

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Dated:28th April, 2014

Present:

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

IA No.130 OF 2014
IN
DFR No.456 OF 2014

In the Matter of:

M/s. Spectrum Power Generation Limited,
Plot No.231, 8-2-293/82/A/231,
3rd Floor, Road No.36,
Jubilee Hills,
Hyderabad-500 033

.....Applicant

Versus

- 1. Andhra Pradesh Electricity Regulatory Commission**
11-4-660, 4th and 5th Floors,
Singareni Bhavan, Red Hills
Hyderabad-500 004
- 2. Transmission Corporation of Andhra Pradesh Ltd.**
Vidyut Soudha, Khairatabad,
Hyderabad-500 004
- 3. Central Power Distribution Company of**
Andhra Pradesh Limited,
11-5-423/1/A, First Floor,
Singareni Collieries Bhavan,
Lakdi-ka-pul,
Hyderabad-506 001

4. **Southern Power Distribution Company of
Andhra Pradesh Limited,
Back Side Sirinvasa Kalyana Mandapam,
Kesavanayanagunta,
Tirupati-517 501**

5. **Northern Power Distribution Company of
Andhra Pradesh Limited,
H.No.1-1-503 & 504,
Opposite NIT Petrol Pump,
Chatainyapuri, Hanamkonda,
Warangal-506 004**

6. **Eastern Power Distribution Company of
Andhra Pradesh Limited,
Sai Shakti, Opposite Saraswati Park,
Daba Gardens,
Visakhapatnam-530 020**

7. **AP Power Co-ordination Committee,
Vidyut Soudha, Khairatabad,
Hyderbad-500 004**

...Respondent(s)

Counsel for the Appellant(s) : Mr. S B Upadhyay, Sr Adv.
Ms. Ruth Elwin,
Mr. Matrugupta Mishra

Counsel for the Respondent(s): Ms. Swapna Seshadri for R-2 to R-7

ORDER

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

1. This is an Application to condone the delay of 287 days in filing the present Appeal as against the Order dated 17.4.2013 passed by the Andhra Pradesh State Commission.
2. M/s. Spectrum Power Generation Limited, the Applicant/Appellant is a Generating Company. The Transmission Corporation of Andhra Pradesh Limited is the 2nd Respondent. It was engaged in the business of purchase and sale of electricity in the State of Andhra Pradesh.
3. The Applicant/Appellant for the purpose of selling power generated by it entered into a Power Purchase Agreement dated 20.6.1993 with the Respondent.
4. On 18.4.1997, a major fire accident took place to a Generator of the Applicant when it was under spin cooling. The EPC contractor notified the above events as Force Majeure and requested for extension of time for completion of the project.

5. The Respondents were aware of the Force Majeure Events. In fact, they were communicated about the happenings of the events on day to day basis. However, the Respondent without paying any heed to such a Force Majeure Event, deducted an amount of Rs.2,21,10,000/- from the bills submitted by the Appellant for the month of July, 99 abruptly. The Respondent had deducted the said amount on the pretext of liquidated damages.
6. Being aggrieved by such conduct of the Respondent, the Applicant originally went and filed a Writ Petition. Subsequently, as directed by the High Court, the Applicant approached the State Commission and filed a Petition for declaration and direction to the Respondent to refund the said amount together with interest.
7. The Respondent has filed preliminary objections challenging the maintainability of the Petition before the State Commission as it is barred by law.
8. After hearing the parties, the State Commission dismissed the Petition by the order dated 17.4.2013 holding that the Applicant is not entitled for refund of the amount as the same is barred by limitation.

9. As against this order dated 17.4.2013, the Applicant has filed this Appeal on 12.2.2014 along with an Application to condone the delay of 287 days in filing the said Appeal.
10. On receipt of the notice issued in this Application, the Respondent appeared and vehemently objected to the Application to condone the delay on the ground that there is no sufficient cause to condone the delay especially when the explanation offered by the Applicant is not satisfactory.
11. It was also pointed out by the learned Counsel for the Respondent that similar issue had been decided by this Tribunal in IA No.103 of 2014 between the same parties and in that matter, this Tribunal dismissed the Application to condone the delay of 268 days in filing the Appeal as against the Order dated 15.3.2013 by rejecting the explanation which is similar to the explanation offered in this case and therefore, this Application also may be dismissed.
12. We have perused the Application to condone the delay filed by the Applicant. The explanation offered by the Applicant through the Application as well as through the oral submissions would be summarised as follows:

“The Impugned Order was passed on 17.4.2013. The said Order was received by the Applicant on 24.4.2013. Thereafter, office note was prepared by

the then Legal Head of the Applicant for filing the Appeal against the Impugned Order. On 15.5.2013, after getting the internal approval, the Legal Head forwarded the entire set of documents to the concerned Advocate in Delhi for preparation and filing the Appeal before this Tribunal. Thus, the Legal Head was assigned the matter and he was continuously following the same with the Advocates in Delhi.

However, the Legal Head suddenly resigned from the Appellant's Company in July, 2013 after informing the Appellant Company that he had taken all steps to file the Appeal before this Tribunal. But, unfortunately, only during December, 2013, the Applicant came to know that such an Appeal was never filed by the concerned Advocates in Delhi. Thereafter, the case papers and documents were sent to the present Advocate's office in first week of January, 2014. After the draft Appeal was approved, the Appeal has been filed on 12.2.2014. That is how the delay was caused. Since the above delay of 287 days was caused due to the sudden resignation of the Legal head and due to the communication gap between the Advocate in Delhi and the Applicant Company, the same may be condoned".

