

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

IA 217 of 2013
IN
DFR NO.1309 of 2013

Dated:12th Aug, 2013

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

In the Matter of:

Vandana Global Limited.,
“Vandana Bhawan”,
M.G. Road,
Raipur, Chhattisgarh,
PIN-492 001

.....Applicant/Appellant

Versus

- 1. Chhattisgarh State Electricity Regulatory Commission**
Irrigation Colony,
Shanti Nagar,
Raipur-492 001
Chhattisgarh
- 2. Chhattisgarh State Power Distribution Company Ltd.,**
Daganiya,
Raipur-492 013
Chhattisgarh

..... Respondent(s)

Amicus Curie Counsel : Mr. Balbir Singh,
Mr. Aashish Bernad

Counsel for the Respondent(s): Ms. Swapna Seshadri for R-1
Mr. Gopal Chaudhury for R-2

ORDER

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

1. This is an Application to condone the delay of 73 days in filing the Appeal as against the impugned order dated 5.3.2013 passed by Chhattisgarh State Electricity Regulatory Commission.
2. The short facts are follows:
 - (a) Vandana Global Limited.,the Applicant/Appellant, is a Steel and Iron manufacturer in the State of Chhattisgarh. For the purpose of meeting the electricity requirements for manufacturing steel, the Applicant has established a Captive Power Plant having capacity of 41 MW.
 - (b) The State Commission is the 1st Respondent. Chhattisgarh State Power Distribution Company

Limited, the Distribution Licensee, is the 2nd Respondent.

(c) The State Commission, in the suo moto proceedings, issued a notice to the Applicant on 4.8.2012 to show cause as to why the Cross Subsidy Surcharge should not be levied for the year 2011-12 as it has lost its Captive Status.

(d) In response to this show cause notice, the Applicant/Appellant filed a reply stating that since there has been no supply of electricity, the Cross Subsidy Surcharge is not leviable on the Applicant.

(e) Rejecting the contention of the Applicant to the effect that even though the Applicant did not qualify as a Captive Power Plant, it is not required to pay the Cross Subsidy Surcharge on the account of the fact that the power generated on its own was consumed by itself, the State Commission by the impugned order dated 5.3.2013 held that the Captive Power Plants alone are not liable to pay Cross Subsidy Surcharge.

(f) Aggrieved by this order, the Applicant/Appellant has filed this Appeal.

3. The Appellant has admitted in this Appeal that the Appellant is not contesting the issue of CPP status having been lost

but is questioning only the levy of Cross Subsidy Surcharge on the Appellant generator, who lost its CPP status.

4. It is noticed that the impugned order had been passed on 5.3.2013. However, the present Appeal has been filed only on 2.7.2013 with a delay of 73 days. In this Application to condone the delay, the following explanation has been given by the Applicant for the delay caused:

(a) The impugned order dated 5.3.2013 was communicated to the Applicant on the same date. However, the Applicant was not issued with any bill by the Distribution Licensee for payment of Cross Subsidy Surcharge for the year 2011-12 on the basis of the impugned order dated 5.3.2013.

(b) In respect of the earlier year 2010-11, the bill was issued to the Applicant by the Distribution Licensee for the amount of Rs.4.4 Crores. The Applicant challenged the said bill before the State Commission which in turn, granted the interim stay of the notice of disconnection by the order dated 22.3.2013. The said proceedings are pending before the State Commission. Therefore, the Applicant expected that the Distribution Licensee would not issue any further bill in respect of the year 2011-12 on the basis of the impugned order dated 5.3.2013.

(c) Since the bill was not issued by the Distribution Licensee, on the basis of the order dated 5.3.2013, the Applicant/Appellant thought that it was not necessary to file an Appeal before this Tribunal against the impugned order dated 5.3.2013 so that the precious time of the Tribunal could be saved.

(d) The Applicant/Appellant got a stay order by the State Commission in respect of the bill issued for the year 2010-11 and therefore the Appellant was under the impression that there may not be any need to challenge the impugned order in the Tribunal.

(e) The Distribution Licensee (R-2), without waiting for the final outcome of the proceedings, in which the stay was granted by the State Commission in respect of the year 2010-11, issued the bill dated 10.6.2013 for an amount of Rs.9,41,21,350/- towards the Cross Subsidy Surcharge, on the basis of the impugned order dated 5.3.2013.

(f) Only after receipt of the bill, the Appellant made arrangement to file the Appeal and accordingly, the Appellant filed the Appeal on 2.7.2013. Thus, there was a delay of 73 days in filing the Appeal. Hence, the delay may be condoned in the interest of justice.

5. We have heard the learned Counsel for the Applicant/Appellant who has reiterated their explanation.
6. We have also heard the learned Counsel for the Respondent. The learned Counsel for the Respondent, in addition to the submissions that the explanation for the delay cannot be said to be satisfactory, pointed out that this issue raised in the Appeal has already been decided in yet another matter in Appeal No.32 of 2009 batch dated 28.4.2010 and as such, the Appeal itself has no merits, especially when the Applicant did not question the finding that the Applicant has lost its Captive Status.
7. On the other hand, the learned Counsel for the Appellant/Applicant, pointed out the said judgment of the Tribunal was appealed before the Hon'ble Supreme Court and the operation of the said judgment was stayed.
8. At the outset, it shall be stated that we are not now concerned with the merits of the Appeal. We are only concerned with the question as to whether the explanation given by the Applicant/Appellant in the Application to condone the delay of 73 days in filing the Appeal, is satisfactory or not and as to whether, the said explanation has indicated sufficient cause to condone the delay or not.
9. Let us now quote the explanation referred to in the Application to condone the delay:

