

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

IA no. 342 of 2014 in DFR No. 2118 of 2014

Dated: 13th November, 2014

**Present: Hon'ble Mr. Rakesh Nath, Technical Member
Hon'ble Mr. Justice Surendra Kumar, Judicial Member**

In the matter of

- 1. Biomass Energy Developers Association ...Appellant(s)
E-506, Keerti Apartments
Behind Sarathi Studios,
Ameerpet, Hyderabad – 500 073**
- 2. Gowthami Bio Energies Pvt. Ltd.
E-506, Keerti Apartments
Behind Sarathi Studios,
Ameerpet, Hyderabad – 500 073**
- 3. Balaji Agro Oils Ltd
74-2-19, Old Checkpost Centre
Krishna Nagar
Vijayawada – 520 007**
- 4. Bollineni Castings & Steel Ltd.
6-2-913/914, Progressive Towers
1st Floor, Khairatabad
Hyderabad – 500 004**
- 5. The Gowthami Solvent Oils Pvt. Ltd.
Post Box No. 7, Pydiparru
Tanuku – 534 211
West Godavari District**

6. **Jocil Ltd.**
Box no. 216, Arundalpet
Gunur – 522 002
7. **Jyothi Bio Energy Ltd.**
4th Floor, Mayank Towers
Raj Bhavan Road
Hyderabad – 500 082
8. **Greenko Energies Pvt. Ltd.**
Plot No. 1071, Road No. 44
Jubilee Hills
Hyderabad – 500 034
9. **Matrix Power Pvt. Ltd.**
8-2-277/12, Road No. 3
Banjara Hills
Hyderabad – 500 034
10. **Ritwik Power Projects Ltd.**
Flat no. 201, Plot No. 20
Sri Chaitanya Residency
Sagar Society, Road No. 2
Banjara Hills, Hyderabad – 500 034
11. **Satyamaharishi Power Corpn. Ltd.**
Flat No. 202, Plot no. 20
Sri Chaitanya Residency
Sagar Society, Road No. 2
Banjara Hills, Hyderabad – 500 034
12. **Shalivahana Green Energy Ltd.**
7th Floor, Minerva Complex, S.D. Road
Secunderabad – 500 003
13. **Satyakala Power Projects Pvt. Ltd.**
Gunguru – 521 139, Penamaluru Mandal
Krishna District

14. **Saro Power & Infrastructure Ltd.**
19-2-217/2, Mir Alam Tank Road
Hyderabad – 500 064
15. **Sree Rayalaseema Green Energy Ltd.**
KPS Complex, Station Road
Gooty – 515 402
16. **Suryateja Power Projects Pvt. Ltd.**
Giri Sikara Apartments, Flat No. A 3
6-3-600/2/B, Padmavathi Nagar
Khairatabad, Hyderabad – 500 004
17. **Veeraiah N C Power Projects Ltd.**
Kurumaddali – 521 157, Pamarru Mandal
Krishna District.
18. **Varam Power Projects Ltd.**
8-4-120/3, Raja Complex, G.T. Road
Srikakulam – 532 001
19. **Vijaya Agro Products Pvt. Ltd.**
Enikepadu – 521 108
Vijayawada

Versus

1. **Andhra Pradesh Electricity Regulatory Commission** ...Respondent(s)
#11-4-660, 4th Floor, Singareni Bhavan
Red Hills, Hyderabad – 500 004
- 1a. **Andhra Pradesh Electricity Regulatory Commission, c/o**
Energy Department, Government of
Andhra Pradesh, Secretariat
Hyderabad
- 1b. **Telangana State Electricity Regulatory Commission, c/o**

**Energy Department, Government of Telangana
Secretariat, Hyderabad**

- 2. Southern Power Distribution Company of Andhra Pradesh Ltd.
19-13-65/A, Srinivasapuram, Tiruchanoor Road
Tirupati – 517 503**
- 3. Eastern Power Distribution Company of Andhra Pradesh Ltd.,
P&T Colony, Seethammadhara
Visakhapatnam – 530 013**
- 4. Southern Power Distribution Company of Telangana Ltd.
(previously called Central Power Distribution Company of Andhra Pradesh Ltd.)
Corporate Office, 6-1-50, Mint Compound
Hyderabad – 500 063**
- 5. Southern Power Distribution Company of Telangana Ltd.
(previously called Central Power Distribution Company of Andhra Pradesh Ltd.)
Corporate Office, 2-5-31/2, Vidyut Bhavan
Nakkalgutta, Hanamkonda
Warangal– 506 001**

Counsel for the Appellant (s) :

Mr. K. Gopal Chowdhary

Counsel for the Respondent(s):

**Mr. A. Subba Rao for R-2 & R-3
Mr. P. Shiva Rao for R-4 & R-5
Mr. K.V. Balakrishna**

ORDER

IA No. 342 of 2014 has been filed by the Appellants for condonation of delay of 51 days reckoned from the date of the impugned order and 20 days from the date of receipt of certified copy of the impugned order.

