

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

I.A. No.5&6 of 2013 in DFR No.1988 of 2012

Dated: 22nd February.2013

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

In the Matter of:

**M/s.Chhattisgarh State Power Trading Co. Ltd.,
Vidyut Sewa Bhawan,
Danganiya,
Raipur-492014(Chhattisgarh)**

...Applicant/Appellant

Versus

- 1. Chattisgarh State Electricity Regulatory Commission
Irrigation Colony, Shanti Nagar,
Raipur, Chhattisgarh -492001.**

- 2. M/s. Jayaswal Neco Industries Limited,
Steel Plant Divisin,
Siltara Growth Centre Road,
Raipur, Chhatisgarh-492001.**

.....Respondent(s)

Counsel for the Applicant(s) : Ms.Suparna Srivastava

Counsel for the Respondent(s): Mr.C.K. Rai for R-1
Mr. Raunak Jain for R-2

I.A. No.7&8 of 2013 in DFR No.1990 of 2012

In the Matter of:

**Chhattisgarh State Power Trading Co. Ltd.,
Vidyut Sewa Bhawan,
Danganiya,
Raipur-492014(Chhattisgarh)**

...Applicant/Appellant

Versus

**1. Chattisgarh State Electricity Regulatory Commission
Irrigation Colony, Shanti Nagar,
Raipur, Chhattisgarh -492001.**

**2. M/s Singhal Enterprises Private Limited,
201, Madan Complex, Shankar Nagar,
Raipur, Chhattisgarh-492001.**

.....Respondent(s)

Counsel for the Applicant(s) : Ms.Suparna Srivastava

Counsel for the Respondent(s):Mr.C.K. Rai for R-1
Mr. Raunak Jain for R-2

I.A. No.9&10 of 2013 in DFR No.1989 of 2012

In the Matter of:

**Chhattisgarh State Power Trading Co. Ltd.,
Vidyut Sewa Bhawan,
Danganiya,
Raipur-492014(Chhattisgarh)**

...Applicant/Appellant

Versus

- 1. Chattisgarh State Electricity Regulatory Commission
Irrigation Colony, Shanti Nagar,
Raipur, Chhattisgarh -492001.**
- 2. M/s Salasar Steel and Power Limited
1st Floor, Bhatia Complex,
Opp. Rajkumar College,
G.E. Road,
Raipur, Chhattisgarh-492001.**

.....Respondent(s)

Counsel for the Applicant (s) : Ms.Suparna Srivastava

Counsel for the Respondent(s):Mr.C.K. Rai for R-1
Mr. Raunak Jain for R-2

I.A. No.11&12 of 2013 in DFR No.1987 of 2012

In the Matter of:

**Chhattisgarh State Power Trading Co. Ltd.,
Vidyut Sewa Bhawan,
Danganiya,
Raipur-492014(Chhattisgarh)**

...Applicant/Appellant

Versus

- 1. Chattisgarh State Electricity Regulatory Commission
Irrigation Colony, Shanti Nagar,
Raipur, Chhattisgarh -492001.**
- 2. G.R. Sponge and Power Limited,
Plot No.102, Phase 2,
Siltara Industrial Area,
Raipur, Chhattisgarh-492001.**

.....Respondent(s)

Counsel for the Applicant (s) : Ms.Suparna Srivastava

Counsel for the Respondent(s):Mr.C.K. Rai for R-1
Mr. Raunak Jain for R-2

I.A. No.13&14 of 2013 in DFR No.1986 of 2012

In the Matter of:

**Chhattisgarh State Power Trading Co. Ltd.,
Vidyut Sewa Bhawan,
Danganiya,
Raipur-492014(Chhattisgarh)**

...Applicant/Appellant

Versus

**1. Chattisgarh State Electricity Regulatory Commission
Irrigation Colony, Shanti Nagar,
Raipur, Chhattisgarh -492001.**

**2. M/s Bharat Aluminium Company Limited.,
Balco Nagar, Korba,
Chhattisgarh-492001.**

.....Respondent(s)

Counsel for the Applicant (s) : Ms.Suparna Srivastava

Counsel for the Respondent(s):Mr.C.K. Rai for R-1
Mr. Raunak Jain for R-2
Mr. Ragvesh Singh for R-2

