

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

IA No.305 OF 2011

And

IA No.306 OF 2011

(DFR No.1205 of 2009)

Dated: 21st February, 2012

Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. Rakesh Nath, Technical Member,

In the Matter Of

Jawaharlal Nehru Port Trust
1107, Raheja Centre, 214, F.P.J Marg,
Nariman Point,
Mumbai-400 021

Applicant/Appellant

Versus

1. The Maharashtra Electricity Regulatory Commission
World Trade Centre No.1
13th Floor, Cuffe Parade, Colaba,
Mumbai-400 001

2. Maharashtra State Electricity Distribution Co. Ltd.
Plot No.G-9,
"Prakashgad", Bandra (East),
Mumbai-400 051

Respondent(s)

Counsel for the Applicant/Appellant: Mr. Vikas Singh, Sr Adv
Mr. Ajay Sharma

Counsel for the Respondent : -

ORDER

PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM, CHAIRPERSON

1. Jawaharlal Nehru Port Trust is the Applicant/Appellant herein.
2. As against the impugned order dated 31.5.2008 passed by the Maharashtra State Commission (R-1) creating a new category namely HT-II Commercial and putting the Appellant in the said Category on the Petition filed by the Maharashtra State Electricity Distribution Company (R-2) for the approval of ARR and the Tariff, the Appellant has filed the Appeal before this Tribunal.
3. Even though the impugned order had been passed as early as on 31.5.2008, the Appellant has filed the Appeal only on 25.8.2009. Thus, there was a long delay of 357 days. Hence, the Appellant filed the application in IA No.306 of 2011 along with the Appeal praying for the condonation of said delay of 357 days in filing the Appeal.
4. The Registry, after finding out some defects in the Appeal papers, issued communication to the Appellant/Applicant on 2.9.2009 intimating the defects and asking the Appellant to cure those defects within 7 days. But those defects have been cured only in November, 2011 and the Appeal papers have

been represented only on 11.11. 2011. Thus, there was again a delay of 469 days in representation of the Appeal papers. Hence the Applicant has filed another application in IA No.305 of 2011 to condone the delay of the said 469 days in representing the papers after curing the defects. Thus there are two phases of period of delay (1) between the date of the impugned order and the date of filing the Appeal and (2) the date of defect notice and date of representation.

5. The Learned Senior Counsel, while praying to condone the 1st phase of delay of 357 days in filing the Appeal in IA No.306/2011 submits that there are valid reasons justifying the said delay and therefore, the delay may be condoned. Those reasons giving explanation for the delay of 357 days given in the two Affidavits dated 7.8.2009 and 5.11.2011 filed by the Appellant are as follows:

- (i) The impugned order was passed on 31.5.2008. The corrigendum was issued on 5.6.2008. Then the detailed order was passed on 20.6.2008. In pursuance of this order, the bill of the Applicant was revised upwards. Therefore, he made a detailed representation to the Distribution Company against the said tariff shock. Then the Appellant requested the Distribution company for downward revision of the existing tariff. He sent several representations to the Distribution Company

seeking the parity with the Mumbai Port Trust and Cochin Port Trust. Thereby, the Applicant was pursuing the matter with the Distribution Company hoping to get the relief directly from the Distribution Company. But there was no relief.

(ii) On getting no relief, the Applicant sent a representation to the State Commission on 18.12.2008 questioning the bill of the Appellant. On 9.2.2009, the Commission informed the Appellant thorough its reply that it was not possible to give any relief.

(iii) It is only, thereafter, the Appellant filed the Appeal and hence there was delay.

6. The Learned Senior Counsel has explained the reason for another phase of period of the delay of 469 days in representing the papers after curing the defects notified by the Registry, as mentioned in the application IA No.305/2011 filed on 11.11.2011. The reasons for the said delay in the application are as under:

(a) The Appeal was filed on 25.8.2009 in the Registry of the Tribunal. The clerk of the Counsel for the Appellant was pursuing the matter in the Registry. He was informed that the defects will be intimated through post. After some time, the said clerk by mistake mixed up the

instant file with another file of another case. As a result, the Counsel for the Appellant did not make any further inquiry with the Registry. In the meantime, the Registry had sent its communication dated 2.9.2009 pointing out the defects in the Appeal. The Registry instead of sending the "Defects Notice" to the Counsel for the Appellant, sent it to a wrong address. This is purely the mistake of the Registry.

