

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

IA 35 OF 2012 IN
DFR 1151 OF 2011

Dated: 06 Feb, 2012

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

Union of India,
East Central Railway, Hajipur

.....Petitioner

Versus

Bihar Electricity Regulatory Commission & OrsRespondents

Counsel for the Petitioner : Mr. V.S.R Krishna, Sr Advocate
Mr. Abhishek Yadav

Counsel for the Respondent : -----

ORDER

1. This is the application to condone the delay of 96 days in filing the Appeal as against the order dated 6.12.2010 passed by the Bihar State Commission in Retail Supply of tariff for the Financial Year 2010-11.
2. According to the learned Senior Counsel appearing for the Appellant/Applicant, though the order had been passed on 6.12.2010, the copy of the same was received on 7.3.2011 and after consultation with the legal Department and other officials the

Appeal was filed on 29.7.2011 with application for condonation of delay to condone the delay of 96 days.

3. It is noticed from the application to condone the delay that the Applicant has stated that certified copy in original was issued on 6.12.2010 and received from the Commission only on 8.8.2011. The relevant portion of the statement is as under:

“ That the impugned tariff order passed by the Bihar Electricity Regulatory Commission in Retail Supply Tariffs for the FY 2010-11 and the commission’s order has not been served on the Appellants. The certified copies in original was issued on 06.12.2010 and received from the Commission only on 08.08.2011”.

4. On the contrary in the Memo of Appeal in Para 6 it is stated that the Order has been issued on 7.12.2011 and the same was received on 8.3.2011 and certified copy of the impugned order was not received from the Applicant till 27.1.2011. The relevant portion of the Memo of Appeal is as under:

“That the impugned tariff order passed by the Hon’ble Bihar Electricity Regulatory Commission on 06.12.2010. The certified copies in original was issued only on 07.12.2011 and was received on 08.03.2011 thereafter the present appeal was filed

That the Appellant further declares that for filing an Appeal before the Hon’ble APTEL, the certified copy of the Respondent No.1, was not received by Appellant till 27.01.2011. Hence there is a delay of 96 days (days after time limit of 45 days) from the date of order. The application for condonation of delay is being filed with the appeal”.

5. It is clear from perusal that the statement in Appeal Memorandum is quite contra to the statement in the application to condone the delay.
6. Admittedly, the Appellant/Applicant was a party to the proceedings before the Commission for fixing the Retail Supply Tariff. So the order which had been passed by the Commission on 6.12.2010, must have been placed in the Website immediately thereafter and that date has to be reckoned for counting the days of limitation namely 45 days in filing the Appeal.
7. In the oral submissions made by the Senior Counsel for the Appellant, he submits that the certified copy was received on 7.3.2011 and Appeal was filed on 29.7.2011. This is not in consonance with statement of the applicant in condonation delay Petition and the Appeal Memorandum. So, the Applicant is not sure about the date on which the order was communicated.
8. Even assuming that the date of communication is the date of receipt of certified copy i.e. 7.3.2011, there is no proper explanation for the delay of 96 days in filing the Appeal by reckoning the delay period calculating from 7.3.2011. The Applicant simply stated in the Application that there is a procedural delay. This delay has not been properly explained with clear particulars.
9. Further it is noticed that when the Appeal was filed on 29.7.2011, the Registry, after perusal of the papers issued a 'Defect in filing' letter on 13.9.2011 asking the learned Counsel to cure the defects

within seven days. The learned Counsel for the Applicant has cured the defects on 22.1.2012 and presented the papers only after lapse of four months. Admittedly, there is no IA for condonation of delay in representation of the papers after curing the defects.

10. The above facts would indicate that the Applicant has been consistently showing the lack of diligence in prosecuting the matter. Further, the Retail tariff order had been passed by the Bihar State Commission on 6.12.2010 in respect of the tariff period for the Financial Year 2010-11. Now, the said period is over. It is noticed that the Retail Supply Tariff has been fixed on 1.6.2011 for the next year also i.e. for the Financial Year 2011-12. As such, there is inordinate delay caused by the Applicant/Appellant not only in filing the Appeal but also in presenting the papers by way of representation i.e. after nearly four months, even without any application to condone the delay in representation.
11. Hence, the prayer to condone the delay is rejected. Consequently, the Appeal is also dismissed.

**(Rakesh Nath)
Technical Member**

**(Justice M. Karpaga Vinayagam)
Chairperson**

Dated: 06 February, 2012

Reportable/Not Reportable