

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

IA No. 420 of 2014 in
DFR No. 268 of 2013
&
IA No. 421 of 2014 in
DFR No. 269 of 2013

Dated : 30th November, 2014

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. T. Munikrishnaiah, Technical Member**

In the matter of

M/s Gangadhar Narasingdas Agarwal

**...Applicant/
Appellant(s)**

Versus

**Bangalore Electricity Supply Co. Ltd.
(BESCOM) & Ors.**

...Respondent(s)

IA No. 421 of 2014 in
DFR No. 269 of 2013

In the matter of

M/s Ferromar Shipping Pvt. Ltd.

**...Applicant/
Appellant(s)**

Versus

**Bangalore Electricity Supply Co. Ltd.
(BESCOM) & Ors.**

...Respondent(s)

Counsel for the Appellant(s): Mr. R. G. Hegde

Counsel for the Respondent(s): Mr. Anand K. Ganesan
Ms. Mandakini Ghosh

ORDER

PER HON'BLE MR. MUNIKRISHNAIAH, TECHNICAL MEMBER

These are the two Applications praying for condonation of delay of 538 days in re-filing the two Appeals. Though the Appeals were filed in time there is considerable delay in re-filing the Appeals. Hence, the Applicants filed these Applications for condonation of delay in re-filing the Appeals by offering explanation giving various reasons to condone the delay.

2. These Applications are stoutly opposed by the Respondent contending that the Applicants were not only negligent from the beginning but also did not pursue the process of getting the Appeals numbered after rectification of defects in time.

3. In view of the contentions urged by the learned Counsel for the parties, we have to consider the question ***whether the delay of 538 days could be condoned on the basis of the explanation offered by the Applicants.***
4. The learned Counsel for the Applicants mainly relying upon the Judgment of the Hon'ble Supreme Court in "***OPG Power Generation P. Ltd. Vs. T. Nadu Elect. Board & Ors (Civil Appeal No. 7582 of 2013)***" submitted that the Limitation Act would not apply for the condonation of delay in re-filing, and therefore, the delay of 538 days could be condoned especially when the Applicants offered the plausible explanation for the said delay. The relevant portions of the Judgment of the Hon'ble Supreme Court is as follows:

"If the provision of the aforesaid Act has been complied with and the Appeals have been filed well within the time to be counted from the date of the impugned Order minus the time taken in obtaining the copy of the order etc. which is permissible under the Act, the appeals cannot be dismissed on the ground of delay on the plea that there was delay in curing the defects in re-filing the appeal, although, that may weigh

with the concerned Court while considering whether the same amounts to latches. Hence, the said delay although may amount to latches in the opinion of the Court for violating administrative order and delaying the disposal of the matter, the same may not have the force of being construed that it is beyond the period of limitation.”

5. On the basis of this observation made by the Hon'ble Supreme Court, it is strenuously contended by the learned Counsel for the Applicants that when the Appeals have been filed well within the time i.e., before the expiry of 45 days, the period of limitation, these Appeals cannot be dismissed on the ground of delay on the plea that the delay in curing the defects in re-filing the Appeals could not show sufficient cause.
6. However, the learned Counsel for the Respondent with equal force submitted that though the Limitation Act would not apply to the condonation of delay in re-filing as held by the Hon'ble Supreme Court when there are latches on the part of the Applicants by not rectifying the defects in time and re-filing the same as early as possible, the delay without acceptable

explanation cannot be condoned and consequently, the Appeals are liable to be rejected.

7. On going through the Judgment of Hon'ble Supreme Court as well as the relevant provisions of the Acts and Rules and also taking note of the argument and the affidavit filed by the Applicants, we feel that the enormous delay of 538 days in re-filing the Appeals without offering proper explanation showing laches on the part of the Applicant, cannot be condoned.

The reasons are as follows:

- a. The Applicants after the receipt of the defects notice from the Registry of this Tribunal have simply requested Registry for extension of time of two weeks and kept quiet thereafter without verifying about the result of their request.
- b. The Applicants should have approached the Registry after the period of 21 days, the maximum time which can be extended to pursue the matter after verification

of any extension being given to them for re-filing the Appeals.

- c. Now, the Applicants after a long period of 538 days approached this Tribunal seeking for condonation of delay in re-filing the Appeals without giving any explanation whatsoever, as to why they kept quite all along.
- d. This clearly shows that the Applicants have not taken proper initiation for extension of time and they go to the extent of blaming the Registry for not receiving any information with regard to the extension from the Registry of this Tribunal.
- e. This clearly shows gross negligence on the part of the Applicants in not taking proper steps for re-filing the Appeals in time.

- f. The Judgment of the Hon'ble Supreme Court cited by the Applicants would only hold that the Limitation Act would not apply for the delay in re-filing. There cannot be any dispute with reference to this legal aspect. But the point is there is no explanation at all for the enormous delay of 538 days caused in re-filing and this conduct of the Applicants reflects latches on their part , which cannot be condoned.
 - g. Though the learned Counsel for the Applicants trying to submit that there is default on the part of the Registry in not informing the Applicants for extension of time, there is no reason as to why the Applicants kept quiet for about more than 500 days even though the Applicants have sought only two weeks extension of time.
7. Hence, we feel that the explanation offered by the Applicants is not only not satisfactory but also reveals latches on the part of

the Applicants in not prosecuting the matter diligently. This would indicate that the Applicants were not so serious in quickening the process of getting the Appeals numbered in time in order to prosecute the Appeals. Thus, there is lack of interest as well.

8. In view of the above, the enormous delay of 538 days in re-filing these Appeals cannot be condoned. Accordingly, the Applications are dismissed. Consequently, the Appeals are also rejected. There shall be no order as to costs.

(T. Munikrishnaiah)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated: 30th November, 2014

REPORTABLE/~~NON-REPORTABLE~~

