

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Dated:21st July, 2014

Present:

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

IA No.228 OF 2014
IN
DFR No.1145 OF 2014

In the Matter of:

- 1. Director General of Police,
HQ, Sector-6,
Panchkula (Haryana)
PIN-134 109**
- 2. Additional Director General of Police-cum-Director
Haryana Police Academy,
Madhuban,
Karnal (Haryana)
PIN-132 037**

.....Applicant(s)/Appellant(s)

Versus

- 1. Haryana Electricity Regulatory Commission
Bays No.33-36, Sector-4,
Panchkula-134 109**
- 2. The Additional Chief Secretary
Home Department,
Government of Haryana,
Haryana Civil Secretariat
Chandigarh-180 001**

3. **The Financial Commission & Principal Secretary
To Govt of Haryana (Power Deptt.)
Haryana Civil Secretariat
Chandigarh-180 001**

4. **The Managing Director
Uttar Haryana Bijli Vitran Nigam Limited,
Vidyut Sadan,
Plot No.C-16, Sector-6,
Panchkula (Haryana)
PIN-134 109**

...Respondent(s)

Counsel for the Appellant(s) : Mr. Ankit Swarup

Counsel for the Respondent(s): Ms. Shikha Ohri for R-1
Mr.M G Ramachandran,
Mr. Anushree Bandhan,
Ms. Swagatika Sahoo
Ms. Poorva Saigal for R-4

ORDER

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

1. This is an Application to condone the delay of 53 days in filing the Appeal as against the Impugned Order dated 30.12.2013.

2. The issue in this Appeal relates to the conversion of existing electricity supply to Single Point Supply to the Police Colony at Madhuban, Karnal, Haryana.
3. The short facts are as under:
 - (a) Haryana State Commission notified HERC Single Point Supply Regulation on 9.1.2013 for laying down the procedure for supply of electricity at Single Point to the residential Colonies or Office-cum-Residential Complexes of Employees and Commercial Complexes of the Developers, Regulations.
 - (b) As per this Regulation, the Distribution Licensee shall convert at its cost, the supply to such colonies to Single Point Supply at 11 KV or higher voltage. This was to be done within three months from the date of Regulations.
 - (c) While monitoring the progress in the matter of compliance of the Regulations, State Commission found that the Police Colony represented by the Director General of Police, Haryana (Applicant) did not comply with the Regulation within the time frame.
 - (d) Hence, on 13.9.2013, the State Commission sought for an explanation from the authorised representatives of

the Applicant/Appellant with regard to non compliance of the directions given in the Regulation.

(e) On that date, the representative of the Applicant/Appellant including the District Attorney as well as Inspector General of Police agreed for Single Point Supply Connection and gave an undertaking that they would convert the existing supply system of the Madhuban Complex to Single Point Supply Connection within a month.

(f) Accordingly, the State Commission passed the Order dated 13.9.2013 in the presence of the authorised representatives of the Appellant giving the time of one month for converting the existing supply system to Single Point Supply Connection.

(g) Despite this, the directions given in the Order dated 13.9.2013, had not been complied with by the Applicants. Again the matter was taken-up by the State Commission in order to monitor the execution of the directions issued by the State Commission in the Order dated 13.9.2013.

(h) As the supply to Madhuban Police Complex was not converted to Single Point Supply within a month,

the State Commission summoned the parties. Again, the representatives of the Appellant sought some more time to comply with the directions of the State Commission issued in the Order dated 13.9.2013. On that date, Shri S K Sharma, Counsel appearing for the DG (Police) as well as the IG (Police) were present and they requested the State Commission to grant three more month's time to implement the order.

(i) Accordingly, another order which is Impugned, was passed on 30.12.2013 granting some more time to the Appellant for execution of the Order passed on 13.9.2013.

(j) At this stage, the Appellant had filed the present Appeal before this Tribunal on 25.4.2014 along with the Application to condone the delay of 53 days in filing the Appeal as against the Impugned Order dated 30.12.2013.

4. When the matter came up for considering the Application to condone the delay, the learned Counsel appearing for the State Commission brought to our notice that some of the material facts relevant for considering this Application to condone the delay have been concealed by the Applicants/Appellants.

