

COURT-I

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

**IA NO. 1226 OF 2019
IN DFR NO. 2130 OF 2019**

Dated: 26th July, 2021

**Present: Hon'ble Mrs. Justice Manjula Chellur, Chairperson
Hon'ble Mr. Ravindra Kumar Verma, Technical Member**

In the matter of:

**MEPGEN Solar Private Limited ... Appellant(s)
Versus
Bangalore Electricity Supply Company Ltd. & Anr. ... Respondent(s)**

Counsel for the Appellant(s) : Mr. Basava Prabhu S. Patil, Sr. Adv.
Ms. Sakie Jakharia

Counsel for the Respondent(s) : Mr. Balaji Srinivasan
Ms. Sumana Nagaland
Mr. S. Sriranga Subbanna
Ms. Medha M. Puranik
Ms. Pallavi Sen Gupta
Ms. Aishwarya Choudhary
Ms. Anini Debbarman **for R-1**

ORDER

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

IA No. 1226 of 2019

(Application for condonation of delay of 489 days in filing the Appeal)

This Application came to be filed seeking condonation of delay of 489 days in filing the Appeal against the impugned order dated 16.01.2018 passed in Petition No. 85 of 2017 on the file of Karnataka Electricity Regulatory Commission (for short “**KERC/ State Commission**”).

Appellant/applicant submits that a large number of farmers under the special scheme was facing similar problem of delay in commissioning of the project due to reasons not within their control and thereafter, subsequent orders of the Respondent Commission rejecting the plea for extended time and thereafter, reducing the tariff contrary to the terms of the PPAs. These farmers including the Solar Project Developer – Sri. A.V Nagraj Reddy (hereinafter referred to as “**SPD**”) approached various authorities seeking relief as the position of the Respondent Commission of imposing reduced tariff made the Solar projects completely unviable. In view of the plight of the land-owning farmers who had established solar projects under the Solar Power Scheme of the Government of Karnataka, subsequent to passing of the Impugned order dated 16.01.2018, a letter dated 08.02.2018 was issued by the Association for land owned farmers Solar Power Plants, Karnataka to the Secretary, Ministry of New & Renewable Energy requesting to restore the original tariff of Rs. 8.40 per

Kwh for 1-3 Kwh solar power plants commissioned under the land owned farmers scheme of Karnataka. It was pleaded that the livelihood of the farmers was being affected by the same and would protect the interests of the farmers.

Subsequently, vide letter no.336/37/2017-NSM dated 09.04.2018, the Ministry of New & Renewable energy requested the Energy Department, Government of Karnataka, to take up the request of the Association for land owned farmers Solar Power Plants with the Respondent Commission under section 108 of the Electricity Act, 2003. Thereafter, on 30.07.2018, the Department of Energy, Bengaluru, Government of Karnataka issued a letter to the Respondent Commission to assess the financial implications and for deliberation thereon so also for taking a decision pertaining to tax rates at solar Power plants allotted under Land Holding Farmers Category.

Appellant further submits that hoping the Respondent Commission would take a decision on the matter, the Appellant waited for the same and lost a considerable amount of time in the process. In the meantime, the Appellant received several demand notices for repayment of its loan availed from the Karnataka State Financial Corporation. At this juncture,

the Appellant is not in sound financial position and under huge debt liability to financial institutions. However, despite the directions from the Government to the Respondent Commission to take a decision on the tariff rates.

The Appellant was hopeful all this while that the benefits of the scheme would be given effect to as special circumstances under which policy was implemented. Owing to poor financial condition of the Appellant/SPD, who is a farmer, and aware that challenging the impugned order dated 16.01.2018 before this tribunal would entail substantial legal expenditure, was hesitant to approach this Tribunal to challenge the impugned order and instead awaited relief through the State Government. Owing to inaction of the Respondent Commission, the Appellant is left with no other option than to seek recourse by way of the present appeal before this Tribunal.

According to Appellant, considerable time had elapsed when the Appellant sometime in October sought legal advice for remedies against the Impugned Order. However, during this course it was noticed that a large part of the documents were not available with the Appellant.

