

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

I.A. No.267 of 2013
IN
DFR No.1396 of 2013

Dated: 14th Nov, 2013

Present : HON'BLE MR. JUSTICE M KARPAGA VINAYAGAM,
CHAIRPERSON
HON'BLE MR. V J TALWAR, TECHNICAL MEMBER

In the Matter of:

M/s. Gayatri Sugars Ltd.,
B-2, 2nd Floor, 6-3-1090,
TSR Towers,
Raj Bhavan Road, Somajiguda,
Hyderabad-500 082 (AP)

...Appellant/Applicant

Versus

1. Andhra Pradesh Norther Power Distribution Co. Ltd.,
(APNPDCL)
Opp NIT Petrol Bunk,
Hanamkonda,
Warangal District,PIN-506 001

2. Andhra Pradesh Electricity Commission
4th-5th Floor, Singareni Bhawan,
Red Hills, Hyderabad-500 004

...Respondent(s)

Counsel for the Appellant(s) : Mr. K Datta,
Mr. Angad Mehta

Counsel for the Respondent(s): Mr. P Shiva Rao

ORDER

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

1. This is an Application under Section 14 of the Limitation Act praying for exclusion of the period from 26.9.2012 to 26.6.2013 during which the Writ Petition was pending in the High Court filed by the Applicant/Appellant in computing the period of limitation for filing this Appeal u/s 111 of the Electricity Act, 2003. Alternately, the Applicant has prayed in this Application to condone the delay of 269 days in filing this Appeal in the event of coming to the conclusion that the said period cannot be excluded.
2. We have heard the learned Counsel for both the parties.
3. According to the Applicant/Appellant, the impugned order was passed by the Andhra Pradesh State Commission on 31.8.2012 and challenging the said order, the Applicant/Appellant had bona-fide filed the Writ Petition before the High Court of Andhra Pradesh on 26.9.2012; however, when the Respondent appeared and raised objection that the proper Forum for adjudicating upon the impugned order was the Appellate Tribunal for Electricity New Delhi, the Applicant/Appellant immediately sought permission for withdrawal of the Writ Petition and

accordingly the High Court dismissed the same on 17.6.2013, with the liberty to file the Appeal as against the impugned order before this Tribunal and that thereafter, the Appeal was prepared and the same was filed on 10.7.2013.

4. It is further stated by the learned Counsel for the Applicant/Appellant that if the period from 26.9.2012 to 17.6.2013 i.e. the period during which the Writ Petition was pending, is excluded for computing the period of limitation, the Appeal is well within the time. Alternately, the Applicant/Appellant has prayed for the condonation of delay of 269 days in filing the Appeal.
5. This Application is stoutly opposed by the learned Counsel for the Respondent contending that the period during which the Writ Petition was pending, cannot be excluded u/s 14 of the Limitation Act since Section 14 of the Limitation Act would be applicable only for the Suits and the Applications and not for the Appeals before this Tribunal.
6. It is further contended by the learned Counsel for the Respondent that even the said provision applies only when the party with due diligence prosecuted the same matter in another Court in good faith but this Petition was ultimately withdrawn by the Applicant on its own volition and therefore, the exclusion of the said period is not permissible under any of the provisions of the Limitation Act. For this proposition,

the learned Counsel for the Respondent has cited the judgment of Hon'ble Supreme Court AIR 2000 (SC) 1295 and AIR (SC) 2768.

7. Even with regard to the alternative prayer for condonation of delay made by the Applicant, it is submitted by the learned Counsel for the Respondent that the Applicant/Appellant failed to show the sufficient cause to condone the huge delay of 269 days u/s 111 (2) of the Electricity Act and therefore, the Application to condone the delay is also to be rejected.
8. On the other hand, the learned Counsel for the Applicant/Appellant has cited several judgments to substantiate his plea that the period during which the Writ Petition was pending in the High Court, can be excluded u/s 14 of the Limitation Act. He has cited the judgments rendered in the case of Union of India and Others Vs West Coast Paper Mills Ltd and Another (III) (2004) 3 SCC 458 and Shakti Tubes Limited Vs State of Bihar and Others (2009) 1 SCC 786.
9. We have gone through these judgments.
10. As pointed out by the learned Counsel for the Respondent, these judgments would not apply to the present facts of the case because Section 14 of the Limitation Act applies only

to the Suits or any other Civil Applications and not to the Appeals to be filed before this Tribunal.

