

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

**IA No. 131 of 2013 and IA No. 132 of 2013
in DFR No. 2245 of 2012**

Dated : 12th July, 2013

**Present: Hon'ble Mr. Justice M. KarpagaVinayagam, Chairperson
Hon'ble Mr. RakeshNath, Technical Member**

In the matter of:

- 1. Karnataka Power Transmission Corporation ...Appellant(s)
Ltd.
KaveriBhavan, Bangalore – 560 009**
- 2. State Load Dispatch Center
No.28, Race Course Road
Bangalore – 560 009**

Versus

- 1. M/s. Ugar Sugar Works Ltd. ...Respondent(s)
Mahaveernagar, Sangli-416416**
- 2. Karnataka Electricity Regulatory Commission
6th & 7th Floor, Mahalaxmi Chambers
No. 9/2, M.G. Road
Bangalore – 560 091**

Counsel for the Appellant(s): Ms. SumanaNaganand
Counsel for the Respondent(s): Mr. Prabhuling K. Navadgi

ORDER

Karnataka Power Transmission Corporation Limited and Another have filed the Appeal as against the main order dated 29.3.2012 and clarificatory order dated 21.6.2012. This Appeal has been filed only on 29.11.2012. Since there is a delay of 114 days in filing the above Appeal, the Applicants/Appellants filed an application in IA no. 132 of 2013 praying for the condonation of said delay of 114 days.

2. On scrutiny of Appeal as well as the Application of condonation of delay, Registry found some defects and directed the Applicant to cure the defects and refile within the time frame. Instead of refiling the said Appeal within the time frame, after curing the defects, the Applicants took some time to cure those defects and refiled only on 15.4.2013. Even in refiling there was a delay of 84 days. Hence, the Applicants filed another Application no. 131 of 2013 seeking for the condonation of delay of 84 days in refiling the Appeal.

3. In these Applications we issued notice to the Respondents. The Respondents filed reply stoutly opposing the Applications for condonation of delay mainly on the ground that the delay was inordinate and the same has not been explained satisfactorily and

since there is no sufficient cause, the Application to condone the delay is liable to be dismissed.

4. We have carefully considered the submissions of both the parties and gone through the Applications for condonation of delay in filing the Appeal and refiling the Appeal. The explanation given by the Applicant in IA No. 132 of 2013 praying for the condonation of 114 days delay in filing the Appeal is given as follows:

5. "The main order was passed on 29.3.2012 in OP no. 4 of 2011 directing the Applicants/Appellants to make payment for the electricity pumped by the Respondents into the State grid. Seeking clarification over the mode of the payment, the Applicants filed a Review on 28.5.2012 before the State Commission. As requested by the Applicants, the State Commission by the order

dated 21.6.2012 clarified by modifying the order dated 29.3.2012 to the effect that the Applicants would make payment on behalf of ESCOMs to whom the power was allocated and later recover the amount from the said ESCOMs.

6. As against these orders dated 29.3.2012 and 21.6.2012, the present Appeal has been filed on 29.11.2012. There is a delay of 114 days in filing the Appeal against both the orders due to the fact that the Applicants received certified copy of the impugned order only on 3.7.2012 and thereafter law officer was consulted and the matter was referred to legal consultant for opinion and thereafter various discussions were held with the concerned officers and the law department of the Company as well as the finance department gave opinion, and ultimately the decision was taken to file the

Appeal before the Tribunal only in the last week of August 2012 and thereafter the papers were sent to the Counsel who prepared the draft for the Appeal and in that process some delay was caused for finalization of the draft and thereafter the Appeal was filed on 29.11.2012. Since the delay was purely administrative, the delay may be condoned.”

7. We are unable to accept the above explanation especially when the Applicants instead of filing the Appeal as against the main order dated 29.3.2012 before the Tribunal challenging the said order or filing the Review challenging the said order before the Commission itself, have approached the Commission by filing the Review only for seeking clarification of the main order dated 29.3.2012 regarding the mode of payment without assailing the main order. The State

Commission passed the order on 21.6.2012 modified the main order as prayed for.

8. As such, the grievance of the Applicants/Appellants before the Commission is completely settled.

9. In the light of the fact that the Appellant, Distribution Company after accepting the said order filed a petition only for a clarification before the State Commission without assailing the main order, the Applicants would not claim any grievance now. This means the Applicants originally decided not to file the Appeal assailing the main order but only sought for clarification with regard to the mode of payment. Accordingly, the Applicants were directed by the State Commission in the Review order to make the payment and collect the same from the respective ESCOMs. Therefore, the

present decision to file an Appeal as against the main order is contrary to the earlier stand taken by them to file a Review before the Commission only for clarification. This cannot be said to be bonafide.

10. That apart, the clarification order was issued as early as on 21.6.2012 but the Appeal has been filed only on 29.11.2012. The period between the date of clarificatory order dated 21.6.2012 and the date of the filing the Appeal on 29.11.2012 has not been properly explained in the Application to condone the delay. Since the Application to condone the delay does not have details to show sufficient cause and administrative delay cannot be said to be sufficient cause, we find no reason to condone the delay of 114 days in filing this Appeal. Therefore, we deem it fit to dismiss the Application to condone the delay in filing the Appeal.

11. That apart, it is noticed that the Applicant has caused further delay in refiling the Appeal and filed separate Application IA no. 131 of 2013 praying for the condonation of delay of 84 days in refiling the Appeal.

12. In this Application, the Applicant has merely said that it took some time to cure the defects and as such it was the administrative delay. This is also not a satisfactory explanation. That apart, there is no necessity to go into the merits of the reasons for delay in refiling in view of the fact,as we have decided to dismiss the main Application to condone the delay in filing the Appeal for the reasons mentioned above. Hence, this Application namely IA no.131 of 2013 is also dismissed.

13. In the result, both the Applications IA No. 132 of 2013 and IA No. 131 of 2013 are dismissed. Consequently, the Appeal is rejected.

14. Pronounced in the open court on this 12th day of July, 2013.

(RakeshNath)
Technical Member

(Justice M. KarpagaVinayagam)
Chairperson

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REPORTABLE/NONREPORTABLE
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