

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

I.A. No.350 of 2013
IN
DFR No.1726 of 2013

Dated:18th Dec, 2013

Present : HON'BLE MR. JUSTICE M KARPAGA VINAYAGAM, CHAIRPERSON
HON'BLE MR. NAYAN MANI BORAH, TECHNICAL MEMBER, P&NG

In the Matter of:
GAIL (India) Limited.,

...Appellant/Applicant

Versus

Petroleum and Natural Gas Regulatory Board

...Respondent(s)

Counsel for the Appellant(s) : Mr. Ramji Srinivasan, Sr. Adv.
Mr. Ankit Jain
Mr. Rahul Sharma

Counsel for the Respondent(s): Mr. Sourav Aggarwal
Mr. Ashish Tiwari

ORDER

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

1. This is an Application to condone the delay of 377 days in filing the Appeal against the Main Order dated 12.7.2012

and Review Order dated 26.7.2013 passed by the Petroleum and Natural Gas Regulatory Board.

2. GAIL (India) Limited is the Applicant/Appellant herein.
3. Aggrieved by the main Transportation Tariff Order dated 12.7.2012 as well as the Review Order dated 26.7.2013 dismissing the Review Petition by the Petroleum Board, the Applicant/Appellant has filed this Appeal.
4. Since, there was a delay of 377 days in filing the Appeal the Applicant/Appellant has filed this Application to condone the said delay.
5. We have heard the learned Senior Counsel appearing for the Applicant/Appellant as well as the learned Counsel appearing for the Petroleum Board.
6. The explanation given by the Applicant/Appellant for this delay through Application as well as the oral submissions, is as follows:

“The Applicant on 19.4.2010 submitted the Tariff Petition for the Determination of Tariff for its pipeline network before the Petroleum Board. On 12.7.2012, the Petroleum Board passed the Tariff Order for the pipeline network. Since, the said Order was not in conformity with the relevant Regulations on certain parameters, the Applicant/Appellant on 20.7.2012 sent

a letter requesting the Petroleum Board through the letter to review the Tariff Order dated 12.7.2012. Again on 16.8.2012, the Applicant/Appellant made another representation praying for Review. Since there was no response, the Applicant/Appellant sent various letters on various dates i.e. on 6.9.2012, 17.10.2012, 12.11.2012, 27.11.2012 and 21.2.1013 praying for a Review of the Order dated 12.7.2012. The Petroleum Board in response to these letters sent a formal communication on 28.5.2013 to the Appellant to file a Review Petition in the proper form in accordance with the law instead of sending letters. Accordingly, on 15.7.2013, the Applicant/Appellant filed a Review Petition in the proper form before the Petroleum Board for Review of the Tariff Order dated 12.7.2012. Since, there was a delay in filing the said Review Petition; the Applicant/Appellant along with the main Tariff Petition filed an Application for condonation of delay giving the reasons for such delay. The Petroleum Board though passed the order condoning the delay after having satisfied with the reasons of delay in filing the Review Petition, passed the final Order on 26.7.2013 dismissing the said Review Petition holding that the grounds canvassed seeking Review would not be sufficient to invoke the

Review jurisdiction. Thereafter, the Applicant/Appellant filed this Appeal on 23.8.2013. Since, the Applicant/Appellant was under the honest impression that the letters exchanged between the Applicant/Appellant and the Petroleum Board in the past were in the nature of the Review Application, the Applicant/Appellant did not file a formal Review Petition. But, after getting a communication from the Petroleum Board that the Applicant should file the Review petition in proper form, the Appellant filed the Review Petition and the same was entertained by the Petroleum Board by the order dated 26.7.2013. The said delay which was not deliberate or wilful, was caused in that process. Hence, the delay may be condoned”.

7. This Application to condone the delay of 377 days is stoutly opposed by the learned Counsel for the Petroleum Board. The contents of the objections are as follows:

“The tariff order was passed as early as on 12.7.2012. The Applicant/Appellant thereafter sent various representations from 20.7.2012 to 21.2.2013 seeking for a Review. In the meantime, the Petroleum Board rejected the representation seeking for review and the said order was sent to the Applicant on 29.10.2012

itself. Instead of challenging this order by way of an Appeal, the Applicant/Appellant went on sending various letters to the Board praying for the Review again and again. Hence, on 28.5.2013, while dealing with the Appellant's last letter dated 21.2.2013, the Petroleum Board informed the Applicant/Appellant that most of the issues have already been considered and rejected by the order dated 29.10.2012 and, however, if the Applicant/Appellant intends to seek a proper order for review of the various issues, then the Applicant/Appellant should file a proper review petition in accordance with the law.

Thereafter, the Applicant/Appellant sent a review petition dated 15.7.2013 which was ultimately dismissed on 26.7.2013 holding that the Review Petition was not sustainable. Thus, the Applicant/Appellant was already informed about the rejection of the most of the issues by the letter dated 28.5.2013 and despite that, the Applicant did not choose to file an Appeal as against the earlier Order dated 29.10.2012. These things would make it clear that the Applicant/Appellant has delayed in filing the Appeal by his own default.

