

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Dated:01 August, 2014

Present:

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

I.A No.139 OF 2013 IN DFR (R.P) No.631 OF 2013
IN
APPEAL No.167 OF 2011

In the Matter of:

Gulbarga Electricity Supply Co. Ltd.
Station Road, Gulbarga-585 101
Karnataka

..... Review Petitioner/Appellant(s)

Versus

- 1. M/s. JSW Steel Ltd.,
Vijaynagar Works, PO-Vijaynagar,
Torangallu, Bellary District-583275
Karnataka**
- 2. M/s. JSW Energy Ltd.
PO Box No.9,
Village & PO-Torangallu,
Bellary District-583275
Karnataka**
- 3. Karnataka Electricity Regulatory Commission,
6th & 7th Floor, Mahalaxmi Chambers,
No.9/2, M.G. Road,
Bangalore-560 091**

...Respondent(s)

Counsel for the Appellant(s) : Mr. S S Naganand, Sr Adv.
Mr. Raghavendra S Srivasta
Mr. Shodhan Babu
Mr. Srianga S.
Ms. Sumana Naganand

Counsel for the Respondent(s): -

ORDER

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

1. This is an Application in IA No.139 of 2013 seeking for the condonation of the delay of 33/59 days in filing the Review Petition as against the Judgment of this Tribunal in Appeal No.167 of 2011 dated 21.12.2012.
2. This case has got a chequered history:
 - (a) This Tribunal on the administrative side through the Hon'ble Chairperson, issued two Notifications dated 24.2.2012 and 14.9.2012 in exercise of the powers under the Electricity Rules, as well as under the Section 120 of the Electricity Act notifying that the Review Petition has to be filed within 30 days from the date of the receipt of the copy of the judgment or order of the Tribunal and no Application for Review shall be

entertained if it is filed beyond 30 days. On this issue, this Tribunal issued several orders on judicial side justifying the Notifications in the Petitions filed by various parties questioning the Notification.

(b) When these Notifications were in force, the Petitioner namely Gulburga Electricity Supply Company Limited filed the present Review Petition seeking for the Review of the judgment dated 21.12.2012 rendered by this Tribunal in Appeal No.167 of 2011 beyond the period of 30 days along with an Application to condone the delay.

(c) Earlier, the Petitioner on being aggrieved over the Order of the State Commission filed an Appeal in Appeal No.167 of 2011 before this Tribunal seeking for setting aside the Order of the State Commission dated 7.7.2011 granting M/s. JSW Steel Limited, the first Respondent "Captive User Status".

(d) This Tribunal, after hearing the parties by the judgment dated 21.12.2012 dismissed the said Appeal i.e. Appeal No.167 of 2011 concurring with the majority order of the State Commission and modified only one portion of it by holding that non-consumption of 51% by

other four share holding Companies do not make them non captive users.

(e) On being aggrieved over the findings rendered by this Tribunal in the above judgment the Petitioner/Appellant filed a Review Petition on 22.3.2013.

(f) As per the Notification dated 24.2.2012 and 14.9.2012, the Review Petition has to be filed within 30 days from the date of the receipt of the judgment. But, in this case, the Petition has been filed only on 22.3.2013 after considerable delay. Therefore, the Petitioner has filed this Application in IA No.139 of 2013 seeking for the condonation of the delay in filing the Review Petition claiming that there was only a delay of 33 days in filing the Review Petition and sought for condonation.

(g) When the matter was taken up on 23.4.2013, it was intimated to the learned Counsel appearing for the Petitioner about the issuance of Notifications dated 22.2.2012 and 14.9.2012 according to which, the Review Petition has to be filed within 30 days and since there was delay, the Application for condonation

of delay was not maintainable. The Tribunal further intimated to the learned Counsel for the Petitioner that this Tribunal already dealt with the issue relating to the validity of these Notification on the judicial side and decided upholding the validity of the Notifications by the Order in IA No.262 of 2012 dated 17.4.2013 and IA No.46 of 2013 dated 28.5.2013.

(h) The learned Counsel for the Petitioner submitted that he wanted some time to go through the Notification and the orders on this point passed by this Tribunal and to make submissions with regard to the Maintainability of the Petition to condone the delay and prayed for adjournment.

