

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

**IA NO.131 OF 2014 AND IA No.132 OF 2014**  
**IN**  
**DFR No.397 OF 2014**

**Dated:3<sup>rd</sup> April, 2014**

**Present:**

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

**In the Matter of:**

- 1. U.P Power Transmission Corporation Limited  
(UPPTCL)  
7<sup>th</sup> floor, Shakti Bhawan,  
14, Ashok Marg,  
Lucknow-226 001 (UP).**
- 2. Chief Engineer (Operations)  
U.P. Power Transmissions Corporation Limited.  
(UPPTCL)  
11<sup>th</sup> Floor, Shakti Bhawan Extension,  
14, Ashok Marg,  
Lucknow-226 001 (UP)**

**...Appellants/Applicants**

**Versus**

- 1. M/s. Noida Power Company Limited (NPCL)  
Commercial Complex, H Block,  
Alpha-II Sector,  
Greater Noida (UP),**

2. **Uttar Pradesh Power Corporation Limited (UPPCL)**  
**7<sup>th</sup> Floor, Shakti Bhawan,**  
**14, Ashok Marg,**  
**Lucknow-226 001 (UP)**
  
3. **Chief Engineer (Power System),**  
**State Load dispatch Centre (SLDC),**  
**U.P. Power Transmission Corporation Limited,**  
**5<sup>th</sup> Floor, Shakti Bhawan,**  
**14, Ashok Marg,**  
**Lucknow-226 001 (UP)**
  
4. **Northern Regional Load Despatch Centre (NRLDC)**  
**18-A, Qutab Institutional Area,**  
**Katwaria Sarai,**  
**New Delhi-110 016**
  
5. **Central Electricity Regulatory Commission**  
**3<sup>rd</sup> & 4<sup>th</sup> Floor,**  
**Chanderlok Building**  
**36 Janpath,**  
**New Delhi-110 001**

**...Respondent(s)**

Counsel for the Appellant(s) : Mr.Ardhendumauli Kr. Prasad  
Ms. Sangetta Mandal  
Ms. Taruna A Prasad  
Ms. Pankhuri Bhardwaj  
Mr. Aditya Bharech

Counsel for the Respondent(s): -

## **ORDER**

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

1. U.P Power Transmission Corporation Limited is the Appellant herein.
2. The Appellant has challenged the two Orders i.e. The Main Order dated 28.11.2011 and the Review Order dated 9.5.2013 passed by the Central Electricity Regulatory Commission, in this single Appeal.
3. In filing this Appeal challenging these two Orders, there was some delay. Therefore, the Appellant has filed two separate Applications for condonation of delay of 802 days in filing the Appeal as against the Main Order dated 28.11.2011 in IA No.131 of 2014 and 307 days in Filing the Appeal as against the Review Order dated 9.5.2013 in IA No.132 of 2014.
4. The short facts are as under:
  - (a) M/s. Noida Power Company Limited is the first Respondent. It filed a Petition in Petition No.126 of 2011 on 11.5.2011 before the Central Commission seeking for a direction to the Appellants to refund the excess transmission charges recovered by them.

(b) The Appellants opposed the Application by filing the reply. Ultimately, the Central Commission, after hearing the parties passed the Impugned Order dated 28.11.2011 directing the Appellants to refund the excess amount being the difference of Rs.80/MWh charged earlier and Rs.50/MWh to be charged with effect from 1.10.2009.

(c) In pursuance of the said order, the Noida Power Company, the 1<sup>st</sup> Respondent sent a letter to the Appellants requesting for the refund of the amount towards excess transmission charges. However, the said amount was not refunded by the Appellants to the Noida Power Company. The Appellants also have not filed the Appeal against the Order dated 28.11.2011.

(d) At this stage, the Noida Power Company on 17.1.2012 filed a Review Petition for modification of Main Order dated 28.11.2011 seeking for 18% interest on the refund amount.

(e) The Appellants filed a reply to the Review Petition. The Review Petition was heard on 31.5.2012. Ultimately on 9.5.2013, the Central Commission allowed the Review Petition filed by the Respondent and directed the Appellants to pay the interest at the

rate of Rs.9% per annum during the period the Appellants collected the excess transmission charges.

(f) Only thereupon, the Appellants had taken steps to file the Appeal against both the Main Order dated 28.11.2011 directing the Appellants to refund the excess amount as well as the Review Order dated 9.5.2013 directing the Appellants to pay the interest at the rate of Rs.9% per annum.

