

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

I.A. No.199 of 2012
IN
D.F.R No.995 of 2012

Dated:29th May, 2012

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

In the Matter of:

**M/s. Sai Renewable Power Pvt Ltd.
Agri Gold House,
#40-6-3, 4th Floor,
Hotel Murali Fourtune Lane,
Labbipet, M.G. Road,
Vijayawada-520 010**

...Appellant/Applicant

Versus

- 1. Andhra Pradesh Electricity Regulatory Commission
11-4-660, 4th Floor,
SingareniBhavan, Red Hills,
Hyderabad-500 004**
- 2. Special Chief Secretary to the Government
The State of Andhra Pradesh
Energy Department
D-Block, Floor-2, Room No.359,
Secretariat,
Hyderabad-500 022**

3. **The Chairman and Managing Director
Transmission Corporation of AP Limited
6th Floor, VidyutSoudha,
Somajiguda
Hyderabad**
4. **Eastern Power Distribution Company of AP Ltd
Sai Shakti Opp. Saraswati Park
Daba Gardens,
Vishakhapatnam-530 013**
5. **Central Power Distribution Company of AP Ltd
11-5-423/1/A, First Floor,
Singareni Collieries Bhavan,
Lakdi-Ka-Pul,
Hyderabad-500 063**
6. **Non Conventional Energy Development Corporation of
A.P. Ltd (NEDCAP)
5/8-207/2, Paigah Complex,
Nampally,
Hyderabad -500 001**

...Respondent(s)

Counsel for the Appellant(s) : Mr. C. Hanumantha Rao

Counsel for the Respondent(s): -

ORDER

PER HON'BLE MR. JUSTICE M. KARPAGAVINAYAGAM, CHAIRPERSON

1. This is an application to condone the delay of 208 days in filing the Appeal as against the impugned order dated 12.9.2011.
2. The only explanation given by the Applicant in the application for condonation of delay is that the Applicant/Appellant came to know of the order dated 12.9.2011 passed by the Andhra Pradesh Commission only on 18.5.2012 and therefore, the Applicant filed this Appeal with delay.
3. On going through the application as well as other records, it is clear that the explanation given for the huge delay of 208 days is not satisfactory.
4. There is no dispute in the fact that the Applicant/Appellant was one of the parties who participated in the proceedings which resulted in the impugned order dated 12.9.2011.
5. During the proceedings, on behalf of the Applicant, it was submitted before the State Commission that the tariff should be fixed in consonance with the MNES guidelines which are in the nature of the directions of the Andhra Pradesh State

Commission since the Commission has adopted the said guidelines in exchange of 3rd party sales and which was also statutorily communicated to the parties. When the Applicant/Appellant participated in the proceedings and made a representation on its behalf with reference to fixing of tariff, we are not able to accept the explanation that even though the State Commission has passed the impugned order determining the tariff on 12.9.2011, they came to know about the same only on 18.5.2012.

6. This case has got a chequered history. The State Commission passed the order on 6.3.2000 fixing the norms and parameters for sale of power from NCE sources. Thereafter, the State Commission by the order dated 20.6.2001, prohibited 3rd party sales and directed all NCE developers to supply power only to 3rd Respondent. Thereafter, on 20.3.2004, the State Commission passed another order reducing the tariff payable to the NCE developers.
7. Then certain NCE developers filed the Writ Petition before the High Court of Andhra Pradesh which in turn directed them to approach the State Commission to seek a review. Accordingly the review of the petition was moved. However,

the State Commission dismissed the review petition by the order dated 5.7.2004.

8. Again, the NCE developers challenged the Review Order before the Andhra Pradesh High Court. The Andhra Pradesh High Court directed the NCE developers to approach this Tribunal.
9. Accordingly, the NCE developers filed the Appeals before this Tribunal. On 2.6.2006, this Tribunal set-aside the orders of the State Commission. Against this judgment, the 3rd Respondent filed a Civil Appeal before the Hon'ble Supreme Court. In the meantime, the State Commission passed the order dated 31.3.2009 fixing the tariff for NCE developers for the period from 2009 to 2014.
10. Against this order, Review Petitions were filed before the State Commission. In the meantime, on 8.7.2010, the Hon'ble Supreme Court passed the order setting aside the judgment of this Tribunal dated 2.6.2006 and directed the State Commission to hear the Non-Conventional Energy Generators afresh and determine the tariff.
11. In pursuance of the said remand, the State Commission took-up the matter and issued notices to all NCE developers including the Applicant. On receipt of the same, the Applicant

along with other developers appeared before the Commission and insisted that the tariff should be fixed in consonance with the MNES guidelines with all norms and parameters.

12. Only after hearing the parties and considering the submissions made by the NCE developers including the Appellant the impugned order had been passed on 12.9.2011 by the State Commission.
13. As against this order, the other developers have filed the Appeals before this Tribunal in time and these Appeals are being heard by this Tribunal periodically.
14. As a matter of fact, as against the interim order passed by this Tribunal in those Appeals, the distribution licensees filed an Appeal before the Hon'ble Supreme Court which in turn, gave same directions regarding payment of dues of the generators as per the interim orders of the Tribunal and requested this Tribunal to dispose of the Appeals as expeditiously as possible.
15. In pursuance of those directions, those Appeals namely Appeal No.166/2011,150/2011,168/2011, 172/2011, 173/2011 and 9/2012 etc. are being heard by Special Bench of this Tribunal.

16. Since the Learned Counsel for the parties in those Appeals have more or less completed their arguments, those matters are about to be disposed of.
17. Under those circumstances we do not incline to condone the delay in filing the Appeal in the absence of valid explanation, more so, when the entertainment of the Appeal would further delay the progress of the other Appeals.
18. Hence the Petition to condone the delay is dismissed. Consequently the Appeal is also rejected.

(RakeshNath)
Technical Member

(Justice M. KarpagaVinayagam)
Chairperson

Dated:29th May, 2012

✓ ~~REPORTABLE/NON-REPORTABLE~~