

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Dated:12th November, 2014

Present:

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

Review Petition No.11 of 2014
IN
IA NO.124 of 2014 IN DFR NO.279 OF 2014

In the Matter of:

1. **Power Company of Karnataka Ltd.,
KPTCL Building
Cauvery Bhavan,
Bangalore-560 009**
2. **Bangalore Electricity Supply Co. Ltd.
K R Circle,
Bangalore-560 009**
3. **Chamundeshwari Electricity Supply Co. Ltd.,
927, L.J Avenue,
New Kanatharaj Urs Road,
Saraswathipuram,
Mysore-570 009**
4. **Hubli Electricity Supply Co. Ltd.,
P B Road, Navanagar,
Hubli-580 029**
5. **Mangalore Electricity Supply Co. Ltd.,
Paradigm Plaza,**

**A B Shetty Circle,
Mangalore-575 001**

- 6. Gulburga Electricity Supply Co. Ltd.,
Main Road,
Opposite Parivar Hotel,
Gulburga-585 101**

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

Versus

- 1. M/s. Himatsingka Seide Ltd.,
10/24, Kumara Krupa Road,
High Grounds,
Near Sindhi High School,
Bangalore-560 001**
- 2. M/s. J K Cement Works
Muddapur,
Bagalkot-587 122**
- 3. Karnataka Electricity Regulatory Commission
6th & 7th Floor,
Mahalaxmi Chambers,
No.9/2, M.G. Road,
Bangalore-560 091**

...Respondent(s)

Counsel for the Appellant(s) : Mr. Sriranga S
Mr. Shodhan Babu

Counsel for the Respondent(s): Mr. Siddharth Bawa for R-1
Mr. P K Bhalla
Ms. Ritika Godhwani for R-2

ORDER

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

1. Power Company of Karnataka Limited and 5 others are the Review Petitioners herein.
2. They have filed this Review Petition seeking for the Review of the Order passed by this Tribunal dated 29.5.2014 dismissing the Application to condone the delay filed by the Petitioners and consequently rejecting their Appeal.
3. The Petitioners originally filed the Appeal in Appeal No.141 and 142 of 2011 before this Tribunal as against the Order dated 24.3.2011 passed by the State Commission questioning the principles adopted by the State Commission in off setting the adverse financial impact on the Generators from complying with the directions of the State Government u/s 11(1) of the Electricity Act, 2003.
4. This Tribunal, in those Appeals, while upholding the Order of the State Commission with regard to the methodology adopted by the State Commission, remanded the matter to the State Commission to determine the discount on account of marketing expenses and transmission charges and re-

determined the rate of supply of energy to be paid to the Generators.

5. In pursuance of the Remand Order, the State Commission heard the Petitioners as well as the Respondents and passed the Impugned Order dated 14.2.2013.
6. Aggrieved by the said Order, the Petitioners filed the Review Petition before the State Commission stating that there were several errors apparent on the face of the record. However, the State Commission held that the grounds of the Review were not tenable and accordingly dismissed the Review Petition by the Order dated 17.10.2013.
7. In view of the dismissal of the Review Petition, the Petitioners challenging the Main Order dated 14.12.2013, filed this Appeal before this Tribunal. Since, there was a delay of 290 days, the Application for condonation of delay was filed by the Petitioner in IA No.124 of 2014. Since the delay was mainly due to the pendency of the Review Petition before the State Commission and other circumstances, the Petitioners prayed for the condonation of delay.
8. However, the Tribunal was pleased to dismiss the said Application on 29.5.2014 on the ground that sufficient cause

has not been shown in explaining the cause for the delay in filing the Appeal.

9. Feeling aggrieved over this order dismissing the Application to condone the delay, the Petitioners have now filed this Review Petition praying for the review of the above order dated 29.5.2014 since there was an apparent error on the face of the record.
10. According to the Petitioners, this Tribunal while considering the condonation of delay Petition wrongly observed that the Review Petition was filed before the State Commission only on 27.9.2013 with a considerable delay and not on 8.5.2013 as claimed by the Petitioner but actually the materials available with the Petitioners now would clearly show that the Review Petition was filed only on 8.5.2013 without any delay and as such, the order dismissing the condonation of delay Application has to be reviewed and consequently the delay be condoned.
11. This Application has been stoutly opposed by the Respondents by filing the detailed reply.
12. According to the Respondents, the materials now produced were not produced before this Tribunal at the time of passing the Order dated 29.5.2013 and therefore in the

absence of satisfying the main ingredient of the grounds of review by establishing the discovery of new evidence was not within the knowledge of Petitioner, the Review Petition cannot be maintained.

