

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

**IA No.262 of 2014 in
DFR-1552 of 2014**

Dated: 04th August, 2014

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. Nayan Mani Borah, Technical Member (P&NG)**

IN THE MATTER OF:-

**Welspun Maxsteel Limited : Appellant /Applicant
Versus
Gail India Ltd. & Anr. ... Respondent (s)**

**Counsel for the Appellant(s) : Mr. Rajiv Bakshi
Ms. Bhanita Patowary**

**Counsel for the Respondent(s): Ms. Ranjana Roy Gawai
(Caveator/R-1)
Mr. Shailesh Suman for GAIL
Ms. Sonali Malhotra for PNGRB**

ORDER

This is an application to condone the delay of 38 days in filing the Appeal as against the Impugned Order dated 13.03.2014 passed by the Petroleum Board (R-2).

According to the Appellant/Applicant, it came to know about the Impugned Order dated 13.03.2014 only in the first week of May, 2014; the Applicant then received a certified copy of Impugned Order on 12.05.2014 and that thereafter, the Appeal was prepared and filed before this Tribunal on 04.06.2014.

The Appellant/Applicant submits that the delay of 38 days in filing the Appeal is unintentional and is caused due to the delay in getting to know about the passing of the Impugned Order and as such, the delay of 38 days which is due to bona fide reasons may be condoned..

The Application for condonation of delay has been vehemently opposed by the Learned Counsels appearing for the Respondents, namely, Gail India Ltd (R-1) and Petroleum Board (R-2).

The 1st Respondent argued that the explanation offered for the delay is not at all satisfactory since the Impugned Order dated 13.03.2014 was web-hosted by the Petroleum Board on 14.03.2014 itself and as such, the contention of the Applicant that it came to know about the Impugned Order as late as in the first week of May, 2014 cannot be accepted.

While opposing this Application, Ms. Sonali Malhotra, the learned Counsel for R-2 raised an objection that the statement of the Appellant/Applicant that it came to know about the Impugned Order in the first week of May, 2014, is factually wrong. She has submitted that the Appellant/Applicant was fully aware about the Impugned Order on 29.04.2014 itself, if not earlier. To substantiate her stand, Ms. Malhotra, the Learned Counsel for the Board, produced a copy of a letter dated 29.4.2014 signed by the learned Counsel sent to the Board applying for a certified copy of the Impugned Order dated 13.03.2014.

We find that this material fact has been concealed by not disclosing the same in this Application. The contents of the letter dated 29.4.2014 sent by the Applicant would prove that fundamental contention of the Appellant/Applicant that it was unaware of the existence of the Impugned Order prior to the first week of May, 2014 is factually incorrect.

On this aspect, we have asked the learned Counsel for the Applicants to clarify the factual aspect as referred to in the letter dated 29.4.2014.

The learned Counsel for the Applicant requested some time for getting instructions from his client. Accordingly, we adjourned the matter by posting the Application on 4.8.2014. When the matter is taken up on 4.8.2014, the learned Counsel for the Appellant/Applicant sought for some more time to obtain signed Affidavit from his client giving due explanation on the above aspect. Since we felt that adequate time has already been given in this regard and no adjournment was called for, we asked the learned Counsel for the Applicant to argue the matter, on the basis of the oral instructions given by his client on this aspect. Accordingly, the matter was argued by both the parties.

The Learned Counsel for the Appellant/Applicant has now stated that the letter dated 29.04.2014 seeking a certified copy of the Impugned Order was brought to the notice of his client for necessary instructions only on 2nd or 3rd of May, 2014 and thereafter the letter dated 29.04.2014 was submitted to the Petroleum Board on 09.05.2014 and, in turn, the said certified copy of the impugned order was received by the Learned Counsel for the Appellant on 12.05.2014 and thereupon, the Appeal was prepared and filed before this Tribunal on 04.06.2014 and that was how the delay was caused.

We find that the above explanation now offered by the Learned Counsel for the Appellant/Applicant, was not a part of the Application for condonation of delay which merely stated that the Appellant/Applicant came to know about the impugned order only in the first week of May, 2014. The Learned Counsel for the Applicant further states that his letter dated 29.04.2014 was submitted to the Petroleum Board on 09.05.2014 only after getting suitable instructions from his client.

