

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Dated:16th Sept'2014

Present:

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

IA No.295 OF 2014
IN
APPEAL NO.152 OF 2012

M/s. Soham Mannapitlu Power Pvt Ltd.,
(Previously known as M/s. Bobba Aviation Services Pvt Ltd)
HMG Ambassador Building,
Bangalore-560 025

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

Versus

- 1. Karnataka Power Transmission Corporation**
A Block, Cauvery Bhavan,
Bangalore-560 009
- 2. Mangalore Electricity Supply Co. Ltd.**
Paradigam Plaza (1st Floor)
A B Shetty Circle
Mangalore-575 101
- 3. The State Load Despatch Centre**
Karnataka Power Transmission Corporation Ltd.,
28 Race Course Road,
Bangalore-560 001

4. **Karnataka Electricity Regualtory Commission,
Mahalakshmi Chambers,
6th and 7th Floor,
9/2, M.G. Road,
Bangalore-560 001**

.....Respondent(s)

Counsel for the Review Petitioner(s)Appellant(s):Mr.Chandrasekhar S
Counsel for the Respondent(s) : -

ORDER

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

1. This is an Application seeking for condonation of the delay of 110 days in filing the Review Petition against the judgment dated 12.2.2014 rendered by this Tribunal.
2. At the outset, it shall be stated that this Tribunal administratively issued two Notifications dated 24.2.2012 and 14.9.2012 notifying that the Review Petition has to be filed within 30 days from the date of receipt of the judgment and the Application to condone the delay beyond the period of 30 days cannot be entertained.
3. When these Notifications were challenged before this Tribunal, the order was passed by this Tribunal in two

applications in IA No.262 of 2012 dated 17.4.2013 and IA No.46 of 2013 dated 28.5.2013 upholding the validity of those Notifications.

4. In view of the above, the maintainability of this Review with an Application for condonation of the delay of 110 days is being questioned.
5. The learned Counsel for the Petitioner cited various authorities of the Hon'ble Supreme Court holding that while dealing with the Application to condone the delay, the Court should adopt a liberal and just oriented approach. Those decisions are as follows:

(a) 1987 (2) SCC 107 in the case of Collector, Land Acquisition, Anantnag and Another Vs Mst. Katiji and Others

(b) 2011 (4) SCC 602 in the case of Gangadhara Palo Vs Revenue Divisional Officer and Another

(c) 2010 (5) SCC 459 in the case of M/s. Oriental Aroma Chemical Industries Limited Vs Gujarat Industrial Development Corporation and Another

(d) 2013 (11) SCC 341 S Ganesharaju (dead) through LRS. And Another Vs Narasamma (Dead) through LRS and Another

(e) 2013 (12) SCC 649 Esha Bhattacharjee Vs Managing Committee of Raghunathpur Nafar Academy and Anothers

(f) ASIR 2011 SC 2439 Mahadev Govind Gharge & Ors Vs The Special Land Acquisition Officer, Upper

Krishna Project, Jamkhandi, Karnataka Vs Special land Acquisition Officer, Upper Krishna Project Jamkhandi, Karnataka with Special Land Acquisition Officer, Upper Krishna Project, Jamkhandi v Mahadev Govind Gharge & Ors

6. The principle laid down in the above decisions cannot be disputed since they are the ratio decided by the Hon'ble Supreme Court. But, the present question which would arise for consideration is to the maintainability of the Application to condone the delay in filing the Review Petition.
7. The Impugned Order was passed by this Tribunal on 12.2.2014. The Review has been filed along with an Application to condone the delay only on 4.7.2014 after about five months.
8. In this context, it is to be pointed out that in yet another matter, in IA no.139 of 2013 in DFR (RP No.631 of 2013) Gulberga Electricity Supply Company Limited filed a similar Review Petition along with an Application to condone the delay.
9. While the matter was pending before this Tribunal, the Petitioner, in that matter approached the Karnataka High Court and filed a Writ Petition challenging the above Notifications and obtained a stay order of the proceedings. Ultimately, it was reported that the said Writ Petition was disposed of by the Karnataka High Court on 30.6.2014. In

that order, the High Court while rejecting the arguments advanced by the Petitioner before the High Court recognised the powers of this Tribunal to issue such a notification. In fact, the High Court specifically held in that order that the powers given to the Chairperson of this Tribunal for issuing directions fixing the period of limitation to file the Review Petition and the said directions issued through the Notifications are valid.

10. In view of the decision taken by the High Court in the Writ Petition, the validity of the Notification could not be challenged in this Tribunal.
11. Therefore, we are to hold that as per the Notifications this Application to condone the delay is not maintainable.
12. However, the High Court in that order observed that this Tribunal in appropriate cases would be entitled to exercise the discretion in the matter of enlarging the time if the Review Petition is filed beyond the period of 30 days.
13. On the basis of this observation, we went into the reasons for the delay in that Petition filed by Gulbarga Company and ultimately held that the reasons for the delay are not satisfactory and accordingly dismissed the said Application.
14. Similarly, though we hold that the Application to condone the delay is not maintainable, we would go into the reasons to

find out whether there is “sufficient cause” to condone the delay so as to exercise our discretion in favour of the Petitioner, as observed by the High Court of Karnataka.

