

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

I.A. No.189 of 2012
IN
DFR No.665 of 2012

Dated:14th Aug, 2012

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

In the Matter of:

**Ind Bharath Power (Madras) Ltd
Plot No.30-A, Road No.1,
Film Nagar, Jubilee Hills,
Hyderabad-500 016**

...Appellant/Applicant

Versus

**1. Central Electricity Regulatory Commission
3rd & 4th Floor, Chanderlok Building,
36, Janpath,
New Delhi-110 001**

**2. Power Grid Corporation of India Ltd.,
'Saudamini', Plot No.2, Sector-29,
Gurgaon-122 001**

...Respondent(s)

**Counsel for the Appellant(s) :Mr. Sanjay Sen,
Ms. Shikha Ohri
Ms. Surbhi Sharma
Mr. Anurag Sharma**

**Counsel for the Respondent(s):Mr. Buddy A. Ranganadhan
Mr. R P Padhi for R-2**

ORDER

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

1. This is an application to condone the delay of 662 days in filing the present Appeal as against the impugned order dated 31.5.2010 passed by the Central Commission.
2. We have heard the learned Counsel for the Applicant/Appellant as well as the Respondent. The explanation given for this delay in the Application for condonation of delay by Ind Bharath Power Ltd, the Applicant/Appellant is as follows:
 - (a) Power Grid Corporation of India Limited, the Respondent, filed a Petition being Petition No.233 of 2009 on 17.11.2009 before the Central Commission seeking for the Regulatory approval and other relief for execution of evacuation system required in connection with the grant of Long Term Open Access to a Group of Developers including Ind Bharath Power Limited, the Appellant. In this Petition, the Central Commission passed the Interim Order dated 26.3.2010 giving certain directions.

- (b) On 31.5.2010, the Central Commission passed the main impugned order confirming said directions contained in the Interim order of 26.3.2010. The Applicant filed a Review Petition as against the order dated 31.5.2010 before the Central Commission on 29.11.2010. The said Petition was dismissed by the Central Commission by the order dated 8.2.2012. Thereafter, this Appeal has been filed on 2.4.2012 challenging the main order dated 31.5.2010.
- (c) According to the Applicant/Appellant, the delay caused in filing the present Appeal was neither intentional nor deliberate and was beyond the reasonable control of the Appellant and hence the delay may be condoned.
3. This contention has been vehemently opposed by the Power Grid Corporation (R-2) on the strength of the reply filed by them. According to the Respondent, as against the order dated 31.5.2010, the Applicant/Appellant instead of filing an Appeal directly before this Tribunal chose to approach the Central Commission and filed a Review Petition that too with a delay of 152 days thereby delaying the further process with a deliberate and malafide intention. It is further stated that even after the order was passed in the Review Petition

on 8.12.2012 there was a further delay in filing this Appeal and therefore the delay application which has been filed without giving a reasonable explanation may be dismissed.

4. The learned Counsel for the Applicant, thereupon filed written submissions refuting the allegations made by the learned Counsel for the Respondent.
5. On perusal of the Application to condone the delay, as well as the written submissions and the reply filed by the parties and on hearing the Learned Counsel for both the parties, we are of the considered opinion that the Application to condone the delay is liable to be dismissed as there is no sufficient cause shown for condoning this inordinate delay. The reasons are as follows:

- (a) The main impugned order had been passed as early as on 31.5.2010 by the Central Commission on the Petition filed by the Power Grid Corporation on 17.11.2009. The Applicant instead of filing an Appeal directly before this Tribunal has thought it fit to file the Review Petition before the Central Commission that too with a delay of 152 days. According to Central Commission there was no sustainable ground for review at all in the Review Petition filed before the said Commission. As such there was no reason given for filing the

Review, before the Central Commission without filing the Appeal before this Tribunal that too belatedly even though there was no error apparent on the face of the record. This conduct on the part of the Applicant has been pointed out by the learned Counsel for the Respondent that this was out of the deliberate intention of the Applicant to delay the process. We find force in this objection, as we are not able to see the reason as to why the applicant has filed the Review without the valid grounds for Review.