(i) On that ground, the matter was adjourned to 01.5.2013 to enable the learned Counsel for the Petitioner to argue on the question of Maintainability.

(j) Again on 01.5.2013, the learned Counsel for the Applicant Petitioner requested some more time to file a written note on the question of maintainability and to make submissions. Accordingly, time was granted and the matter adjourned to 29.5.2013.

(k) Again on 29.5.2013, the learned Counsel for the Petitioner sought some more time to file written notes on the question of maintainability and to make submissions. Therefore, it was again adjourned to 1.7.2013.

(l) On 1.7.2013, the learned Counsel on the very same ground sought for some time. Therefore, it was again adjourned to 12.7.2013.

(m) When the matter was taken-up on 12.7.2013, the learned Counsel for the Petitioner submitted that the Writ Petition has been filed by the Petitioner before the Karnataka High Court against these Notifications and in that Writ Petition stay order has been passed staying the present Review Proceedings pending before this Tribunal.

(n) On that basis, the matter was adjourned to several dates. It was reported on those dates that Writ Petition was still pending in which the stay order has already been passed.

(o) In view of the above statement, the Petition to condone the delay had been periodically adjourned to various dates.

(p) When it was taken up on 18.12.2013, the learned Counsel for the Petitioner was absent. However, it was again adjourned to 10.01.2014. Even on that date, the learned Counsel for the Petitioner was not present.

(q) Despite the absence of the learned Counsel, this Tribunal again adjourned the matter to 4.2.2014, and again on 23.4.2014.

(r) On these dates, it was informed by the learned Counsel for the Applicant that Writ Petition was still pending.

(s) Ultimately, when the matter was taken-up on 15.7.2014, it was reported by the learned Counsel for the Applicant that Writ Petition has been disposed of vacating the stay granted earlier.

(t) Since the matter was pending for long time i.e. from 23.4.2013, this Tribunal wanted to dispose of the

matter as there was no stay order as on that date. Therefore, the order was reserved.

(u) Next day, the learned counsel for the Applicant sought permission to file written notes with regard to the prayer for condonation of the delay. Accordingly, permission was granted.

(v) On 16.7.2014, the learned Counsel filed the written submissions as well as the copy of the High Court Order.

(w) In the written Submissions he has given the details as to why the delay in filing the Review has been caused.

(x) In the original Application which was filed on 22.3.2013, it is stated that there was only 33 days delay in filing the Review Petition. Now, in the present written submission, the prayer is made to condone the delay of 59 days in filing the Review Petition.

3. Before going through the merits of the contents of the explanation contained in the Original Petition and the Written submissions filed now, it would be proper to refer to our Notifications dated 24.2.2012 and 14.9.2012 as well as the

interpretation given by this Tribunal on those Notifications in IA No.262 of 2012 in RP (DFR) No.1311 of 2012 dated 17.4.2013 in the case of Gujarat Electricity Regualtory Commission Vs Century Rayon and Others and in IA No.46 of 2013 (RP) DFR No.165 of 2013 in Appeal No.24 of 2011 dated 28th May, 2013 in the case of Odhisha Power Transmission Corporation Ltd Vs Odhisha Electricity Regualtory Commission and Others.

4. Let us now refer to both the Notifications issued by this Tribunal dated 24.2.2012 and 14.9.2012 to consider the wordings contained. In the Notification dated 24.2.2012, the following clauses are provided:

“(i) No Application for review shall be entertained unless it is filed within thirty days from the date of receipt of copy of the order sought to be reviewed.”

.....

(vi) The Review filed before the Appellate Tribunal shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the Review finally within Ninety days (90 days) from the date of receipt of the review in order by the Registry and 60 days from the date of Admission of the Review.”

5. The wordings contained in the above clause would indicate that the Review Petition should be filed within 30 days and the Petition for Review filed beyond that date, cannot be entertained and this Review petition also should be expeditiously disposed of by the Appellate Tribunal within the time frame.

6. Let us refer to the 2nd Notification dated 14.9.2012 which reads as under:

“In exercise of powers conferred under Rule 107 of the Appellate Tribunal for Electricity (Procedure, Form, Fee and Record of Proceedings) Rules, 2007 read with Section 120 of the Electricity Act, 2003, the Hon’ble Chairperson is pleased to issue the following procedural directions, which shall come into effect immediately.

.....

.....