ORDER

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

1. This common order is being passed in these Applications to condone the delay in filing various Appeals as well as to condone the delay in re-filing the Appeals as against the impugned order passed by the Chhattisgarh State Commission, which is common.
2. The Chhattisgarh State Power Trading Co. Ltd., is the Applicant/Appellant in these Applications i.e. I.A. Nos. 5,6,7,8,9,10,11,12,13 & 14 of 2013.
3. The power plants of the Respondent-2 in these Appeals filed separate petitions before the Chhattisgarh State Commission challenging the demand notices issued by the Applicant/Appellant, the Power Trading Co., towards the transmission losses. The State Commission ultimately passed the common impugned order in all these petitions on 14.12.2011 quashing the said notices of demand raised by the Appellant on the Power Plants (R2) towards transmission losses occurred on account of evacuation of power from the power plant to the Distribution utility of the State holding that the same was unauthorized.

4. Challenging the same, the Appellant has filed these Appeals as against this common order dated 14.12.2011 before this Tribunal by filing separate Appeals in respect of each of the Power plants who is arrayed as Respondent-2 in these Appeals.
5. Since there was delay in filing these Appeals, the Applicant/Appellant in all these Appeals filed separate applications to condone the delay of 262 days in filing the Appeals as against the impugned common order dated 14.12.2011 along with the Appeals which were filed on 22.10.2012.
6. Since there were defects in these Appeals, the Registry through a letter dated 06.11.2012, asked the Appellant's Counsel for curing those defects within 7 days. The said communication was received by the Counsel for the Applicant/Appellant on 12.11.2012.
7. After removal of the defects, the Appeals were re-filed only on 19.12.2012 after the delay of 31 days. Therefore, the Applicant has also filed separate applications for condonation of the said delay in re-filing these Appeals.
8. These Applications came up for Admission before this Bench on 02.1.2013. After hearing the learned Counsel for Applicant/Appellant, we entertained the Applications both for

condonation of delay in filing the Appeals as well as for the condonation of the delay in re-filing the Appeals and issued notices in all these Applications to the Respondents. On receipt of the said notice, the Respondents appeared through their learned Counsel and filed separate counter opposing the prayer of the Applicant in each of the Applications both for the condonation of delay in filing the Appeals and for the condonation of delay in re-filing the Appeals.

9. The matter was heard on 19.2.2013. The learned Counsel for both the parties have argued at length.
10. The learned Counsel for the Applicant/Appellant in these Applications contended that there was a considerable delay occurred due to the fact that the Applicant/Appellant after the receipt of the order dated 14.12.2011, had filed Review Petition on 23.01.2012 before the State Commission as against the said order and the same was dismissed by the State Commission only on 27.6.2012 i.e. after 5 months and that is how the delay was caused.
11. In regard to the subsequent period, it has been explained that due to the reasons which were beyond the control of the Applicant/Appellant as well as the Counsel, there was some delay in preparation of the Appeals which were ultimately filed on 22.10.2012.

12. The learned Counsel for the Applicant/Appellant while explaining the delay in re-filing the Appeals contended that the delay of 31 days had occurred due to the time taken for discussion and deliberations made between the Applicant/Appellant and the Counsel of the Applicant/Appellant for undertaking the process of removal of the defects. On the basis of this explanation, it is prayed by the learned Counsel for the Applicant/Appellant that the delay in filing the Appeals as well as re-filing the Appeals may be condoned.
13. In these Applications, the Respondent (2) in the respective Applications have filed the detailed counter opposing these Applications contending that the explanation which has been given by the Applicant/Appellant in the Applications to condone the delay on the basis of which the learned Counsel for Applicant/Appellant prayed for condonation of delay, has not shown sufficient cause and therefore, these applications are liable to be dismissed.
14. During the course of hearing the learned Counsel for the Respondent had stoutly opposed these Applications mainly on the ground that the conduct of the Applicant/Appellant from the very beginning was most callous and not bona-fide and prayed for the dismissal of these Applications.

