

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

**I.A. No.362 of 2013**  
**IN**  
**DFR No.2293 of 2013**

**Dated: 30<sup>th</sup> Jan, 2014**

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

**In the Matter of:**

- 1. The South Indian Sugar Mills Association  
Andhra Pradesh, 5-9-22/69, Adarsh Nagar  
Hyderabad-500 063  
Andhra Pradesh**
  - 2. M/s. Empee Power Co (I) Limited.  
Ayyapareddipalam Naidupet - 524126,  
Andhra Pradesh**
  - 3. M/s.K.C.P. Sugar and Industries Corporation Ltd.,  
Ramakrishna Buildings, No. 239, Anna Salai,  
Chennai - 600006  
Tamil Nadu**
  - 4. M/s. Nizam Deccan Sugars Ltd.,  
201, Diamond Block, Rock dale Compound  
Somajiguda, Hyderabad-500 063  
Andhra Pradesh**
- ...Appellant(s)/Applicant(s)**

**Versus**

- 1. Andhra Pradesh Electricity Regulatory Commission,  
4<sup>th</sup> and 5<sup>th</sup> Floor,  
Singareni Bhavan, Red Hills,  
Hyderbad-500 004  
Andhra Pradesh**
- 2. Central Power Distribution Company of  
Andhra Pradesh Ltd.,  
6-1-50, Mint Compound,  
Hyderabad-500 063  
Andhra Pradesh**
- 3. Southern Power Distribution Company of  
Andhra Pradesh Ltd.,  
Kesavayanigunta, Tiruchanoor Road,  
Tirupati-517 503,  
Andhra Pradesh**
- 4. Northern Power Distribution Company of  
Andhra Pradesh Ltd.,  
H.No.11-5-423/1, 1<sup>st</sup> Floor,  
1-7-668, Postal Colony, Hanamkonda,  
Warangal - 506 001 (AP)**
- 5. Eastern Power Distribution Company of  
Andhra Pradesh Limited.,  
Opp. Saraswati Park, Dabe Gardens,  
Visakhapatnam-530030  
Andhra Pradesh**

**...Respondent(s)**

Counsel for the Appellant(s) : Mr. Gopal Choudary  
Mr. Challa Gunaranjan  
Mr. Mullapudi Rambabu

Counsel for the Respondent(s): Mr. A. Subba Rao  
Mr. K.V. Mohan  
Mr. K.V. Balakrishnan

## **ORDER**

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

1. This is an Application to condone the delay of 1619 days i.e. 4 years and 35 days in filing the Appeal as against the Main Order dated 31.03.2009.
2. The South Indian Sugar Mills Association and Others are the Applicants/Appellants. The huge delay of 1619 days in filing the Appeal, has been explained in the Application filed by the Appellants which is as follows:

“(a) The State Commission initiated Suo Moto proceedings and determined the variable cost in respect of Bagasse based co-generation projects for the years 2009-10 to 2013-14, by the order dated 31.03.2009. The Applicants on coming to know of this Order, applied for certified copy of the order on 28.4.2009 before the State Commission. Accordingly, the certified copy of the Impugned Order

dated 31.03.2009 was furnished to the Appellant on 10.05.2009.

(b) Thereupon, the Members of the Association have convened the meeting in May 2009 and took a decision to file the Review against the Impugned Order before the State Commission.

(c) In pursuance of the said decision, the Applicants have filed the Review Petition on 03.06.2009 before the State Commission. The matter was heard by the State Commission on various dates.

(d) Ultimately, the State Commission after hearing the parties reserved the Review Petition for the orders on 21.01.2010. Even before the pronouncement of the order, one of the members of the State Commission got retired. Hence, the State Commission with available members heard the Review Petition once again on 16.07.2013 and 20.07.2013.

(e) Ultimately, the State Commission dismissed the Review Petition by the order dated 27.07.2013. This

order was communicated to the Applicants on 01.08.2013.

(f) Thereafter, the Association have called for a meeting to discuss over the matter on 15.08.2013. Again they convened another meeting on 05.09.2013. In that meeting, the decision was taken to file the Appeal as against the Main Order dated 31.03.2009 before this Tribunal.

(g) Then, the Association requested their Counsel to proceed for the filing of the Appeal. Accordingly, the Appeal was prepared and filed before this Tribunal on 21.10.2013.

(h) In this process, there was a delay of 1619 days in preferring the Appeal. Since, the huge delay was caused due to the pendency of the Review Petition before the State Commission, the Applicants have prayed for the condonation of the delay”.

3. This Application for condonation of delay of 1619 days. is stoutly opposed by the Learned Counsel appearing for the Distribution Companies, the Respondents, after filing Counter on the following grounds:

- (a) The delay of 4 years and 35 days i.e. 1619 days in filing the Appeal which is inordinate has not been satisfactorily explained by the Applicants.
- (b) The only ground urged in the Application to condone the delay is due to the pendency of the Review Petition before the State Commission. This Review Petition was dismissed by the State Commission on 27.7.2013 holding that there was no apparent error in the order and as such no ground was made out for Review.
- (c) The ground urged by the Applicants before the State Commission in the Review Petition was that the fixed charges beyond 31.03.2009 need to be reviewed. This ground has been rejected by the State Commission because of the Judgment of the Tribunal dated 20.12.2012 and 30.04.2013.
- (d) When the Applicants are aggrieved by the order dated 31.03.2009, with reference to the fuel cost, the Applicants could have argued the same point before this Tribunal in the Appeals which were pending at that time for determining all the parameters of Bagasse Co-generation project.