13. Review to be filed within 30 days from the date of the judgment/order. The earlier Notification No.APTEL/Registry /procedure/2012 dated 24.2.2012 is reiterated.”

7. So, the reading of the relevant clauses in this notification would reveal that the time frame fixed by this Tribunal by the earlier notification within which the Review to be filed and

beyond that period, no Review could be entertained has been reiterated.

8. The Order in IA No.262 of 2012 was passed dismissing the Application to condone the delay in filing Review Petition as against the Tribunal's judgment filed by Gujarat State Commission on the strength of the Notification. The principles laid down in the Order dated 17.4.2013 in IA No.262 of 2012 is under:

(a) Even though either in the Electricity Act or in the Rules framed, there is no indication about the prohibition for filing the Review Petition beyond the period of 30 days before this Tribunal, in the absence of any clause for condonation of delay for showing sufficient cause for such delay, it must be held that there is exclusion of Section 5 of the Limitation Act. As such, Application for condonation of delay in filing Review is not maintainable.

(b) The specific prescription of period of limitation for filing the Appeals before the Tribunal as per Section 111 and period of limitation for filing the Review as per the notification is with a view to ensure that the dispute emanating from the operation and

implementation of the various provisions of the Electricity Act are expeditiously decided by an expert body.

(c) The Electricity Act is clearly a special law within the meaning of Section 29 of the Limitation Act prescribing its own set of limitation period which includes the applicability of the Limitation Act.

(d) This Tribunal in the notifications issued under powers under Section 120 (1) read with Section 120 (2) (f) has prescribed the Limitation period for filing of Review Petition as 30 days. The said Notification does not confer any power for condonation of delay for the further period.

(e) The Electricity Act as well as the Notification issued by this Tribunal under the powers conferred under the Electricity Act would be certainly construed to be a special law within the meaning of Section 29 of the Limitation Act. Therefore, Section 5 of the Limitation Act would not apply to the Electricity Act.

(f) In view of the absence of any provisions either in the Act or in the Rules to condone the delay in filing

the Review Petition especially when it is a settled law that Limitation Act would not apply to this Special Act, we hold that Application to condone the delay in filing the Review beyond the period of 30 days is not maintainable.

9. In this order, apart from holding that the Petition to condone the delay was not maintainable, this Tribunal went into the merits of the explanation for the inordinate delay also and held that the explanation did not show sufficient cause. In this decision, the main ground for dismissal of the Application to condone the delay in filing the Review was not maintainable in view of the Notifications. Admittedly, this Order has not been challenged in the Hon'ble Supreme Court.
10. Now let us refer to the other order passed in IA No.46 of 2013 in (RP) DFR No.165 of 2013 in Appeal No.24 of 2011 dated 28.5.2013 dismissing the same on the strength of the Notification.
11. In this case, the Review Petition was filed by Odisha Power Transmission Corporation Ltd challenging the judgment of this Tribunal in Appeal No.24 of 2011 along with the

Application to condone the delay of 47 days in filing the Review after expiry of 30 days.

12. In the order passed in this case, we have quoted several judgments rendered by the Hon'ble Supreme Court including the decision of the Hon'ble Supreme Court reported in 2010 (5) SCC 23 Chhattisgarh State Electricity Board Vs CERC. The Hon'ble Supreme Court laid down the following principles formulating the guidelines:

(a) The Electricity Act is a self contained code and comprehensive legislation which ensures creation of special adjudicatory mechanism to deal with the grievance of any person aggrieved by an order made by an adjudicating officer under this Act and also to ensure that disputes emanating from the operation and implementation of different provisions of the Electricity Act are expeditiously decided and disposed of by the expert body.

(b) In this Act, the jurisdiction of the Civil Court is ousted in respect of an order made by an adjudicating officer under this Act. This is the reason as to why various time frames have been fixed for the disposal of the matter by various Authorities and Forums for

expeditious disposal in respect of any grievance of any person who suffers at the order of the adjudicating officer.

(c) Under Section 64 of the Electricity Act, 2003, the appropriate Commission shall issue a tariff order within 120 days from the receipt of an application for the determination.

(d) Under Section 111 of the Electricity Act any person aggrieved by an order passed by an appropriate Commission may prefer an Appeal with the Appellate Tribunal for Electricity within 45 days from the date on which the copy of the order is received by the aggrieved person.

