

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

I.A. No.191 of 2013

IN

DFR No.908 of 2013

Dated:15th July, 2013

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

In the Matter of:

- 1. Karnataka Power Transmission Corporation Ltd.,
Kaveri Bhavan,
Bangalore-560 009**
- 2. State Load Dispatch Centre,
No.28, Race Course Road,
Bangalore-560 009**

...Appellants/Applicants

Versus

- 1. M/s. Cauvery Hydro Energy Ltd.,
No.67M "Lavina Courts",
First Floor, No.102, 8th Main,
7th Cross, RMV Extension,
Bangalore-560 009**
- 2. Karnataka Electricity Regulatory Commission
6th & 7th Floor,
Mahalaxmi Chambers,
No.9/2, M.G. Road,
Bangalore-560 091**

...Respondent(s)

**Counsel for the Appellant(s) :Mr. Raghavendra S Srivastava,
Counsel for the Respondent(s): -**

ORDER

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

1. This is an Application for condonation of delay of 648 days in Filing the Appeal as against the impugned order dated 2.6.2011 passed by the Karnataka State Commission.
2. The First Applicant/Appellant is a State Transmission Utility. The Second Applicant/Appellant is the State Load Dispatch Centre.
3. M/s. Cauveri Hydro Energy Limited, the Generating Company is the First Respondent. Karnataka State Commission is the Second Respondent.
4. Aggrieved by the order dated 2.6.2011, passed by the Karnataka State Commission giving the directions to the Applicants to refund the charges collected in excess from M/s. Cauveri Hydro Energy Limited, the Applicants/Appellants have filed this Appeal. There is a delay of 648 days in filing the Appeal. Hence, they filed this Application in IA No.191 of 2013 to condone the delay of 648 days in filing the Appeal giving explanation for the same.

5. In this application, we are concerned with the question as to **“Whether the explanation for the delay offered by the Applicants/Appellants is satisfactory or not”**.
6. The short facts are as follows:
 - (a) M/s. Cauvery Hydro Energy Ltd., the First Respondent is engaged in generation of the electricity at its hydro-electric power station in Mandya District, Karnataka.
 - (b) On 17.8.1998, M/s. Cauvery Hydro Energy Limited., the First Respondent had a Wheeling and Banking Agreement with the predecessor of Karnataka Power Transmission Corporation Ltd., the first Applicant fixing the Wheeling price for a period of 10 years.
 - (c) On 30.8.2000, Karnataka Power Transmission Corporation Ltd., the First Applicant increased the Wheeling Charges which was fixed in the Agreement from 5% to 20%.
 - (d) Therefore, M/s. Cauvery Hydro Energy Limited, the First Respondent challenged the same before the High Court of Karnataka in WP No.690 of 2003.

- (e) The High Court of Karnataka ultimately passed the order in the Writ Petition on 13.4.2007 directing First Applicant/Appellant, the Transmission Company to consider the request of the Generating Company in accordance with the law and then pass the appropriate orders. Thereafter, the Generating Company claimed for refund of the excess charges paid. However, the Applicants by the letter dated 1.7.2010, rejected the said claim.
- (f) Hence, the Generating Company filed OP No.47 of 2010 before the State Commission seeking for quashing of the order increasing the Wheeling Charges issued by the First Applicant dated 30.8.2000 and for a consequential direction to make the payment for the energy supplied by the Generating Company.
- (g) This was contested by the Transmission Company; the Applicant contending that the order dated 30.8.2000 is in accordance with the terms of the contract which confers the power to the Applicant for modifications of the rate of Wheeling Charges of the First Respondent.
- (h) The State Commission, after hearing both the parties, passed the impugned order dated

2.6.2011 holding that the order of the first Applicant/Appellant dated 30.8.2000 is not legally enforceable and consequently set aside the order of the Second Applicant dated 1.7.2010 and further directed the Applicants to recalculate the charges payable by the First Respondent and make due adjustments to the charges already paid by the Generating Company.

- (i) This order is challenged now by the Applicants in the Appeal.

7. The impugned order was passed on 2.6.2011. The Appeal against the order was filed before this Tribunal on 29.4.2013 i.e. after a delay of 648 days. The explanation given by the Applicants in this Application in IA No.191 of 191 is as follows:

“The State Commission passed the impugned order on 2.6.2011. After receipt of the certified copy, it was decided to convene a meeting of the officials of the ESCOMs of the State since the impact of the order was on all the ESCOMs. Therefore, a meeting was convened on 20.7.2011. In the meeting only some ESCOMs attended. Thereafter, separate discussions were held with the officials of the other ESCOMs. The matter was referred to Law Officer of the Appellant in

the month of August. In the month of August, the Law Department of the Applicants gave the opinion that the order could be challenged. Then, discussions were held with the Officers of the other Department and Finance Department. Ultimately, on 7.8.2012, it was decided to get a legal opinion as to whether the Appellants should go in for the Appeal before the Tribunal. Accordingly, opinion was sought in the first week of September. Ultimately, on 4.10.2012, the Counsel for the Appellant furnished a legal opinion that the impugned order of the State Commission was an appealable order. Thereafter, another round of discussions was made and matter was entrusted to the Counsel in the last week of January, 2013. The final draft was prepared in the second week of March and then after approval, the Appeal has been filed on 29.4.2013. So, the delay of 648 days is bona fide and unintentional. Hence, the delay may be condoned”.

8. On the strength of this explanation given in the Application, the learned Counsel for the Applicants/Appellants elaborately argued and prayed this Tribunal to condone the delay by imposing some costs.
9. We have carefully considered the submissions made by the learned Counsel for the Applicants/Appellants.

10. On perusal of the Application and also on consideration of the submissions made by the learned Counsel for the Applicants/Appellants, we feel that no sufficient cause has been shown to enable us to condone the long delay of 648 days.
11. According to the Applicants/Appellants, even though the impugned order was passed as early as on 2.6.2011, the Applicants took time to have a consultation with all the ESCOMs and also to get a legal opinion from the Law Department as well as from the Counsel who drafted the Appeal. The details given in various paragraphs in the Application seeking for the condonation of the delay would indicate that purely administrative delay has been projected as the reason for the delay.
12. It is settled law that mere administrative delay cannot be construed to be the sufficient cause to condone the delay.
13. As a matter of fact, though the order had been passed as early as on 2.6.2011, the Applicants spent time on discussions after discussions up to August, 2012 and thereafter; the legal opinion was furnished on 4.10.2012 advising the Applicants to file the Appeal. Even the so called discussions from the date of the receipt of the certified copy up to receipt of the legal opinion on 4.10.2012 would

not show that the Applicants/appellants took diligent steps to take further course of action promptly.

14. That apart, the period between 4.10.2012 i.e. the date of legal opinion and 29.4.2013 i.e. the date of filing of the Appeal i.e. nearly six months has not been properly explained.
15. So, in the absence of the valid reasons for the delay, we are to conclude there is neither sufficient cause shown nor satisfactory explanation offered for this inordinate delay of 648 days.
16. Hence, the Application to condone the delay is dismissed.
17. Consequently, the Appeal is also rejected.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated:15th July,2013

✓ ~~REPORTABLE/NON-REPORTABLE~~