

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

IA No.137 of 2014
IN
DFR No.506 of 2014

Dated:23rd May, 2014

Present:

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

In the Matter of:

M/s. Ginni Global Limited,
2nd Floor, Shanti Chamber,
11/6 B, Pusa Road,
New Delhi-110 005

...Appellant/Applicant

Versus

- 1. Himachal Pradesh Electricity Regulatory Commission
Keonthal Commercial Complex,
Khalini,
Shimla-171 002**
- 2. Himachal Pradesh State Electricity Board Ltd
Vidyut Bhawan,
Shimla-171 004**
- 3. The Government of Himachal Pradesh,
Through its Secretary (MPP & Power),
HG Government,
Shimla-171 002**
- 4. The Himachal Pradesh Energy Development Agency
(Himurja)
SDA Complex, Kasumpti,
Shimla-171 009**

...Respondent(s)

Counsel for the Appellant(s) : Mr. Hemant Singh
Ms. Shikha Ohri

Counsel for the Respondent(s): Mr. Anand K Ganesan
Ms. Swapna Seshadri for R-2

ORDER

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

1. This is an Application filed by the Applicant/Appellant to condone the delay of 1477 days in filing the Appeal against the Impugned Order dated 22.5.2010 passed by the Himachal Pradesh State Commission.
2. The Applicant/Appellant M/s. Ginni Global Ltd is a Generating Company. The Applicant/Appellant has submitted following explanation for the delay of 1477 days in filing the Appeal:

“The Impugned Order was passed on 22.5.2010. Aggrieved by the Impugned Order, the Applicant filed a Review Petition in Petition No.135 of 2010 before the State Commission on 2.7.2010. The State Commission dismissed the Review Petition by the Order dated 3.12.2010. In the meantime, the Himachal Pradesh State Electricity Board filed the Writ Petition in the High

Court of Himachal Pradesh challenging the Regulations of the State Commission. Since the Writ Petition filed on 6.12.2010 by the Second Respondent was pending, the Order passed in the Review petition dated 3.12.2010 was not communicated. The Writ Petition was ultimately disposed of on 6.8.2013. Thereafter, the Order that was passed on 3.12.2010 was communicated on 19.12.2013. Thereafter, the Applicant filed the Appeal on 17.2.2014 along with an Application to condone the delay. Therefore, the delay in filing the present Appeal is neither intentional nor deliberate. Since, the said delay was caused only on account of the pendency of the Review Petition; therefore, the delay may be condoned as the Application is bona fide and justified”.

3. Opposing the condonation of the huge delay of 1477 days, the Himachal Pradesh State Electricity Board (R-2) has filed the reply. The crux of the objections is as follows:

“Even though the Order had been passed on 3.12.2010 dismissing the Review, the State Commission decided not to communicate the Order in the Review Petition to the Applicant since the stay application was pending in the Writ Petition. It is true that the order in the Review Petition was

communicated by the State Commission on 19.12.2013 after disposal of the Writ Petition. The fact remains that pending disposal of the Writ Petition which was communicated to the Applicant, there was no bar to the Applicant to approach this Tribunal by way of an Appeal immediately thereafter. In fact, one other party, i.e. M/s. Patikari Power Limited who is similarly situated had filed an Appeal against the Impugned Order in Appeal No.179 of 2010. The said Appeal was disposed of by this Tribunal by the judgment dated 23.4.2012. When the present Impugned Order becomes subject matter of the Appeal pending before this Tribunal, the Appellant would have approached this Tribunal by filing an Appeal and requested this Tribunal to dispose of the Appeal along with other Appeal i.e. Appeal No.179 of 2010 filed by M/s. Patikari Power Limited. Instead of filing the Appeal, on coming to know about the decision of the State Commission not to decide the review, the Applicant must have approached this Tribunal by filing an Appeal. This was not done. Further, substantial time has already been passed in view of the fact that the Impugned Order was passed on 22.5.2010. If any change in the Impugned Order is made, it would render retrospective adjustments to be

done which will cause hardship to the parties concerned. Hence, the delay may not be condoned.”

4. In the light of the above statements made by both the parties with reference to the condonation of delay, we have given our thoughtful consideration to the issue in question.
5. As admitted by both the parties, the Impugned Order was passed on 22.5.2010 itself by the State Commission. The Applicant filed the Review Petition on 2.7.2010 and the same was disposed of on 3.12.2010. In the meantime, the Writ Petition has been filed by the Electricity Board before the High Court challenging the Regulation. Since the Writ Petition was pending, the State Commission did not incline to communicate the Order dated 3.12.2010 to the Applicant. But, it is to be noted that the pendency of the Writ Petition is very well known to the Applicant as the Applicant was a party to the Writ Petition. When the State Commission has decided not to dispose of the Review Petition and communicate the Order to the Applicant, the Applicant could have approached this Tribunal by way of filing an Appeal as against the Impugned Order and obtained suitable orders with reference to the disposal of the review or at least the Applicant should have withdrawn the Review Petition and filed an Appeal before this Tribunal and in that event this much of delay would not have been caused.

6. That apart, one other party namely M/s. Patikari Power Limited has challenged the very same Impugned Order by filing an Appeal before this Tribunal in Appeal No.179 of 2010.
7. Having known about the pendency of the Appeal, the Applicant/Appellant must have filed a separate Appeal against the Impugned Order and prayed the Tribunal to have disposal of both the Appeals. This was not done by the Applicant.
8. This would show that the Applicant/Appellant was not diligent enough to prosecute the matter. Mere pendency of the Writ Petition or stay order passed by the High Court with reference to the particular Regulations would not be a bar to the Appellant to approach this Tribunal by way of Appeal against the Impugned Order. Therefore, the Applicant who is not diligent enough in approaching this Tribunal in time in the absence of any bar, cannot be allowed to contend that the inordinate delay 1477 days in filing the Appeal is bonafide.
9. On the other hand, the Applicant is not diligent enough to take up the matter by way of filing the Appeal before this Tribunal in time and get the disposal of the Appeal.

10. That apart, the huge delay of 1477 days, if condoned, then this Tribunal would be constrained to go into the validity of the Impugned Order and if any change in the Impugned Order is made, as pointed out by the learned Counsel for the Respondent No.2, it would render retrospective adjustments to be made which would cause great hardship to the parties concerned.
11. In view of the above, we are not inclined to condone the enormous delay of 1477 days in the absence of any satisfactory explanation which does not show sufficient cause to condone the delay.
12. Accordingly, this Application to condone the delay is dismissed. Consequently, the Appeal also is rejected.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated:23rd May, 2014

✓ ~~REPORTABLE/NON-REPORTABLE~~