5. In view of the said statement, the learned Counsel for the Applicants/Appellants requested for some time to get the instructions from his client and to file an Additional Affidavit with regard to those facts.
6. In pursuance of the request, the permission was granted by the Order dated 30.5.2014. Accordingly, the Applicant filed an additional Affidavit on 3.7.2014.
7. Now, the learned Counsel for the State Commission filed a reply opposing the Application to condone the delay mainly on the ground that the Applicant/Appellant has not approached this Tribunal with clean hands and concealed the material facts and therefore, the Application to condone the delay has to be dismissed and consequently the Appeal is also to be rejected.
8. We have carefully considered the submissions made by both the parties.
9. The explanation for the delay of 53 days in filing the Appeal is given as under:

“The Original order giving directions was passed on 13.9.2013. This Order was received in the office of the Appellant on 21.9.2013. The matter was listed again before the State Commission on 30.12.2013 as

the electricity supply was not converted into Single Point Supply within the time frame fixed by the State Commission i.e. by 12.10.2013. After hearing the representatives of the Appellant, the Impugned Order was passed on 30.12.2013. This order was received in the office of the Appellant on 7.1.2014. Thereupon, there was a meeting with Officials and consumers at the Police Complex on various dates. On 20.2.2014, a detailed report was submitted for the purpose of conversion to Single Point Supply. Again, a meeting was held on 5.3.2014. On 7.3.2014, a message was sent by the Appellant to all the Police Officers in Haryana for obtaining the willingness of the electricians to provide their service at Haryana Police Academy (HPA). On 14.3.2014, a letter was written to Director General (Police) for seeking advice for future course of action. On 20.3.2014, the Director General of Police issued a direction to file the Appeal before the Appellate Authority. Then the legal cell was contacted. Necessary instructions were given to Legal Cell and discussions were held on 2.4.2014 between the Legal Officers of the Appellant and the Panel Counsel on the matter and after drafting, the present Appeal has been filed on 25.4.2014. In view

of the above circumstances, the delay of 53 days may be condoned”.

10. This Application to condone the delay is vehemently opposed by the learned Counsel for the State Commission not only on the ground that the explanation is not satisfactory but also on the ground that the Applicant/Appellant has not approached the Tribunal with clean hands by concealing material facts in the matter.
11. Refuting the submissions made by the Applicant/Appellant, the learned Counsel for the State Commission has filed a detailed reply.
12. From the reply, it is clear that the Applicant/Appellant has received the Original Order dated 13.9.2013 on 21.9.2013. In fact, on 13.9.2013, the Counsel as well as the Inspector General and other Officials of the Applicants were present before the State Commission. They agreed to implement the order dated 13.9.2013 and requested for some time for converting the supply into Single Point Supply.
13. On the basis of the said undertaking, the earlier order had been passed on 13.9.2013. Admittedly, this order was not challenged. At that time, the Appellants had not decided to file the Appeal as against the Main Order dated 13.9.2013.

There is no explanation given in the Application to condone the delay as to why the main order dated 13.9.2013 had not been challenged.

14. On the other hand, the Applicant/Appellant through its representatives appeared before the State Commission both on 13.9.2013 as well as on 30.12.2013 and undertook to implement the Order requesting time for execution of the Order and the Regulations. Accordingly, time was granted. Despite that, the Applicant/Appellant did not take any steps for implementation of the Order.
15. On the other hand, even after the Impugned Order which was passed on 30.12.2013, the representatives of the Applicant/Appellant appeared before the State Commission on 2.5.2014 seeking for some more time to comply with the order by converting to Single Point Supply. A specific undertaking had been given by the representatives of the Appellant on 2.5.2014 also which was duly recorded in the Order dated 19.5.2014.
16. It is quite strange to notice that in the meantime as against the Order dated 30.12.2013; the present Appeal has been filed in April, 2014.
17. Admittedly, both on 13.9.2013 on which date the Main Order was passed and on 30.12.2013 on which date the Impugned

Order was passed, the Applicant/Appellant gave specific undertaking before the State Commission that they would implement the orders and requested for some more time.

18. This shows that during this period, the Applicant/Appellant did not take any steps to challenge the Main Order dated 13.9.2013 or the consequential directions given in the Impugned Order dated 30.12.2013 before this Tribunal.
19. This would indicate as mentioned above, that the Applicant/Appellant had at that stage decided not to file the Appeal against these Orders but commenced the process of implementing the order by convening a meeting with the officials in order to report the compliance before the State Commission.
20. While that process was going on, the Applicant/Appellant filed the Appeal in April, 2014 only as against the Order dated 30.12.2013 and not against the Main Order dated 13.9.2013.
21. Similarly, when the matter was taken-up on 2.5.2014 by the State Commission for monitoring the compliance of the directions contained in the Commission's Order dated 13.9.2013 and 30.12.2013, the Applicant/Appellant in fact, again gave the undertaking and stated that it is implementing orders passed by the State Commission. This

undertaking had again been recorded and accordingly, the order was passed on 19.5.2014.

