

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

I.A. No.395 of 2012
IN
DFR No.1745 of 2012

Dated:22nd January, 2013

**Present : HON'BLE MR. JUSTICE M KARPAGA VINAYAGAM,
CHAIRPERSON
HON'BLE MR. RAKESH NATH, TECHNICAL MEMBER**

In the Matter of:

**M/s. Bhushan Power & Steel Limited
N-3/28, Nayapalli IRC Village
Bhubaneswar-751 015
Orissa**

...Appellant/Applicant

Versus

- 1. Odhisha Electricity Regulatory Commission
Bidyut Niyamak Bhavan
Unit-VIII, Bhubaneswar-751 012,**
- 2. GRIDCO Limited,
Vidyut Bhawan, Janpath,
Bhubaneswar-751 007**
- 3. Orissa Power Transmission
Corporation Limited,
Janpath, Bhubaneswar- 751 022**

...Respondent(s)

Counsel for the Appellant(s) : Mr. Rajiv Yadav

**Counsel for the Respondent(s):Mr. Rutwik Panda for R-1
Mr. R K Mehta,
Mr. Antaryami Upadhyay for R-2**

ORDER

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

1. This is an application to condone the delay of 135 days in filing the present Appeal as against the impugned order dated 29.3.2011 passed by the Odhisha Electricity Electricity Commission.
2. M/s. Bhushan Power & Steel Limited, the Applicant/Appellant is owning a captive power plant. It is engaged in manufacture of steel having manufacturing facilities spread over different parts of the Country. One of its plant is situated in Nayapalli, IRC Village, Bhubaneswar, Orissa.
3. The Appellant obtained the permission from the Odhisha State Commission for sale of surplus power outside the State of Orissa. However, subsequently, the Load Dispatch Centre refused to grant inter-State Open Access for sale of power from the Appellant's plant.
4. At this stage, GRIDCO offered to purchase the surplus power generated by the Appellant's captive power plant at the rate of Rs.2.02 per unit or the rate determined by the State Commission from 1.1.2007. In view of non-availability

of Open Access, the Appellant/Applicant was unable to sell power through Inter State Open Access. Hence it was constrained to supply power to GRIDCO. Accordingly, the Applicant/Appellant commenced supply of power to GRIDCO w.e.f. 1.1.2007.

5. The GRIDCO in its 105th Meeting held on 27.2.2007 approved the rates for procurement of power for different slabs of energy supply. But in the 107th meeting, they decided that the said rates shall be applicable only w.e.f. 27.2.2007. The Appellant did not accept GRIDCO's unilateral decision of making the approved rates effective from 27.2.2007.
6. In the meantime, the GRIDCO paid an amount of Rs.3,77,40,627/- as differential payment of power supplied during the period between 27.2.2007 and 31.5.2007. The Appellant claimed for the differential payment for the power supplied from 1.1.2007 but GRIDCO did not give any response to the said claim.
7. Therefore, the Appellant filed a Petition before the State Commission to direct the GRIDCO to pay the differential amount for supply of surplus power w.e.f 1.1.2007 to 26.2.2007 over and above the rate of Rs.2.02 per unit. However, the State Commission did not incline to issue any directions but directed to settle the matter amicably.

8. Accordingly, several meetings were held between the parties. Ultimately in the 141st meeting of the Board of Directors, the Appellant's request for payment of differential amount was rejected. On the basis of this, the State Commission by the impugned order dated 29.3.2012 disposed of the matter rejecting the claim of the Appellant by accepting the plea of the GRIDCO.
9. Against this order dated 29.3.2012, the Appellant/Applicant has filed this Appeal.
10. Even though the proceedings were initiated before the State Commission on the application filed by the Applicant before the Commission and the same was disposed of as early as on 29.3.2012, the Appellant has filed this Appeal only on 26.9.2012 before this Tribunal. Along with the Appeal, the Applicant has filed an application to condone the delay of 135 days in filing the said Appeal, giving the various reasons. The gist of the reasons given by the Applicant is as follows:

“The order had been passed on 29.3.2012. The same was received by the Appellant on 2.4.2012. The concerned officials of the Applicant were located at different places in Orissa and therefore it was difficult for the officials to coordinate and to arrange for meetings. In the 3rd week of April, 2012, several

rounds of the meetings were held. It was decided that the applicant should file a RTI application with GRIDCO seeking information relating to the quantum and tariff of power purchased by the GRIDCO. Accordingly, RTI application was filed. When the information was obtained from the GRIDCO on 2.7.2012, it was decided to send it to the Appellant's in house legal team in Delhi. On 7.7.2012 it was decided that the Appeal should be filed. Thereafter, on 25.9.2012, the Appeal has been filed".

11. This application has been vehemently opposed by Shri Mehta, the learned Counsel, who is appearing for the GRIDCO, the 2nd Respondent.
12. As pointed out by the learned Counsel for the Respondent, the Applicant/Appellant, from the beginning has not shown due diligence in prosecuting the matter by filing the Appeal in time before this Tribunal.
13. It is quite strange to see that the Applicant has spent a lot of time in seeking some information from GRIDCO by filing a RTI application. There is no reason as to why they approached RTI for seeking some information. In fact, the Applicant admits that there is in-house legal team in Delhi available to advise the Appellant. But even then, no steps

have been taken either to file a Review before the State Commission or file an Appeal before this Tribunal in time.

14. As a matter of fact, the Applicant admitted that even on 4.7.2012 and 7.7.2012, the legal team decided to file the Appeal. Even then, the Appeal has been filed only on 26.9.2012. Even this period of delay, has not been explained.
15. The details given in the Affidavit to condone the delay would show that the Applicant from the beginning had not shown due diligence in filing the Appeal challenging the impugned order. On the other hand, they slept over the matter for a considerable period on the pretext that the officials were stationed at different areas in Orissa and they were unable to coordinate the meeting to decide about the further course of action. This shows that the Appellant is not vigilant to take due steps to challenge the order impugned.
16. The learned counsel for the Applicant/Appellant prays for condonation on payment of cost. We are unable to accede to this request since we are of the view that the Applicant/Appellant for the reasons best known to him did not incline to challenge the impugned order initially. It means it had not shown interest to challenge the same either by filing a Review before the Commission or by filing an Appeal before this Tribunal in the initial period.

17. In view of the lack of diligence on the part of the Applicant throughout, we are unable to find any reason to hold that there is sufficient cause to condone the delay and as such we have no other option except to dismiss the Application to condone the delay of 135 days.

18. Accordingly, the Application is dismissed. Consequently, the Appeal is also rejected.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated:22nd January, 2013

✓ ~~REPORTABLE/NON-REPORTABLE~~