

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

IA 224 of 2013 and IA 225 of 2013

IN
DFR No.1253 of 2013

Dated: 22nd October, 2013

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

In the Matter of:

**New Tirupur Area Development Corporation Ltd.,
"POLYHOSE TOWERS" (formerly called SPIC Annex
Building),
1st Floor, No.86, Mount Road,
Chennai-600 032**

..... Applicant/Appellant

Versus

- 1. Tamil Nadu Electricity Regulatory Commission,
Egmore,
Chennai-600 008**
- 2. The Chairman,
Tamil Nadu Generation and Distribution Corporation
Ltd.,
N.P.K.R Malligai,
144, Anna Salai,
Chennai-600 002**
- 3. The Superintending Engineer,
Tirupur Electricity Distribution Circle,
5/9B, M.G.R. Nagar, 7th Street,
P.N road, tirupur-641 603**

4. **The Superintending Engineer,
Erode Electricity Distribution Circle,
948, EVN Road,
Erode-638 009**

5. **The Secretary to the Government,
Government of Tamil Nadu (Energy Department),
Fort St. George,
Chennai**

..... Respondent(s)

Counsel for the Appellant : Mr. Vijay Narayan, Sr Adv
Mr. Swarnam J Rajgopalan

Counsel for the Respondent(s): Mr. S Vallinayagam

ORDER

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

1. M/s. New Tirupur Area Development Corporation Ltd., Chennai, is the Applicant/Appellant herein.
2. This is an application to condone the delay of 405 days in filing the Appeal as against the impugned order dated 30.3.2012.
3. A) The Applicant has made the following explanation for the delay in filing the Appeal:

"After the impugned tariff order that was passed on 30.3.2012, the Applicant/Appellant approached the

TANGEDCO (R-2) seeking reclassification in tariff HT II A at par with TWAD board. But the same was rejected by the TANGEDCO with an observation that the Applicant should approach the State Commission for reclassification. Accordingly, the Applicant filed a Petition before the State Commission on 26.6.2012 seeking reclassification. This was not entertained. Hence, the Applicant filed a Review Petition. After hearing the parties, the State Commission dismissed the Review Petition on 31.1.2013. Thereafter, the Applicant filed an Appeal as against the Review Order dated 31.1.2013. The same was dismissed by the order dated 23.5.2013 on the ground that the Appeal as against the order dismissing the Review Petition was not maintainable. Hence, the Applicant has now presented this Appeal on 24.6.2013 challenging the main order dated 30.3.2012. Due to this process, the delay of 405 days had occurred. Hence the delay may be condoned”.

- (B) The Learned Senior Counsel for the Applicant/Appellant in elaborating the above explanation has made the following submissions:-

He reiterated AIR 2009 Supreme Court 1200 (From: 2007(4) Pat LJR 770) M/s. Shakti Tubes Ltd. v. State of Bihar & Ors.

”The Applicant instead of filing an Appeal against the main order bonafidely filed the Appeal against the Review Order before this Tribunal and the same had been dismissed as not maintainable. This period for wrongly prosecuting the matter before this Tribunal by filing an Appeal as against the Review Order has to be excluded in computing the limitation under Section 14 of the Limitation Act and in that event that there would not be inordinate delay.”

He relied upon the decision of the Hon’ble Supreme Court reported AIR 2009 Supreme Court 1200 (From: 2007(4) Pat LJR 770) M/s. Shakti Tubes Ltd. v. State of Bihar & Ors.’ In support of his plea that Section 14 of the Limitation has to be invoked.

4. This is stoutly opposed by the Respondent on the ground that there is no proper explanation for the huge delay of 405 days and this Application cannot be entertained especially when the tariff period which was challenged in this Appeal by the Appellant was already over and a new tariff year has now been issued for the Financial Year 2013-14 and that if the request of the Appellant for reclassification is now accepted, it will affect the recovery of the ARR of the TANGEDCO.

5. We have carefully considered the submissions of both the parties with reference to the prayer for condonation of delay.