“In fact, the Appellant/Applicant was at that point of time issued with a bill for the year 2010-11 of any amount of about Rs.4.4 Crores and the same was challenged by the Appellant/Applicant before the Hon’ble State Commission in Petition No.12 of 2013 (D) and the Hon’ble Commission by its order dated 22.3.2013 was pleased to stay the notice of disconnection and the said stay was further extended on the next date of hearing on 27.04.2013. Since the issues were the same therefore, the Appellant/Applicant was hopeful that the Respondent No.2 would not issue any further bills and would wait the final outcome of the proceeding in Petition No.12 of 2013 (D) and therefore, the precious time of the Hon’ble Tribunal would be saved. It was also hoped by the Appellant/Applicant that may be the Hon’ble Commission may appreciate the averments and submissions of the Appellant/Applicant in Petition No.12 of 2013 (D) for the year 2010-11 (as the issues are the same), since it had granted a stay and continued it and therefore, there may not be any need to challenge the Impugned Order”.

10. We have carefully considered the explanation as well as the submissions made by the parties..
11. According to the Applicant, the Applicant participated in sou motu proceedings and filed its objection to the effect that even though the Applicant’s Power Plant did not qualify as Captive Power Plant, it was not required to pay the Cross Subsidy Surcharge. From this stand, it is evident that the Applicant has not challenged the findings of the State Commission that it has lost its captive status.
12. On the other hand, the Applicant confined itself to the question on the levy of Cross Subsidy Surcharge on the

Applicant who had its own captive power plant contending that it could not impose the Cross Subsidy Surcharge on the use of power consumed by it.

- 13.** Having taken the stand by admitting that the Applicant/Appellant lost its Captive status, there is no reason as to why it did not take immediate steps to file an Appeal before this Tribunal to challenge the impugned order in which it was specifically held that only those power plants which were qualified as Captive Power plants are not required to pay Cross Subsidy Surcharge.
- 14.** On the other hand, it is now submitted that in respect of the charges levied on the Applicant through the bill for the earlier year 2010-11, the Applicant challenged the same before the State Commission and obtained the stay and that therefore, the Applicant was under the impression that the Distribution Licensee would not issue bills on the basis of the impugned order dated 5.3.2013 for the year 2011-12. It is further explained that the Appellant was under the impression that it need not file an Appeal before this Tribunal as the stay was already granted by the State Commission.
- 15.** This impression is quite wrong. The stay order was passed by the State Commission for the bills issued by the Distribution relating to the year 2010-11 which does not

relate to the issue dealt with by the State Commission in the impugned order dated 5.3.2013 relating to the Cross Subsidy Surcharge for the year 2011-12.

- 16.** Therefore, the Applicant/Appellant ought to have filed the Appeal immediately without waiting for the issuance of the bill for the year 2011-12 by the Distribution Licensee on the basis of the impugned order dated 5.3.2013. The Applicant must have been vigilant enough to challenge the said order and he should not have waited till the bill is issued. Strangely, the Applicant has now given an explanation stating that it did not think it fit to file an Appeal as the Applicant should not waste the precious time of the Tribunal.
- 17.** This explanation is quite preposterous. Strangely, it has been stated through the explanation that since the stay had been granted by the State Commission in respect of the earlier year, there was no necessity for the Applicant to challenge the impugned order as the Applicant thought that the Distribution Licensee would not issue any bill till the outcome of the proceedings in which stay was granted by the State Commission. This is also not a valid and acceptable explanation.
- 18.** It is evident that a clear finding had been given by the State Commission in the impugned order dated 5.3.2013 that only the Power Plants who have qualified as Captive Power

Plants, need not pay Cross Subsidy Surcharge, after rejecting the contention that it need not pay the cross subsidy surcharge though the Applicant has lost its captive status.

- 19.** As mentioned earlier, a specific objection was raised by the Applicant before the State Commission that even though the Applicant has not qualified to be the captive status for the year 2011-12, the Applicant was not liable to pay the Cross Subsidy Surcharge. This objection raised by the Applicant has been rejected by the State Commission through the impugned order.
- 20.** When such a categorical finding has been rendered by the State Commission, the quasi-judicial authority, as against the Applicant, the Applicant should have taken prompt steps to challenge the said finding by filing the Appeal before this Tribunal. This was not done.
- 21.** Now the Appellant cannot contend that the Applicant expected that the Distribution Licensee would not act upon the impugned order by issuing the bill on the reason that some proceedings were pending before the State Commission for earlier year and so, the Applicant did not want to disturb the Tribunal by filing the Appeal as the precious time of this Tribunal should not be wasted. This contention is monstrous. The Appellant is to challenge the

impugned order only and not the bills. If that is so, how can the Appellant now contend that it originally expected that bills would not be issued and that therefore, it did not file the Appeal in time? This shows the callous attitude of the Applicant who was not vigilant throughout.

22. In view of the above, we do not find sufficient reason to conclude that sufficient cause has been shown to condone the delay especially when the Appellant has not shown the diligence in prosecuting the Appeal in time.

23. Hence, the Application to condone the delay of 73 days is dismissed.

24. Consequently, the Appeal is also rejected.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated:12th Aug, 2013

✓ ~~REPORTABLE/NON-REPORTABLE~~