15. We have carefully considered the submissions made by the learned Counsel for both the parties who argued at length with great vehemence.
16. In these cases, there is a considerable period of delay in filing the Appeals as well as in re-filing the Appeals. Thus, there are two phases of the period of delay.
17. In respect of the First Phase, there is the delay of 262 days in filing the Appeals while in the Second Phase; there is a delay of 31 days.
18. For the period of **First Phase**, the explanation has been offered by the Applicant/Appellant through the Application for the condonation of delay in filing the Appeals. The contents of the explanation is as follows:-
 - a) The impugned order was passed on 14.12.2011. The same was received only on 19.12.2011 by the Applicant. Thereafter, the Applicant challenged the said order before the State Commission itself by filing the Review petition on 23.01.2012. The State Commission was pleased to dispose of the same by dismissing the Review petition only on 27.6.2012. The said order was communicated to the Applicant/Appellant on 29.6.2012. Thus, the delay in challenging the impugned order dated 14.12.2011 had

occurred on account of the pendency of the Review petition before the State Commission till 27.6.2012.

b) Thereafter, the Applicant gave necessary instructions to the Counsel for the Applicant for preparation of the Appeals. The said Appeals, after preparation, were sent to the Applicant for approval and the same were signed, attested and sent by the Applicant on 20.7.2012. Necessary demand drafts were prepared on 01.8.2012 and the same were received in the office of the Counsel for the Applicant on 7.8.2012 and that is how the delay was caused during the period between 27.6.2012, i.e. the date of the Review order and 7.8.2012, i.e. the date of the receipt of the Appeal papers by the Counsel.

c) On 9.8.2012 and 10.8.2012, there was heavy rain in Delhi which had caused water logging in the office of the Counsel for the Applicant on account of which there was heavy damage caused to the computer system including the data stored with respect to the typed annexure relating to the present Appeals. Thus, this event also led to a further delay. Ultimately, the Appeals were filed on 22.10.2012. That is how the delay was caused between the period

between 9.8.2012 and 22.10.2012, i.e. the date of the filing of the Appeals.

19. Opposing the prayer for condonation, the learned Counsel for the Respondent-2, contended that this explanation would not at all, show sufficient cause so as to warrant for condonation of inordinate delay of 262 days in filing the Appeals.
20. It has been pointed out by the learned Counsel for the Respondent that the direction given to the Applicant to refund the amount to the Respondent in the impugned order dated 14.12.2011 had actually been complied with by the Applicant/Appellant as early as on 16.01.2012 itself by refunding the amount through cheque sought to be recovered from the Respondent-2 and only thereafter, the Applicant/Appellant had thought it fit to file a Review on 23.1.2012 before the State Commission as against the impugned order dated 14.12.2011.
21. According to the learned Counsel for the Respondent, while the cheque was sent to the Respondent by the Applicant along with a covering letter, it had not mentioned that the amount was being sent without prejudice to its rights and on the other hand, it was stated that Applicant had sent the amount to the Respondent in compliance with the order

passed by the State Commission on 14.12.2011. Let us refer to the said letter:

“CHATTISGARH STATE POWER TRADING CO.LTD
(A GOVERNMENT OF CHATTISGARH UNDERTAKING)
(A SUCCESSOR COMPANY OF CSEB)
Vidyut Sewa Bhawan, Ground Floor, Danganiya,
Raipur(C.G)
Tel-2574598/334/110 Fax-771-2574370

No.05-01/Acctt/GRSPL/552 Raipur, Dt.16/01/2012.

To,
M/s G.R. Sponge & Power Ltd.,
Plot No.102, Phase-II, Siltara Industries Area,
Raipur.

Subject: Refund of audit recovery amount.

Ref: Order passed on dated 14.12.2011 on Hon'ble
CSERC.

Dear Sir,

In the light of the C.S.E.R.C. order cited under reference, please find enclosed herewith Cheque No.296955 dt.13.01.2012 amounting Rs.14,82,000/- towards refund of audit recovery amount which was adjusted from the net payable amount pertaining to power purchase bill for the month of March,2011.

Thanking you,

Yours faithfully,

Sd/-xxx
Asth. Manager(F&A)
CSP Trad. CL, Raipur.”

