

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

IA No.124 of 2014
IN
DFR No.279 of 2014

Dated:29th May, 2014

Present:

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

In the Matter of:

Power Company of Karnataka Limited
KPTCL Building,
Cauvery Bhavan,
Bangalore-560 009

Bangalore Electricity Supply Co. Ltd.
KR Circle
Bangalore-560 009

Chamundeshwari Electricity Supply Co. Ltd.
No.927, L.J Avenue,
New Kanatharaj Urs Road,
Saraswathipuram,
Mysore-570 009

Hubli Electricity Supply Co. Ltd.
P B Road, Navanagar,
Hubli-580 029

Mangalore Electricity Supply Co. Ltd
OParadigm Plaza, A B Shetty Circle,
Mangalore-575 001

Gulbarga Electricity Supply Co. Ltd
Main Road, Opposite Parivar Hotel
Gulbarga-585 101

...Appellant/Applicant

Versus

1. **M/s. Himatsingka Seide Ltd
10/24, Kumara Krupa Road,
High Grounds,
Near Sindhi High School,
Bangalore-560 001**
2. **M/s. J K Cement Works,
Muddapur, Bagalkot-587 122**
3. **Karnataka Electricity Regulatory Commission
6th and 7th Floor, Mahalaxmi Chambers,
No.9/2, M G Road,
Bangalore-560 091**

...Respondent(s)

Counsel for the Appellant(s) : Mr. A M Shodhan Babu

Counsel for the Respondent(s): Mr. Siddharth Bawa for R-1
Mr. P K Bhalla for R-2

ORDER

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

1. This is an Application to condone the delay of 290 days in filing the Appeal as against the Impugned Order dated 14.2.2013 passed by the Karnataka State Commission.

2. The Power Company of Karnataka Limited and Others are the Applicants/Appellants.
3. The First Applicant is a Special Purpose Vehicle which undertakes certain duties of facilitating procurement of power. The 2nd and 6th Applicants are the Distribution Licensees in their respective designated areas.
4. M/s. Himatsingka Seide Ltd and the others are the Respondents.
5. The Respondents are the Generators. The Respondents filed the Petitions in OP No.40 of 2010 and OP No.41 of 2010 for seeking determination of tariff by the State Commission for the supply of electricity made by the various generators including the Respondents in compliance with the Government Order dated 3.4.2010 passed u/s 11 (1) of the Electricity Act, 2003.
6. The State Commission disposed of the said Petitions by the common order dated 24.3.2011. In this order, the State Commission fixed the tariff at Rs.5 per KwHr for the period April-June, 2010.
7. The Respondents, aggrieved by this Order dated 24.3.2011, filed the Appeal in Appeal No.141 of 2011 and Appeal No.142 of 2011 before this Tribunal. This Tribunal, by the

judgment dated 3.10.2012 affirmed the principles adopted by the State Commission in offsetting adverse financial impact. However, this Tribunal held that the State Commission had not actually determined the marketing and transmission charges while fixing the price at Rs.5/- per KwHr. Ultimately, by this order, the Tribunal remanded the matter to the State Commission to re-determine the rate of supply of energy to be paid to the Generators during the period April-June, 2010.

8. On remand, the State Commission, after hearing the parties passed the Order dated 14.2.2013 fixing the price as Rs.5.82/-per unit. The State Commission after discounting the operation charges fixed at 10 Paise held that the Generators Respondent 1 and 2 are entitled to Rs.5.72 per unit instead of Rs.5 per unit.
9. Aggrieved by this Order dated 14.2.2013, the Applicants/Appellants filed a Review Petition on 8.5.2013 in RP No.3 of 2013 on the ground that there was an error apparent on the face of the record. The State Commission ultimately dismissed the Review Petition by the Order dated 17.10.2013.
10. Thereupon, the Appeal has been filed on 27.1.2014 along with an application to condone the delay of 290 days.

11. The explanation offered by the Applicants for this delay in their Affidavit is as follows:

“The State Commission passed the Impugned Order on 14.2.2013 pursuant to the remand order passed by this Tribunal on 3.10.2012. Aggrieved by the Impugned Order dated 14.2.2013, the Applicants filed a Review Petition in RP No.3 of 2013 on 8.5.2013 within the time prescribed for filing the Review Petition. The Review Petition came to be disposed of on 17.10.2013. The Applicants No.1 to 5 received the certified copy of the orders on various dates from 17.10.2013 to 22.10.2013. The Applicant thereafter sought for internal opinion with regard to the action to be taken pursuant to the dismissal of the Review Petition from the Department of Regulatory Affairs. Legal opinion was obtained on 26.11.2013 opining that the Impugned Order dated 14.2.2013 shall be appealed in the light of the rejection of the Review Petition. Thereafter, the decision was taken in the first week of December, 2013 to file the Appeal before this Tribunal. Accordingly, the communication was sent to the Counsel for the Applicant. Documents in support of the Appeal were also sent on 24.1.2014. Ultimately, the Appeal was filed on 27.1.2014. This

delay in filing the Appeal is unintentional and bona fide. Therefore, the delay may be condoned”.

