

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

I.A. No.236 of 2013
IN
DFR No.1291 of 2013

Dated: 18th Dec, 2013

Present : HON'BLE MR. JUSTICE M KARPAGA VINAYAGAM, CHAIRPERSON
HON'BLE MR. NAYAN MANI BORAH, TECHNICAL MEMBER (P&NG)

In the Matter of:

M/s. GAIL India Limited.,
GAIL Bhawan, 16,
Bhikaji Cama Place,
New Delhi-66.

...Appellant/Applicant

Versus

Petroleum & Natural Gas Regulatory Board,
1st Floor World Trade Centre
Babar Lane
Barakhamba Road
New Delhi-01.

...Respondent(s)

Counsel for the Appellant(s) : Mr. Gaurav Pachnanda, Sr. Adv.
Mr. Ankit Jain
Mr. Rahul Sharma
Mr. Puja Priyadarshini

Counsel for the Respondent(s): Mr. Saurav Aggarwal
Mr. Ashish Tiwari
Mr. Rakesh Dewan

ORDER

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

1. The GAIL India Limited is the Appellant herein.
2. This is an Application to condone the delay of 304 days in filing the Appeal as against the Tariff Order dated 31.7.2012.
3. The explanation for this delay given by the Applicant/Appellant is as follows:

“The Petroleum Board passed the Tariff Order on 31.7.2012. As against this order, the Applicant/Appellant sent a communication to the Petroleum Board on 16.8.2012 requesting for Review and reconsideration of the various issues which had not been dealt with in the Tariff Order dated 31.7.2012. On 31.8.2012, the Petroleum Board communicated to the Applicant that they would be considering the only issue pertaining to the revision in pipeline tariff w.e.f. 6.3.2012. After receipt of this communication dated 31.8.2012, the Applicant once again requested the Petroleum Board through the letter dated 13.9.2012 to consider other issues also. In response to this letter, the Board on 24.9.2012

wrote back to the Applicant/Appellant reiterating the position communicated through the letter dated 31.8.2012. Again on 1.10.2012, the Appellant wrote to the Board requesting for Review of the Tariff Order. On 4.10.2012, the Board sent a communication that the request for review of the Tariff Order was under consideration. On 4.3.2013, the Applicant once again requested the Board to consider all the issues in the Review. Again on 17.5.2013, similar letter was sent by the Applicant to the Petroleum Board. However, on 29.5.2013, the Petroleum Board summarily rejected the only issue raised by the Applicant/Appellant for the review of the Tariff Order holding that the Petroleum Board did not find it fit to revise the transportation tariff. Thus, the time taken by the Applicant/Appellant between 16.8.2012, the date of the first communication sent by the Applicant to the Petroleum Board and 29.5.2013, the date of dismissal of the Review, was completely beyond the control of the Applicant/Appellant as during this time, the Applicant/Appellant was diligently pursuing the review filed before the Petroleum Board. Thereafter, the Appeal has been filed on 1.7.2013 within one month from the date of the Review Order. In the above

process, the delay was caused. Hence, the same may be condoned”.

4. This Application to condone the delay is stoutly opposed by the learned Counsel for the Petroleum Board. The contents of the reply by the Petroleum Board are as follows:

“The Tariff Order was passed as early as on 31.7.2012. Against that order, the Applicant, through its letter dated 16.8.2012 sought for a Review of the Tariff Order on various grounds. The Petroleum Board, by its specific communication dated 31.8.2012 informed the Appellant that among the various issues raised by the Appellant seeking for the review, only one issue pertaining to revision of pipeline tariff w.e.f 6.3.2012 would be considered. Even then, the Applicant sent another letter dated 13.9.2012 to the Petroleum Board to consider the other issues as well. This was not accepted by the Board and this was communicated through the letter dated 24.9.2012. Even when the Board received another letter dated 1.10.2012 from the Applicant/Appellant, the Petroleum Board on 4.10.2012 reiterated the same as referred to in the earlier letter. Ultimately, by the order dated 29.5.2013, the Petroleum Board rejected the Review Petition in respect of the issue of the revision of the