6. Admittedly, the impugned order had been passed as early as on 30.3.2012 by putting the Applicant under tariff HT I A. Instead of filing an Appeal as against the said order dated 30.3.2012 for reclassification for putting the Appellant in HT tariff under HT Tariff II A, the Applicant approached the TANGEDCO, Respondent seeking reclassification under the HT II A. This reclassification could be done only by the State Commission. But, there is no reason as to why the Applicant approached the TANGEDCO for reclassification. The TANGEDCO rightly rejected the request of the Applicant contending that only the State Commission can consider the question of reclassification. Even then, the Applicant instead of filing a Review before the State Commission as against the main impugned order dated 30.3.2012; the Applicant filed a mere Petition for reclassification before the State Commission. The State Commission rejected the said Petition as it was not inclined to entertain the said Petition on the ground that the reclassification Petition instead of filing Review was not maintainable. Thereafter, the Applicant filed a Review on 26.6.2012. Ultimately, the Review Petition was also

dismissed on 31.1.2013 as no ground was made out for the Review.

7. Instead of filing an Appeal as against the impugned order dated 30.3.2012, the Applicant filed the Appeal as against the Review order dated 31.1.2013. This Tribunal by the order dated 23.5.2013 dismissed the Appeal at the admission stage itself on the ground that the Appeal as against the order dismissing the Review Petition was not maintainable.
8. In view of the above, the Applicant has now filed the Appeal as against the impugned order dated 30.3.2012 before this Tribunal on 24.6.2013 along with an Application to condone the huge delay of 405 days.
9. The explanation offered by the Applicant in this application to condone the inordinate delay of 405 days in our view, is not satisfactory, as sufficient cause has not been shown to condone the delay.

10. The following are the reasons for rejecting the Application to condone the delay:

(a) On the Application filed by the TANGEDCO, the State Commission passed the tariff order on 30.3.2012. Through this order, the Applicant was classified under HT I A. The Appellant was aggrieved over the said classification. Therefore, the Applicant approached the TANGEDCO seeking for reclassification under Tariff HT II A at par with TWAD Board, since the Applicant's business was similar to that of the TWAD Board. The reclassification can be done only by the State Commission. Since the classification was through the impugned order passed by the State Commission on 30.3.2012, the Applicant either should have filed a Review Petition before the State Commission for reclassification or should have filed an Appeal as against the said order seeking for the classification by filing the Appeal before this Tribunal. This was not done. There is no explanation for the failure on the part of the Applicant either to file a Review or to file an Appeal. Similarly, there is no reason given for approaching the TANGEDCO for reclassification instead of approaching the proper Forum. This conduct reflects the lack of diligence on the part of the Applicant.

(b) The TANGEDCO rightly rejected the request made by the Applicant for re-classification by the letter dated 19.5.2012. Even thereafter, the Applicant did not take immediate steps to file the Review before the State Commission or appealed before this Tribunal. On the other hand, the Applicant filed a mere Petition on 26.6.2012 before the State Commission seeking reclassification of the HT Tariff instead of filing a Review before the State Commission. The State Commission rightly rejected Petition for reclassification observing that the same was not maintainable and that only a Review would lie as against the tariff order dated 30.3.2012. On that basis, the Applicant filed a Review Petition along with the delay application. Ultimately, the Review Petition was dismissed on 31.1.2013. There is no explanation for the period between 19.5.2012, the date of letter of the TANGEDCO rejecting the request made by the Appellant and 26.6.2012 the date of filing of the Petition for reclassification. That apart, there is no reason given as to why the Applicant did not take steps to file a Review Petition before the State Commission in time as the Review Petition alone would be maintainable.