22. On going through the above letter sent by the Applicant to the Respondent-2, it is evident that the Applicant has categorically stated in the letter that in compliance with the order passed on 14.12.2011, the Applicant has sent a cheque towards the refund of audit recovery amount which was adjustable from the net payable amount pertaining to power purchase bill.
23. Admittedly, in this letter, there is no communication that the Applicant/Appellant had paid the amount without prejudice to its right to challenge the order of the State Commission. This shows that while the Applicant sent the letter to the Respondent along with the cheque, the Applicant seems to have decided not to challenge the impugned order dated 14.12.2011. Only after some days, that is on 21.3.2012, the Applicant had decided to file the Review petition challenging the said order dated 14.12.2011 and filed the same.
24. Admittedly, there is no proper reason given for immediate compliance of the order that too, without any protest. Even this fact has not been mentioned in the Application to condone the delay. Even in the Review petition filed before the State Commission, they did not mention about the compliance of the order. There is no reason as to why the Applicant should send the cheque to the Respondent in compliance with the impugned order and as to why they had

approached the State Commission through Review petition, though the order had been complied with.

25. As a matter of fact, the matter was taken up for hearing for admission on 16.3.2012 by the State Commission. Even though the matter was heard on 16.3.2012, the State Commission dismissed the Review petition only on 26.7.2012. Admittedly, the Applicant did not seek for any interim order from the State Commission directing the Respondent-2 not to use the amount which they had paid through the cheque. Similarly, they had also not intimated to the Respondent about their filing Review and demanded Respondent-2 either not to encash the cheque, or not to use this amount for their own.
26. The above fact would show that the Applicant was neither so serious to seek appropriate direction from the State Commission with reference to the payment made by the Applicant/Appellant earlier, nor requested the State Commission to dispose of the Review at an early date.
27. Under those circumstances, we are unable to accept the explanation offered by the Applicant that the delay had occurred only due to the pendency of the Review before the State Commission.

28. The next period is between the date of the disposal of the Review petition and filing of the Appeals before this Tribunal. To explain this period, the learned Counsel for the Applicant/Appellant submits that there was a rain on 9.8.2012 and 10.8.2012 in New Delhi, with the result, there was heavy damage to the computer system etc., in their office.
29. As indicated above, the Review petition was dismissed as early as on 27.6.2012. According to the learned Counsel for the Applicant/Appellant, necessary demand draft was received by the Counsel on 7.8.2012. There is no proper explanation for this period. Even assuming that there was some damage in computer system in the office of the learned Counsel due to rain, there is no explanation with regard to the delay for the period between 11.8.2012 and 22.10.2012, the date of filing of this Appeal. This also would show that the Applicant had not been diligent enough to ensure the Appeal was filed in time.
30. One more aspect is to be noticed in this context. As pointed out by the learned Counsel for the Respondent, the Application has been filed to condone the delay of 262 days in filing the Appeal along with the Appeal on 22.10.2012. This Application has been accompanied by an affidavit signed by the Executive Director of the

Applicant/Appellant. Strangely, this affidavit signed by Mr. A.K. Garg, Executive Director of the Applicant/Appellant which accompanied the Application to condone the delay, would show that affidavit was sworn to and signed on 20.7.2012. If this affidavit is to be taken that this would relate to accompanying Application to condone the delay of 262 days, the said Application also must have been dated 20.7.2012. But, the accompanying Application to condone the delay filed along with the Appeal shows that it was dated 22.10.2012 and not 20.7.2012. Thus, it becomes evident that the Application dated 22.10.2012 filed on 22.10.2012 was not accompanied with the affidavit of the Applicant/Appellant signed and attested on the same date. In the absence of the affidavit signed by the Applicant/Appellant signed on the same date, the Application dated 22.10.2012 can not be taken to be an accompanying application for the affidavit signed and attested as early as on 20.7.2012.

31. This could be viewed from yet another angle. As mentioned above, the affidavit was signed and attested by the party on 20.7.2012 itself. The Application was dated 22.10.2012. If that is so, there is no application accompanying the affidavit dated 20.7.2012. As such, there is no reason as to why separate affidavit dated

22.10.2012 for condonation of delay was not filed along with the Application dated 22.10.2012.