22. Admittedly, the Appellants on 2.5.2014 did not inform the State Commission that they have already filed an Appeal before this Tribunal in April, 2014 itself.
23. On the other hand, Mr. S K Sharma, District Attorney appearing on behalf of the DG (P), informed the State Commission that the Nodal Officer has already been appointed to implement the Orders and sought for some more time for completion.
24. On that basis, the State Commission passed the Order on 19.5.2014 indicating the progress made by the Appellant in Implementation of the Orders. This means that during the aforesaid proceedings, the Appellant concealed the material facts from the State Commission regarding the fact that the Applicants have already filed the Appeal before this Tribunal in April, 2014 as against the Order dated 30.12.2013.
25. In the same way, the Applicants have also concealed before this Tribunal with reference to the undertaking given by the Applicant/Appellant before the State Commission to implement the Order and requesting for further time on various dates even after filing of the Appeal on 2.5.2014.

26. Hence, the Applicants are to be blamed not only for their conduct of taking different stand before the different Forums at different times but also for the conduct that the Applicants/Appellants have concealed the material facts from both before the State Commission as well as this Tribunal.
27. One more aspect has to be noticed as pointed out by the learned Counsel for the State Commission.
28. The main Order had been passed by the State Commission on 13.9.2013 in the presence of District Attorney and other representatives of the Applicant/Appellant. Thus, the Appellant fully knew about the nature of the Order giving specific directions to the Appellant. No steps were taken to file the Appeal against that Order. Similarly in implementation of the said order dated 13.9.2013, another order dated 30.12.2013 giving similar directions for implementation of the said order was passed on the basis of the undertaking given by the Applicant/Appellant and his request for grant of some more time.
29. It is quite preposterous to see that Appellant/Applicant has now taken a decision to file the Appeal as against the second Order dated 30.12.2013 only and not against the Main Order dated 13.9.2013. Unless, the earlier order dated

13.9.2013 is challenged, the Appeal against the Order dated 30.12.2013 which is a consequential order to the earlier Order dated 13.9.2013, cannot be maintained.

30. The only explanation which has been given by the learned Counsel for the Applicant/Appellant is that earlier they did not get the legal advice and only later they were able to get a legal advice for filing the Appeal as against the present Impugned Order dated 30.12.2013. This explanation lacks bona fide because when the State Commission passed the 1st Order dated 13.9.2013 in which it specifically mentioned that along with IG and other officials, one Advocate also was present. In all the further hearings, one District Attorney by name Shri S K Sharma was also present who appeared for DG (P). This was also recorded in the other proceedings.
31. Therefore, the contention of the Applicant/Appellant that they were not able to get legal advice is not only untenable but also misleading.
32. One more aspect has been pointed out by the learned counsel for the State Commission.
33. According to the Applicant/Appellant there is only 53 days delay since, the order passed on 30.12.2013 was received by the Applicant only on 7.1.2014. This is factually incorrect.

34. As pointed out by the learned Counsel appearing for the State Commission, when the Impugned Order was passed on 30.12.2013, the authorised representatives of the Appellant namely Smt. Suman Manjari, IPS, IG, Shri S K Sharma, District Attorney and other officials on behalf of DG (P) were present before the State Commission at the time of the hearing and passing of the Impugned Order dated 30.12.2013. So, the date has to be reckoned only from the date of the issue of the Order, on which date, they have been communicated about the directions by the State Commission which passed the Order in the presence of the officers of the Applicant/Appellant.
35. Therefore, the Application to condone the delay is to be dismissed not only on the ground of failure to show sufficient cause to condone the delay but, also on the ground of lack of diligence and lack of bona-fide taking different stand and concealment of the material facts before the State Commission as well as before this Tribunal.
36. Though, we feel that this is an appropriate case where exemplary cost has to be imposed on the Applicants/Appellants, we refrain from doing so since we hope that the Applicants/Appellants will not commit this sort of deliberate mistake before any Forum of law, in future.

37. Accordingly, the Application to condone the delay is dismissed. Consequently, the Appeal against the Impugned Order is also rejected.

(Rakesh Nath)

Technical Member

Dated:21st July, 2014

(Justice M. Karpaga Vinayagam)

Chairperson

✓ ~~REPORTABLE/NON-REPORTABLE~~