- (b) According to the Applicant, there is no benefit to the Applicant in deliberately delaying the matter. But it is submitted by the learned Counsel for the Respondent that there is a delay in construction of the generating station and the delay in construction of the transmission facility which is to the benefit of the Applicant to avoid the liability to pay the transmission charges. On the other hand, it is submitted by the Applicant that the Central Commission has failed to take into account the new facts and wrongly dismissed the Review Petition. We are not concerned with the merits of the reasonings in the Review Order but, we are to consider whether the explanation for the delay

caused in filing the Appeal against main order dated 31.5.2010 is proper or not.

- (c) Even according to the Applicant/Appellant, the directions issued on 31.5.2010 in the impugned order had already been issued in the interim order passed by the Central Commission on 26.3.2010. The said order was not challenged. The Appellant had chosen to challenge this order dated 31.5.2010 in the Petition for Review, even though the Central Commission in this Order reiterated the directions and views expressed in its interim order dated 26.3.2010. As a matter of fact, the Central Commission itself has pointed out this and held that the Review Petition is not maintainable. The relevant observations are as follows:

“There is another infirmity in the present petition in that it seeks a review of the order dated 31.5.2010 whereas the decision not to require the Respondent to develop the dedicated transmission lines, if it was planned prior to the 2009 Connectivity Regulations, is contained in the order dated 26.3.2010. The Petition is not maintainable on this ground as well. Hence, the other prayers (b) and (c) are also liable to be dismissed as not maintainable”.

As correctly pointed out by the learned Counsel for the Respondent, the Applicant/Appellant had wasted lot of time by filing a Review before the Central Commission even though there was no material to show that there was an apparent error on the face of the record and even though the directions issued in the impugned order dated 31.5.2010 are contained in the earlier interim order passed on 26.3.2010 which had not been challenged.

Under those circumstances, we hold that there was no proper explanation as to why the Applicant/Appellant thought it fit to approach the Central Commission to file a Review as against the order dated 31.5.2010 without challenging the order dated 26.3.2010.

- (d) It is noticed that even though the Application for Review had been filed on 29.11.2010 as against the order dated 31.5.2010, with a delay; the Review was heard only on 19.7.2011. Similarly, even though hearing was over on 19.7.2011, the Central Commission dismissed Review Petition only on 8.2.2012. This would show that the Review Petition filed by the Applicant was pending

before the Commission for a considerable length of time. In this context, we must point out that the Central Commission should not have kept the Review Petition pending for a long time but it should have taken immediate steps to dispose of the Review Petition then and there without giving room to the parties like Applicant to complain to this Tribunal that there was delay only due to the delay in disposal of the Review Petition by the Central Commission and that there was no delay on the part of the Applicant. Hence, the Central Commission is directed to ensure that no such room is given for such a complaint in future and see to it that Review Petitions are disposed of within the time frame in future by framing suitable Regulations for the same.

- (e) However, in the present case, the pendency of the Review Petition before the Central Commission for some period cannot be the valid ground to condone the inordinate delay. As pointed out by the learned Counsel for the Respondent, even subsequent to the Review Order dated 8.2.2012, there was further delay in filing the Appeal since the Appeal has been filed only on 2.4.2012. Admittedly, this delay between the period dated

8.2.2012 and 2.4.2012 has not been explained in this Application indicating the sufficient cause.

- (f) The learned Counsel for the Applicant cited judgment of Hon'ble Supreme Court reported in (1987) 2 SCC 107 (Collector, Land Acquisition and Another) to show that when there is sufficient cause shown, the delay shall be condoned. This proposition cannot be disputed. But in this case, we feel that the delay was caused by the Applicant due to lack of diligence as such we do not find sufficient cause to condone the delay.

6. In view of the above, we are not inclined to condone this huge delay as there was no promptness on the part of the Applicant in prosecuting the Appeal in time. Hence this Application is dismissed. Consequently, the Appeal is also rejected. However, there is no order as to costs.
7. Registry is directed to send the copy of this order to the Central Commission.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated: 14th Aug, 2012

✓ ~~REPORTABLE/NON-REPORTABLE~~