(e) Having not taken up this issue in the connected Appeals by arguing this point in the Appeals decided by this Tribunal on 20.12.2012, the Applicants cannot be permitted to raise this issue that too after the delay of 4 years and 35 days.

(f) The fuel cost which has been determined by the State Commission by order dated 31.03.2009 cannot be reopened now at this distance of time i.e. 4 years and 35 days thereby making an attempt to set at naught the Judgment of this Tribunal dated 20.12.2012. Hence, the Petition to condone the delay may be dismissed.”

4. We have carefully considered the submissions made by both the parties.
5. On going through the Application filed by the Applicants for condonation of delay as well as reply filed by the Respondent opposing the said Application and on considering the submissions made by both the parties, we are not inclined to condone the delay which is inordinate since, sufficient cause has not been shown by the Applicants to condone this delay.
6. The detailed reasons are as follows:

(a) The main ground urged by the Applicants for condonation of the delay is that the Review Petition which has been filed on 03.06.2009 was disposed of only on 27.07.2013 by the State Commission. The State Commission ultimately, rejected the Review Petition as there was no apparent error in the Main Order.

(b) The Applicants have not given any explanation as to why they have resorted to filing of the Review before the State Commission instead of invoking the Appeal remedy before this Tribunal that too in the absence of any apparent error on the face of the record as held by the State Commission.

(c) This Appeal is relating to the determination of fuel cost by the order dated 31.03.2009. There is no dispute in the fact that the components of the tariff which had been determined by State Commission for the period in question, was subject matter of the Appeals pending before this Tribunal at that time. In these Appeals, this point was not raised before this Tribunal.

(d) This Tribunal in those Appeals, by the Judgment dated 20.12.2012, laid down guidelines as to how the

State Commission has to fix the tariff in respect of the fuel cost. The Applicants could have urged this point before this Tribunal, but the Applicant chose not to argue this point before this Tribunal. If the argument on this point was placed before this Tribunal, it would have considered the same and given a finding in the judgment dated 20.12.2012 itself in which event the Review Petition would have become infructuous. No attempt has been made by the Applicants for getting the decision on this point from the Tribunal at that stage itself.

(e) According to the Applicants, the Review Petition filed on 03.06.2009 was heard by the State Commission on 10.11.2009, 16.12.2009 and on 05.01.2010 and the order was reserved on 21.01.2010 after hearing the parties. Thereafter the State Commission did not pronounce the order for a long time. At that stage, the Applicants also did not take any steps for early disposal either by filing a Petition before the State Commission to pronounce the order at an early date or to seek a direction through High Court or this Tribunal to the State Commission for the pronouncement of the order at an early date. This was

not done. There is no reason given by the Applicants/Appellants for the failure to do so.

(f) The matter had been once again heard on 16.07.2013 and 20.7.2013. Admittedly, even before these dates, the Tribunal already passed the Judgment dated 20.12.2012 in which the components of the tariff and parameters have been fixed by this Tribunal in its Judgment dated 20.12.2012.

(g) In view of the above judgment, Fuel cost charge beyond 31.03.2009 cannot be reviewed. Even then, the Applicants kept quiet for the reason best known to them. Pursuing the Review Petition before the State Commission even after the Judgment of this Tribunal dated 20.12.2012 would be of no use.

(h) Although the Review Petition had been dismissed on 27.07.2013, the present Appeal has been filed only on 21.10.2013 i.e. nearly after three months. This delay also has not been satisfactorily explained.

(i) When there is an enormous delay of 4 years 35 days, it has to be established by the Applicants that they have pursued the matter with diligence throughout. But, in the present case, there is no

diligence on the part of the Applicants to take further step to file an Appeal against the Order dated 31.03.2009 in time, instead of filing a Review or taking adequate steps to pray the State Commission for disposal of the Review Petition at an early date or approach the High Court or this Tribunal for seeking suitable direction to the State Commission for early disposal. On the other hand, they kept silent all along.

(j) In the light of the above circumstances, the objection raised by the Respondents to the Application to condone the delay on the ground that there is no justification to permit the Applicants to reopen the matter at this distance of time i.e. 4 years and 35 days, in the absence of the sufficient cause to condone the delay, is perfectly justified.

7. In view of the above reasonings, the Application to condone the delay is dismissed.
8. Consequently, the Appeal is also rejected.

**(Rakesh Nath)**  
**Technical Member**  
Dated:30<sup>th</sup> Jan, 2014

**(Justice M. Karpaga Vinayagam)**  
**Chairperson**

✓ ~~REPORTABLE/NON-REPORTABLE~~