

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

I.A. No. 86 of 2013 AND IA 87 of 2013

IN
DFR No.140 of 2013

Dated: 01st May,2013

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

In the Matter of:

**Uttar Pradesh Power Corporation Limited.,
Shakti Bhawan 14, Ashok Marg,
Lucknow-226 001**

...Appellant/Applicant

Versus

- 1. NHPC Limited.,
(A Government of India Enterprises)
NHPC Office Complex, Sector-33,
Faridabad (Haryana) 121 003**
- 2. Punjab State Power Corporation Ltd.,
The Mall, Patiala-147 001**
- 3. Haryana Power Utilities (DHVN & UHVN)
Shakti Bhaan, Sector-6,
Panchkula (Haryana) 134 109**
- 4. BSES Rajdhani Power Limited,
BSES Bhawan, Nehru Place,
New Delhi-110 019**

5. **BSES Yamuna Power Ltd.,
Shakti Kiran Building,
Kakardooma,
New Delhi-110 092**
6. **Rajasthan Rajya Vidyut prasaran Nigam Ltd.,
Vidyut Bhawan, Janpath, Jyoti Nagar,
Jaipur-302 005**
7. **North Delhi Power Ltd.,
33 KV Sub Station Building,
Hudson Lane, Kingsway Camp,
Delhi-110 009**
8. **Uttarakhand Power Corporation Ltd.,
Urja Bhawan, Kanwali Road,
Dehradun-248 001**
9. **Jaipur Vidyut Vitran Nigam Limited.,
Vidyut Bhawan, Janpath,
Jaipur-3032 005**
10. **Himachal Pradesh State Electricity Board,
Vidyut Bhawan, Kumar House Complex Bldg II
SHIMLA-171 004**
11. **Jodhpur Vidyut Vitran Nigam Limited.,
New power House, Industrial Area,
Jodhpur-342 003 Rajasthan**
12. **Engineering Department, 1st Floor,
UT Secretariat, Sector 9 D,
Chandigarh 160 009**
13. **Ajmer Vidyut Vitran Nigam Limited,
Old Power House, Hatthi Bhatta,**

Jaipur Road,
Ajmer-305 001, Rajasthan

14. Principal Secretary,
Power Development Department,
New Secretariat, Jammu (J&K)
15. Central Electricity Regulatory Commission,
4th Floor, Chanderlok Building,
36 Janpath, New Delhi-110 001

...Respondent(s)

Counsel for the Appellant(s) : Mr.Pradeep Mishra
Mr. Daleep Kr Dhayani

Counsel for the Respondent(s): Mr. Sachin Datta for R-1

ORDER

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

1. Uttar Pradesh Power Corporation Limited, the Applicant/Appellant has filed this Appeal as against the impugned order dated 01.10.2012 passed by the Central Commission.
2. Since there was a delay of 55 days in filing the Appeal, the Applicant/Appellant filed an Application in IA No.86 of 2013

to condone the said delay. The Appeal has been filed on 21.1.2013.

3. After filing the Appeal and the Application to condone the delay, the defect notice was issued by the Registry and the same was received by the Counsel for the Applicant/Appellant on 30.1.2013. Through the defect notice Registry asked the Counsel for the Applicant to rectify the defects and represent the same within seven days.
4. However, the Applicant/Appellant refiled the Appeal only on 5.3.2013. Since there was a delay in re-filing the Appeal also, the Applicant/Appellant has filed another Application to condone the delay of 22 days in re-filing the Appeal in IA No.87 of 2013.
5. Notices were issued in both the Applications to the Respondents. The 1st Respondent appeared before us through the Counsel. On behalf of the Respondent-1, a detailed counter has been filed opposing the Applications for condonation of delay contending that the explanation offered by the Applicant for the delay has not shown sufficient cause to condone such a delay and as such they are liable to be dismissed.

6. In the light of the above situation, we have to consider as to whether the explanation given by the Applicant in these two Applications is satisfactory or not.

7. The short facts are as follows:

(a) The Appellant is a successor in interest of the then Uttar Pradesh State Electricity Board. National Hydro Power Generation Limited, the 1st Respondent is a Government of India undertaking engaged in Generation of Electricity.

(b) The 1st Respondent filed a Petition in Petition No.66 of 2010 before the Central Commission for approval of Generation Tariff for the period from 1.4.2009 to 31.3.2014.

(c) On 27.1.2012, the Central Commission had determined the tariff.

(d) On 11.4.2012, the R-1 filed a Review Petition on various issues stating that there was error apparent on the face of the record and praying for the review of the order dated 27.1.2012.

(e) Accordingly, the Central Commission reviewed its order and allowed the said Review Petition whereby it has revised the operation and maintenance cost

payable to the 1st Respondent by the order dated 01.10.2012.

