

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

**IA Nos. 2242 & 1591 of 2019 in
DFR No. 2267 of 2019 & IA Nos. 1592 & 1594 of 2019**

Dated 16th July, 2021

Present: Hon'ble Mrs. Justice Manjula Chellur, Chairperson

Hon'ble Mr. Ravindra Kumar Verma, Technical Member (Electricity)

In the matter of:

Smt. Anjinamma

... Appellant(s)

Versus

**Bangalore Electricity Supply Company Ltd.
&Anr.**

... Respondent(s)

Counsel for the Appellant(s)

**: Mr. Kumar Shashank
Ms. RukhminiBobde
Ms. Purna Priyadarshini
Mr. Kush Chaturvedi
Ms. Priyashree Sharma
Mr. ShubhranshuPadhi
Mr. Nivesh Kumar
Ms. Prity Kumari
Ms. Riya Dhingra**

Counsel for the Respondent(s)

**: Mr. Shahbaaz Husain
Mr. Fahad Khan
Ms. Stephania Pinto for R-1**

ORDER IN

IA Nos. 2242 & 1591 of 2019

PER HON'BLE MRS. JUSTICE MANJULA CHELLUR, CHAIRPERSON

1. This Appeal under DFR is filed by the Applicant/Appellant against the Order dated 28.08.2018 passed in OA Petition No. 217/2017 by Karnataka Electricity Regulatory Commission (hereinafter referred to as 'Commission') whereby, the Commission has held that the Applicant/Appellant is not entitled to extension of time for commissioning of solar power project in terms of the Power Purchase Agreement and Supplementary power Purchase Agreement.

2. The Applicant/Appellant has preferred this appeal with an application being IA No. 1591 of 2019 for condonation of delay of 315 days in filing the appeal. The Applicant/Appellant has also filed an application being IA No. 2242 of 2019 for condonation of delay of 106 days in re-filing the appeal as some more delay was occurred for removing the objections raised by the Registry of this Tribunal. In order to explain delay, the Applicant/Appellant has also filed an additional affidavit explaining the reasons for the delay appearing herein below:

3. The Applicant/Appellant submits that during the pendency of the petition before the Commission, the Solar Power Developers (SPD) had formed an Association i.e., "Land Owned Farmers Solar Power Plants, Karnataka" with the aim of addressing the grievances of the SPD's who were all part of the Land Owning Farmer scheme introduced by the State of Karnataka. The Applicant/Appellant is the Member of the said Association. After the impugned order was passed on 28.08.2018, the said Association followed up the matter with the Central and State Governments seeking their intervention in the matter as the Commission had reduced the tariff to Rs.4.36/- from Rs.8.40/- in a few of the petitions disposed by the Commission. Due to the efforts put in by the Association, on 01.03.2019 the Ministry of New and Renewable Energy directed the State Government to look into the grievances raised by the Appellant, by which time, the delay of almost eight months occurred.

4. The Applicant/Appellant further submits that simultaneously after the Impugned order dated 28.08.2018 was passed, the Applicant/Appellant approached a Chennai based Advocate, who took five months time to look into the matter i.e., from September 2018 to January 2019. The said Advocate first suggested to file first appeal and later suggested to file a review petition before the Commission with other documents. Thereafter, the Applicant/Appellant approached another

Advocate in Bangalore to file a review petition before the Commission, who took two months time i.e., till February 2019 to prepare the review petition. Finally, on 08.03.2019, when the Applicant/Appellant approached the Bangalore based Senior Advocate, he was advised by the Senior Advocate to file an appeal before this Tribunal instead of the review petition before the Commission. Thereafter, it took four months time to prepare the appeal and to procure additional documents as suggested by the Advocate. After the appeal was finalised, on 27.07.2019 the appeal was sent to the practicing advocate in New Delhi, who filed the appeal before this Tribunal on 23.08.2019. That is how the delay in filing the appeal took place.

5. Subsequent to the filing of the appeal before this Tribunal, on 09.09.2019, the concerned Advocate informed about the defects raised by the Registry of this Tribunal. On 25.11.2019 the translated/un-typed documents as requested by the Advocate were sent to him. After several reminders, the present appeal was re-filed on 12.12.2019 after removing defects raised by the Registry. That is how the delay of 106 days in re-filing the appeal was occurred. The Appellant/Applicant submits that the Appellant would suffer irreparable loss and grave injustice if the present application is not allowed.

6. The Respondent has filed objections to the additional affidavit and to the application for condonation of delay. Respondent's objections in nutshell are stated hereunder:

7. As regards the averment of the Appellant that Land Owned Farmers Solar Power Plants Association at Karnataka persuaded the Central and State Government to intervene in the matter of reduction of tariff from Rs. 8.40/- to Rs. 4.36/- and the Ministry of New and Renewable Energy directed the State Government to look into the grievances raised by the Appellant on 01.03.2019, learned counsel for the Respondent states that the Appellant has failed to explain how this would justify the delay in filing the Appeal against the impugned Order dated 28.08.2018. According to the learned counsel, such contention needs to be dismissed at the very outset.