13. The learned Senior Counsel on the strength of the two decisions i.e. (1987) 2 SCC 107 in the case of Collector, Land Acquisition, Anantnag and Another Vs Mst. Katiji and Other and (2001) 9 SCC 106 in the case of Vedabai Alias Vijay Anaatabai Baburao Patil Vs Shantaram Baburao Patil and Ors, has submitted that the Courts should take liberal approach in condonation of delay and therefore, this delay of 287 days may be condoned on payment of cost.
14. Opposing this prayer, the learned Counsel for the Respondent has cited two judgments i.e. New India Insurance Co Ltd and Ors vs Smt Keshar and Ors AIR 1996 Rajasthan 28 and Victor Albuquerque Vs Saraswati Co-Operative Bank Ltd & Ors AIR 1998 Bombay 346 contending that the enormous delay of 287 days has not been satisfactorily explained and the Applicant was not vigilant throughout and that therefore, the Application to condone the delay may be dismissed and consequently the Appeal also may be rejected.
15. We have carefully considered the submissions made by both the parties and perused the judgments cited by them.
16. Let us refer to various principles which have been laid down by various High Courts as well as Hon'ble Supreme Court to

be followed while we deal with the Applications to condone the delay:

(a) In exercising discretion u/s 5 of the Limitation Act, the Courts should adopt a pragmatic approach. A distinction must be made between a case where the delay is inordinate and a case where the delay is of a few days. In the former case, the consideration of prejudice to the other side will be a relevant factor. In the latter case, no such consideration may arise. In such a case, liberal approach is to be adopted.

(b) The Court has to exercise the discretion on the facts of each case keeping in mind that in construing the expression “sufficient cause”, the principle of advancing substantial justice is of prime importance.

(c) The expression “sufficient cause” employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice.

(d) There is no straight jacket formula for condoning the delay in all cases on the ground of administrative exigencies. The case has to be made out for the same and delay has to be explained by making out a sufficient cause for condoning the same.

(e) When there is a gross negligence on the part of the Applicant for not filing an Appeal in time, the delay cannot be condoned. For condoning the delay sufficient cause has to be shown. For the lethargy and fault of the Applicant, the Respondent should not be made to suffer.

(f) It is true that while considering the application for condonation of delay, the Court should not take a pedantic approach but at the same time one should not forget that relief of condonation of delay is a discretionary relief and the discretion has to be exercised judiciously. The discretion for condonation of delay can be exercised on consideration of all the relevant facts including diligence and bona fides of the party praying for condonation of delay. While exercising such discretion, the Court is not supposed to lightheartedly disturb the legal right accrued in favour of the opponent by the Applicant's failure to prefer the Appeal within the prescribed period.

17. In the light of the above principles laid down by the Hon'ble Supreme Court, we shall now decide the question as to whether the explanation offered in this case is satisfactory or not?

- 18.** It is pointed out by the learned Counsel for the Respondent that the similar issue with reference to condonation of delay between the same parties in filing the Appeal against the order of the same Commission has been dealt with by this Tribunal in IA No.103 of 2014 in DFR No.228 of 2014 and this Tribunal rejected the very same explanation and dismissed the Application to condone the delay.
- 19.** We have gone through the said Order. It is noticed that in that matter also it was stated that there was a failure on the part of the Legal Head to take steps to file the Appeal in time and his sudden resignation and because of the lawyer's default who misled the party, there was a delay of 268 days in filing the Appeal.
- 20.** We have specifically held in that case that the resignation of the Legal Head cannot be accepted as the sufficient cause to condone the delay. It is settled law as referred to above that the Court should not take a pedantic approach in considering the application to condone the delay but the discretion to condone the delay which is discretionary relief has to be exercised judiciously. The discretion of condonation for delay shall be exercised on consideration of relevant facts including the diligence and bona fides of the Applicant praying for the condonation of delay.

- 21.** As held by the Hon'ble Supreme Court the legal right accrued in favour of the opposite party should not be lightly disturbed. If the above principle is applied to the present case, then we are constrained to conclude that the explanation offered by the Applicant in the present case does not deserve acceptance.
- 22.** According to the Applicant, the Impugned Order was passed on 17.4.2013. The Legal Head forwarded the papers on 15.5.2013 to the Counsel at Delhi. In July, the Legal head had resigned after informing the Appellant Company that he had taken all steps to file the Appeal. Having come to know that the Legal Head had resigned in July, 2013, the Applicant ought to have not taken steps to pursue the matter with the Lawyer who was stated to have been engaged by the erstwhile Legal head. This was not done. It is now stated that only in December, 2013, the Applicant came to know that no such Appeal was filed. There are no details as to what steps the Applicant had taken to pursue the matter between July, 2013 and December, 2013 by contacting the Delhi lawyer. Even after July, 2013 no immediate steps have been taken to file the Appeal immediately thereafter by engaging a new Counsel.
- 23.** These facts would indicate that the Appellant's Company was not showing diligence in prosecuting the matter.

- 24.** In the absence of any satisfactory explanation between 17.4.2013, the date of the Order and 12.2.2014, the date of Appeal, we cannot show indulgence to condone the delay so as to disturb the legal right accrued to the Respondent. Hence, the Application to condone the delay is dismissed.
- 25.** Consequently, the Appeal is also rejected.

(Rakesh Nath)
Technical Member
Dated:28th April, 2014

(Justice M. Karpaga Vinayagam)
Chairperson

✓ ~~REPORTABLE/NON-REPORTABLE~~