

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

I.A. No. 332 of 2014 in
D.F.R NO. 2047 OF 2014

Dated:9th October, 2014

Present:

HON'BLE MR. JUSTICE M KARPAGA VINAYAGAM, CHAIRPERSON
HON'BLE MR. RAKESH NATH, TECHNICAL MEMBER

In the Matter of:

GRIDCO Limited
Janpath,
Bhubaneswar – 751022
Odisha

..... Applicant

Versus

- 1. NTPC Limited**
NTPC Bhawan,
Core 7, Scope Complex,
7, Institutional Area, Lodhi Road,
New Delhi 110003
- 1. Central Electricity Regulatory Commission**
Chanderlok Building
4th Floor, Janpath
New Delhi 110001

Counsel for the Appellant(s) : Mr. R.K. Mehta
Ms. Ishita
Mr. Elangbam

Counsel for the Respondent(s):Mr. M.G. Ramachandran
Ms. Anushree Bardhan
Ms. Poorva Sahegal for R.1

O R D E R

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

1. This is an Application seeking for the Condonation of Delay of 378 days in filing the Appeal as against the impugned Order dated 07.06.2013 passed by the Central Commission.
2. Gridco Limited is the Applicant/Appellant herein. NTPC Limited, the 1st Respondent, filed a Petition before the Central Commission for grant of in-principle approval for R & M Schemes for State-II Units. The Central Commission after hearing the parties passed the Order dated 07.06.2013 granting in-principle approval for R & M Schemes for Stage – II Units as claimed by the NTPC. Thereupon, the NTPC filed a Petition before the Central Commission on 25.06.2013 for determining the tariff on the basis of the Order earlier passed on 07.06.2013. Accordingly, the Central Commission passed the Order dated 15.05.2014 determining the tariff of TTPS for the period 2009-2014. On

the basis of this Order, NTPC issued the Bill to the GRIDCO. After receiving the Bill, the GRIDCO has filed this Appeal as against the earlier Order dated 07.06.2013 granting in-principle approval. Since there is delay in filing the Appeal, the Applicant has filed this Application on 14.08.2014 seeking for Condonation of delay of 378 days in filing this Appeal.

3. The explanation offered by the Applicant for the delay is as follows:
 - a) The impugned Order was passed by the Central Commission on 07.06.2013 and the same was received by the Applicant on 17.06.2013. At that stage, the Applicant was not in a position to assess the financial impact of the Order dated 07.06.2013. Therefore, the Applicant was not advised to challenge the said Order by way of Appeal.
 - b) Subsequently, by the Order dated 15.05.2014, the Central Commission determined the tariff for the period 2009-2014.
 - c) On the basis of the said tariff Order dated 15.05.2014, NTPC raised a Bill for Rs. 740 Crores on GRIDCO towards differential amount on account of tariff revision

including interest. Only thereafter the financial impact of the impugned Order dated 07.06.2013 came to be ascertained by the learned counsel for the Applicant.

- d) Thereupon, the Applicant was advised to file the present Appeal against the impugned Order dated 07.06.2013. Since the Applicant has got a *prima facie* case, the delay of 378 days may be condoned in the interest of justice as well as in the public interest.
4. This Application is stoutly opposed by the learned counsel for the NTPC by filing a detailed reply. It is strenuously contended by the learned counsel for the NTPC that the Applicant had already filed the Appeal against the 2nd Order dated 15.05.2014, and the same has been admitted by this Tribunal earlier. Having filed the Appeal only against the second Order dated 15.05.2014, the Applicant earlier had not chosen to file the Appeal as against the first Order dated 07.06.2013. When the Applicant having deliberately chosen not to file an Appeal against the Order dated 07.06.2013 cannot at this stage challenge the same, which depicts the clear lack of bonafide and negligence on the part of the Applicant. Hence the delay may not be condoned.

5. The learned Counsel for the Applicant has cited AIR 1996 SC 1623, in which it has been held that the State cannot be put on the same footing with that of an individual and certain amount of latitude is permissible to the State machineries having regard to the impersonal bureaucratic set up.
6. On the other hand, the learned counsel for the NTPC has cited the following decisions in order to show that the Applicant having earlier decided not to file the Appeal cannot choose to file the present Appeal at this belated stage, that too without any *bonafide* explanation.
 - i) *Brijesh Kuamr and Ors. V. State of Haryana and Ors. (AIR 2014 SC 1612)***
 - II) *Basawaraj and Ors. V. The Spl. Land Acquisition Officer (AIR 2014 SC 746)***
 - III) *Pundlik Jalam Patil V. Executive Engineer, JIagaon Medium Project and Another (2008 (17) SCC 448)***
 - IV) *Vellaithai, K. Thnagavedivel and K. Valarmathi V. V. Duraisami (2010 (1) MLJ 1092)***
7. Having regard to the submissions of the learned counsel for both the parties and also the contents of the explanation as

well as the reply, we have to consider as to ***“Whether the Applicant was vigilant enough to file the present Appeal in time, and if not, is there any plausible explanation to condone the delay”?***

8. Before dealing with this question, we will refer to the relevant observations made in the various decisions cited by the parties.
9. The learned counsel for the Applicant has cited AIR 1996 SC 1623, the relevant observation is as under:

“

The Supreme Court generally adopts a liberal approach in condonation of delay finding somewhat sufficient cause to decide the Appeal on merits. When the State is an applicant, praying for condonation of delay, it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the note-making, file-pushing, and passing-on-the-buck ethos, delay on the part of the State is less difficult to understand though more difficult to approve. Therefore, certain amount of latitude is not impermissible when the State is an Applicant seeking for the Condonation of delay”.