(e) However, the Appellate Tribunal, under provision to Section 111(2) can condone the delay in filing the Appeal if it is satisfied that there is sufficient cause for not filing the Appeal within the said period.

(f) Under Section 111 (5) the Appellate Tribunal shall dispose the Appeal as expeditiously as possible and endeavour to dispose of the Appeal finally within 180 days from the date of the receipt of the Appeal.

(g) Under Section 125, the aggrieved person as against the judgment of the Appellate Tribunal, may file an Appeal to Hon'ble Supreme Court within 60 days from the date of the communication of the judgment and beyond 60 days, the Hon'ble Supreme has got the powers to condone the delay in filing the Appeal for a further period not exceeding 60 days. This provision makes it clear that the Appeal shall be filed within 60 days before the Hon'ble Supreme Court. If not filed within 60 days, the aggrieved person shall show sufficient cause to condone the delay for the further 60 days before the Supreme Court. It is beyond further 60 days, the Hon'ble Supreme Court cannot entertain the application to condone the delay in filing the Appeal.

(h) The perusal of these provisions make it evident that the proceedings under the Electricity Act must be disposed of as expeditiously as possible since the scheme of the Act is to ensure that the dispute emanating from the operation and implementation of the various provisions of the Electricity Act are expeditiously decided and disposed by the expert body so that it may end in finality within the time frame.

(i) Under Section 120 (2) of the Electricity Act, the Appellate Tribunal has been conferred with same powers as are vested in Civil Court. By virtue of clause (f) of Section 120 (2), the Appellate Tribunal has the same powers for reviewing its own decision as referred to in the Civil Court under Cr.PC.

(j) Article 124 of the Schedule to the Limitation Act provides a Limitation Period of 30 days for filing of a Review Petition. But no period of Limitation has been prescribed for filing the Review Petition under the Electricity Act. Similarly, the Appellate Tribunal for Electricity (Procedure, Form, Fee and Record of Proceedings) Rules, 2007 framed by the Central Government under the Electricity Act, also do not provide any period of Limitation for filing of a Review Petition. Under Section 120(1) of the Electricity Act, this Tribunal has the powers to regulate its own procedure. Accordingly, this Tribunal issued two Notifications on 24.2.2012 and 14.9.2012 respectively prescribing the time limit for filing the Review Petition.

13. On the basis of this interpretation, we gave our conclusion which is as follows:

“ In our view, the intention to exclude the application of Section 5 of the Limitation Act has not only been expressly referred to in the Notifications issued by the Tribunal but also the same can be inferred from the provisions of the Electricity Act, 2003 impliedly. Under those circumstances, this application to condone the delay in filing the Review is not maintainable.”

14. The main objective for the above conclusion is to ensure that the disputes between the parties under the Electricity Act are expeditiously decided and disposed of by the Expert Body like the Tribunal.
15. Indicating the above ratio decided by this Tribunal in the Orders referred to above by this Tribunal, we have asked the learned Counsel for the Petitioner to make submissions with regard to the question of maintainability. Accordingly, as mentioned earlier, the learned Counsel for the Petitioner sought for adjournment on various dates to enable him to file the written notes and to make oral submissions before this Tribunal. Though several adjournments have been granted to give the opportunity, the learned Counsel did not avail the opportunity and on the other hand, the matter was adjourned to several dates on his request.

16. At this stage, the learned Counsel for the Petitioner Applicant even during the pendency of the Review Proceedings before this Tribunal has rushed to the Karnataka High Court and filed the Writ Petition seeking for quashing of those Notifications.

17. In this Writ Petition, the Applicant made this Tribunal as one of the Respondents before the Karnataka High Court. The Karnataka High Court after entertaining the Writ Petition granted stay of the Review Proceedings and issued notice to this Tribunal. On receipt of the notice, this Tribunal engaged its Counsel and filed the reply opposing the prayer of the Petitioner for quashing the Notifications issued by this tribunal. In that Writ Petition, the Petitioner stated that the Appellate Tribunal for Electricity directed the Applicant to file an Application for condonation of delay in filing the Review Petition and as such, the Petitioner was aggrieved since the Tribunal has no powers to issue such Notifications fixing the time frame for filing the Review and to direct the Petitioner to file a Petition to condone the delay. The specific prayer made by the Petitioner in the Writ Petition is as follows:

- (a) Quash Notification dated 24.02.2012 issued by the 2nd Respondent, the Tribunal as being ultra-vires

the provisions of the Electricity Act, 2003 bearing No.Reference-APTEL/Registry/Procedure-2012;

(b) Quash Notification dated 14.09.2012 issued by the 2nd Respondent, the Tribunal as being ultra-vires the provisions of the Electricity Act, 2003 bearing No.Reference-APTEL/Registry/Procedure-2012;

(c) Declare that the action of the 2nd Respondent, the Tribunal, in prescribing a period of limitation for filing of Review under Section 120 (2)(f) of the Electricity Act, 2003 is illegal and opposed to the scheme of the Electricity Act, 2003.

18. From the perusal of the Writ Petition filed before the Karnataka High Court, the main ground raised by the Applicant before the High Court was that this Tribunal has no powers to fix the time frame for filing the Review Petition and as such, the Petitioner aggrieved over the directions issued by this Tribunal directing the Applicant to file the Application to condone the delay in filing the Review Petition. Thus, the Applicant in the Writ Petition took stand that this Tribunal directed the Applicant to file an Application to condone the delay in filing the Review Petition.

19. The above statement made before the Writ Court is factually incorrect in view of the fact that this Tribunal never directed the Petitioner to file the Application to condone the delay in filing the Review Petition along with the Review Petition. As a matter of fact, the Petitioner filed Review Petition on 23.2.2013 along with an Application to condone the delay in filing the Review Petition. As per the Notification, the Application to condone the delay could not be entertained. If that is so, how could this Tribunal could give such a direction? As a matter of fact, when the matter came up before this Tribunal for entertaining the Application to condone the delay as well as the Review Petition, it was informed to the learned Counsel appearing for the Petitioner that in the absence of filing a Review within 30 days, the Application to condone the delay cannot be entertained. This Tribunal never directed to file an Application to condone the delay. Therefore, it is wrong to state that in the Writ Petition that the Petitioner had to file the Application to condone the delay on the directions issued by this Tribunal.
20. That apart, the main prayer made by the Petitioner before the Karnataka High Court to declare that the action of the Appellate Tribunal in prescribing the period of limitation for filing of the Review u/s 120(2) (f) of the Electricity Act is

illegal. This prayer was opposed by filing a reply before the High Court by this Tribunal stating that the Tribunal has got the powers to issue Notifications to file Review Petition within the time frame under the relevant provisions of the Act and Rules. The Petitioner never sought for a relief with reference to the prohibition relating to the condonation of delay beyond the period of 30 days. The grievance for fixing time limit for filing Review is one thing but, grievance for alleged direction by the Tribunal to the Petitioner to file an Application to condone delay is another thing. When the Tribunal's Notifications show no application to condone delay beyond 30 days, how could this Tribunal direct the Petitioner to file a condonation Petition? We are at loss to understand as to why the Applicant misled the High Court by making incorrect statement.

21. Ultimately, as mentioned above, High Court of Karnataka disposed of the said Writ Petition by the Order dated 30.6.2014 vacating the stay by making the following observations:

“7. The object of Clause (f) of Sub Section (2) of Section 120 of the Act, it appears, is to provide an effective judicial forum to redress the grievance of the litigants who appear before it. The power of review conferred on the Tribunal, undoubtedly is of the same

character as that of a Civil Court under the Civil Procedure Code, 1908, which includes enlargement of time, in cases where the Application for review is filed beyond the period of 30 days as prescribed under Article 124 of the Schedule to the Limitation Act, 1963, if however sufficient cause is shown for not having made an Application within 30 days.

8. *The Central Government exercising a jurisdiction under Section 176 (2) (f) over additional matters in respect of which the Appellate Tribunal may exercise powers of a Civil Court for purposes of Clause (i) of Sub Section (2) of Section 120 framed the 'Rules', without, however providing a period of limitation to entertain a review petition. Rule 13, invests in the Tribunal the power to enlarge time appointed under the Rules or fixed by any order as the justice of the case may require, though the Application is not made until after the expiry of the time appointed or allowed. The words 'Any Order' referred to under Rule 13 is said to be procedural directions dated 14.9.2012 issued by the Hon'ble Chairperson of the Tribunal prescribing 30 days time for filing a review petition in exercise of jurisdiction under Rule 107 of the 'Rules'. The prescription of 30 days time for filing a Review Petition is not inflexible in view of Rule 13 providing for enlargement of time as the justice of the case may require.*

9. *A bare perusal of Rule 13 of the Rules framed by the Central Government is in order to effectuate the purposes of the Act and enable the prescription of a period of limitation to file a review petition, coupled with the Appellate Tribunal's discretion to condone the*

delay in preferring a review petition beyond the period of 30 days.