13. It is also further contended that apart from the said delay in filing the Review before the State Commission there was a delay in another phase i.e. the period between 17.10.2013, the date of the Review Order and 27.1.2014, the date of the filing of the Appeal and this period had not been explained and therefore, the Review Petition seeking to set-aside the dismissal order is nothing but abuse of process of law and that therefore, the same may be dismissed.

14. The learned Counsel for both the parties have cited number of authorities to substantiate their respective pleas:

15. The learned Counsel for the Petitioners cited the following decisions:

- (a) (1996) 3 SCC State of Haryana Vs Chandra Mani and Others;

(b) Civil Appeal Nos.9726-9727 of 2010 in the case of Indian Oil Corporation Ltd Vs Subrata Borah Chowlek;

(c) Civil Appeal No.10581 of 2013 in the case of Manoharan Vs Sivarajan & Ors;

(d) (1988) 2 SCC 142 in the case of G Ramegowda, Major and Others Vs Special Land Acquisition Officer, Bangalore and Basavalingappa Vs Special Land Acquisition Officer, Bangalore;

(e) (2008) 14 SCC 582 State (NCT of Delhi) Vs Ahmed Jaan;

16. The learned Counsel for the Respondents has cited the following decisions:

(a) AIR 2013 SCC 3301 Kamlesh Verma Vs Mayawati & Ors;

(b) (2013) 8 SCC 337 in the case of Union of India vs Sandur Manganese and Iron Ores Limited and Others

17. While dealing with this question as to whether any case is made out for review, it would be proper to refer to the grounds of

the review as mentioned in Order 47 Rule 1 of the CPC which has been quoted by the Hon'ble Supreme Court in the case of Union of India Vs Sandur Manganese & Iron Ore Limited (2013) (8) SCC 337. The following are the grounds:

- (i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the Petitioner or could not be produced by him.
- (ii) Mistake or error apparent on the face of the record.
- (iii) Any other sufficient reason which is at least analogous to those grounds specified in the rule.

18. According to the Respondent, the Review Petition filed by the Petitioners before this Tribunal does not fall under any of the above grounds declared by the Hon'ble Supreme Court under which the Review Petition is maintainable under law and therefore, the Review Petition filed by the Petitioner deserves to be dismissed.

19. At the outset, it shall be mentioned that all the decisions cited by the learned Counsel for the Petitioners would relate to the principles laid down by the Hon'ble Supreme Court

with reference to the liberal construction to find out the proof for any sufficient cause.

20. We need not consider this aspect in this matter as we are not concerned with the question as to whether the delay has been explained by showing sufficient cause but we are only concerned with the question as to whether a case has been made out for Review.
21. We have given detailed reasons in our order dated 29.5.2014 to hold that sufficient cause has not been shown to condone the delay of 290 days. The main ground for seeking of the Review of the said order is that this Tribunal has wrongly observed that the Petitioners filed the Review Petition before the State Commission only on 27.9.2013 and not on 8.5.2013. Now, in this Review Petition, he has produced some documents to show that the Review Petition had been filed on 8.5.2013.
22. It is noticed from the materials produced by the Petitioner that though the Review Petition was filed on 8.5.2013 there were some defects pointed out and after rectifications, it was re-filed on 27.9.2013.
23. It is true that this Tribunal on the basis of the objections raised by the Respondents held that there is no explanation for the delay in filing the Review before the State

Commission up to the period dated 27.9.2013. Now, it is pointed out that there was no delay and it was filed on 8.5.2013.

