

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

I.A. No.63 of 2013
IN
DFR No.306 of 2013

Dated: 30th April,2013

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

In the Matter of:

- 1. M/s. Bharat Sugar Mills**
A Unit of M/s.Upper Ganges Sugar & Industries Ltd.,
PO Sidhwalia, Distt-Gopalganj,
Bihar, PIN-841 423
Having it's Registered Office at Seohara,
District-Bijnor,
Uttar Pradesh PIN 246 746

- 2. New Swadeshi Sugar Mills**
A Unit of M/s. The Oudh Sugar Mills Limited.,
PO-Narkatiaganj, Dist West Champaran,
Bihar, PIN-845 455
Having it's Registered Office at
Hargaon, District Sitapur,
Uttar Pradesh, PIN-261 101

...Appellants/Applicants

Versus

- 1. Bihar State Electricity Board,**
Vidyut Bhawan, J.L. Nehru Marg,
Patna-800 021

**2. Bihar Electricity Regulatory Commission,
Vidyut Bhawan-II, J.L Nehru Marg,
Bailly Road, Patna-800 021**

...Respondent(s)

Counsel for the Appellant(s) : Mr.Pankaj Bhagat

Counsel for the Respondent(s): Mr. Lakshman Bhakta
Adv & Dy Secy,BERC

ORDER

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

1. Bharat Sugar Mills and Another are the Applicants/Appellants herein.
2. As against the order passed by the Bihar State Commission in the Review Petition by the Bihar State Commission dated 29.6.2010, the Applicants/Appellants have filed this Appeal before this Tribunal on 12.2.2013.
3. Since there was a delay in filing the Appeal, the Applicants/Appellants have filed this application in IA No.63 of 2013 seeking for condonation of the delay of 745 days in filing the present Appeal.
4. Opposing this Application, counter Affidavit has been filed by the Bihar State Commission, the Respondent.

5. According to the State Commission, the number of days has been wrongly calculated as 745 days whereas the Appeal has been filed after a lapse of 958 days and this long delay has not been satisfactorily explained.
6. Let us first refer to the explanation given by the Applicant in this Application:

“Bihar State Commission had initiated Suo-moto proceedings in Petition No.2 of 2008 for benchmarking and determination of tariff for Bagasse based Co-generation Plants. In these proceedings, the State Commission passed the order on 21.5.2009. As against this order, the Applicants preferred Review Petition before the State Commission. The said Petition was disposed of on 29.6.2010. In this order, the State Commission reserved its power to amend the order at any time. In view of the observations made by the State Commission, the Applicants filed the Applications u/s 152 of CPC for modifications of the said order. The said Application was disposed of on 18.7.2012. Since the Applicants were engaged in pursuing the remedies before the State Commission u/s 152 CPC there was a delay. Therefore, this delay being bona-fide, may be condoned”.

7. We have heard the Counsel for the parties and also perused the Application as well as the Counter filed by the parties.
8. As admitted by the parties, the original order in Suo-moto proceedings was passed by the State Commission as early as on 21.5.2009. Thereafter, the Applicants filed Review Petitions challenging the said order. Those Petitions were disposed of on 29.6.2010. The order was served on the Applicants on 2.7.2010. The letter informing the order was also served on the Applicants on 12.7.2010. However, the Applicants did not choose to file any Appeal before this Tribunal within 45 days after receipt of the order of the State Commission.
9. On the other hand, they filed Application for modification purported to have been filed u/s 152 of the CPC on 5.10.2010. Ultimately, the State Commission dismissed the said modification Application on 18.7.2012 holding that the second Review was not maintainable. This order had been received by the Applicants on 19.7.2012. Thereafter, this Appeal has been filed on 12.2.2013 along with this Application to condone the delay.
10. According to the Applicants, there was only a delay of 745 days. Denying the calculation with regard to number of days in filing the Appeal by the Applicants, it is contended by the

State Commission through the counter Affidavit that there was a delay of 958 days.

11. Without going into the correctness of the calculations, it would be better to go into the acceptability of the explanation offered by the Applicants in the Application.
12. Even according to the Applicants, challenging the main order dated 21.5.2009, passed in the Suo-moto proceedings; they filed the Review Petition before the State Commission. These Petitions were disposed of on 29.6.2010 giving the findings on the issues raised by the Review Petitioners. Instead of filing an Appeal against the main order as well as the order passed in the Review Petition, the Applicants has filed the Second Review in the form of a Petition seeking for a modification on 5.10.2010. There is no explanation as to why they have approached the State Commission for filing a second Review instead of filing an Appeal before this Tribunal. That apart, these Review Petitions have been dismissed on 18.7.2012 mainly on the ground that the second Review was not maintainable. Only thereafter, they have filed this Appeal not immediately but only on 12.2.2013.
13. The first order was passed on 21.5.2009. The Review Order was passed on 29.6.2010. The second Review Petition was filed on 5.10.2010 and the same has been

disposed of on 18.7.2012. The period of delay between 18.7.2012, the date of disposal of second Review Petition by the State Commission and 12.2.2010, the date of filing the Appeal has not been explained. It is contended that the very same order i.e. the date on 18.7.2012 which had been passed in the modification Petition, has been challenged in another Appeal which has been admitted. That Appeal has been filed within the period of limitation and there was no delay. Further, the admission of the other Appeal by this Tribunal cannot be the valid ground to condone the huge delay of more than 900 days in filing the Appeal.

14. In the absence of sufficient cause shown as provided u/s 111 of the Electricity Act, 2003, it is not proper to entertain this Appeal after condoning the enormous delay which has not been satisfactorily explained.
15. In view of the above, the Application to condone the delay is dismissed.
16. Consequently the Appeal is also rejected.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated:30th April, 2013

✓ ~~REPORTABLE/NON-REPORTABLE~~