- (b) When the Appellant came to know that the Tribunal in a similar case of Mumbai International Airport India Ltd in Appeal No.195 of 2009 dated 31.5.2011 while dealing with similar issue decided the issue in favour of the Appellant in the said Appeal, the Appellant made inquiries with regard to stage of the present Appeal with his Counsel. Only then, the Counsel for the Appellant contacted the Registry which in turn showed him the letter dated 2.9.2009 pointing out the defects in the instant Appeal. This error could not be cured in time because of the fact that the defect notice was sent to a wrong address. This fact came to be known only in November, 2011.
- (c) Therefore, the Application in IA No.305 of 2011 has been filed on 11.11.2011 for condoning the delay of 469 days in representation.

7. On entertaining these two applications, we issued notice to the Respondents. We also asked for explanation from the Registry with reference to the defect notice having been sent to the wrong address. The Registry has given explanation that the “Defects in filing” the letter was issued on 2.9.2009 itself but the Registry inadvertently sent the letter to a wrong address by post and when the Advocate contacted the Registry, the same was informed. Registry also stated that the concerned official has been warned that such mistake would not recur in the future. In the light of the above factual situation, we are to consider both these applications.
8. First, we are concerned with the delay of 357 days in filing the Appeal. The Applicant has admitted in its Affidavits, that it came to know about the impugned order passed by the State commission which was passed on 31.5.2008 in which corrigendum had been issued on 5.6.2008 only on receipt of the order on 3.9.2008. This admission indicates that the Appellant received the impugned order as early as on 3.9.2008 but even then the Appellant filed the Appeal only on 25.8.2009. Thus, there is nearly about one year delay after receipt of the order in filing the Appeal.
9. It is mentioned in its 1st Affidavit that the Applicant sent representation to the Distribution Company and it took some time. He also stated that some papers were not legible and

the Counsel for the Applicant requested for the legible copy and some documents and the Applicant took some time in presenting the same and sending the same to the Advocate who then prepared the Appeal and filed the Appeal. In the Additional Affidavit, the Applicant has given further explanation that it made a representation to the Distribution Company but the Appellant did not get any relief from the Distribution company and so, he sent a representation to the State Commission on 18.12.2008 and got a negative reply on 9.2.2009. Thus, it is clear that the Appellant knew about the nature of the orders passed by the State Commission on 9.2.2009 itself.

10. Even then, no steps have been taken to file the Appeal immediately thereafter.
11. Between 9.2.2009 to 25.8.2009 there was a delay of six months. This period was also not explained properly. As indicated above, having received the communication about the nature of the impugned order on 3.9.2008 itself, there is no reason as to why the Applicant had not taken any steps to file the Appeal before the Tribunal. Similarly, having received another communication by the Commission on 9.2.2009, there is no reason as to why the Applicant had not taken steps to file the Appeal. It is strange to see the conduct of the Applicant/Appellant that instead of filing the Appeal

straightway before the Tribunal in time, it seemed to have pursued the matter with the Distribution Company by sending representation after representation..

12. Having known about the nature of the impugned order on 3.9.2008 itself as admitted by him, the Appellant must have questioned the same only in the Tribunal. On the other hand, he sent a representation only to the Distribution Company. This shows that either the Applicant was not interested in challenging the impugned order or it was not properly advised. Further, the impugned order relates to the Tariff Order in respect of Financial Year 2008-09 and its period has already expired.
13. Therefore, we are of the opinion that the long delay of 357 days which is not duly explained cannot be condoned and as such the Application in IA No.306/2011 is dismissed.
14. In view of the dismissal of the said application to condone the delay in filing the Appeal, the Appeal cannot be entertained. When such being the case, it is not necessary to go into the merits of the explanation given in the application to condone the delay of 469 days in representing the matter after curing the defects in IA No.305 of 2011.
15. However, it is appropriate to point out that it is clear from the perusal of the Application in IA No.305/2011 that there is a lack

of diligence on the part of the Applicant in pursuing the matter even after filing the Appeal. The Appeal was filed on 25.8.2009. Even assuming that there was a mistake on the part of the Registry in sending the defect notice to the wrong address, there is no valid reason for the act of the Applicant who kept quiet for a long time without making any verification with the Registry. From this, it is evident that the Applicant did not show interest in ascertaining the fate of the Appeal or in pursuing the matter further. The very fact that it took steps to pursue the Application and the Appeal only after it came to know about the judgment rendered by this Tribunal in Mumbai International Airport India Ltd in Appeal No.195 of 2009 dated 31.5.2011, after the lapse of long delay, would show that these Applications are not bonafide. Hence this application also is dismissed.

16. Thus, both the applications are dismissed.

17. However, there is no order as to costs.

(Rakesh Nath)
Technical Member
Dated: 21st Feb, 2012

(Justice M. Karpaga Vinayagam)
Chairperson

Reportable/Not Reportable