

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

I.A. No. 298 of 2014

in

D.F.R. No. 1637 of 2014

Dated : 13th November, 2014

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

In the matter of :

**Andhra Pradesh State Load Dispatch Centre ... Applicant/
Appellant(s)**

Versus

1. Andhra Pradesh Electricity Regulatory Commission

4th & 5th Floors,
11-4-660, Singareni Bhavan,
Red Hills, Hyderabad – 500 004

2. M/s Roshni Powertech Private Limited

Registered Office No. 1071, Road No. 44,
Jubilee Hills, Hyderabad - 500016

...Respondent(s)

Counsel for the Applicant/(s)/Appellant(s) Ms. Swapna Seshadri
Mr. Anand K. Ganesan
Mr. P. Shiva Rao

Counsel for the Respondent(s): Mr. Sridhar Prabhu
Mr. Anantha Narayana for R.2

JUDGMENT

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

Andhra Pradesh State Load Dispatch Center is the Applicant/Appellant herein.

1. The Applicant/Appellant has filed this Appeal as against the Impugned Order dated 12.08.2013 passed by the Andhra Pradesh State Commission directing the Applicant/Appellant to grant the accreditation to M/s. Roshni Powertech Private Limited under the Renewable Energy Certificate (REC) mechanism evolved by the Central Commission under the CERC (Terms and conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 (for short "Central Commission's Regulations"). Since there was a delay of 321 days in filing the Appeal as against the impugned Order dated 12.08.2013, the Applicant along with the Appeal has filed this Application to condone the said delay in filing the Appeal.

2. This Application is stoutly opposed by the 2nd Respondent.
3. Let us first refer to the explanation offered by the Applicant both in the Application as well as in the Rejoinder, which is as follows:

“a) The Applicant/Appellant is a Nodal Agency. M/s Roshni Powertech Private Limited – 2nd Respondent had filed a Petition before the State Commission claiming for the accreditation under the Renewable Energy Certificate (REC) mechanism for receiving the Renewable Energy Certificate. The State Commission allowed the Petition holding that Respondent No.2 is entitled to receive the accreditation under the Renewable Energy Certificate (REC) mechanism by the impugned Order dated 12.08.2013. This Order was communicated to the Applicant on 23.08.2013.

b) The Applicant, which is the Statutory Body and the Nodal Agency, after receipt of the impugned Order on 23.08.2013, was not clear as to how the Order would be implemented in view of the Central Commission’s Regulations Amendment, which was introduced on 10.07.2013. The Applicant/Appellant came to know that in view of the above amendment, the Order passed

on 12.08.2013 was not implementable. However, by way of abundant caution, the Applicant/Appellant has sent a letter on 09.10.2013 to the distribution Company to clarify whether the Renewable Energy Power, which was purchased from the Respondent No.2 was being considered towards fulfillment of Renewable Purchase Obligation (RPO) of the distribution companies. To further resolve the issue, the Applicant/Appellant conducted a meeting with the distribution companies. During the negotiations, the distribution companies have not considered the request of Renewable Energy Certificate benefits to the generators. Thereupon, the Applicant/Appellant approached the National Load Dispatch Centre through its letter dated 06.12.2013 requesting to issue REC Certificate in terms of the impugned Order as a special dispensation. But, the National Load Dispatch Centre by its reply, dated 26.12.2013, clarified that since the period in question has already been expired, no REC Certificate would be given to Respondent No.2.

c) Under those circumstances, the Applicant/Appellant thought that the impugned Order, dated 12.08.2013, was not implementable and there would be no

implication of not challenging the same. Though the Applicant/Appellant *bona fide* sought to implement the impugned Order, in view of the stand taken by the National Load Despatch Centre and distribution companies, the Applicant thought that the Order was not implementable and need not be challenged.

d) At this stage, several other generators started approaching the State Commission with similar Petitions on 10.07.2013, 05.08.2013 and 05.11.2013 seeking for the similar relief, by relying upon the impugned Order passed by the State Commission. In those Applications, the State Commission issued a notice on 27.01.2014 and posted the matters for hearing on 19.04.2014. In view of the said development, the Applicant/Appellant sought the opinion of the internal Legal Advisor, who in turn advised by the letter, dated 03.05.2014, to challenge the impugned Order dated 12.08.2013 before this Tribunal.

e) Accordingly, the Advocate in Delhi was contacted and the Appeal was drafted and after necessary signatures have been obtained from the

Applicant/Appellant on 20.06.2014, this Appeal has been filed on 01.07.2014 before this Tribunal. That was how the delay of 321 days was caused. This delay is *bona fide* and has occurred due to the wrong understanding of the Applicant over the aspects involved in the matter. Therefore, this delay may be condoned.”

