling the Appellant with costs. The present application is listed before us for condonation of delay in filing the appeal.

6. We have heard learned counsel for the parties. Counsel for the Respondents has opposed the prayer for condonation of delay.

7. In this application also no explanation is offered by the Appellant except that the advocate for the Appellant had shifted his office from Delhi to Ghaziabad and in that process, the copy of the appeal memo and relevant documents got misplaced. Ordinarily such explanation would have entailed dismissal of application for condonation of delay. But the factual matrix of this case prevents us from doing so. In our order dated 10/04/2017 passed while condoning the delay in re-filing of this appeal we have severely commented on the conduct of the Appellant and we have given a gist of the same hereinabove. We reiterate that it is because of the direction

given by this Tribunal that the appeals in which defects are not cured should be listed before the Court that the present appeal was listed before us. Otherwise one does not know for how many more years this appeal would have remained in the Registry without defects being cured. We have already indicated the nature of the issues involved in this appeal. Though we have not examined the merits of the case we feel that this is a case where the Appellant's case needs to be examined by this Tribunal. This Tribunal's scrutiny cannot be avoided in this way. Cause of justice should not be allowed to suffer.

8. In the circumstances we condone the delay on the Appellant depositing a sum of Rs.30,000/- with "Sai Deep Dr. Ruhi Foundation", A/c No.952663443, A-508, Sector-19, Noida-201301 within a period of three weeks from today.

9. We want to again make it clear that we have not expressed any opinion on the merits of the case. Needless to

say that the appeal will be finally disposed of independently and in accordance with law.

10. Application is disposed of.

11. List the matter before this Tribunal for compliance on **06th July,2017**. If the amount is not paid within the stipulated period, further appropriate orders may have to be passed.

I.J. Kapoor
[Technical Member]

Justice Ranjana P. Desai
[Chairperson]