15. The explanation offered by the Petitioner in the Application to condone the delay of 110 days is as follows:

“The judgment was pronounced on 12.2.2014 in Appeal No.152 of 2012 allowing the Appeal in part in favour of the Appellant/Petitioner while rejecting the other prayer for Open Access. The Counsel for the Petitioner was under the impression that certified copy of the Order would be sent by this Tribunal directly to the parties concerned. Hence, the Petitioner or his Counsel did not apply for the certified copy. After waiting for nearly two months, as certified copy of the order was not received, the Counsel for the Petitioner directly approached the Registrar of this Tribunal and on enquiry, the Counsel came to know that the parties themselves have to apply for the certified copy. Therefore, certified copy of the order was applied on 3.4.2014 and the same was issued on the same date itself. After getting certified copy of the order the same was placed before the Board of Petitioner. Since the Board found some errors in the judgment, the Counsel advised the Petitioner to file the Review

Petition. During April/May, 2014, the officials of the Petitioner Company were busy in the audit work therefore; they were unable to give instructions to the Counsel to prepare the Review Petition. That apart, the Tribunal was on vacation during the month of June, 2014. Hence, the Petitioner was unable to file the above Review Petition during that period. Ultimately, the Review Petition was filed on 4.7.2014. Thus, there is a delay of 110 days. Since the delay was caused due to the aforesaid bona fide reasons, the delay may be condoned”.

16. We have carefully considered the explanation offered by the Petitioner as well as the oral submissions made by him.

17. While considering the Application, it would be appropriate to refer to the mandatory guidelines given by the Hon’ble Supreme Court to be followed in the matter of Condonation of delay. Those are as follows:

(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 unreasonable, the Court should be vigilant not to expose the other side unnecessarily to face such 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.

18. Bearing these various guidelines as referred to above in our mind, we shall now analyse the explanation offered by the Applicant as to whether sufficient cause has been shown to condone the delay for exercising our discretion.

19. There are three aspects noticed in this explanation:

(a) The judgment was rendered on 12.2.2014. The Counsel for the Petitioner was under the impression that the Tribunal would send the certified copy of the order directly to the parties concerned. Therefore, they waited for nearly two months. Since the copy was not received, the Counsel for the Petitioner approached the Registrar of the Tribunal on 3.4.2014. After the Enquiry, the Petitioner applied for certified copy of the Impugned Order on

3.4.2014 and the same was issued on the same day itself..

(b) The order was placed before the Board of the Petitioner. It took some time to take a decision. In April/May, 2014, the officials of the Petitioner Company were busy in the audit work. Therefore, they were not able to give instructions to prepare the Review Petition.

(c) During June, 2014, there was a vacation period for the Tribunal hence the Petitioner was unable to file the above Review Petition during the month of June also.

20. All the three aspects giving the explanation for the delay in filing the Review Petition are not based upon the factual and correct position.

21. Nowhere, in the rules framed by this Tribunal that this Tribunal will send certified copy directly to the Petitioner. Therefore, it is strange to contend that the Counsel was under the impression that certified copy of the Order will be sent by this Tribunal directly to the parties concerned. Ultimately, the Counsel approached this Tribunal and applied for the certified copy on 3.4.2014.

22. The explanation for two months period cannot be accepted since there is no basis for the learned Counsel to have an impression that certified copy of the Order will be sent to the Petitioner directly by the Tribunal.
23. In regard to the second explanation that it was placed before the Board and they were not able to file the Review in April/May, 2014 as the officials of the Company were busy in the audit work, it is to be stated that this conduct of the Petitioner Company is not appreciable as it has not shown interest in pursuing the matter immediately thereafter.
24. Further, the learned Counsel also was not aware of the Notification fixing the time period for filing the Review. It is the duty of the Counsel to have verified the rules of this Tribunal and proper instructions must have to be given to the parties within 30 days. Therefore, this explanation also cannot be accepted.
25. Thirdly, the Petitioner contended that the Petitioner was unable to file the Review Petition during the month of June namely the vacation period. This is also factually incorrect because the vacation is only for the sitting of the Tribunal and not for the Registry. The Registry was working during the vacation period of June, 2014 throughout.

26. Therefore, it is not proper for the learned Counsel to contend that the Petitioner was unable to file the Review during the vacation period.
27. In view of the above, we do not find any credibility in the explanation especially when the party failed to show that it was acting bona fide and had taken all possible steps to approach the Tribunal without unnecessary delay,
28. As there is a lack of diligence from the beginning, we are not inclined to condone the delay by exercising our discretion in favour of the Petitioner. Therefore, the Application to condone the delay is dismissed not only on the ground that it is not maintainable but also on the ground that there is no “sufficient cause” to condone the delay.
29. Consequently, the Review Petition is also rejected.
27. Pronounced in the Open Court on this 16th day of September, 2014.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated:16th Sept, 2014

√REPORTABLE/~~NON-REPORTABLE~~