10. *It is well settled law that Rules made by subordinate legislation are to be regarded as part and parcel of the enactment for certain purposes, on ascertaining the objects and scope of the Act, since framed subsequent to the enactment. In the light of the aforesaid statutory provisions and the power of the Central Government to frame rules, following which the 'Rules' are brought into existence, in the matter of procedure in filing the review petition and the exercise of power by Hon'ble Chairperson in issuing directions, fixing the period of limitation to file a review petition, since not provided under the Act or the Rules, it cannot but be said that the directions dated 14.9.2012 are with a view to carry out the purposes of the Act.*

11. *Viewed in the aforesaid light, the period of 30 days fixed in the Notification dated 14.9.2012 issued by the Hon'ble Chairperson exercising jurisdiction under Rule 107 of the Rules, for filing a Review Petition, when read with Rule 13 of the Rules, **entitles the exercise of discretion by the Tribunal in the matter of enlarging of time if the review petition is filed beyond the period of 30 days and the justice of the case may require.***

12. *In the circumstances, the Appellate Tribunal was justified in calling upon the Petitioners to file Applications for enlargement of time in filing review Petitions beyond 30 days, by exercising a jurisdiction vested under Rule 13 of the 'Rules'."*

22. The above order would indicate that the High Court specifically held that the powers given to the Hon'ble Chairperson for issuing directions fixing the period of limitation to file the Review Petition and the said directions issued through the Notifications are valid as they are issued with a view to carry out the purpose of the Act.
23. Thus, the High Court rejected the contention of the Petitioner that the Tribunal through Chairperson has no power to issue directions fixing the time frame as a period of limitation to file the Review Petition.
24. According to the High Court, the Hon'ble Chairperson while exercising his jurisdiction under Rule-107 of the Rules entitles to exercise the discretion to issue such a Notification for fixing time limit for filing the Review. It is also held that the Tribunal in the same way would be entitled to the exercise of similar discretion in the matter of enlarging the time if the Review Petition is filed beyond the period of 30 days if the circumstances so warrant and the justice of the case may require.
25. Though our view is that this Application to condone the delay in filing Review Petition as decided earlier is not maintainable on the basis of the Notifications, it would be

proper to go into the merits of the explanation offered by the Petitioner as desired and observed by the High Court to find out as to whether our discretion could be exercised in this matter of condonation of the delay in favour of the Petitioner.

26. As indicated above, the earlier Original Petition was filed for condonation of delay before this Tribunal on 22.3.2013. The Petitioner has stated in the said Petition that there was only a 33 days of delay. Now, in the present written submissions, he has stated that there was a delay of 59 days in filing the Review Petition. Therefore, we have to consider whether the explanation for the delay of 59 days offered by him now, would be construed to be sufficient cause to exercise our discretion. The explanation offered by the Applicant is as under:

“The judgment was pronounced on 21.12.2012. The same was communicated to the Petitioner on 22.12.2012 by this Tribunal. The communication was received by the Petitioner at its office on 31.12.2012. Then the Managing Director of the Company and the Legal Department were contacted. Thereafter, decision was taken to obtain a legal opinion. Accordingly, request to obtain the opinion was made

on 17.1.2013. The said letter was misplaced in transit. Therefore, the Petitioner again addressed the letter on 28.1.2013 requesting for the opinion. The opinion was furnished on 5.2.2013. Thereafter, decision was taken to file the Review. This was communicated to the Counsel on 18.2.2013. The approval was granted in first week of March, 2013 and the papers were sent to New Delhi. Thereafter, Review Petition filed on 22.3.2013. So, the delay was bona fide and due to the reasons beyond its control. The Petitioner is a public Corporation having a special status. The Government Companies cannot be put on the same footing as that of the Private individuals for considering the condonation of the delay. Hence, the delay may be condoned”.