(g) Thus, the Appellants in this single Appeal have challenged both the Orders. Since there was a delay, both in filing the Appeal against the Main order as well as in filing the Appeal against the Review Order, the Appellants have filed two different Applications for condonation of delay in IA No.131 of 2014 and IA No.132 of 2014 along with this Appeal.

(h) There was a delay of 802 days in filing the Appeal against the Main Order dated 28.11.2011. So, the Application has been filed in IA No.131 of 2014 to condone the delay in filing the Appeal as against the Main order dated 28.11.2011 directing the Appellants to refund the amount.

(i) Similarly, the Appellant in another Application in IA No.132 of 2014 sought for condonation of delay of 307 days in filing the Appeal as against the Review Order dated 9.5.2011 directing the Appellant to pay the interest as well.

5. These Applications have come-up before this Tribunal for consideration.
6. The learned Counsel for the Appellant has made elaborate arguments with reference to the explanation offered by the Appellants in these two Applications in order to show that there was sufficient cause to condone the delay.
7. The gist of the submissions made by the Appellants offering the explanation for the delay of 802 days in Filing the Appeal against the Main Order dated 28.11.2011 as well as for the delay of 307 days in filing the Appeal against the Review Order dated 9.5.2013 is extracted as below:

“(a) The Main Order dated 28.11.2011 was passed by the Central Electricity Commission directing the Appellants to refund the excess amount collected by them from the Respondents. On receipt of the Order on 13.12.2011, there was correspondence between the Appellant and the State Load Despatch Centre for

taking necessary action. It took some time for a regular correspondence between the Appellant and the State Load Despatch Centre. Then the Counsel was contacted to take further action. The conference with the Counsel was held from 16.3.2012 and 29.3.2012. On 13.4.2012, the Counsel advised the Appellants to file the Appeal as against the Order dated 28.11.2011. Accordingly, the Counsel was instructed by the Appellants on 17.4.2012 to prepare the Appeal.

(b) In the meantime, the Review Petition has been filed by the Respondents for modification of the Main Order seeking for the direction for payment of interest also. Therefore, on 23.4.2012, the Counsel advised that since the time for Appeal has already expired, it would be better to contest the Review Petition filed by other parties and then to file the Appeal later against both the Original Order as well as the Review Order.

(c) Accordingly, counter affidavit has been filed contesting the Review Petition filed by the Respondents. The Central Commission after hearing the parties on 31.5.2012 allowed the Review Petition by directing the Appellants to pay the interest also on the refund amount directed to be paid earlier.

(d) Then, some other Counsel was engaged to consider for further course of action. The other Counsel gave opinion on 15.9.2013 advising the Appellants not to file the Appeal. Accordingly, it was decided not to file the Appeal. However, after some time, the Appellants referred the matter to the earlier Counsel for second opinion. This time, they were advised to file the said Appeal. Then, on the advise of the Counsel, the Appellants took decision to challenge the Orders dated 28.11.2011, the Main Order as well as the Review Order dated 9.5.2013.

(e) Accordingly, the Appeal has been filed on 7.2.2014. Since the Appellants took some time to proceed with the matter, on the basis of the different opinions given by different Counsel, some delay was caused. Therefore, the delay which is bona fide, may be condoned.”

8. The learned Counsel for the Appellant have also cited judgment rendered by the Hon'ble Supreme Court reported in (1998) 7 SCC 123 in the case of N Balakrishnan Versus M Krishnamurthy in which it is held that the condonation of delay is a matter of discretion of the Court and the words “sufficient cause” under Section 5 of the Limitation Act

should receive a liberal construction so as to advance substantial justice.

9. We have carefully considered the submissions made by the learned Counsel for the Appellants and analysed the various reasons by way of explanation for the delay caused in filing this Appeal as against both the orders.
10. On going through the explanation and on hearing the submissions of the learned Counsel for the Appellants, we are unable to accept the explanation offered by the Appellants.
11. It is not disputed that even though the Main Order which was passed on 28.11.2011 directing the Appellants to refund the excess amount collected from the Respondents, the Appellants had not taken any immediate steps either to file the Appeal as against the Main Order dated 28.11.2011 or to file a Review against the Order before the Central Commission.
12. The Impugned Order dated 28.11.2011 would clearly render a finding that the collection of the amount by the Appellants from the Respondent was not legally valid and therefore, the excess amount collected by them had to be refunded. This main Impugned Order would show that the plea of the

Appellants opposing the claim of the Respondent with reference to the excess amount being collected has been totally rejected by the Central Commission.