4. This Application is stoutly opposed by the Respondent by filing the reply.
5. The crux of the objection raised by the Respondent No.2 is as follows:
 - (i) Even according to the Applicant's own admission, the Applicant/Appellant approached the National Load Dispatch Center for implementation of the impugned Order. However, the National Load Dispatch Center wrote a letter to the Appellant, dated 26.12.2013, stating that no certificate can be issued as per the Central Commission's Regulations. So in view of the above, the Applicant/Appellant decided not to file the Appeal.

(ii) But the Applicant/Appellant has now changed his stand to file the Appeal against the impugned Order merely because some other generators have been approached the State Commission for similar relief on the basis of the impugned Order. This cannot be considered to be sufficient cause. Therefore, the inordinate delay of 321 days may not be condoned as no sufficient cause has been shown to condone the delay.

6. We have carefully considered the submissions of both the parties and also gone through the Application, Reply and Rejoinder.
7. It is true that huge delay of 321 days has been caused in filing the Appeal as against the Impugned Order dated 12.08.2013. As held by the Hon'ble Supreme Court the length of delay is not the criteria to decide the Application to condone the delay but, the Courts are concerned with the question whether the act of the Applicant/Appellant to approach this Tribunal seeking for the condonation of delay is bona fide or not. In that view of the matter, we have to consider whether the delay was caused due to the bona fide reasons.

8. According to the Applicant, the Applicant/Appellant was not clear as to how the Order would be implemented, in view of the amendment introduced in the Central Commission's Regulations. Therefore, the Applicant had sent a letter and conducted a meeting with the distribution companies. In addition to that, the Applicant/Appellant has approached the National Load Dispatch Center through the letter dated 06.12.2013 to consider the issuance of REC Certificate in terms of the impugned Order. But the National Load Dispatch Center by the reply dated 26.12.2013 clarified that since the period in question has already been expired, no REC Certificate could be issued to Respondent No.2. This reply made the Applicant/Appellant to think that the Impugned Order was not implementable as the period is over, and as such, there will be no implication of not challenging the same. Only when the Applicant came to know about several other generators filed similar Petitions after Petitions seeking for the similar relief relying upon the impugned Order through notices received by the Applicant in those Applications, the Applicant sought opinion from the legal Advisor of the Applicant in order to avoid legal complications. Thereafter, opinion was given by the Legal Advisor to file the Appeal against the Impugned Order dated

12.08.2013. Only then, the process of engaging an Advocate in Delhi and drafting of the Appeal had commenced. It is a specific assertion by the Applicant/Appellant that there is no *mala fide* at all in the action of the Applicant/Appellant in not filing the Appeal within the period of limitation. The Applicant/Appellant based on the genuine misunderstanding had failed to challenge the Order dated 12.08.2013 in time.

9. It is also submitted by the Applicant/Appellant that as a Nodal Agency it cannot allow improper Order to stand, especially when several of the generators are seeking to take advantage of the above Order of the State Commission. These details, referred to, by the Applicant/Appellant in his Application as well as in Rejoinder would indicate that the Applicant/Appellant had a misunderstanding of the order and impact originally, but when the legal opinion was obtained after the issuance of notice by the State Commission, Applicant/Appellant decided to file the Appeal before this Tribunal. Therefore, it cannot be said that there was any *mala fide* on the part of the Applicant/Appellant in having decided not to file an Appeal at that stage.
10. It is a well settled position of law that the condonation of delay must be considered by exercising discretion in the liberal manner. Furthermore, the issue raised in this Appeal

is an important issue which, may arise frequently before the State Commission as well as before this Tribunal in the future. Therefore, we deem it appropriate to condone the delay on payment of some costs.

11. Accordingly, the Application is allowed and the delay is condoned subject to the condition that the Applicant/Appellant is directed to pay the cost of Rs. 1,00,000 (Rupees One lakh only) to a charitable organization, namely, "**SAI DEEP DR. RUHI FOUNDATION, A/C NO. 952663443, Address: A -508, SECTOR 19, NOIDA – 201301**" within one week from the date of this Order.
12. After verification of the compliance of this Order, the Registry is directed to number the Appeal and post it for Admission.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated:13th November, 2014

✓ ~~REPORTABLE/NON-REPORTABLE~~