

APPELLATE TRIBUNAL FOR ELECTRICITY

(Appellate Jurisdiction)

IA No.90 of 2012 IN

DFR No.1652 of 2010

AND

IA No.91 OF 2012 IN

DFR No.1661 OF 2010

Dated: 26th March, 2012

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

In the matter of

Mula Pravara Electric Co-Operative Society Ltd

Shrirampur, Distt-Ahmednagar

Maharashtra-413 709

.....Appellant/Applicant

Versus

- 1. Maharashtra Electricity Regulatory Commission,
13th Floor, Centre No.1, World Trade Centre,
Cuffe Parade, Mumabi-400 005**
- 2. Government of Maharashtra
Through the Principal Secretary
Industries, Energy & Labour Deptt
Govt of Maharashtra Mantralaya,
Mumbai-32**
- 3. Maharashtra State Electricity Distribution Company Limited,
Prakashgad, Bandra (East),
Mumbai-400 051**

.....Respondent(s)

**Counsel for Appellant(s) : Mr. Ramji Srinivasa, Sr Adv.
Mr. Hasan Murtaza**

Counsel for Respondent(s) :

ORDER

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

1. IA No.91 of 2012 and IA No. 90 of 2012 are being disposed of through this common order as the issue in both these matters involving two Appeals, is the same.
2. In both these Appeals, these Applications have been filed by the Appellant/Applicant for condoning the delay of 463 days in representing and refiling these two Appeals in the Registry.
3. IA No.91 of 2010 is relating to the impugned order dated 8.9.2010. This order was passed by the Maharashtra State Commission in the Petition filed by the Maharashtra State Electricity Distribution Company for truing-up for the Financial Year 2006-07, Annual Performance Review 2007-08 and 2008-09 and for Tariff Determination for the year 2009-10. As against this order dated 8.9.2010, the Appeal has been filed by the Applicant/Appellant before this Tribunal on 25.10.2010.

4. On 12.11.2010, the Registry of this Tribunal issued a defect notice pointing out certain defects and asking the Learned Counsel for Appellant to rectify the said defects within 7 days. This Notice was received by the Applicant's Counsel on 16.11.2010 but the defects have not been rectified in time. On the other hand, in December, 2011, i.e. after nearly one year later, the Applicant/Appellant gave an information in respect of these two Appeals returned with defects notice to their present Counsel.
5. Thereafter, the change of Vakalatnama was obtained from erstwhile Counsel on 5.1.2012 and the Appeal papers were sought to be returned to the Appellant on 21.2.2012.
6. However, the erstwhile Counsel informed that the Appeal papers were missing. On 22.2.2012, the present Counsel filed a Vakalatnama in Registry and collected all the copies of the Appeal papers from the Registry. Ultimately after curing the defects as pointed out by the Registry the Appellant had refiled the Appeal on 29.2.2012. Thus, there is a delay of 463 days in refiling the Appeal.
7. IA No.90 of 2012 relates to impugned order dated 12.9.2010 passed by the Maharashtra State Commission. This order had been passed on the application filed by the MSEDCL for trueing-up for the year 2008-09, APR 2009-10 and ARR for the year 2010-11. As against this order dated 12.9.2010, the

Appellant/Applicant filed this Appeal on 21.10.2010 through their erstwhile advocate.

8. On 12.11.2010, the defects notice were issued by the Registry asking the Applicant to rectify the defects and file it within 7 days. This was received by the erstwhile Counsel on 16.11.2010. However, the defects have not been rectified and in time by the Applicant. But only, in December, 2011 after nearly one year, the Applicant/Appellant gave an information to the present counsel in respect of these two Appeals returned with defect notice. Then change of Vakalatnama was obtained from erstwhile Counsel on 5.1.2012. Since the papers were missing from the erstwhile Advocate's office, the Applicant obtained the copies of the Appeal from the Registry and handed over the same to the present Counsel on 24.2.2012. Thereafter, this Appeal after curing the defects was refilled on 29.2.2012. That is how there was a delay of 463 days in representing and refiling the Appeal.
9. In both these applications, the only reason given by the Applicant for the delay is that the applicant had engaged the Counsel in prosecuting one another Appeal in Appeal No.39 of 2011, as against the order passed by the State Commission dated 27.1.2011 rejecting the renewal or grant of distribution license to the Applicant and the said Appeal was disposed of only on 16.10.2011 and therefore, in December, 2011, the

Applicant gave information belatedly to the present counsel in respect of these two Appeals returned with defect notice.

10. This reason for the huge delay of 463 days in refiling the Appeals is not only unsatisfactory but also it shows the lack of interest and diligence on the part of the Applicant in prosecuting these Appeals in time.
11. The other Appeal 39 of 2011 had has been filed on 9.3.2011 i.e. after the filing of the present Appeal. If that is so, there was no reason as to why the applicant did not take interest in ensuring that these Appeals are refiled in time when the other Appeal in Appeal No.39 of 2011 which is filed on 9.3.2011 was diligently prosecuted which resulted in the judgement dated 16.10.2011.
12. Admittedly, in both the Applications, the Applicant would state that even though the defect notice were received by the Applicant on 16.11.2010, he intimated to the present Counsel only in December, 2011 i.e. after one year about these two Appeals returned with defect notice before the Registry. There was no reason as to why the Applicant kept quiet between 16.1.2010 on the date on which he received the defects notice and December, 2011 on the date on which he informed the present counsel in respect of these two Appeals already returned.

13. The Learned Senior Counsel appearing for the Applicant has cited these authorities to show that liberal approach has to be adopted by the Courts while condoning the delay:

- (a) (1977) 4 SCC Mahant Bikram Dass Chela V/s Financial Commissioner, Revenue, Punjab & Ors
- (b) (2008) 8 SCC Perumon Bhagvathy Devasom Perinadu Village V/S Bhargaviamma (Dead) by LRs and Ors.
- (c) (1996) 3 SCC State Of Haryana Vs Chandra Mani and Others
- (d) (1998) 7 SCC N Balakrishnan V M. Krishnamurthy
- (e) (1978) 1 SCC Indian Statistical Institute Vs M. Associated Builders and Others
- (f) (2010) 6 SCC Improvement Trust, Ludhiana Vs Ujagar Singh and Others

14. There is no dispute in the proposition. All these decisions show that the delay was condoned by the Courts on the basis of the fact that sufficient details were given showing sufficient cause to condone the delay and accordingly the delay was condoned. But those facts would not apply to the present facts of the case especially when there is no explanation with regard to the delay for the period between 16.11.2010 and December, 2011. As a matter of fact in one of the decisions of the Hon'ble Supreme Court the applicant reported to consumer forum about the negligence as against his Counsel who was directed to pay some

compensation to the Applicant. Here in this case, no such complaint was lodged against erstwhile Counsel.

15. Each case has to be weighed from its facts and circumstances in which the party acts and behaves. From the conduct and attitude of the Applicant the Court can find out whether the Applicant was diligent or not.
16. In the present case, as indicated above, the Applicant's conduct would not indicate that Applicant was a responsible litigant who kept quiet for a long period. When there is a continued negligence and the lack of diligence, apparent on the part of the Applicant, then this Tribunal cannot condone the huge delay so as to affect the interest of the opposite party.
17. In view of the above, we do not find any valid reasons to condone the delay.
18. Accordingly, these applications for delay are dismissed. Consequently, the Appeals are also rejected.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated:26th March, 2012

REPORTABLE/NON-REPORTABLE