

**Before the Appellate Tribunal for Electricity  
(Appellate Jurisdiction)**

**IA No.256 of 2012 in  
DFR No.973 of 2012**

**Dated: 8<sup>th</sup> August , 2012**

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson  
Hon'ble Mr. Rakesh Nath, Technical Member**

**In the matter of:**

**DPSC Limited  
Plot X - 1, 2 & 3, Block EP, Sector V  
Salt Lake City  
Kolkata - 700 091**

**....Applicant**

**Vs.**

**West Bengal Electricity Regulatory Commission ... Respondent  
FD - 415 A, Poura Bhawan  
3<sup>rd</sup> Floor Sector - III, Bidhannagar  
Kolkata - 700 106**

**Counsel for the Applicant(s) : Mr. Buddy Ranganadhan  
Mr. Atul Shanker Mathur  
Ms. Shruti Verma  
Mr. Debnath Ghosh  
Mr. Shaunak Mitra  
Ms. Abhiswar Bairagi**

## **ORDER**

This is the application in IA No.256 of 2012 filed by DPSC Limited, a generation and distribution utility for condonation of delay of 1558 days in filing Appeal against the order passed by the West Bengal Electricity Regulatory Commission on 31.1.2008, deciding the Fuel and Power Purchase Cost Adjustment (FPPCA) for the years 2004-05 to 2006-07.

2. The Annual Performance Review of the Appellant/Applicant for the FY 2006-07 was decided by the State Commission by its order 15.9.2008, adopting the FPPCA decided in its order dated 31.1.2008. Aggrieved by the order dated 15.9.2008 passed by the State Commission, the Appellant/Applicant preferred an Appeal being no. 67 of 2009 before this Tribunal. This Appeal was allowed in part by the Tribunal by its judgment dated 6.9.2012. However, the issue regarding the Power Purchase Cost for the FY 2006-07 was decided

by the Tribunal against the Appellant on the ground that the FPPCA order dated 31.1.2008 had not been challenged in the Appeal and as such the same has attained finality. Accordingly, the Appellant/Applicant has now filed the Appeal against order dated 31.1.2008.

3. The Appellant/Applicant has given the following explanation for delay of 1558 days in filing the Appeal.
  - i) There was change in management of the Appellant's company pursuant to the order passed by the High Court dated 19.1.2010 and subsequent merger with the present holding company on 1.10.2010. Thereafter, it transpired that the Review Application have been erroneously filed by the erstwhile management of the Appellant/Applicant in relation to the orders passed in APR instead of challenging the FPPCA orders dated 31.1.2008.

- ii) After the disposal of the Appeal no. 67 of 2009 by this Tribunal on 6.9.2011, it was decided to file the instant Appeal against the FPPCA order dated 31.1.2008. However, during the period April, 2010 to November, 2011 the persons dealing with the regulatory affairs left the Appellant/Applicant's company and the new persons took time to peruse the records and filed the Appeal.
4. We have heard the Learned Counsel for the Appellant/Applicant, who argued at length giving the explanation and pointing out the merits of the matter.
5. We are only concerned with question as to whether sufficient cause has been shown to condone this inordinate delay. On going through the application, we find that there is no proper explanation for this huge delay. According to the Appellant only after change in management of the company, it was realized in October,

2010 the order dated 31.1.2008 has to be challenged, even then the Appeal was not filed. On the other hand, the Applicant waited for final disposal of Appeal no.67 of 2009 by the Tribunal on 6.9.2011. This Tribunal specially held in the said judgment that since Appeal has not been filed as against the order dated 31.1.2008, it has attained finality. Despite this the Applicant had not chosen to file the Appeal immediately. The Applicant filed this Appeal only on 18.5.2012 i.e. after about 8 months. Admittedly, there is no proper explanation for this period i.e. between 6.9.2011, the date of disposal of the Appeal no. 67 of 2009 and, 18.5.2012, the date of filing this Appeal.

6. This would show that the Appellant/Applicant has not been vigilant in seeking the remedy. In fact, the Applicant has not been able to show sufficient cause by explaining the delay for a long period i.e. 1558 days.

7. Accordingly, IA No. 256 of 2012 is dismissed.

Consequently, the Appeal is also rejected.

8. Pronounced in the open court on this

**8<sup>th</sup> day of August, 2012.**

**( Rakesh Nath)**  
**Technical Member**

**(Justice M. Karpaga Vinayagam)**  
**Chairperson**

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**REPORTABLE/~~NON-REPORTABLE~~**

**mk**