24. In order to prove this aspect, the Petitioners have produced some documents to show that originally it was filed on 8.5.2013. Admittedly, these documents have not been produced before this Tribunal to refute the objections raised by the Respondents that review Petition was filed before the State Commission not on 8.5.2013 but only on 27.9.2013.
25. As pointed out by the learned Counsel for the Respondent, when this objection was raised by the Respondents, the Petitioners ought to have produced these records to over rule the said objections and on the other hand only in this Review Petition before this Tribunal, the Petitioners have produced the fresh materials to show that the Review Petition was filed before the State Commission on 8.5.2013.
26. As indicated above, one of the main grounds of Review must be that the discovery of new evidence was not in the knowledge of the Petitioners and that therefore, the said evidence could not be produced by them. In this Review Petition, the Petitioners nowhere submitted that these documents were not within the knowledge of the Petitioners

and therefore they could not be produced by them at the relevant time. In view of the above, the order could not be reviewed on the basis of the fresh material which is now produced by the Petitioner. It is never pleaded that these materials were not within the knowledge of the Petitioners and that therefore, they could not be produced by the Petitioners before this Tribunal.

27. Therefore, mere fresh evidence now produced now would not be sufficient to hold that the grounds are made out for Review.
28. That apart, there was another phase of delay for the period between 17.10.2013, the date of Review Order and 27.1.2014, the date of the filing of the Appeal. This period has not been explained satisfactorily as held by this Tribunal.
29. The relevant portion of the findings in this Order dated 29.5.2014 are as follows:

***“19. That apart, the Order had been passed in the Review on 17.10.2013 but the Appeal has been filed only on 27.1.2014. This period has also not been satisfactorily explained. The mere statement that time taken for obtaining internal opinion cannot be construed to be sufficient cause for the delay.*”**

20. As pointed out by the Hon'ble Supreme Court, even though, the expression sufficient cause should be given liberal interpretation to ensure that substantial justice is done, we can not apply that concept in the present case because there is an unexplained and inordinate delay due to lack of diligence and inaction on the part of the Applicants.

21. As laid down by the Hon'ble Supreme Court once a period of limitation expires, the right accrues to the Respondents to enjoy the fruits of the Impugned Order and the said right should not be lightly to be disturbed. Since in this case the Applicants are found to be negligent, we are unable to accept the explanation offered by the Applicants as it does not show the sufficient cause".

30. In view of the above findings recorded in the Order dated 29.5.2014, it cannot be said that the Application for condonation of delay was dismissed solely on the ground that the Petitioner have not filed Review Petition before the State Commission within the prescribed time. Therefore, it has to be held that the Order dated 29.5.2014 does not suffer from apparent error on the face of the record.

31. The learned Counsel for the Respondent cited the judgment in the case of AIR 2013 SCC 3301 in the case of Kamlesh Verma v Mayawati and Ors in which some important principles have been laid down with reference to the Review.

32. The following guidelines have been given in the said judgment:

(a) Review of the earlier order cannot be done unless the Court is satisfied that material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(b) An error which is not self evident and has to be detected by a process of reasoning can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review.

(c) It is well settled that the review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule-1, CPC.

(d) It is not the case of the Petitioners that they have discovered any new and important matter which after the exercise of due diligence was not within their knowledge or could not be brought to the notice of the Court at the time of passing of the judgment.

(e) Error contemplated under the rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched.

(f) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

33. In the light of the above guidelines, if we look at the facts of the case, as indicated above, it is clear that the Petitioners have never pleaded in the Review Petition that they have discovered this new materials only now that too, after the exercise of the due diligence and these were not within their knowledge and therefore could not be brought to the notice of the Tribunal at the time of the passing of the Order. Even otherwise, we are not satisfied with the explanation for condonation of the delay in respect of 2nd phase of the period between 17.10.2013, the date of the Review Order and 27.1.2014, the date of the Appeal.

34. We have specifically stated in the order that mere statement of the Petitioner that time taken for the internal opinion cannot be construed to be sufficient cause for the delay on the strength of various Hon'ble Supreme Court decisions. This cannot be construed to be apparent error on the face of the record.

35. In view of the above, we conclude that no case is made out for the Review.

36. So, the Review Petition is dismissed. However, there is no order as to cost.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated:12th November, 2014

✓ ~~REPORTABLE/NON-REPORTABLE~~