

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

I.A. No.421 of 2013

IN

DFR No.1975 of 2013

Dated:5th Feb, 2014

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

In the Matter of:

**North Municipal Corporation of Delhi
Dr. S.P.M Civic Centre,
Minto Road,
New delhi-110 002**

...Appellant/Applicant

Versus

- 1. Delhi Electricity Regulatory Commission,
Vinayamak Bhawan,
"C" Block,
Shivalik, Malviya Nagar,
New Delhi-110017**
- 2. Tata Power Delhi Distribution Limited.,
Grid Sub-Station Building,
Hudson Lines, Kingsway Camp,
Delhi-110 009**
- 3. BSES Rajdhani Power Limited
BSES Bhawan, Nehru Place,
New Delhi-1110 009**
- 4. BSES Yamuna Power Limited.,
Shakti Kiran Building
Karkardooma
Delhi**

...Respondent(s)

Counsel for the Appellant(s) : Mr. B P Agarwal
Mr. Ujjwal Kr. Jha

Counsel for the Respondent(s): Mr. Manu Seshadri for R-1
Mr. Alok Shankar for R-2
Mr. Hasan Murtaza
Mr. Aditya Panda for R-3 & 4

ORDER

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

1. This is an Application to condone the delay of 385 days in filing the Appeal against the Order dated 13.7.2012.
2. Aggrieved by the Impugned Order by which the category of the Appellant falling under the highest slab of Domestic Tariff was changed into non-domestic tariff in the Tariff Order dated 13.7.2012 in respect of the Financial Year 2012-13, the Applicant has filed this Appeal.
3. There is a delay of 385 days in filing the Appeal. Therefore, the Applicant has filed this Application to condone the said delay giving explanation for the delay.
4. According to the Applicant, although the Impugned Order was passed on 13.7.2012, the Applicant came to know about the order only in February, 2013, thereafter, the Applicant filed a Review Petition challenging the said Tariff

Order but the same was dismissed on 3.7.2013, thereupon, the Appeal was prepared and the same was filed on 13.9.2013 and that therefore, the delay which was due to bona fide reasons may be condoned.

5. Opposing this Application, with vehemence, the 3rd Respondent contended that even though the Main Order was passed on 13.7.2012, the Applicant filed a Review Petition only on 11.6.2013 after a long delay i.e. nearly one year, thereafter, i.e. within three weeks, the Review Petition was dismissed on 3.7.2013 by the Delhi Commission and then after two months, the Appeal has been filed on 13.9.2013 and as such, there was no proper explanation for this inordinate delay and hence the Application to condone the delay may be dismissed.
6. We have considered the submissions made by both the parties and also perused the Affidavit as well as the Additional Affidavit filed by the Applicant and the reply filed by the Distribution Licensee, the 3rd Respondent.
7. On going through the Affidavits, reply and other records, we are of the opinion that the Applicant has failed to show sufficient cause to condone the inordinate delay of 385 days in filing the Appeal and therefore, this Application is liable to be dismissed. The detailed reasons are as follows:

(a) The main tariff order allowing the Respondent to charge the Applicant on non domestic tariff was passed as early as on 13.7.2012. According to the Applicant, it came to know about the Tariff Order dated 13.7.2012 only in February, 2013 when the objections with regard to category were invited for the determination of new tariff for the Financial Year 2013-14. This statement of the Applicant is found to be factually wrong.

(b) According to the Respondent, in pursuance of the Tariff Order dated 13.7.2012, the Respondent raised a bill immediately thereafter mentioning the tariff category as a non domestic High Tension and issued to the Applicant. This fact, pointed out by the Respondent, has not been disputed by the Applicant. Therefore, the contention of the Applicant that it came to know about the order only in February, 2013, is baseless.

(c) Even assuming that the Applicant came to know about the order only in February, 2013, the Applicant filed the Review Petition only on 11.6.2013 i.e. after about four months. This period has not been explained as to why the Applicant

took time to file the Review in June, 2013, even though the Applicant admitted that it came to know about the Impugned Order in February, 2013 itself.

(d) The Review Petition which was filed on 11.6.2013 before the Delhi Commission had been disposed of without any delay on 3.7.2013 itself. Even then, the Appeal has been filed only on 13.9.2013 after about 2 months and 10 days. This delay also has not been explained.

(e) The main Tariff Order was passed on 13.7.2012 in respect of the Financial Year 2012-13. This period of Tariff year was already over on 31.3.2013. The Applicant received the bills immediately after the Tariff Order was passed on 13.7.2012 at non-domestic tariff according to the Tariff Order dated 13.7.2012. Nevertheless, the Applicant had chosen to file the Review only on 11.6.2012 i.e. after the tariff period was over. Now in the present Appeal, the Applicant is seeking for a retrospective revision of the tariff after the year in question was already over. The learned Counsel for the Respondent has correctly pointed out that any revision of tariff of the past year at this stage would cause prejudice to the Respondent and in

that event, the tariff for all categories of consumers will have to undergo a change which is impracticable at this stage.

8. In view of the above, we are not inclined to accept the explanation offered by the Applicant in the Affidavit especially when it reflects lack of bona fide and lack of diligence. Hence, this Application to condone the delay of 385 days is dismissed.
9. Consequently, the Appeal is also rejected.

(Rakesh Nath)
Technical Member
Dated:5th Feb, 2014

(Justice M. Karpaga Vinayagam)
Chairperson

✓ ~~REPORTABLE/NON-REPORTABLE~~