

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

I.A.No.97 of 2013
IN
DRF No.453 of 2013

Dated: 05th April,2013

**Present: HON'BLE MR. JUSTICE M KARPAGA VINAYAGAM,
CHAIRPERSON
HON'BLE MR. V.J. TALWAR, TECHNICAL MEMBER**

In the Matter of:

**Indian Industries Association
Through Chairperson of its
Greater Noida Chapter Sh.A.D. Pandey,
IIA Bhwan, Vibhuti Khand, Phase-II,
Gomtinagar, Lucknow-226010.**

...Applicant/Appellant

Versus

**Uttar Pradesh Electricity Regulatory Commission
through its Chairman,
Vibhuti Khand, Kisan Mandi Bhawan,
Gomti Nagar, Lucknow-226 010,
Uttar Pradesh.**

**Uttar Pradesh Power Corporation Limited
through its Chairman,
Shakti Bhawan, Extension 14,
Ashok Marg, Lucknow-226 001, Uttar Pradesh**

**Noida Power Company Limited
through its Managing Director,
Commercial Complex, H Block Alpha-II Sector
Greater Noida City – 201 308
Uttar Pradesh.**

.....Respondent(s)

Counsel for the Applicant(s) : Mr. Ms. Pyoli

Counsel for the Respondent(s): Mr. M.G. Ramachandran
Mr.Vishal Gupta

ORDER

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

1. This is an Application to condone the delay of 83 days in filing the Appeal as against the impugned order dated 19.10.2012 passed by the Uttar Pradesh State Commission.
2. Indian Industries Association is the Applicant/Appellant.
3. In the Application to condone the delay, the Applicant has given the following explanation:-
 - a) "The impugned order dated 19.10.2012 was not communicated to the Applicant/Appellant Association

immediately. The Applicant/Appellant Association came to know about the order on 23.10.2012.

- b) Thereafter, the Applicant/Appellant sent the representation to various authorities including the Noida Power Company Ltd., Respondent-3 appealing for the cancellation of 8% regulatory surcharge being levied on its Greater Noida Chapter.
- c) The Respondent-3 assured that the representation sent by the Applicant/Appellant would be forwarded to the State Commission and an amicable solution could be reached. The letter was forwarded by the Respondent-3 to the State Commission on 27.11.2012. However, the talks did not yield the fruitful results.
- d) Thereafter, the Applicant/Appellant approached the Counsel to file the Appeal after 2 months. Thereafter also, there was some delay since the Counsel for the Applicant/Appellant was not well for some time.”

On this explanation, the delay has been sought to be condoned.

- 4. This Application has been vehemently opposed by the Noida Power Company Ltd., 3rd Respondent by filing counter to the Application. The learned Counsel for the 3rd Respondent

would strenuously contend that apart from the fact that the delay of 83 days has not been sufficiently explained, the averments contained in the Appeal are verbatim copy of some other Appeals without any application of mind as the facts mentioned in other Appeals are not connected with the facts in the present Appeal. On the basis of this objection, the learned Counsel for Respondent-3 prays for dismissal of the Application to condone the delay.

5. In reply to this counter, the learned Counsel for the Applicant/Appellant filed the rejoinder stating that the Applicant was misled by the News item dated 30.11.2010 published in Times of India indicating that “Noida Power Company Ltd., not to collect power surcharge hike”.
6. We have heard the learned Counsel for both the parties who have argued at length.
7. At the outset, it shall be mentioned that the explanation given by the Applicant/Appellant both in the Application to condone the delay and the rejoinder does not show sufficient cause to condone the delay.
8. Though we are not concerned with the number of days of delay in filing the Appeal, we have to be convinced about the conduct of the Applicant/Appellant with regard to its diligence to prosecute the matter in time.

9. According to the Applicant/Appellant, it came to their knowledge about the impugned order dated 19.10.2012 only on 23.10.2012 and thereafter they sent representation to the Respondent-3 on 22.11.2012 appealing for the cancellation of 8% regulatory surcharge.
10. Having come to know on 23.10.2012 that the impugned order was passed on 19.10.2012 there was no reason as to why they sent representation requesting for cancellation of regulatory surcharge to the Noida Power Company Ltd., Respondent-3 that too only on 22.11.2012 i.e. after one month's time from the date the impugned order came to the knowledge of the Applicant/Appellant.
11. Further, the Applicant/Appellant was bound to know that the issue pertaining to the tariff order could not be resolved by the Noida Power Company Ltd., R-3 on the basis of the representation sent by the Applicant/Appellant for the cancellation of surcharge.
12. It is stated that the Noida Power Company Ltd., R-3 sent the copy of the said representation to State Commission on 27.11.2012. However, the Applicant/Appellant had not shown any interest in approaching the State Commission for pursuing the matter.

13. This issue for cancellation can not be decided by various other authorities including the Noida Power Company Limited,R-3 as the tariff order can be modified only by the State Commission at the instance of the party seeking for the said modification.
14. Admittedly, the Applicant/Appellant did not approach the State Commission for modification or cancellation by filing a review. The limitation period of 45 days for filing Appeal running from the date of the impugned order had expired on 07.12.2012 itself, but this Appeal had been filed only on 01.3.2013.
15. The learned Counsel appearing for the Respondent-3, Noida Power Company Ltd., pointed out that the this Appeal is verbatim copy of the other Appeals which have already been filed in time and admitted. It is also pointed out that even the facts in the Appeal grounds in this Appeal have been copied verbatim and put in those Appeals which would show non application of mind on the part of the Applicant/Appellant to state the irrelevant facts in the present Appeal.
16. We find force in this contention of the learned Counsel for the Respondent-3, in view of the fact that the Applicant/Appellant itself in this Appeal has filed another Application praying for amendment admitting that many of

the facts and grounds regarding other distribution companies which were stated in the other Appeals have been inadvertently stated in this Appeal and requesting that those portions may be allowed to be deleted.

17. The above facts would clearly reveal that the Applicant/Appellant has not only shown lack of diligence in filing the Appeal in time and instead of filing Review before the State Commission or Appeal before this Tribunal, they have sent representation to the Respondent-3 and other authorities for amicable solution. This shows that initially they have decided not to file the Appeal or the Review.
18. The news items which had been published on 30.11.2012 as pointed out in the Rejoinder would be of no use to the Applicant/Appellant since the Applicant/Appellant has not pursued the matter with the State Commission by filing a Review for cancellation of the regulatory surcharge.
19. According to the learned Counsel for the Respondent-3 that the Applicant/Appellant had approached this Tribunal with lack of diligence, without clean hands and even without application of mind by not checking the facts mentioned therein with the facts relating to some other Appeals and this would show that the conduct of the Applicant/Appellant to have filed this Appeal in an utmost irresponsible manner.

20. We find substance in the contention made by the learned Counsel for the Respondent-3.

21. In view of the above, we see no reason to allow the Application to condone the delay as there is no sufficient cause shown to condone the delay in the Application as well as in the rejoinder.

22. Hence, the Application to condone the delay of 83 days in filing the Appeal is dismissed. Consequently, the Appeal is also rejected.

(V.J. Talwar)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated:05th April,2013

√REPORTABLE/~~NON-REPORTABLE~~