

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

I.A. No. 177 of 2013

Dated: 17th July,2013

**Present : HON'BLE MR. JUSTICE M KARPAGA VINAYAGAM,
CHAIRPERSON
HON'BLE MR. RAKESH NATH, TECHNICAL MEMBER**

In the Matter of:

**Gujarat Energy Transmission Corporation Limited
Sardar Patel, Vidyut Bhavan Race Course,
Vadodara-390007
Gujarat**

...Applicant/Petitioner

Versus

- 1. Gujarat Electricity Regulatory Commission
First Floor, Neptune Tower,
Opposite Nehru Bridge,
Ashram Road,
Ahmedabad-380009**
- 2. Gujarat Urja Vikas Nigam Limited
Sardar Patel, Vidyut Bhavan Race Course,
Vadodara-390007
Gujarat**
- 3. Gondal Chamber of Commerce and Industry
Udhyog Bharti, Udhyog Bharti Chowk,
Gondal-360311**

...Respondent(s)

Learned Counsel for the Applicant/Appellant :

Mr.M.G.Ramachandran.
Ms. Swagatika Sahoo
Mr. Anand K.Ganesan

Learned Counsel for the Respondent(s): -

ORDER

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

This is an Application to condone the delay of 353 days in filing the Appeal as against the impugned order dated 7.4.2012 passed by the Gujarat State Commission.

We have heard the learned Counsel for the Applicant/Appellant.

The short facts are as follows.

- i) The Applicant/Appellant is a transmission company. The learned Counsel filed the petition before the Gujarat State Commission for true-up of ARR for the financial year 2010-11 and determination of tariff for the financial year 2012-13.
- ii) The State Commission passed the impugned order on 07.4.2012 in the said petition.
- iii) Thereupon, the Applicant/Appellant filed a review petition before the State Commission.

- iv) The said review petition was ultimately withdrawn by the Applicant/Appellant with a liberty to file a fresh review petition.
- v) Accordingly, the Applicant/Appellant filed a fresh review petition. In the review petition, the State Commission heard both the parties. Ultimately, the State Commission dismissed the review petition on 3.4.2013.
- vi) Thereupon, the Applicant/Appellant filed an Appeal on 10.5.2013 as against the impugned order dated 7.4.2012 along with an application to condone the delay of 353 days in filing the above Appeal.
- vii) The explanation offered by the Applicant/Appellant in brief is as follows:

“ The impugned order was passed on 7.4.2012 in the petition filed by the Applicant/Appellant. In August 2012 the Applicant/Appellant found out some computational errors in the impugned order. Therefore, the Applicant/Appellant filed a review petition on 21.8.2012. When the petition was heard by the State Commission, the learned Counsel for the Applicant/Appellant on noticing certain mistakes in the review petition sought permission from the State Commission to withdraw the petition with a liberty to file a fresh petition. Accordingly, the permission was granted and the said application was dismissed on 30.10.2012 with the said liberty. Thereupon, the Applicant filed revised petition on 23.11.2012. The hearing was held by the State Commission on 05.2.2013. Pursuant to the hearing, the State Commission by the order dated

3.4.2013 dismissed the said review petition mainly on the reason that the long delay in filing the review petition was not properly explained. Then, the Appeal was drafted by the learned Counsel for the Applicant/Appellant and after finalization, the Appeal was filed on 10.5.2013. Thus, there is a delay of 353 days, which is due to bonafide reasons.”

2. We have carefully considered the submissions made by the learned Counsel for the Applicant/Appellant and also gone through the Application for condonation of delay wherein the explanation has been referred to.

3. At the outset, it shall be stated that after the impugned order was passed on 7.4.2012, this Appeal has been filed after a delay of nearly one year. According to the Applicant/Appellant, they found out some computational errors in the impugned order and filed a review petition on 21.8.2012 that is about after 4 months delay.

4. Even when the review petition was taken up for hearing, the learned Counsel for the Applicant/Appellant himself admitted that the petition contains some mistakes which have to be rectified. Therefore, the Application was sought to be withdrawn with a liberty to file a fresh review petition. Accordingly, the order was passed by the State Commission on 30.10.2012 permitting the withdrawal of the Review Petition with a liberty to file the fresh Review Petition. Then, after a month, the Applicant/Appellant filed a revised review petition on 23.11.2012.

5. The State Commission, ultimately after hearing both the parties dismissed the review petition on 03.4.2013. As indicated above, even though the order was passed on 07.4.2012, the petition for review had

been filed only on 21.8.2012, i.e. after a delay of 4 months on the ground that there was an error in computation of the provision of tax. This period of 4 months has not been explained.

6. Thereafter, the said petition was withdrawn with a liberty to file a fresh petition admitting that there were some mistakes in the review petition. Accordingly, the petition was dismissed on 30.10.2012 with a liberty to file a fresh petition. This shows that the Applicant/Appellant was not careful enough to give correct particulars to his Counsel to draft the review petition without any mistakes. Ultimately, the learned Counsel for the Applicant/Appellant himself found out those mistakes and withdrew the petition on 30.10.2012. Thereupon, after a month that is on 23.11.2012, the Applicant filed a revised review petition.

7. Even according to the order of the State Commission in the review petition passed on 30.10.2012, the total delay in filing the said review petition before the State Commission was 228 days. The State Commission, while rejecting the fresh review petition has given elaborate reasons in the review order that the delay of 228 days in filing the review petition before the State Commission was not satisfactorily explained.

8. After dismissal of the review petition, this Appeal has been filed along with an Application to condone the delay of 353 days giving the very same explanation for condoning the said delay.

9. The events referred to above paragraphs would indicate that the Applicant/Appellant adopted a casual approach and did not take effective steps to file a review petition immediately thereafter with correct particulars or to file an Appeal as against the impugned order dated 07.4.2012 before

this Tribunal in time. Thus, lack of diligence on the part of the Applicant/Appellant is apparent. The reasons given by the State Commission even for rejecting the delay of 228 days in filing the review petition are, in our view, perfectly justified. The very same reasonings would apply to the present Application for condoning the delay of 353 days as well.

10. Hence, this Application is dismissed. Consequently, the Appeal is also rejected.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated:17th July, 2013

✓ ~~REPORTABLE/NON-REPORTABLE~~