11. Therefore, we are unable to accept the plea urged on behalf of the Applicant with regard to the exclusion of the period during which the Writ Petition was pending before the High Court u/s 14 of the Limitation Act.
12. However, the learned Counsel for the Applicant has cited two judgments reported in the case of Ram Rup Agrahri and Others Vs Naik Ram-Plaintill AIR 1926 Allahabad 252 and Gopi Nath Pandey V Bhukhan AIR 1955 Patna 301 and contended that even assuming that Section 14 of the Limitation Act would not apply to the Appeals, the principle embodied in the provision relevant for the purpose of considering the aspect of sufficient cause could be considered for condoning the delay.
13. On this basis, the learned Counsel for the Applicant/Appellant has submitted that on good faith, the Applicant/Appellant has wrongly approached the High Court and filed the Writ Petition which was admitted by the Writ Court initially and the moment it was brought to notice that the proper Forum to file the Appeal was before the Appellate Tribunal for Electricity, the Applicant immediately withdrew the Writ Petition on 17.6.2013 and thereupon, he prepared the Appeal and then filed this Appeal and in the process of

preparation of the Appeal, it has taken some time and that was how, the delay was occurred and hence, the same may be condoned as it was not deliberate.

14. We have carefully considered these submissions.
15. There is no dispute in the fact that as against the impugned order dated 31.8.2012; the Applicant filed the Writ Petition in the High Court on 26.9.2012 without any delay. Ultimately, it was dismissed on 17.6.2013 on the request of the Applicant/Appellant seeking for permission to withdraw the Writ petition as the jurisdiction of the Writ Court was questioned by the Respondent. While the same was dismissed, the High Court granted liberty to file the Appeal u/s 111 of the Electricity Act, 2003 before this Tribunal. According to the Applicant, it was the bona fide mistake on the part of the Applicant to approach the High Court instead of this Tribunal and hence the delay may be condoned.
16. From the facts narrated above, it is clear that the Appellant has been misled to approach the Writ Court instead of filing an Appeal before the Appellate Tribunal for Electricity, New Delhi. Further, in the Writ Petition, the Applicant has pleaded that the Applicant had no other remedy and that therefore, he was constrained to approach the Writ Court under Article 227 of the Constitution of India. This pleading

has been made by the Applicant in Para 41 of the Writ Petition which is as follows:

“As there is no other efficacious remedy where the petitioner can obtain relief, the Petitioner is constrained to approach this Hon’ble Court by way of present Writ Petition invoking the jurisdiction of this Hon’ble Court under 2267 of the Constitution of India more particularly one in the nature of WRIT MANDAMUS on the following among other grounds:”

17. Thus, the Writ petition which was filed by the Applicant through the Counsel stating that there was no other remedy, has actually misled the Writ Court to entertain the Writ Petition which was ultimately allowed to be withdrawn.
18. Thus, it is clear that the High Court entertained this Writ Petition and issued notice only on the basis of the wrong representation made by the Applicant through its lawyer.
19. As such, this is purely the mistake of the lawyer who was engaged by the Applicant for filing the Writ Petition before the Writ Court and got the notice ordered due to the misrepresentation made by the lawyer.
20. However, we are of the view that the party should not suffer due to the mistake committed by its’ lawyer.
21. It is noticed that even though the Writ Petition was filed on 26.9.2012, it was withdrawn only on 17.6.2013 after a considerable period of time. Hence, we deem it appropriate

to condone the delay of 269 days in filing the Appeal by imposing some cost to be paid to a Charitable Organisation.

22. Accordingly, this Application is allowed and the delay is condoned on the condition that the Applicant shall pay a cost of Rs.50,000/- to a Charitable Organisation namely ***The Child Rights and You (CRY), 632, 2nd Floor, Lane No. 3, West End Marg, Saiyadul Ajaib, New Delhi*** within two weeks.
23. After depositing the amount with the said Charitable Organisation, the Applicant/Appellant shall inform the Registry about the compliance of the order.
24. The Registry, after verification of the compliance of this order, will number the Appeal and post it for admission on **25th November, 2013.**

(V J Talwar)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated: 14th Nov, 2013

✓ ~~REPORTABLE/NON-REPORTABLE~~