

COURT-I

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)**

**IA NO. 1239 OF 2020 in
DFR NO. 2186 OF 2019**

Dated: 6th November, 2020

**Present: Hon'ble Mrs. Justice Manjula Chellur, Chairperson
Hon'ble Mr. S.D. Dubey, Technical Member**

In the matter of:

**Power Grid Corporation of India Limited ... Appellant(s)
Versus
Central Electricity Regulatory Commission & Ors. ... Respondent(s)**

Counsel on record for the Appellant(s) : Ms. Suparna Srivastava

Counsel on record for the Respondent(s): Mr. Syed Jafar Alam
Mr. Abhishek Kumar
Mr. Aryaman Saxena
Mr. Arjun Agarwal
Ms. Harmeet Kaur **for R-2**

Mr. Raj Bahadur Sharma **for R-3**

ORDER

(PER HON'BLE MRS. JUSTICE MANJULA CHELLUR, CHAIRPERSON)

1. This Application came to be filed seeking condonation of delay of 413 days in filing the Appeal against the impugned Order dated 03.04.2018 (read with Corrigendum dated 26.04.2018) passed in Petition No. 110/MP/2016 on the file of Central Electricity Regulatory Commission (for short "**CERC/Commission**").

2. According to Appellant/applicant, the Respondent-Commission has adjudicated the claims of Respondent No.2-Purulia and Kharagpur Transmission Company Ltd. for the compensatory and declaratory reliefs under the Transmission Services Agreement dated 06.08.2013 on account of force majeure and change in law events affecting the construction of transmission project forming the subject matter of the Present Appeal and has granted extension of commercial operation dates (CODs) of the two elements comprised in the said project by 274 days and 71 days respectively from their Scheduled Commercial Operation (SCODs).

3. The Appellant/applicant further submits that, vide Corrigendum dated 26.4.2018, the Commission has modified para 57(g) of its Order dated 03.04.2018 to allow extension of COD for the second element by 42 days from its SCOD (instead of 71 days) and held that the transmission charges for the same for the period from 20.5.2017 to 18.6.2017 would be paid by the Appellant.

4. The Appellant/applicant submits that the reason for the 413 days delay is that pursuant to passing of the impugned Order dated 3.4.2018 (read with Corrigendum dated 26.4.2018), the Appellant preferred a Review Petition [being Petition No. 21/RP/2018] on 18.05.2018 for review of the impugned

Order for rectification of the errors it claimed to have occurred therein. Vide its Order dated 23.4.2019, the Respondent-Commission wrongly dismissed the said Review Petition by holding that there existed no error apparent on the face of the record on the impugned Order. After the said dismissal, the management of the Appellant Company discussed the matter internally and along with their counsel and decided on 15.05.2019 to file the present Appeal. The Appeal was then drafted by the counsel and discussed with the concerned officers of the Appellant. The draft Appeal was received from the counsel on 07.06.2019 for its internal approval; the approved draft was sent to the counsel for filing. As such, since the Appellant was pursuing its remedy under the review jurisdiction of the Respondent-Commission, the time consumed for the same i.e., from 03.04.2018 to 23.4.2019, is liable to be condoned by this Tribunal.

5. The Appellant/applicant further submits that as a matter of principle, the Hon'ble Supreme Court in its various decisions has held that at the time of condoning the delay in filing applications, the merit of the case is taken to be of paramount consideration. The reason for filing the review against the Order dated 03.04.2018 (read with Corrigendum dated 26.04.2018) of the Respondent-Commission passed in Petition No.110/MP/2016 was an

apparent error made by the Central Commission in complete misappreciation of facts.

6. The Appellant/applicant further submits that in one of the decisions of the Hon'ble Supreme Court, in the case of ***Manoharan vs. Shiv Rajan*** [2014(4) SCC 163], the above principle of law has been upheld. Paras 8 & 11 of the Judgment are relevant.

7. The Appellant/applicant therefore, prays that 413 days of delay in filing the Appeal may be condoned, since the said delay has been caused on account of the Appellant pursuing other legal remedies as has been stated hereinabove.

8. ***Per contra***, the 2nd Respondent-Purulia and Kharagpur Transmission Company Ltd. filed objections to the instant application, in brief, as under:

2nd Respondent submits that the Petitioner had preferred a Review Petition (being Review Petition No. 21/RP/2018) on 18.05.2018 before Respondent No. 1-Commission for review of the Impugned Order. In the said Review Petition, the Appellant (as the Review Petitioner) was seeking a re-appreciation of the facts and circumstances which is not permissible in a review proceeding. There was neither an apparent error, nor was there a

discovery of any new evidence or information or any other sufficient cause made out. The Appellant as the Review Petitioner was treating the Review Petition as an appeal in disguise, to escape its obligations as were recognized by the Respondent No. 1-Commission in the Impugned Order. The Respondent No. 1-Commission dismissed the said Review Petition while categorically observing that the Appellant (as the Review Petitioner) was trying to re-agitate the issue once again which was not permissible in review and there was no error apparent on the face of the record in the Impugned Order. The present Appeal has been filed on the same grounds as were pleaded in the aforementioned Review Petition.

9. According to 2nd Respondent, the Appellant in pursuing an appeal in garb of a review of the Impugned Order, lost the precious time within which it could have filed an appeal, which is now being filed, after a delay of 413 days. Assuming but not conceding, that the time consumed in relation to the Review Petition i.e. from 03.04.2018 to 23.04.2019 was to be condoned, it is submitted that the Appeal was filed only on 05.07.2019, again after a delay of 72 days from the date of order in the Review Petition i.e. 23.04.2019. The explanation provided by the Appellant for such delay does not justify the delay in filing the present Appeal.

10. 2nd Respondent submits that in view of the foregoing, the Tribunal ought not to condone the delay by the Appellant in filing present Appeal and may dismiss the application for condonation of delay.

11. It is seen that after passing of the impugned order dated 03.04.2018 read with corrigendum dated 26.04.2018, the Appellant with *bona fide* opinion that there was apparent error on the face of record, filed Review Petition, which came to be dismissed on 23.04.2019. According to Respondent, there was no good reason to file the Review Petition and the available remedy to the Appellant was to file an Appeal against the impugned order. Therefore, the Respondent contends that the Appellant though was well aware of the fact that the remedy available to them was to prefer an appeal against the impugned order but they wasted time pursuing wrongly review remedy. Therefore, the delay in filing the appeal cannot be allowed.

12. We have taken into consideration the arguments of both the parties. If the Appellant was not under *bona fide* impression that review was the remedy, they would have taken recourse to filing of appeal against the impugned order. If they were convinced that the remedy was only by way of an appeal, they would not have wasted their time by pursuing the remedy of review. Instead, in the first instance itself they would have filed the appeal.

Therefore, we are convinced that the Appellant was pursuing the proceedings in the review petition under bona fide belief that they were doing the right exercise.

13. Even if the delay is condoned, it would not amount to accepting the merits of the appeal. Ultimately, the appeal has to be decided on merits after hearing both the parties. We are of the opinion that except causing some inconvenience to the Respondent to face review petition and again this appeal proceedings, no other loss is caused to the Respondents. Therefore, we are of the opinion that the delay application deserves to be allowed and accordingly allowed.

14. Pronounced in the Virtual court on this day of 6th November, 2020.

S.D. Dubey
(Technical Member)

Justice Manjula Chellur
(Chairperson)

REPORTABLE/~~NON-REPORTABLE~~

Tpd/ts