2. The Applicant has given the following reasons for the delay in filing the Appeal.

2.1 The State Commission passed the impugned order dated 16.05.2014 determining the variable component of tariff for biomass based power plants for the period 2014-2019. The impugned order was not communicated to the Appellants. Immediately, thereafter Andhra Pradesh Reorganisation Act, 2014 came into force on 02.06.2014 whereby the State of Telangana was carved out as a new State. The names of the Distribution Licensee, the 2nd and 3rd Respondents, herein,

as also their area of supply were changed as a consequence of the Reorganisation Act, 2014.

2.2 The Applicants/Appellants applied for certified copy of the impugned order by letter dated 15.06.2014. The certified copy was obtained on 16.06.2014.

2.3 On perusal of the impugned order it was noticed by the Appellants that a study report by a consultant commissioned by the State Commission was referred to and relied upon by the State Commission. The study report was not disclosed at any time during the course of the proceedings by the State Commission.

2.4 The Appellants sent repeated request through written applications between 10.07.2014 to 30.07.2014 for forwarding a copy of the study report but the same was not supplied by the State Commission.

2.5 In the first week of August on being apprised the position with regard to obtaining the study report, the Learned Counsel of the Appellants advised that the Appeal could be finalized on the basis of the available material with an application for directions to the State Commission to furnish the study report and seeking leave of the Tribunal to raise further additional grounds thereafter.

2.6 While the Appeal was being made ready for filing, the Appellants came to know through newspaper reports on or about 12.08.2014 that the Government of Andhra Pradesh had issued Notification dated 01.08.2014 constituting Andhra Pradesh State Electricity Regulation Commission. Earlier the Telangana Government had issued Notification dated 26.07.2014 constituting Telangana State Electricity Regulatory Commission. Andhra Pradesh Reorganization Act, 2014 provided for continuation of the Andhra Pradesh

Electricity Regulatory Commission as a Joint Commission only till separate State Commissions are formed into two States. In view of above, the Applicants were again advised by the Learned Counsel to revise the Memorandum of Appeal to include all the three Regulatory Commissions as Respondents in the Appeal by way of abundant caution.

2.7 Consequently, the Appeal was filed on 21.08.2014 resulting in delay of 51 days in filing of the Appeal reckoned from the date of the impugned order and 20 days reckoned from the date of receipt of certified copy of the impugned order.

3. Learned Counsel for the Appellants referred to judgment of this Tribunal dated 20.12.2012 in IA no. 278 of 2012 in DFR no. 1229 of 2012 in which it was held that limitation period for preferring a Appeal under Section 111 of the Act before this Tribunal would commence only from the date of the receipt of the authenticated copy of the impugned order by

the person concerned from the Commission as per the procedure contemplated under the Regulations, rules and provisions of the Act and not from the date of the impugned order, as applicable to the persons who participated in the proceedings.

4. Shri A. Subba Rao, Learned Counsel for Respondent nos. 2 and 3. Shri P. Shiva Rao, Learned Counsel for Respondent nos. 4 and 5 vehemently opposed the contention of the Appellant. According to them the Appellant had claimed their monthly bills with revised variable cost in line with the impugned order dated 16.05.2014 even prior to second week of June, 2014, when the Appellant is said to have come to know the impugned order. The said bills were submitted on 26.05.2014 by some of the companies and 30.05.2014 by other companies. Thus, they had knowledge about the order dated 16.05.2014 prior to 26.05.2014/30.05.2014. As such the delay in filing the

Appeal is 51 days but not 20 days. The Appellants have also misrepresented about the knowledge of the impugned order. Further, there is absolutely no reason or justification for the Appellants to wait for the copy of the study report for filing of the Appeal. They have also referred to Tribunal's order dated 30.10.2014 in case of Adani Power Ltd. in support of their arguments.

5. We have heard Learned Counsel for the parties.

6. The main contention of the Respondents is that since the Appellants had raised the bills based on the impugned order between 26.05.2014 and 30.05.2014, they were aware about the impugned order prior to 16.06.2014. Even if it is presumed that the Appellants came to know about the impugned order on the date of the order that is on 16.06.2014, the delay in filing the Appeal is 51 days.

7. The Appellants have explained the delay from 16.06.2014 till the filing of the Appeal. We feel that sufficient reasons have been indicated by the Applicants/Appellants for the delay from 16.06.2014 to the date of filing of the Appeal. However, the delay in applying for the certified copy prior to 16.06.2014 has not been properly explained. We, therefore, deem it appropriate to condone the delay of 51 days after imposition of cost by way of donation to a Charitable organization.

8. We feel that the findings in order of the Tribunal dated 30.10.2014 referred to by the Respondents will not be applicable to the present case as in that case there was inordinate delay in filing of the Appeal which was not explained properly.

9. Accordingly, the Appellants are directed to pay Rs. 20,000/- (Rs Twenty Thousand only) to The Child Relief and You,

632, 2nd Floor, Lane no.3, West End Marg, Saiyadul Ajaib,
New Delhi.

10. The Registry is directed to number the Appeal after compliance of this order and post the matter for admission on **1st December, 2014.**

(Justice Surendra Kumar)
Judicial Member

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REPORTABLE/~~NON-REPORTABLE~~
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(Rakesh Nath)
Technical Member