transportation pipeline tariff w.e.f. 6.3.2012. In view of the above, the Applicant/Appellant cannot claim that the delay was caused since the review in respect of all the issues was pending. On the other hand, the issue of Review was pending only in respect of one issue. The Petroleum Board in fact, rejected the other grounds through their first letter dated 31.8.2012. Once the Petroleum Board rejected the Review in respect of other issues, the Applicant/Appellant ought to have filed an Appeal in respect of those issues in this Tribunal. On the other hand, the Applicant went on sending letters requesting the Petroleum Board to consider other issues also. All his requests were turned down by sending response to each and every letter. Thus, the delay of 304 days has not been properly explained. In the absence of the sufficient cause shown, the huge delay of 304 days may not be condoned.”

5. On the basis of the above points urged by the Applicant/Appellant as well as by the Board, we have heard both the parties who argued at length.
6. We have carefully considered and examined the records and also the submissions made by both the parties.

7. There is no dispute in the fact that the impugned order was passed as early as on 31.7.2012. The letter for review was sent by the Applicant on 16.8.2012. On receipt of the letter for review, the Board sent a reply on 31.8.2012 stating that among various issues raised in the letter for review, one issue pertaining to the revision of pipeline tariff w.e.f. 6.3.2012 alone would be considered by the Petroleum Board.
8. The reading of the letter dated 31.8.2012 sent by the Petroleum Board would clearly indicate that all the other issues were rejected to be entertained. So, the Applicant/Appellant, if they had so desired, ought to have filed an Appeal before this Tribunal in respect of those issues without further delay. Instead, the Applicant/Appellant sent a request on 13.9.2012 to the Petroleum Board requesting for consideration of all the issues. The same was rejected. Even through the letters sent on 24.9.2012 and 04.10.2012 the same view was reiterated. Even then, no steps were taken by the Applicant to file an Appeal in respect of those issues.
9. Strangely, the Applicant/Appellant sent one more letter on 17.5.2013 seeking for a review. Ultimately, by the order dated 29.5.2013, the Petroleum Board rejected a review in

respect of the said issue, namely, determination of transportation pipeline tariff.

10. As correctly pointed out by the learned Counsel for the Petroleum Board, there is no reason given by the Applicant/Appellant as to why the Applicant/Appellant did not take steps to file the Appeal immediately thereafter before this Tribunal in spite of intimation given by the Board dated 31.8.2012 and 24.9.2012 informing the Applicant/Appellant that only one issue will be considered among the various issues raised by the Applicant/Appellant in the letters sent by the Appellant on 16.8.2012.
11. So, in the absence of an explanation, we cannot conclude that the Applicant/Appellant was diligently pursuing the matter.
12. On the other hand, we find that there is a lack of diligence on the part of the Applicant/Appellant to pursue the matter by filing an Appeal in time before this Tribunal in respect of those issues.
13. Therefore, we find no sufficient cause to condone the enormous delay of 304 days in filing the Appeal against the Tariff Order dated 31.7.2012. It is now stated that they have filed the Appeal not only against the main order dated 31.7.2012 but also against the review order dated

29.5.2013. We cannot entertain the said Appeal as against the Review Order as it is settled law that an Appeal is not maintainable as against the order passed against the Review Petition dismissing the same.

14. Accordingly, the Application to condone the delay is dismissed. Consequently, the Appeal as against the Tariff Order dated 31.7.2012 also is rejected. However, there is no order as to costs.

(Nayan Mani Borah)
Technical Member(P&NG)

(Justice M. Karpaga Vinayagam)
Chairperson

Dated: 18th Dec, 2013

✓ ~~REPORTABLE/NON-REPORTABLE~~