32. From the above fact, it is clear that even though the affidavit had been prepared and signed as early as on 20.7.2012 itself, the Applicant filed the Application dated 22.10.2012 as well as the affidavit dated 20.7.2012 only on 22.10.2012. There is no explanation for the delay for the period between 20.7.2012 and 22.10.2012.
33. Therefore, we find force in the vehement objection raised by the Respondent to the Application for condoning the delay contending that Applicant had not shown due diligence from the beginning in prosecuting these Appeals.
34. In the absence of the satisfactory explanation, we are constrained to hold that there is no sufficient cause shown to condone the inordinate delay of 262 days in filing the Appeal. Hence, delay for this period, cannot be condoned.
35. The **Second Phase** of the period is for condonation of delay of the period in re-filing these Appeals.
36. The only reason given by the learned Counsel for the Applicant in these Applications to condone the delay in re-filing the Appeals is that some time was taken for discussion between the learned Counsel and the parties with reference to the removal of defects and during the said

process, the delay of 31 days had occurred. These Applications have also been stoutly opposed by the Respondent stating that the time taken by the Applicant/Appellant for curing the defects beyond the permitted time period has not been properly explained.

37. On going through the Applications to condone the delay in re-filing the Appeals as well as the counter filed by the Respondent, we feel that 31 day's time taken to decide about the removal of defects with regard to the payment of court fee in respect of the Appeals as against the Review order is not justified.
38. In our view, this much of time need not be taken by the learned Counsel for the Applicant since the Appeals as against the main order itself would serve the purpose and there can not be separate Appeals as against the dismissal order in the Review petition and in that event, the question of separate court fee for the Appeals as against the Review order would not arise. Therefore, this period also, in our view, has not been satisfactorily explained and as such, the delay for this period also can not be condoned.
39. Consequently, both the set of Applications namely Applications for condoning the delay in filing Appeals as well as the Applications for condoning the delay in re-filing the Appeals, are dismissed in view of the fact that the

callousness of the Applicant is continuous and consistent through out. Consequently, the Appeals are rejected. However, we shall record our appreciation for the performance of Ms. Suparna Srivastava, the learned Counsel for the Applicant, who argued the matter well through her lucid presentation and effective persuasion.

40. Before parting with this case, we would like to observe with regard to the delay in disposal of the Review and to give suitable directions on this aspect to the State Commission.
41. As indicated above, the Review petition was filed on 23.1.2012. It was taken up for admission on 16.3.2012. The learned Counsel for the petitioner was fully heard for admission on that day itself. When that being the case, there is no reason as to why the State Commission had to take this much of time till June, 2012 for disposal of petition rejecting the Admission. When the State Commission was not inclined to admit the Review petition, it could have disposed the matter within a short time. But, the Review petition was dismissed only on 26.7.2012. The State Commission could have taken immediate steps to dispose of the matter without causing further delay especially when the State Commission decided not to admit the Review petition.

42. In this case, the Review petition which was filed on 23.1.2012, was dismissed on admission stage itself only on 27.6.2012. Due to this delay, the Applicant/Appellant was not allowed to approach the Tribunal for filing an Appeal in time.
43. Even though this period of pendency of the Review petition before the State Commission could be considered for condonation of delay, in the earlier paragraphs we have indicated that the explanation with regard to the subsequent period did not show sufficient cause.
44. However, we can not, but express our disapproval for the long pendency of the Review petition before the State Commission i.e. for about 5 months.
45. If a Review is admitted, notice ordered and parties were heard, we can understand that there could be some delay, but when the State Commission decided to dismiss the Review at the admission stage itself, then the State Commission should have disposed of the said Review petition within a short time frame.
46. Therefore, we deem it appropriate to give direction to the Chhattisgarh State Commission to frame regulations with reference to the time frame within which Review has to be disposed of. There is regulation available providing time

period in filing the Review i.e. within 30 days. Similarly, there must be regulation providing the time frame for the disposal of the Review as well. Only then, the aggrieved party could approach the Tribunal in time for filing an Appeal without putting any blame on the State Commission with regard to the delay.

47. Accordingly, directed.

48. Registry is directed to send a copy of this order to Chhattisgarh State Commission forthwith.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated: 22nd February, 2013

√REPORTABLE/~~NON-REPORTABLE~~