8. So far as the submission of the Appellant, that the Appellant approached a Chennai based Advocate for filing the Appeal, who took 5 months 'time to look into the matter only to suggest to file the Appeal and to further file a review Petition before the State Commission, learned counsel points out that It is a settled proposition of law that two courts with concurrent jurisdiction cannot simultaneously adjudicate upon matters arising out of the same cause of action. Moreover, the period of limitation of 90 days to file a review petition before the Commission was

already over. Therefore, learned counsel submits that such contention of the Appellant is merely an afterthought to explain such unreasonable, prolonged, inordinate delay and that the same cannot be taken into consideration. Further, the contention that the Chennai based Advocate further took two months time to prepare the review Petition is absurd as the Review Petition would be time barred for the reasons mentioned above.

9. As far as the averment that the Appellant later approached a Senior Advocate at Bengaluru on 08.03.2019 who suggested to file an Appeal before this Tribunal, according to the Respondent, is the self-serving statement of the Appellant. The period of 45days provided under Section 111 of the Electricity Act, 2003 is sufficient to cater to the procedural requirements of filing the Appeal and in case of any delay, that has to be properly explained by the Appellant with proper justification.

10. Even at the time of re-filing the Appeal, the Appellant took 106 days. The Appellant ought to have exercised due care and caution while re-filing the Appeal considering the fact that it had delayed filing of appeal by 315 days. Had the Appellant been diligent in performing its duties and abiding by the provisions of the Electricity Act, it would have

filed the Appeal within the statutory period of limitation as required under the law. Therefore, the Respondent prays for dismissal of the application as well as the appeal.

DECISION:

11. The above two applications, one for condonation of delay in re-filing the Appeal and the other for condonation of delay in filing the Appeal, itself are seriously contested by the Respondent-Discom.

12. The applicant/Appellant explains that they have a very good case on merits so far as the Appeal is concerned. Apparently, this is not an Appeal against rejection of total claim of the Appellant. According to Appellant, on account of reason of force majeure, i.e. reasons beyond the control of the applicant/Appellant, there was delay in filing the Appeal, since they were hoping to get a favourable response from the authorities to resolve the problems faced by the Appellant like other project proponents.

13. Apparently, the Appellant was a member of the Association formed in the name of Land Owned Farmers Solar Power Plants, Karnataka. The applicant/Appellant claims that the Association promised to get the grievances of the SPDs resolved through the Association. The applicant/Appellant on oath submits that it was following up the steps

actively taken by the Association to get the grievances of the members resolved, i.e. by approaching the State Government of Karnataka, so also Ministry of New and Renewable Energy. The main problem seems to be that there was enormous delay in getting the approvals from different governmental agencies to set up the solar plant. The applicant/Appellant further claims that without such approval, the applicant/Appellant could not have proceeded with the construction of the project.

14. Though Respondent No.1 contends that all these facts were not within the knowledge of the Respondent, but we can take judicial notice of the fact that the solar scheme undertaken by the several farmers in the state of Karnataka had several obstacles like delay in getting land conversion, which definitely prevents the creditors including the banks to finance the project proponent. Therefore, one cannot expect the farmer-cum-land owner i.e., the Appellant to invest huge money on its own.

15. It is noticed that since the power plant of the Appellant was commissioned with some delay, which according to Appellant amounts to force majeure, there is reduction of tariff that was agreed to be paid in terms of PPA. That apart, there is also imposition of liquidated damages which according to the applicant/Appellant cannot be attributed to

appellant in causing delay to start the project. As a matter of fact, we note that apart from reducing the tariff to Rs. 4.36 per unit, there was a direction to pay liquidated damages in terms of PPA.

16. In this Appeal, the Tribunal was to consider whether there was bona fide delay on the part of the Appellant in commissioning the project. They must be able to place on record that on account of delay in securing approval from different governmental agencies was the cause for delay in commissioning the project, which was beyond the control of the Appellant. The Respondents will have ample opportunity to oppose the material placed on record and establish that it was on account of contributing factors on the part of the Appellant, the delay has occurred.

17. Therefore, even if the delay in re-filing the Appeal exists which was again on account of the advocate engaged by the Appellant was not being alert, which is explained by way of additional detailed affidavit filed by the applicant/Appellant. Therefore, we are of the opinion that ultimately the matter would be heard and disposed of on merits by the Tribunal after hearing both the parties. Hence, no prejudice of any nature would be caused to the parties. Accordingly, the IAs are allowed and delay of 106 days in re-filing as well as 315 days in filing the Appeal are condoned. The applications are disposed of.

18. List the matter for admission on **23.08.2021.**
19. Pronounced in virtual court on this the 16th July, 2021.

(Ravindra Kumar Verma)
Technical Member(Electricity)

(Justice Manjula Chellur)
Chairperson

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