27. In the Written Submissions presently filed, the learned Counsel for the Applicant has referred to several authorities in order to interpret the expression “Sufficient Cause”. They are as follows:

(a) Manoharan vs Sivarajan and Ors; 2013 (14)
SCALE 347;MANU/SC/1192/2013:Para-9,12,13

(b) S Ganesha Raju(D)Thr.LR's and Anr Vs Narasama(D)Thr. LR's 2012 (4) SCALE 152;MANU/SC/0379/2012 Para-14-18;

(c) State (NCT of Delhi) Vs Ahmad Jaan, 2008 (14) SCC 582 Para 7-14

(d) Collector, Land Acquisition, Anantnag and Another vs Mst. Katiji and Others (1987) 2 SCC 107 Para-3;

(e) G Ramegowda, Major and Others vs Special Land Acquisition Officer, Bangalore and Basavalingappa vs Special Land Acquisition Officer; Bangalore (1988) 2 SCC 142; Para-14;

(f) State of Haryana vs Chandra Mani and Others (1996) 3 SCC 132; Para-4,7;

(g) Indian Oil Corporation Ltd vs Subrata Borah Chowlek, Order of the Supreme Court of India dated 12.11.2010 in Civil Appeal No.9726-9727 of 2010 Para-7,9

28. With regard to the “Special Status” to the Government Companies the Applicant has placed the reliance on the following judgments:

(a) Manoharan vs Sivarajan and Ors; 2013 (14) SCALE 347;MANU/SC/1192/2013:Para-12

(b) State (NCT of Delhi) Vs Ahmad Jaan, 2008 (14) SCC 582 Para -14

(c) G Ramegowda, Major and Others vs Special Land Acquisition Officer, Bangalore and Basavalingappa vs Special Land Acquisition Officer; Bangalore (1988) 2 SCC 142; Para-15,16,17 & 18;

(d) State of Haryana vs Chandra Mani and Others (1996) 3 SCC 132; Para-9 & 11;

(e) Indian Oil Corporation Ltd vs Subrata Borah Chowlek, Order of the Supreme Court of India dated 12.11.2010 in Civil Appeal No.9726-9727 of 2010 Para-11;

(f) State of J&K and Ors Vs Mohammad Makbul Sufi & Ors (1987) 2 SCC 107 Para-3;

29. With regard to “Ends of Justice” the Applicant/Petitioner has cited the judgment in the case of Mahadev Govind Garg and Ors vs The SLAO Upper Krishna Project, Jamkhandi, Karnataka, AIR 2011 SC 2439 Para-19,20,28,32,35.
30. The principles laid down in the authorities shown by the learned Counsel or the Applicant which is not disputed are as follows.
31. The mandatory guidelines given by the Hon’ble Supreme Court to be followed in the matter of condonation of delay are given in various decisions of the Hon’ble Supreme Court as referred to above:
- (a) If there is negligence, gross inaction or lack of bona fide on the part of the party, there is no reason as to why the opposite side should be exposed to a time barred Appeal.
 - (b) Each case will have to be considered on the particularities of its own special facts. However, the expression “Sufficient Cause” must receive a liberal construction so as to advance substantial justice.
 - (c) Once a valuable right has accrued in favour of the one party as a result of the failure of the other party

to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away the right of the other party on the mere asking of the Applicant, particularly when the delay is directly a result of negligence, default or inaction of the party. Justice must be done to both the parties equally. Then alone, the ends of justice can be achieved.

(d) If the explanation offered is fanciful and reasonable, the Court should be vigilant not to expose the other side unnecessarily to face such a litigation.

(e) There could be instances where the Court should condone the delay; equally there could be the instances where the court must exercise its discretion against the Applicant for want of mandatory ingredients or where it does not reflect "Sufficient Cause".

(f) The party should show that besides acting bona fide, it had taken all possible steps within its power and control. It had approached the Court without any unnecessary delay. The test is whether or not a cause is sufficient to see whether it could have been avoided by the party by exercise of due care and attention.

(g) The words “Sufficient Cause” should receive liberal construction so as to advance substantial justice where no negligence nor inaction nor want of bona fide is imputable to the Applicant.

