

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

I.A. No.409 of 2013
IN
DFR No.2258 of 2013

Dated:23rd Jan, 2014

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

In the Matter of:

- 1. Transmission Corporation of Andhra Pradesh
Vidyut Soudha, Khairatabad
Hyderabad-500 082
Andhra Pradesh**

- 2. Eastern Power Distribution Company of
Andhra Pradesh Limited.,
P&T Colony, Seethammadhara,
Visakhapatnam-530013
Andhra Pradesh**

- 3. Southern Power Distribution Company of
Andhra Pradesh Ltd.,
D.NO.19-13-65/A, Srinivasapuram,
Tiruchanoor Road,
Tirupati-517 503,
Andhra Pradesh**

- 4. Central Power Distribution Company of
Andhra Pradesh Ltd.,
6-1-50, Corporate Office,
Mint Compound,
Hyderabad-500 063
Andhra Pradesh**

5. **Northern Power Distribution Company of
Andhra Pradesh Ltd.,
H.No.2-5-31/2, Corporate Office
Nakkalagutta,
Hanamkonda,
Warangal (AP)
PIN-506 004**

6. **Andhra Pradesh Power Coordination Committee
Vidyut Soudha, Khairatabad,
Hyderabad-500 082
Andhra Pradesh**

...Appellant(s)/Applicant(s)

Versus

1. **Andhra Pradesh Electricity Regulatory Commission,
4th and 5th Floor,
Singareni Bhavan, Red Hills,
Hyderabad-500 004
Andhra Pradesh**

2. **M/s. GMR Vemagiri Power Generation Limited.,
Skip House, 25/1, Museum Road,
Bangalore-560025**

...Respondent(s)

Counsel for the Appellant(s) : Mr. Anand K. Ganesan
Ms. Swapna Seshadri

Counsel for the Respondent(s): Mr. Amit Kapur
Mr. Vishnov Mukherjee
Ms. Rimali Batra for R-2

ORDER

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

1. This is an Application to condone the delay of 268 days in filing the Appeal as against the Impugned Order dated 27.11.2012 passed by the Andhra Pradesh State Commission.
2. The said order was passed in the Petition filed by M/s. GMR Vemagiri Power Generation Limited, the 2nd Respondent herein to the effect that the Second Respondent is entitled for payment of MAT from the Appellants under the PPA as per the actuals during the Tax Holiday Period available to the 2nd Respondent under Income Tax Act, 1961.
3. We had issued notice to the Respondent in this Application to condone the delay.
4. On receipt of the notice, the learned Counsel for the Second Respondent, who is also the contesting Respondent filed a reply opposing the Application to condone the delay with vehemence by giving various details showing the conduct of the Appellant in approaching this Tribunal with enormous delay which was not bona-fide.

5. We have heard the learned Counsel for the parties who argued the Application to condone the delay at length.
6. The gist of the explanation for this inordinate delay of 268 days in filing this Appeal is as follows:

“The Impugned Order had been passed on 27.11.2012. The same was communicated to the Applicants/Appellants on 5.12.2012. At that time, the issue in the same impugned order was pending in the Appeal in Appeal No.128 of 2011 filed by another developer. Ultimately, this Tribunal by the judgment dated 2.7.2012 held that the MAT paid by the Generating Company has to be reimbursed by the Appellants in the said Appeal. The judgment of this Tribunal in the said Appeal was challenged by the said Appellants in the Appeal filed in the Hon’ble Supreme Court. The said Appeal though was admitted, an interim order had been passed by the Hon’ble Supreme Court on 7.9.2012 directing the Appellants to pay 50% of the amount due by way of bank guarantee. Since the issue was pending in the Hon’ble Supreme Court, the Applicants/Appellants in this Application were advised to wait till the Appeal before the Hon’ble Supreme Court is disposed of. Accordingly, the Appellants did not choose to file the

Appeal against the order dated 27.11.2012 at that time. But, when the State Commission passed a subsequent order dated 12.8.2013 in the case of M/s. GVK Gautami Power Limited., the Applicants/Appellants obtained another legal opinion by which the Applicants/Appellants were advised to file a separate Appeal challenging the Impugned Order dated 27.11.2012.

