

COURT – I

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

**IA No. 370 of 2012 &
IA No. 371 of 2012 in DFR No. 1881 of 2012**

Dated: 18th December, 2012

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

Videocon Industries Ltd.

... Appellant(s)

Versus

Gujarat Electricity Regulatory Commission & Ors.Respondent(s)

Counsel for the Appellant(s): Mr. Amitesh Chandra Misra
Mr. Jasmeet Singh

Counsel for the Respondent(s) : Mr. Anand K. Ganesan
Ms. Swapna Seshadri for R.2

ORDER

This is an application to condone the delay of 452 days in filing the Appeal as against the main Order dated 01.06.2011.

We have heard the learned counsel for the parties.

There is no dispute with regard to the fact that the main Order had been passed as early as on 01.06.2011. Even though the Applicant/Appellant was a party to the proceedings before the State Commission, he did not take any steps immediately either for filing

the Review before the State Commission or for filing the Appeal before this Tribunal.

On the other hand, that after the receipt of the bills of parallel operation charges raised by the Respondent on the Applicant, the Applicant filed a Review before the State Commission only on 14.12.2011 with the delay of around 160 days, and the same had been dismissed on 03.04.2012 holding that no ground had been made out to allow the review. Thereafter, with a delay of more than 150 days, the Applicant has filed an Appeal before this Tribunal only on 10.10.2012 along with an Application to condone the delay.

Admittedly, the Review was pending before the State Commission between 14.12.2011 and 03.04.2012. As such, the Applicant has to explain the delay for the period between 01.06.2011, the date of the main Order and 14.12.2011, the date of filing the Review as well as the period between 03.04.2012, the date of disposal of the Review and 10.10.2012, the date of filing of the Appeal before this Tribunal.

Strangely, the Applicant has filed two Applications, one is for condonation of delay of 452 days in filing the Appeal as against the

main Order dated 01.06.2011 and the other is for condonation of delay of 221 days in filing the Appeal as against the Review Order dated 03.04.2012.

At the outset it shall be stated as pointed out by the learned counsel for the Respondent that the Appeal as against the Review Order, which was dismissed confirming the main Order, is not maintainable. Therefore we are concerned with the explanation for the delay in filing the Appeal as against the main Order dated 01.06.2011.

On the strength of the Judgment in Appeal No. 157 of 2009 rendered by this Tribunal, the learned counsel for the Applicant strenuously prayed for condonation of delay on the ground that the settlement talks were going on subsequent to passing of the main Order dated 01.06.2011 and that was how the delay was caused. He further submits that the delay due to settlement talks was considered as a ground to condone the delay in Appeal No. 157 of 2009 and so very same ground may be considered in the present case also.

On the other hand, it is strenuously submitted by the learned counsel for the Respondent that there were no such settlement

talks in the present matter, and in fact bills were raised and thereafter the Applicant merely asked for the clarification of the bills and there was no steps taken for settlement. We find force in this submission made by the learned counsel for the Respondent especially when this explanation relating to the settlement talks has not been given in the Application to condone the delay.

Therefore, now the question is why the Applicant did not take any steps, either to file an Appeal or to file the Review, subsequent to passing of the main Order on 01.06.2011.

The Applicant filed the Review only on 14.12.2011. Why there was a delay to file the Review, there is no explanation. The Review had been disposed of on 03.04.2012. Even after the Review Order, the Applicant has not taken steps to file the Appeal immediately before this Tribunal. Again with the delay of 160 days the Applicant filed the present Appeal only on 10.10.2012. Why there was again delay, there is no explanation.

The learned counsel for the Respondent has cited two Judgments of the Supreme Court in **“State of Karnataka and Ors. Vs. S.M. Kotrayya and Ors. (1996)6 SCC 267”** and **“D. Gopinathan Pillai Vs. State of Kerala and Anr (2007) 2**

SCC 322.” These decisions would lay down the principle that the delay which is not properly, satisfactorily and convincingly explained, the court should not condone the same. Admittedly, there is no proper, satisfactory and convincing explanation to show sufficient cause for the delay in filing the Appeal in the present case.

In view of the dictum laid down by the Hon'ble Supreme Court, we are not inclined to condone the huge and unexplained delay of 452 days as against the main Order dated 1.6.2011. Therefore, the IA No. 370 of 2012 and IA No. 371 of 2012 are dismissed. Consequently, the Appeal is also rejected.

(Rakesh Nath)
Technical Member
ts/mk

(Justice M. Karpaga Vinayagam)
Chairperson