32. Bearing the various guidelines and principles laid down by the Hon’ble Supreme Court while considering the Application to condone the delay in our mind, we now analyse the explanation offered by the Applicant as to whether “Sufficient Cause” has been shown to condone the delay for exercising our discretion.
33. The explanation given in the Original Application as well as the explanation given in the present written submissions would indicate that even though the original judgment was rendered in Open Court in Appeal No.167 of 2012 on 21.12.2012 which was communicated to the Petitioner on 22.12.2012 in writing, the Review Petition has been filed only on 22.3.2013 i.e. after about 89 days. The Limitation Period as fixed by the Notification is 30 days. The High Court of Karnataka referring to the 30 days time frame fixed by the Chairperson of the Tribunal to file the Review Petition, has recognised the said power. But the observations of the High Court would indicate that there is also discretion for this Tribunal to

extend the said period if the circumstances warrant or justice demands for the same. Hence, for exercising the discretion, the Petitioner has to show the sufficient cause to condone the delay of 59 days. The details given in the Original petition as well as the written submissions would only indicate that it sent a letter to the Counsel for legal opinion but the letter was misplaced in the transit and thereafter, another letter has been sent and after opinion, the Petition for the Review has been filed.

34. In fact, the Original Appeal was argued by the learned Counsel appearing for the Petitioner in the Appeal for the Appellant and made elaborate arguments. Therefore, it cannot be said that legal advice was not available at that stage. The moment the judgment on the Appeal was pronounced in the Open Court i.e. on 21.12.2012, which was communicated on 22.12.2012, the Petitioner must have been vigilant and got the opinion from the learned Counsel who appeared before the Tribunal then and there in order to take a decision in this matter either to file the Review Petition before the Tribunal or to file an Appeal before the Hon'ble Supreme Court. This was not done. Why? There was no explanation.

35. On the other hand, the Petitioner simply states that it approached the Managing Director of the Company and then the Legal Department and then wrote letters after letters. This shows that the Petitioner was not so serious about the further course of action to be taken in spite of the fact that the result of the Appeal was known to the Petitioner as early as on 22.12.2012. During the period between 22.12.2012, the date of communication of the judgment and 5.2.2013, the date of the legal opinion, no details have been given as to what steps have been taken to take further course of action.
36. Admittedly, the legal opinion was obtained on 5.2.2013. Despite that, the Review has been filed only on 22.3.2013. The period between 5.2.2013 and 22.3.2013 has also not been satisfactorily explained. As such, there is no sufficient cause to condone the delay.
37. The principles laid down would mandate that the party who seeks for condonation, should show that besides acting bona fide, it had taken all possible steps to take further course of action. The exercise of discretion to condone the delay lies with the Tribunal. As held by the Hon'ble Supreme Court while condoning the delay, this Tribunal has

to take into consideration, the interest of both the parties. When the period of limitation expired, automatically the right accrues to the Respondent. This right accrued to the Respondents cannot be lightly disturbed by this Tribunal by simply saying that the well laid down principles would not apply to the Government Companies. Even for the Government Companies, there must be sufficient reasons to show sufficient cause so as to warrant for exercise of the discretion in favour of condonation of delay. It is not the law that Govt Companies need not show sufficient cause to condone the delay.

38. As we mentioned above, when we look at the explanation given in the Original Petition claiming that there was only a delay of 33 days and the explanation given in the Written Submissions filed on 16.7.2014 claiming that there was 59 days delay, we find that there was negligence and inaction on the part of the Applicant/Petition throughout.
39. Even assuming that the Applicant has got the right to seek for condonation, it shall give the details giving sufficient cause to enable the Tribunal to exercise its discretion in favour of the Applicant. No such details have been given.

40. The Applicant cannot mandate this Tribunal to condone this delay of 59 days merely by stating that it is a Government Company even though there is no "Sufficient Cause". In fact, from the conduct of the Applicant, we find that there is existence of lack of diligence and inaction on the part of the Applicant throughout.
41. Under these circumstances, we are unable to exercise our discretion in favour of the Applicant/Petitioner.
42. Therefore, the Application to condone the delay is dismissed. Consequently, the Review Petition is also rejected.
43. However, there is no Order to costs.

(Rakesh Nath)
Technical Member
Dated:01 August, 2014

(Justice M. Karpaga Vinayagam)
Chairperson

✓ ~~REPORTABLE/NON-REPORTABLE~~