On the basis of the said opinion, approval was obtained from the Management. Initially, the Management returned the note seeking for an explanation from the Applicants/Appellants as to why this decision for filing an Appeal was not taken earlier. Thereafter, the detailed note was prepared explaining the circumstances. Then the note was moved before the Management which in turn gave approval on 20.9.2013. Thereafter, the Appeal was prepared and had been filed on 14.10.2013. That was how the delay of 268 days in filing the Appeal had caused”.

7. This Application for condonation of delay of 268 days, has been stoutly opposed by M/s. GMR Vemagiri Power Generation Limited (R-2) mainly on the ground that the Appellants earlier took a conscience decision not to challenge the Impugned Order but without giving any valid

explanation for change of decision, they filed the Appeal belatedly along with the Application to condone the delay.

8. The learned Counsel for the Respondent has also pointed out that this Tribunal earlier passed the orders in IA No.280 and 281 of 2013 on 5.9.2013, judgment reported in 2013 ELR (APTEL) 1236 dated 15.7.2013 and 2013 ELR (APTEL) 1285 dated 12.8.2013 rejecting the Applications to condone the delay holding that when the party had chosen not to file the Appeal against the judgment earlier, the subsequent Appeal filed by changing its decision that too with enormous delay could not be entertained and that reasoning would apply to this Application also.
9. We have carefully considered the submissions made by the parties.
10. As correctly pointed out by the learned Counsel for the Respondent, this Tribunal decided the issue raised in the Impugned Order dated 27.11.2012 in the Appeal filed by another developer and dismissed the Appeal on 2.7.2012 itself. Further, the Applicants again decided not to file the Appeal against the Impugned Order even when the Hon'ble Supreme Court after entertaining the Appeal against the judgment of this Tribunal passed the Interim Order directing the Appellants in that Appeal to pay 50% of the payment by

way of bank guarantee. In fact, they took the decision not to file the Appeal since the issue would be decided by the Hon'ble Supreme Court.

11. Having decided so, the Applicants have now taken a different decision to file this Appeal after a subsequent order dated 12.8.2013 passed by the State Commission in another matter and thereafter, they filed this Appeal on 14.10.2013.
12. Thus, the inordinate delay of 268 days was not only not explained satisfactorily but also the ground of delay cannot be accepted since this Tribunal held in the various matters as referred to above, as pointed out by the learned Counsel for the Respondent that the change of decision to file the Appeal belatedly, would not be the ground for condoning the delay.
13. Though the learned Counsel for the Respondent vehemently objected to the Application to condone the delay, ultimately he gave a concession that the Application for condonation of delay could be considered favourably in favour of the Applicants/Appellants provided that the Applicants/Appellants is willing to pay the 50% of the amount due by way of bank guarantee as the Hon'ble Supreme Court directed in the other Appeal.

14. We are not willing to pass such an order by imposing similar conditions as imposed by the Hon'ble Supreme Court to condone the delay in view of the fact that we are of the view that the explanation given by the Applicants/Appellants for enormous delay is not satisfactory as it does not show sufficient cause.
15. The learned Counsel for the Applicants/Appellants herself pointed out that this issue in this Appeal has already been decided by this Tribunal in the judgment in Appeal No.128 of 2011 rendered on 2.7.2012 filed by another developer.
16. However, there is no satisfactory explanation adduced by the Applicants/Appellants. Therefore, we are not inclined to condone the delay and to entertain the Appeal.
17. Therefore, the Application to condone the delay of 268 days in filing the Appeal, is dismissed.
18. Consequently, the Appeal is also rejected.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated:23rd Jan, 2014

✓ ~~REPORTABLE/NON-REPORTABLE~~