

COURT-I

**Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

**IA NO. 220 OF 2015 IN
DFR 851 OF 2015**

Dated : 4th December, 2015.

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

In the matter of :

M/s Singareni Collieries Co. Ltd.

...Appellant(s)

Versus

**Andhra Pradesh Electricity Regulatory
Commission & Anr.**

...Respondent(s)

Counsel for the Appellant(s) : Mr. Hemant Singh
Mr. Tushar Nagar
Mr. Matrugupta Mishra
Mr. Tabrez Malwat

Counsel for the Respondent(s) : Mr. K.V. Balakrishnan &
Mr. K.V. Mohan for R-1

Ms. Swapna Seshadri for R-2

ORDER

PER HON'BLE (SMT.) JUSTICE RANJANA P. DESAI - CHAIRPERSON

1. The Appellant is a Government company. In this appeal, the Appellant has challenged Order dated 23.08.2014 passed by

the Andhra Pradesh Electricity Regulatory Commission. There is 182 days delay in filing the appeal, hence the Appellant has filed this application praying that the said delay be condoned.

2. The main reason for the delay appears to be the bifurcation of State of Andhra Pradesh into the states of Andhra Pradesh and Telangana on 02.06.2014. It is the case of the Appellant that such reconstitution of the erstwhile state of Andhra Pradesh led to uncertainty and policy paralysis as the Government of Andhra Pradesh also had to be accordingly restructured.

3. It is stated in the application that the shareholding pattern of the Appellant company before the constitution of the State of Andhra Pradesh was divided between the erstwhile State of Andhra Pradesh and Union of India in the ratio of 51 : 49 respectively. The Union Government's administration of the Appellant company was through the Ministry of Coal. It is further stated that upon the reconstitution of the Appellant Company, the shareholding of the Appellant company changed to the effect that currently it is divided between the newly formed State of Telangana and the Union of India in the ratio of 51 : 49

respectively. This led to unavoidable administrative delay. No timely decision could be taken about filing the appeal against the Order dated 23.8.2014 passed by the State Commission. The Appellant contends that on account of the impugned order there has been an adverse financial impact to the tune of Rs.66 crores on the Appellant company. The Appellant has a good case on merits. It is submitted that substantial justice may be preferred as against technical considerations and delay may be condoned.

4. Reply is filed by Respondent No.2 opposing the condonation of delay. It is stated in the reply that erstwhile State of Andhra Pradesh was reconstituted on 02.06.2014 however the impugned order is passed on 23.08.2014. It is stated that bifurcation of the State has nothing to do with delay in filing the appeal. It is further stated that the impugned order has crystallized valuable rights in favour of Respondent No.2. The State Commission has held by the impugned order that the petition filed by the Appellant itself was not maintainable and has also held that proceedings under section 126 of the Electricity Act, 2003 for unauthorised use of electricity can go on against the Appellant. It is submitted that mere administrative reasons and lack of

coordination between the Government departments is not a sufficient cause for not filing proceedings in time. It is submitted that the Appellant has not made out sufficient cause for not filing appeal in time and, hence, the delay should not be condoned. The Appellant has filed a rejoinder reiterating its stand on delay.

5. We have heard Mr. Tushar Nagar, learned counsel for the Appellant and Ms. Swapna Seshadri, learned counsel for Respondent No.2. Counsel have reiterated their respective stand reflected in their pleadings. Counsel for the Appellant has relied on an order of this Tribunal in **I.A.No.301 of 2015 in DFR No.1378 of 2015** dated 19/10/2015 and counsel for Respondent No.2 has relied on the judgment of the Full Bench of the Gujarat High Court in **Municipal Corporation of Ahmedabad, through the Municipal Commissioner v. Voltas Limited and etc. etc.**¹ in support of their submissions.

6. It is true that a Government Company, as a rule, is not entitled to a special treatment but if there are any special circumstances, peculiar to a Government department affecting its

¹ AIR 1995 Guj 29

functioning, leading to red tapism, lack of coordination, the Court may have to take note of those circumstances while considering prayer for condonation of delay. Some amount of latitude is not impermissible (**See The State (NCT of Delhi) v. Ahmed Jaan**²).

In our opinion, the Appellant's case regarding bifurcation of the State of Andhra Pradesh, leading to uncertainty, lack of clarity and coordination, cannot be lightly brushed aside merely because the bifurcation took place prior to the impugned order. Moreover, it is the case of the Appellant that due to the impugned order, it has suffered losses to the tune of Rs.66 crores. While considering application for condonation of delay, the Court has to have regard to the possible adverse financial impact that may be caused on the Appellant if the Appellant is not given a chance to challenge the impugned order. In matter of condonation of delay, there are no hard and fast rules. Each case turns on its own facts. So far as the merits are concerned, while the Appellant contends that it has a good case on merits, counsel for Respondent No.2 submitted that the Appellant has no case. Since we have come to a conclusion that the Appellant has made out sufficient cause for condonation of delay, we do not wish to

² (2008) 14 SCC 582

give even a prima facie opinion on the merits of the case. We feel that this is a case where delay should be condoned on the condition that the Appellant pays costs of Rs.30,000/- to a charitable organization.

7. Counsel for Respondent No.2 submitted that in case this Tribunal decides to condone the delay, this Tribunal may permit proceedings under Section 126 of the Electricity Act filed against the Appellant to go on. We see no reason to deny this prayer because ultimately all proceedings will be subject to the final order that may be passed in this Appeal. Hence, the following order:

Delay of 182 days' in filing the appeal is condoned on the condition that the Appellant deposits a sum of Rs.30,000/- (Thirty thousand only) with the charitable organisation viz. "Tamana", C-10/8, Vasant Vihar, New Delhi – 110 057" within a period of two weeks from today. If the amount is paid as directed, office is directed to number the appeal. Needless to say that if the amount is not deposited as directed, the appeal shall stand dismissed. The proceedings initiated under Section 126 of

the Electricity Act may go on. We, however, make it clear that on the merits of those proceedings, we have expressed no opinion and the proceedings may go on independently and in accordance with law. Needless to say that all proceedings will be subject to the final orders that may be passed in this appeal.

8. The application is disposed in the aforesaid terms. After receiving the compliance report, list the matter for admission on 06.01.2016.

9. Pronounced in the Open Court on this 4th day of December, 2015.

(I.J. Kapoor)
Technical Member

(Justice Ranjana P. Desai)
Chairperson

✓ ~~REPORTABLE/NON-REPORTABLE~~