(f) Challenging the same, the Appellant has filed this Appeal.

8. In this Appeal, the Applicant/Appellant has filed the two Applications i.e. IA 86 of 2013 for condoning the delay in filing the Appeal and IA 87 of 2013 praying for the condonation of delay in refiling of the Appeal.
9. The explanation which has been given for the condonation of 55 days in filing the Appeal is as follows:

“The impugned order that was passed on 1.10.2012 was received by the Applicant on 12.10.2012. Thereafter, the matter was examined at different levels and opinion from the Consultant was sought. Ultimately, the Consultant gave an opinion that Appeal be filed before this Tribunal. After receiving the said opinion, the records were sent to the Counsel for the Appellant in December, 2012. The Appeal was prepared by the Counsel and Affidavit had also been prepared on 28.12.2012. Thereafter, there was a delay in sending the draft towards the Court Fee. Only in 2nd week of January, 2013, the draft which was sent by the Appellant was received by the Counsel.

Thereafter, the present Appeal has been filed along with the Application to condone the delay of 55 days”.

10. The explanation given by the Applicant in condonation of delay of 22 days in refiling the Appeal is as follows:

“The Appeal had been filed on 21.1.2013. The Registry sent the defect notice. The same was received only on 30.1.2013. The defect notice pointed out that the additional draft of Rs.10,000/- to be presented. This was intimated to the Appellant. The draft was prepared on 12.2.2013 and the same was received by the Counsel on 18.2.2013. However, the said draft was misplaced in the office of the Counsel and the same could be traced out only on 28.2.2013. After curing the defects on 5.3.2013 the Applicant/Appellant refiled the Appeal along with the application to condone the delay of 22 days. Hence, this application to condone the delay which was not intentional and deliberate.

11. These Applications have been stoutly opposed by the learned Counsel appearing for the 1st Respondent stating that the explanation cannot be said to be satisfactory as reasons for the said delay was vague. He has also cited the recent judgment of Hon’ble Supreme Court reported in 2012 SC 1506 in the case of the Chief Post Master General Vs

Living Media India Limited. In this decision, it has been held that in the absence of the plausible and acceptable explanation, the delay cannot be condoned mechanically.

12. As pointed out by the Respondent, even according to the Applicant/Appellant as referred to in the Application to condone the delay in filing the Appeal, there was a delay on the part of the Appellant to send the draft for Court Fee to the Counsel. There was no explanation as to why there was such a delay.
13. Similarly, the explanation which has been given for the delay in refiling the Appeal also would not show convincing reasons for the delay.
14. On the other hand, it has been admitted in the affidavit, sworn to by the learned by the learned Counsel for the Appellant himself that the draft which was received by the Counsel was misplaced in his office and the same could be traced out only later and that was how the delay was caused in refiling. This explanation, in our view, could not be said to be plausible explanation.
15. The learned counsel for 1st Respondent has vehemently objected to these Applications that the Applicant has not been able to offer any cogent and credible explanation for the delay and vague averments to the fact that after

receiving the impugned order, the matter was examined at different level, would not show sufficient cause since the details of the identity of the officers who were responsible for examining the orders have not been disclosed.

16. As indicated above, he has cited the judgment of Hon'ble Supreme Court where the guidelines have been given that when there is no plausible explanation for the delay, the delay may not be condoned.
17. While we are in perfect agreement with the contention of the learned Counsel for the 1st Respondent that the delay has not been explained properly, it is to be pointed out that the guidelines have been given by the Hon'ble Supreme Court in the judgment cited above while dealing with the application to condone the inordinate delay of 427 days in filing the Appeal. In this case, there is a delay of 55 days in filing the Appeal and delay of 22 days in refiling the Appeal. This can not be said to be an inordinate delay.
18. As mentioned above, though we are not convinced with the explanation offered by the Applicant as well as the Counsel for the Applicant in these Applications, we are of the view that the delay can be condoned on payment of cost.
19. Accordingly, both these Applications are allowed and consequently the delay of 55 days in filing as well as the

delay of 22 days in refiling of the Appeal is condoned on the condition that the Applicant shall pay the cost of Rs.75,000/- (Rupees seventy five thousand only) as a donation to be paid to a Charitable Organisation namely “**The Child Relief and You (CRY), 632, 2ND Floor, Lane No.3, West End Marg, Saiyadul Ajaib, New Delhi**” within two weeks from today.

20. The Registry is directed to number the Appeal and post the same for Admission on 20.5.2013 after getting verification with regard to compliance of this order from the Counsel for the Applicant.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated:01st May, 2013

✓ ~~REPORTABLE/NON-REPORTABLE~~