

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

I.A. No.187 of 2012 IN DFR No.1741 of 2011

AND

IA NO.188 OF 2012 IN DRF No.1742 OF 2011

Dated: 4th July, 2012

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

In the Matter of:

**M/S. OPG Power Generation Pvt Ltd.
No.6, Sardar Patel Road, Guindy,
Chennai 600 032**

...Appellant/Applicant

Versus

- 1. Tamil Nadu Electricity Board
800, Anna Salai
Chennai**
- 2. TANTRANSCO,
NPKRR Maaligai,
144 Anna Salai
Chennai-600 002**
- 3. Director (Operations)
Tamilnadu Transmission Corporation Limited,
NPKRR Maligai,
144, Anna Salai
Chennai-600 002**
- 4. The Chief Engineer/PPP
Tamil Nadu Electricity Board
144, Anna Salai
Chennai-600 002**

5. **Superintending Engineer (Operation)**
Tamil Nadu Electricity Board,
144, Anna Salai
Chennai-600 002
6. **TANGEDCO**
NPKRR Maligai,
144 Anna Salai,
Chennai-600 002
7. **Tamil Nadu Electricity Regulatory Commission,**
TIDCO Office Building
No.19 A, Rukmani Lakshmipathi Salai
Chennai-600 008

...Respondent(s)

Counsel for the Appellant(s) : Mr. T Srinivasa Murthy
Mr. Senthil Jagadeesan
Mr. Krishna Dev
Mr. Pankhuri Bhardwaj

Counsel for the Respondent(s): -

ORDER

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

1. These two applications to condone the delay in refiling the two Appeals in IA No.187 of 2012 and 188 of 2012 are being disposed of through this common order as the issue in both the matters is common.

2. M/S. OPG Power Generation Private Limited filed a Petition before the Tamil Nadu State Commission seeking for a direction against the TANTRANSCO, 2nd Respondent to make payment to the Applicant for the infirm power supplied to them.
3. Similarly, the same Company filed another application before the Tamil Nadu State Commission praying for the fixation of the rates at which Tamil Nadu Electricity Board should make the payments for the infirm power supply from the date of commissioning till the commercial operation date and for the direction for the payment of such amount.
4. The Tamil Nadu State Commission passed the impugned order in the first Petition dismissing that Petition with the finding that no amount is payable to the Applicant for pumping infirm power into the Respondent's grid without getting approval.
5. Similarly, the State Commission in the other application passed the impugned order fixing the tariff for infirm power only at the rate of Rs.1.75 per kwhr.
6. Aggrieved over both these orders passed by the State Commission on 7.10.2011, the Applicant filed two Appeals in DFR No.1741 and 1742 on 21.11.2011 before this Tribunal.

7. The Registry notified certain defects in the Appeal papers and sent a defect notice dated 14.12.2011 requiring the same to be complied within 7 days from the date of receipt of the notice. Even after receipt of the said defect notice in both the matters, the Applicant had not cured the defects and re-filed both the matters in time.
8. On the other hand, in both the matters the Applicant re-filed the Appeal papers only after a delay of 165 days. Since the Registry raised an objection, the Applicant filed these two Applications in IA No.187 and 188 of 2012 to condone the delay of 165 days in re-filing the Appeal.
9. We have heard the Learned Counsel for the Applicant/Appellant.
10. As laid down by the Hon'ble Supreme Court, the delay, irrespective of number of days can be condoned in filing or re-filing the Appeal if sufficient cause is shown and if there is no lack of diligence on the part of the party. On the other hand, if the explanation given by the party is not satisfactory showing the negligence on the part of the party, the delay should not be condoned.
11. It must be remembered that once the unexplained delay has occurred in filing or re-filing, the right which accrues to the Respondent party who obtained the favourable orders from

the subordinate authority, should not be allowed to be defeated by condoning the said delay.

12. In that view of the matter, we shall now see as to whether the explanation which is common offered by the Applicant in both the matters is satisfactory or not?
13. The gist of the explanation given in the Petition to condone the delay filed by the Applicant is extracted as below:

“The impugned orders were passed on 7.10.2011. The Appeal were filed on 21.11.2011. On 14.12.2011, the Registry sent a defect notice notifying the defects in the Appeals, requiring the same to be complied within 7 days from the date of the receipt of the defect notice. The said notice was received on 19.12.2011. Though the Advocates office received the same on 19.12.2011, the Advocate at Delhi was able to find out the defect notice only in the 2nd week of January, 2012 as he was out of station. Thereupon, the Advocate at Delhi informed the Advocate at Chennai about the particulars of the defects and sought for the relevant information after collecting from the Applicant for the purpose of curing the defects. Accordingly, the Advocate at Chennai on 13.1.2012, sent the list of compliances to the office of the Applicant asking the Applicant to get in touch with the Advocate on record

at New Delhi in order to ensure the defects are cured.. However, the said letter sent by the Chennai Advocate to the Applicant has been misplaced at the Applicant's office since the shifting was taking place during that period. At last, only on 27.4.2012, the said letter was brought to the notice of the Applicant by a new Manager who had been appointed in March, 2012. Then, the Advocate at Chennai was contacted. Thereafter, the Applicant contacted the Advocate at New Delhi to find out about the present status of the Appeals and got the information about the defects. Thereafter, the Applicant proceeded to comply with in curing the defects and refilled the Appeal papers after delay of 165 days”.

14. On going through the explanation, it is evident that despite the fact that the Advocate Chennai informed the Applicant through his letter dated 13.1.2012 about the particulars of the defects to be cured and the same was received by the Applicant in time i.e. on 15.1.2012, the Applicant has not at all taken any step to contact either the Counsel at Chennai or the Counsel at Delhi by sending his representative to give the required information to cure the defects. It is simply stated that Applicant's office was shifted during that period and during that time the letter from Chennai Counsel had

been misplaced and that was how the matter was not attended to till 27.4.2012.

15. Thus, it is clear that even though the Counsel concerned took proper steps to inform the Applicant, the Applicant has not taken prompt steps to cure the defects through his representative by contacting his Counsel at Chennai or Delhi. The Applicant cannot simply escape from the responsibility to take immediate steps to cure defects. The explanation offered by the Applicant that the particulars of the letter sent by the Counsel was brought to the notice of the Applicant only in April, 2012 by one Mr. Venu Gopal who had been appointed as new Legal Manager in March is quite strange.
16. The above statement of the Applicant would clearly show that the Applicant was not diligent to take immediate steps to re-file the same after curing the defects in spite of the fact that Applicant received the letter from Chennai Counsel on 15.1.2012 who promptly instructed the Applicant to take steps to cure the defects without any delay. It is stated by the Applicant that the letter was misplaced and the matter was not attended to because during that period the office was shifted. This shows that the Counsel for the Applicant both at Chennai and Delhi sent letters to the Applicant but the Applicant slept over the matter for a long time. This

would indicate that there was negligence on the part of the Applicant only.

17. As a matter of fact, the Act provides that the Appeal after it is filed, has to be disposed of by this Tribunal within 180 days. In this case even refiling has been done after 165 days.
18. Therefore, we find that this is a case where lack of diligence has been shown by the Applicant for a long time in not refiling the Appeal in time thereby causing a huge delay of 165 days.
19. In view of the above, we do not find any sufficient cause to condone this delay. Therefore, both the applications are dismissed.
20. Consequently both the Appeals are rejected.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated: 4th July, 2012

✓ ~~REPORTABLE/NON-REPORTABLE~~