

**Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

IA No. 69 of 2014 in
DFR no. 151 of 2014

Dated: 13th February, 2014

Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. Rakesh Nath, Technical Member

In the matter of:

Sh. Bharat Jhunjunwala
R/o B-2106, Angel Mercury
Ahimsa Khand-II, Indirapuram
Ghaziabad – 201010

...Appellant (s)

Versus

- 1. Uttar Pradesh Electricity Regulatory Commission**
2nd Floor, Kisan Mandi Bhawan,
Gomti Nagar, Vibhuti Khand,
Lucknow – 226010, Uttar Pradesh **...Respondent(s)**
- 2. Uttar Pradesh Power Corporation Ltd**
7th Floor, Shakti Bhawan
14 Ashok Marg, Lucknow – 226001
Uttar Pradesh
- 3. Central Electricity Authority**
Sewa Bhawan, R.K. Puram
New Delhi – 110066
- 4. Alaknanda Hydro Power Co. Ltd.**

**156-159, Paigah House, SP Road
Secunderabad – 500 003**

Counsel for the Appellant (s) : Mr. P.S. Sharda

Counsel for the Respondents (s) :

ORDER

This Interlocutory Application has been filed by the Applicant/Appellant seeking waiver of court fee in the Appeal filed against the impugned order dated 26.5.2011 in Petition no. 710 of 2010 passed by Uttar Pradesh Electricity Regulatory Commission regarding provisional approval of revised estimated capital cost in respect of Srinagar Hydro Electric Power Project.

2. Before we examine the IA for waiver of fee it would be appropriate to look into the background of the case as it is not for the first time that the Appellant has come before us in Appeal against the impugned order.
3. The Applicant/Appellant Dr. Bharat Jhunjunwala, is a consumer of the distribution licensee in Uttar Pradesh.

He had earlier filed an Appeal no. DFR 1844 of 2012 before this Tribunal challenging the impugned order dated 26.5.2011 among other orders. In this Appeal the Applicant had not disclosed his residential address and had not claimed that he was a consumer in UP and had indicated his address as his lawyer's chambers in Delhi. The said Appeal was rejected by this Tribunal by order dated 20.12.2012 on the grounds that the Appellant was not a consumer of Uttar Pradesh and there was no provision for filing PIL against the order of the State Commission in the Tribunal and that separate Appeals had to be filed for the three orders that were challenged by the Applicant. The Applicant also filed a Review Application no. 379 of 2013 in DFR no. 1844 of 2012 which was also dismissed by this Tribunal on 19.3.2013. The Applicant also preferred a Civil Appeal no. D 19596 of 2013 before the Hon'ble Supreme Court

against the above two orders of the Tribunal which was dismissed by order dated 19.8.2013.

4. The Applicant/Appellant has again filed this Appeal disclosing his residential address in Uttar Pradesh and challenging the same order dated 26.5.2011 which was challenged earlier, as a consumer of the distribution licensee in Uttar Pradesh along with Application for waiver of the fee as well as for condonation of delay in filing this Appeal.
5. The Applicant in IA no. 69 of 2014 for waiver of court fee has furnished documents in support of his income. The Appeal has been filed after a long delay for which Application for condonation of delay has been filed. Thus, even if we waive the court fee, the Applicant will have to cross one more hurdle regarding delay of more than 900 days in filing the Appeal. Based on the details of income furnished by the Applicant we may consider to waive the court fee partially. However, before

- considering for waiver of the court fee partially, we would like to refer to the findings in the impugned order dated 26.5.2011 over which the Applicant is aggrieved.
6. The impugned order is regarding provisional approval of revised estimated capital cost in respect of Srinagar Hydro Electric Project being executed by the Respondent no.4 in the State of Uttrakhand for which Respondent no.4 and the UP Power Corporation Ltd. (Respondent no.2) have entered into a Power Purchase Agreement. In the order, the State Commission has only considered the revised estimated cost as submitted by the Respondent no.4 and accepted the same on record subject to prudence check at the appropriate time. Thus, the State Commission has not done the prudence check of the revised estimated cost of the project which is required to be done before the State Commission determines the capital cost of the

- project for the purpose of determining the tariff as per its Tariff Regulations.
7. Therefore, when the State Commission considers to approve the capital cost of the project after prudence check for determination of tariff of the hydro project the public has to get an opportunity for giving their suggestions and objections as per Section 64 of the Electricity Act, 2003. Hence, we do not feel that any purpose would be served in our going into the validity of the impugned order which was passed about 32 months back wherein the exercise of prudence check has not been made by the State Commission and cost was provisionally taken on record subject to prudence check at an appropriate time.
 8. In view of above, we feel that it would not serve any purpose to pass any order for waiver of court fee. We, however, direct the State Commission and Uttar Pradesh Power Corporation Ltd (Respondent no. 2) to

- ensure that notice is given to the public for inviting objections and suggestions at the time of determining the capital cost and tariff of the project according to Section 64 of the Electricity act, 2003 which shall be considered by the State Commission while determining the capital cost and tariff of the project. The Applicant may avail this opportunity to make his submissions and suggestions.
9. With these directions the IA is disposed of. Accordingly, the Appeal is dismissed. The Registry is directed to send a copy of this order to the Uttar Pradesh State Regulatory Commission and Uttar Pradesh Power Corporation Ltd.
- 10. Pronounced in the open court on this**
13th day of February, 2014.

(Rakesh Nath)
Technical Member

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(Justice M. Karpaga Vinayagam)
Chairperson

REPORTABLE/NON-REPORTABLE
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