13. Despite this, the Appellant have not chosen to file the Appeal either before this Tribunal or Review before the Central Commission questioning that order contending that the finding that was rendered with reference to the excess collection of the amount, was not legally valid.
14. On the other hand, the Respondent filed a Review Petition on 17.1.2012 seeking for a direction to pay 18% of interest on the amount directed to be refunded. At least at that stage, the Appellant could have filed a Review Petition before the Central Commission seeking for the Review of the Main Order dated 28.11.2011 or the Appellants could have filed the Appeal against the said Main Order before this Tribunal.
15. On the other hand, the Appellant kept quiet without taking steps to challenge the said order and on the other hand, the Appellants filed a reply in the Review Petition opposing the claim for the interest.
16. It is submitted by the learned Counsel for the Appellant in the reply to the Review Petition that they prayed the Central

Commission to review the whole order which would show that they had taken some steps. This contention is misplaced.

17. The main order could be challenged only by the Appellants either by filing a separate Appeal or by filing a separate Review before the Central Commission. Without doing that, the Appellant simply filed a reply seeking for the Review of the whole Order. Review of the whole Order as prayed by the Appellants in the reply is not permissible under law.
18. On the other hand, the Appellant was said to have been advised not to file the Appeal at that stage as they could file the Appeal after the disposal of the Review. It is stated that on that advice, the Appellants were awaiting the Orders in the Review Petition. This explanation is monstrous, as that was no reason to wait for the Review Order especially when the aspect of the Main order and the Review Order is totally different.
19. As indicated above, the Review Petition has been ordered in favour of the Respondent with regard to interest on 9.5.2013. At least thereafter, they would have filed an Appeal either against the Main Order or against the Review Order without any further delay in the Tribunal. On the other

hand, they filed the Appeal against both the Orders only on 7.2.2014 i.e. after about 9 months.

20. While explaining the delay between 9.5.2013, the date of Review Order and 7.2.2014, the date of filing the Appeal, the learned Counsel for the Appellant submitted that originally they were advised not to file any Appeal before the Tribunal but while they sought for second opinion from some other Counsel they got the opinion that Appeal could be filed and that was how the delay was caused.
21. This explanation is unacceptable as it does not indicate any sufficient cause to condone the delay. The chronological events which have been given by the Appellants in the Synopsis and List of Dates would clearly indicate that originally, the Appellant decided not to file an Appeal as against the Main Order and even after the Review Order dated 9.5.2013, they have not taken steps to file the Appeal in time. It is stated that only after getting the second opinion that too after a long time; they decided to file an Appeal.
22. Thus, the period between the date of the Main Order dated 28.11.2011 and 9.5.2013, the date of the Review Order and the period between 9.5.2013, the date of the Review Order and 7.2.2014, the date of filing the Appeal, has not been

properly explained to indicate that there was sufficient cause.

23. One other aspect has to be noticed in this context.
24. Even though the Main Order has been passed for refund of the amount as early as on 28.11.2011 and the payment of interest ordered on 9.5.2013, the Appellants have not at all taken the steps to comply with the Orders till now by making some payments to the Respondents to show bona fide.
25. This would clearly show that the conduct of the Appellants was to cause further delay to the matter for a long time in order to avoid the payment of refund amount as well as the payment of interest to the Respondent in violation of the both the Impugned Orders.
26. The Hon'ble Supreme Court has specifically held in the decision cited by the learned Counsel for the Appellants that condonation of delay is a matter of discretion of the court and if the explanation indicated that there was a dilatory strategy adopted by the Appellant and when there is a reasonable ground to think that the delay was occasioned by the Appellant deliberately to gain time, then the Court should not accept the explanation.

27. In view of the above, we find that there is a reasonable ground to think that the inordinate and unexplained delay of 802 days and 307 days was occasioned by the Applicant virtually to gain more time to avoid the payment of the amount which is to be refunded as per the Order dated 28.11.2011 and the payment of Interest as per the Review Order dated 9.5.2013. Thus, there is a lack of bona fide, on the part of the Appellants. Hence, we are not able to accept the explanation offered by the Appellant which reflects the lack of bona fide as well as lack of diligence.

28. Hence, we deem it fit to dismiss both the Applications.

29. Accordingly, the same are dismissed. Consequently, the Appeal also is rejected.

**(Rakesh Nath)**  
**Technical Member**

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

Dated:3<sup>rd</sup> April, 2014

✓ ~~REPORTABLE/NON-REPORTABLE~~