10. The learned Counsel for the Respondent-NTPC has cited the decisions referred to above, in which the following ratio has been decided:

“1. Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the Courts have no power to extend the period of limitation on equitable grounds.

2. The conduct, behavior and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

3. The Courts should not adopt an injustice oriented approach in rejecting the application for condonation of delay. However the Court while allowing such application has to draw a distinction between delay and inordinate delay for want of bona fides of an inaction or negligence would deprive a party of the protection of Section 5 of the Limitation Act, 1963. Sufficient cause is

a condition precedent for exercise of discretion by the Court for condoning the delay.

4. “Sufficient Cause” means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has “not acted diligently” or “remained inactive”.

5. The applicant must satisfy the Court that he was prevented by any “sufficient cause” from prosecuting his case, and unless a satisfactory explanation is furnished, the Court should not allow the application for condonation of delay. The Court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose.

6. The expression “sufficient cause” should be given a liberal interpretation to ensure that substantial justice is done, but only so long as negligence, inaction or lack of bona fides cannot be imputed to the party concerned, whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible.”

11. On going through the decisions cited by both the parties, it is evident that certain amount of latitude may be shown to the State in the matter of Condonation of delay, but it must show that the delay was ***bona fide*** and not due to the lack of diligence.
12. In the present case, the impugned Order had been passed on 07.06.2013 itself granting in-principle approval in favour of NTPC, which filed the Application before the Central Commission. In fact, the GRIDCO, the Applicant appeared as a Respondent in that Application before the Central Commission and opposed vehemently for grant of in-principle approval in favour of the NTPC. The Central Commission after having heard both the parties rejected the objection raised by the GRIDCO and allowed the Application in favour of the NTPC.
13. The GRIDCO being aggrieved over the Order should have filed the Appeal then and there without any delay. This was not done at that stage. The reason for not filing the Appeal before the Tribunal at that point of time seems to be that the Applicant was not able to assess the financial impact and that the Applicant was not advised to file the Appeal. From this, it is clear that it is an admitted fact that the GRIDCO

had earlier decided not to file the Appeal as against the impugned Order dated 07.06.2013.

14. Ultimately the second Order has been passed on 15.05.2014 determining the tariff on the basis of the methodology prescribed by the Central Commission referred to in the first impugned Order dated 07.06.2013. Having aggrieved over this Order dated 15.05.2014 determining the tariff, the Applicant has already filed the Appeal before this Tribunal and the same was admitted and is pending still before this Tribunal. So the very fact that the Applicant has chosen to file the Appeal only against the Order dated 15.05.2014 would clearly indicate that even at that stage the Applicant had chosen deliberately not to file the Appeal as against the earlier Order dated 07.06.2013.
15. Now the Applicant has decided to file the present Appeal as against the Order dated 07.06.2013 with the Application to condone the inordinate delay of 378 days.
16. At the outset it shall be stated that there is no valid explanation as to why the Applicant has not chosen to file this Appeal immediately after the impugned Order was passed, by which the GRIDCO became aggrieved. Similarly, there is no explanation as to why the GRIDCO has

chosen to file the Appeal only as against the Order dated 15.05.2014 without filing an Appeal as against the Order dated 07.06.2013 atleast at that stage. This would clearly indicate that originally GRIDCO decided not to file an Appeal and now it has changed its stand to file the Appeal as against the Order dated 07.06.2013, that too long after filing of the Appeal as against the second Order dated 15.05.2014. This is not a case of delay on the part of the State by pushing the file from table to table. On the other hand, this is a case where originally the GRIDCO decided not to file the Appeal but now they have changed their stand by taking a different decision to file the Appeal. This conduct of the Applicant shows that there is negligence, inaction and lack of diligence on the part of the GRIDCO in not filing the Appeal in time.

17. As held by the Hon'ble Supreme Court as referred to above, the sufficient cause is a condition precedent for exercise of discretion by the Court for condoning the delay and that the conduct, behavior and attitude of a party relating to its negligence, inaction and lack of diligence are relevant factors to be taken into consideration.

18. In this matter, we feel that there is inaction and lack of diligence on the part of the Applicant in originally taking a decision not to file the Appeal, but subsequently changing its decision to file the Appeal without any valid reason, which reflects the conduct, the behavior and the attitude of the Applicant. Consequently we are constrained to uphold the objection raised by the NTPC-Respondent in the matter of condonation of delay.

19. In view of the above, the Application to condone the inordinate delay of 378 days is dismissed. Consequently, the Appeal also is rejected.

(Rakesh Nath)

Technical Member

(Justice M. Karpaga Vinayagam)

Chairperson

Dated:9th October, 2014

✓ ~~REPORTABLE/NON-REPORTABLE~~