(c) The Review Petition was ultimately dismissed on 31.1.2012. At least, at that stage, the Applicant must have taken steps to file an Appeal as against the main order dated 30.3.2012 before this Tribunal. This also was not done. On the other hand, the Applicant preferred an Appeal before this Tribunal as against the order dismissing the Review Petition. It is settled law as held by this Tribunal in several its reported judgments that an Appeal against the Review Order dismissing the Petition cannot be appealed before this Tribunal. Without verifying the legal position the Applicant had chosen to file the Appeal as against Review order. This also shows that there was a lack of diligence. This was dismissed by this Tribunal on 23.3.2012. Thereafter, the Applicant has now filed this Appeal on 24.6.2013 as against the impugned order dated 30.3.2012 with an application to condone the delay of 405 days. Even here, no proper explanation has been given for the period between the 23.5.2013 the date of dismissal order passed by this Tribunal and 24.6.2013, the date of presentation of the Appeal.

(d) The Tariff period i.e. FY 2012-13 in the proceedings in question has already expired. Admittedly, the new tariff order had already been

issued for the Financial Year 2013-14. Since the State Commission has already issued a tariff order to recover the ARR, with a classification of the Appellant's service condition under HT tariff, the same has been acted upon and at this stage, if the request of the Appellant is accepted; it will have an impact on the recovery of the ARR, as rightly pointed out by Learned Counsel for the Respondent.

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(e) The reliance on the judgment "AIR 2009 Supreme Court 1200 (From: 2007(4) Pat LJR 770) M/s. Shakti Tubes Ltd. v. State of Bihar & Ors." By the Applicant is misplaced. The Hon'ble Supreme Court while interpreting Sub Section (1) of Section 14 of Limitation Act, 1960 has held that in computing the period of limitation for filing any suit, the time during which the period have been prosecuting with due diligence another civil proceedings has to be excluded where the proceedings relates to the same matter in issue and prosecuting in good faith in court which was dismissed for want of the jurisdiction. There is no dispute in the proposition of law laid down by the Hon'ble Supreme Court while interpreting Section 14(1) of the Limitation Act. In that case the writ Petition was filed by the party which was admitted and it was

pending for some time and as it was not dismissed at threshold. It was to be considered that the Applicant pursuing the remedy before the court was bonafide and in good faith so on the basis of the fact of that case the Hon'ble Supreme Court held that the provisions of the Section 14 of the Limitation Act was applicable to that case in the light of the facts and circumstances that case. This ratio cannot be applied to the present facts of this case. In this case as indicated above the Applicant as against the main order dated 30.3.2012 putting the Application under the tariff of HT I A has resorted to file a Petition before the TANGEDCO seeking reclassification under the HT II A, even though the reclassification could be done by the State Commission. This shows Applicant's due to its lack of diligence, has approached wrong Forum even at initial stage. After rejection of the said prayer by the TANGEDCO , the Applicant has not immediately filed the Review Petition before the State Commission. On the other hand the Applicant merely filed a Petition for reclassification before the State Commission. This also shows the Applicant has approached for wrong remedy through the Application is not maintainable.

(f) The State Commission rightly dismissed the said Application and directed the Applicant to file a Review. Only thereafter the Applicant filed a Review which was thereafter dismissed. At last after the dismissal of Review on 31.1.2013, the Applicant could have filed the Appeal as against the impugned order dated 30.3.2012.

(g) Without doing so the Applicant filed an Appeal as against the Review order dated 31.1.2013 without verification of the legal position. The said Review was dismissed on 23.5.2013 at the admission stage itself on the ground that the Appeal against the order dismissing the Review Petition was not maintainable. Only thereafter the Appeal has been filed.

(h) The above facts would clearly indicate the Applicant was not only prosecuting the matter not diligently but also approached the wrong Forum at every stage causing delay after delay which reflects the lack of bonafide and diligence.

Hence, Section 14 of the Limitation Act would not apply to the present facts of the case.

11. In view of the above reasons, we find that there is no valid ground to condone the inordinate delay of 405 days especially when the Applicant was not vigilant enough through out at every stage in approaching the proper Forum to seek his grievance redressed in time.
12. Hence, this Application to condone the delay of 405 days is dismissed.
13. Consequently, the Appeal is also rejected.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated: 22nd October. 2013

✓ ~~REPORTABLE/NON-REPORTABLE~~