12. This Application was stoutly opposed by both the Respondents No.1 and 2 by filing separate counters. The gist of the objection is as follows:

“The Appellants, instead of filing the Appeal before this Tribunal within 45 days from the date of communication of the Order dated 14.2.2014; filed a Review Petition before the State Commission seeking a review of the Order even though there was no apparent error on the face of the record. Even during the pendency of the Review, the Applicants were not interested in prosecuting the matter to get an early disposal of the review. On the other hand, the Applicants filed several applications seeking for transposing the Applicants/Respondents mentioned in the Review Petition. This conduct of the Applicant shows the intention of the Applicants to delay the matter. Ultimately, the Review Petition had been dismissed on 17.10.2013. Even then, the Applicants/Appellants did not evince interest in taking prompt action for filing the Appeal immediately thereafter. Ultimately, the Appeal was filed only on 27.1.2014 i.e. after about 3 months. The Applicants,

by way of explanation merely stated that opinion was sought from the Department of Regulatory Affairs in the meantime and opinion was obtained later. There are no details of the dates on which the legal opinion was sought. According to the Applicants, ultimately the decision to file the Appeal was taken in December, 2013. But, the Appeal was filed only at the end of January. There is no proper explanation for this period. That apart, after first week of December, 2013, it took nearly two months for filing the Appeal i.e. on 27.1.2014. Thus, the explanation given by the Applicant for the inordinate delay does not indicate that there was sufficient cause to condone the delay. Therefore, the Applications for condonation of delay may be dismissed”.

13. On the basis of the respective contention, both the parties argued at length.
14. Before dealing with the merits of the explanation for condonation of delay of 290 days, it would be worthwhile to refer to the judgment of Hon'ble Supreme Court reported in AIR 2014 SC 746 cited by the Respondent where the guidelines were given while considering the condonation of delay Petition. In this decision the following principles have been laid down:

(a) Where a case has been presented in the Court beyond the period of limitation, the Applicant has to explain to the Court as to what was the sufficient cause which prevented him to approach the Court within the period of limitation.

(b) The term “sufficient cause” means that the party should not have acted in a negligent manner or there was want of bona fide on its part in view of the facts and circumstances of the case. The Applicant must satisfy that he was prevented by any sufficient cause from prosecuting his case. Unless a satisfactory explanation showing sufficient cause is furnished, the court should not allow the Applications for condonation of delay.

(c) Of course, the expression “sufficient cause” should be given a liberal interpretation to ensure that substantial justice is done. But, the concept of liberal interpretation would apply only to a case when there is no negligence or inaction or lack of bona fide which can be imputed to the party concerned.

(d) In case a party is found to be negligent or for want of bona fide on its part or found to be negligent, or for want of bona fide on his part in the facts and

circumstances of the case or found to have not acted diligently or remained inactive, there cannot be any justification to condone the delay.

15. In the light of the above guidelines laid down by the Hon'ble Supreme Court while considering the Application to condone the delay, let us now see the merits of the explanation offered by the Applicants.
16. There is no dispute in the fact that the Impugned Order has been passed on 14.2.2013 by the State Commission.
17. According to the Applicants, the Review Petition had been filed within the period of limitation before the State Commission. But, on the other hand, it is noticed from the Petition for Review that the Review Petition had not been filed on 8.5.2013 as claimed by the Appellant but it has been filed only on 27.9.2013. This factual error committed by the Applicants has been pointed out by the learned Counsel for the Respondents. If there was a delay in filing the Petition for Review, it is bounden duty of the Applicants to explain that delay also i.e. between the date of the Impugned Order and the date of filing of the Petition for Review. This has not been done.
18. On the other hand, the Applicants have wrongly stated in their Affidavit that the Application for Review had been filed

as early as on 8.5.2013. This statement is factually incorrect. This period has not been explained. That apart, the Review petition which had been filed on 27.9.2013 had been disposed of on 17.10.2013.

19. That apart, the Order had been passed in the Review on 17.10.2013 but the Appeal has been filed only on 27.1.2014. This period has also not been satisfactorily explained. The mere statement that time taken for obtaining internal opinion cannot be construed to be sufficient cause for the delay.
20. As pointed out by the Hon'ble Supreme Court, even though, the expression sufficient cause should be given liberal interpretation to ensure that substantial justice is done, we can not apply that concept in the present case because there is an unexplained and inordinate delay due to lack of diligence and inaction on the part of the Applicants.
21. As laid down by the Hon'ble Supreme Court once a period of limitation expires, the right accrues to the Respondents to enjoy the fruits of the Impugned Order and the said right should not be lightly to be disturbed. Since in this case the Applicants are found to be negligent, we are unable to accept the explanation offered by the Applicants as it does not show the sufficient cause.

22. Accordingly, the Application to condone the delay is dismissed. Consequently, the Appeal is also rejected.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated:29th May, 2014

✓ ~~REPORTABLE/NON-REPORTABLE~~