Having chosen not to file an Appeal even after the order that was passed on 29.10.2012 itself, the Applicant/Appellant cannot now seek for the condonation of delay. This shows that there is lack of diligence on the part of the Applicant/Appellant in approaching the Tribunal in time. Therefore, the delay may not be condoned. The Application for condonation of delay may be dismissed.”

8. We have heard the parties who argued the matter at length.
9. At the outset, it should be mentioned that it is settled law that the Appeal as against the Review Order dated 26.7.2013 dismissing the Review Petition before this Tribunal is not maintainable and the Appeal as against the main order dated 12.7.2012 alone is maintainable.
10. The learned Counsel for the Petroleum Board says that the 1st Review Order had been passed as early as on 29.10.2012 and in the absence of the Appeal as against the said order dated 29.10.2012, this Appeal is not maintainable and consequently, the Application to condone the delay also is not maintainable.
11. This argument advanced by the learned Counsel for the Petroleum Board is not tenable because as indicated earlier, the Appeal against the Review order dismissing the Review

Petition on 29.10.2012 is not maintainable. The same principle is applicable to the second Review Order also which was passed on 26.7.2013. Therefore, the Applicant/Appellant is entitled to file the Appeal only against the main order dated 12.7.2012 and Applicant cannot maintain any appeal as against the first Review Order dated 29.10.2012 or against the second order dated 26.7.2013.

12. Therefore, we are only concerned with the Appeal as against the main order dated 12.7.2012.
13. Thus, the delay has to be calculated from 12.7.2012, the date of Main Order to 23.8.2013, the date of filing of the Appeal. We have to see whether the delay occurred for the reasons mentioned in the Application to condone the delay has been satisfactorily explained or not.
14. It is not disputed that after the tariff order that was passed on 12.7.2012, several representations have been sent by the Applicant/Appellant to the Petroleum Board for consideration of the Review.
15. According to the Petroleum Board, the initial representation for Review had been rejected by the 1st Review Order dated 29.10.2012. Having rejected the 1st Review Petition on 29.10.2012, the Petroleum Board need not have advised through the communication dated 28.5.2013 to the Applicant

in response to the Applicant's last letter dated 21.2.2013 to file a Review Petition in the proper form which would be decided in accordance with the law. Only on the basis of this communication, the Applicant/Appellant filed the Review Petition in the proper form on 15.7.2013 and the same was dismissed on 26.7.2013.

16. The Petroleum Board having rejected the representations for the Review through the order dated 29.10.2012 ought not to have advised the Applicant/Appellant to file 2nd Review Petition in a proper form and thereafter ought not to have entertained the present Petition filed on 15.7.2013 which is the 2nd Review Petition. The Petroleum Board in fact, entertained the so called 2nd Review Petition filed on 15.7.2013 and passed the final order on 26.7.2013 by going into the merits of the matter and dismissing the same.
17. Strangely, the Petroleum Board has decided to condone the delay by allowing the Petition filed by the Applicant/Appellant seeking for condonation of the delay in filing the said second Review Petition and accordingly condoned the delay.
18. Having condoned the said Review Petition for the period between 12.7.2012, the date of main order and 15.7.2013, the date of the filing of the 2nd Review Petition, the Petroleum Board, before this Tribunal cannot object to the condonation of delay in filing the Appeal.

19. On going through the records, it is noticed that the Applicant/Appellant has been given a wrong impression by the Petroleum Board that it is at liberty to file again the 2nd Review Petition in the proper form before the Petroleum Board which could be considered by the Petroleum Board on merits.
20. This shows that the Applicant/Appellant was actually misled due to which the Applicant/Appellant time and again approached the Petroleum Board for filing various representations for the Review and ultimately filed the Review Petition in proper form as per the advice of the Petroleum Board. In these circumstances, it cannot be said that the delay was caused by the Applicant/Appellant deliberately and wantonly. However, it must be pointed out that there was some lack of diligence on the part of the Applicant/Appellant. The Applicant/Appellant must have obtained proper legal advice from its Advocate. It should have had approached this Tribunal by filing an Appeal as against the main order at least after getting the intimation from the Petroleum Board by the letter dated 29.10.2012 that his request for Review was rejected. This was not done properly.
21. Hence, we feel it appropriate to impose cost while condoning the huge delay of 377 days.

22. Accordingly, the Applicant/Appellant is directed to pay a cost of Rs.50, 000/-(Rupees Fifty thousand only) as a donation to a Charitable Organisation namely, "**Dr. Ruhi Foundation School, Village:Gheja, Sector-93, NOIDA, A/c (TRUST): Payable to: SAIDEEP DR.RUHI FOUNDATION, A/C No.952663443**" within two weeks from the date of this order.
23. This application for condonation of delay is allowed with the above condition.
24. The Registry is directed to verify the compliance of this order after two weeks and after such verification number the Appeal and post for admission on **16.01.2014.**

(Nayan Mani Borah)
Technical Member(P&NG)

(Justice M. Karpaga Vinayagam)
Chairperson

Dated:18th Dec,2013

✓ ~~REPORTABLE/NON-REPORTABLE~~