We are unable to accept this explanation and fail to comprehend that subject to diligent follow-up, why the matter could not have been properly taken up with the Petroleum Board on the 29.04.2014 itself or immediately thereafter, by the Appellant/Applicant. The urgency in the matter would have been self-evident since only after perusal of the certified copy of the Impugned Order, the counsel would be able to assess whether the findings of the Petroleum Board were in order or there were any grounds of Appeal against the same to protect the interests of his client.

In our view, there is no proper explanation as to why a delay occurred in learning about the Impugned Order dated 13.03.2014 which was put in the public domain by web-hosting the same on its website on 14.03.2014 by the Petroleum Board. Notwithstanding this, we have shown indulgence to the Learned

Counsel for the Appellant/Applicant by giving opportunity to file the additional affidavit for giving the explanation. Although more than adequate time till 04.08.2014 was allowed vide our order dated 18.07.2014, the Learned Counsel for the Appellant/Applicant has failed to produce the said affidavit on the due date. Thus, it is evident that the explanation offered by the Applicant was not only not satisfactory but also the events referred to above would show that there was constant lack of diligence on the part of the Applicant to approach the Appellate Forum for the timely redressal of his alleged grievances.

The learned Counsel for the Applicant submits that at any rate, he has got a good case on merits and therefore, the delay may be condoned. When he argued that he has got merits, we have put some queries to the learned Counsel for the Applicant regarding the merits of the case as well as the findings in the Impugned Order.

As regards the allegation leveled by the Appellant that the Respondent (R-1) imposed exorbitant tariff, we notice the observations made by the Petroleum Board vide para 35 of the Impugned Order which is as follows:-

“QUOTE

Para 35: *Moreover the Respondent made a categorical statement that it is levying the transmission charges from all its customers including the Complainant as has been determined by the Board vide order dated 12.03.2012 but the complainant could not rebut this statement by adducing any evidence in support of its contentions.*

UNQUOTE

The Appellant is successor in interest of M/s Vikram Sponge Iron Ltd., which had entered into a series of contracts over a period of 1991 to 2006 with the Respondent (R-1) for supply of natural gas. It is pertinent to note that the Appellant had, lastly, entered into a fresh Gas Sales and Transmission Agreement with the Respondent on 31.03.2011 which is effective till 31.12.2015 superseding all prior negotiations/representations/proposal and agreements.

It is also noticed that on receipt of Representation sent by the Applicant alleging exorbitant transportation charges against the 1st Respondent, the Petroleum Board in fact, advised the Appellant on 12.05.2010 itself to file a complaint under the provisions of the PNGRB Act and the Regulations so that the Petroleum Board could look into the matter in exercise of its powers under the provisions of the Act.

The Appellant/Applicant, admittedly, did not avail of the opportunity to file a complaint. Instead, the Appellant made a detailed representation to GAIL India Ltd. (R-1) to consider the issue of exorbitant monthly transportation charged. Following a series of similar representations, a fresh Gas Sales and Transmission Agreement was entered into with the Respondent (R-1) on 31.03.2011 for a period ending on 31.12.2015.

Thus, it is evident that the Appellant/Applicant was a party to this stand-alone, fresh Agreement and the same had been acted upon by both the parties.

Thereafter, after a long delay, the Appellant filed a complaint dated 19.07.2011 with the Petroleum Board (R-2) under Section 11 (a) read with Section 35 of the PNGRB Act, 2006. After hearing all the parties and perusal of written submissions, the Petroleum Board vide the Impugned Order dated 13.03.2014, dismissed the complaint of the Appellant.

It is also important to note that during the pendency of the Complaint before it, the Petroleum Board vide the Order dated 12.03.2012 approved reduced levels of tariff with effect from 20.11.2008 (the date of notification of the relevant PNGRB

Regulations) with a further direction for retrospective adjustment of difference between the tariff charged hitherto and that approved by the Petroleum Board.

In view of the above, we are of the considered opinion that the grounds for dismissal of the complaint referred to in the Impugned Order, do not suffer from any legal infirmity. Thus, it is clear that there is no merit also in this Appeal.

Hence, the Application to condone the delay is dismissed not only on the ground that the explanation for the delay is not satisfactory but also on the ground that there is no merit in this case. Consequently, the Appeal is also rejected.

However, there is no order as to costs.

(Nayan Mani Borah)
(Technical Member)

(M. Karpaga Vinayagam)
(Chairperson)

✓ ~~REPORTABLE/NON-REPORTABLE~~

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