However, the Appellant again being in financial difficulty had to forestall further process and due to uncertainties, work on the Appeal was stalled. The Appellant thereafter, applied for certified copies of the entire set of pleadings from the Respondent Commission on 07.03.2019 which was obtained only on 18.03.2019 and proceeded to hand over the documents to the Counsel in New Delhi by last week of March. Sufficient fund was gathered thereafter and the Appellant issued the demand draft for the requisite Court fee for this Appeal on 12.04.2019. While preparing the draft Appeal it was noticed that a large number of documents were in Kannada language and as per the Rules of the Tribunal, translated versions of the same were required. On 16.04.2019, the Appellant was informed that translations of the several documents are required. Thereafter, all the documents were translated by the Appellant, notarized and sent to Delhi on 29.04.2019. On 10th May 2019 the Appeal was sent for approval of the Appellant and after availing all the relevant documents and translations including the relevant documents for condonation of delay, the Appeal was approved for filing by 20th May, 2019. The approved and finalized Appeal was received at Delhi office on 24th May, 2019 and thereafter, filed on 27th May, 2019.

Appellant submits that nearly a year had elapsed in communications between the Association for land owned farmers Solar Power Plants, Ministry of New & Renewable Energy, Energy Department, Government of Karnataka and the Respondent Commission. That also as the Appellant is facing a huge financial crisis, it has taken some time to gather the requisite funds for filing the present appeal. The delay caused in filing the present Appeal was neither intentional nor deliberate and was beyond the reasonable control of the Appellant.

Appellant further submits that the actions of the Respondents are unreasonable, arbitrary and therefore illegal. The Appellant/applicant therefore, seeks condonation of delay of 489 days in filing the Appeal against the impugned order. Appellant further submit that unless the prayers are granted, the Appellant/applicant is likely to suffer severe loss and injury, and no prejudice is likely to be suffered by the Respondents if the prayers are granted.

Per Contra, Respondent No.1 – Bangalore Electricity Supply Company Ltd. (hereinafter referred to as “BESCOM”) filed reply in brief as under:

Respondent No.1 – BESCO submits that it is settled law that each days delay is required to be explained. When there is any delay in filing any petition/appeal, the Applicant/Appellant is duty bound to explain in detail the cause for each day's delay and such delay may be condoned only if substantial reasons for delay is furnished and if the court comes to a conclusion that the same could not reasonably be filed during the prescribed period. However, in the present case, the Applicant/Appellant has totally failed to substantiate and explain the cause for each day's delay. In the absence of sufficient cause for the said delay, the present application deserves dismissal.

BESCO further submits that the applicant/appellant has failed to satisfy the requirements set out in law and has instead made general assertions about the cause for delay in filing the appeal. In the absence of any material to show the reasons for delay, the application deserves to be dismissed in *limine*.

According to BESCO, Section 111 of the Electricity Act, 2003 provides for a specific provision for entertaining and adjudication upon all appeals against any order of the State Commission before this Tribunal. In

the present appeal, the Applicant/Appellant claims to be aggrieved by an order of the State Commission and any challenge to an order of the State Commission can only be before this Tribunal. Therefore, contention of the Applicant/Appellant that delay in filing the present appeal was result of Applicant/Appellant approaching various authorities i.e., Ministry of New and Renewable Energy and Energy Department, Government of Karnataka, seeking relief against the action of the State Commission reducing the tariff and imposing liquidated damages is untenable.

BESCOM further submits that it is settled principle of law and dictum of the Hon'ble Supreme Court of India that no relief can be granted by any Court if a person sleeps over his rights. Incurrence of legal expenditure cannot be a valid ground for not filing Appeal in stipulated timeframe. The Applicant/Appellant knowing fully well about the remedy available to it, has failed to approach this Tribunal in a timely manner and it is therefore, disentitled to any relief.

BESCOM further submits that the Appellant/applicant has also admitted to the fact that no step to file the appeal was taken by him until 07.03.2019 before this Tribunal and no reasons are assigned for the delay

subsequent to the said date. Therefore, the application is bereft of any merit and the application and the appeal deserve dismissal.

BESCOM also submits that the averments that the Appellant has received several demand notices for repayment of its loan availed from the Karnataka State Financial Corporation, and the Appellant is not in a sound financial position and is under huge debt liability to financial institutions are denied. Further, the Appellant has failed to commission the plant within the scheduled commissioning date. Therefore, the Appellant is entitled for a varied tariff prevailing on the date of commissioning the plant as per the terms of PPA. Incurrence of financial expenditure is not a justifiable reason for not filing the Appeal within the prescribed period under the Electricity Act, 2003. Further, the State Commission had pronounced the impugned order and uploaded the same in its website on 16.01.2018, however, the Appellant had not applied for the certified copies of the same until 07.03.2019. This clearly depicts the fact that the Appellant/applicant has deliberately delayed in applying for the certified copy of the impugned order and delayed the filing of present appeal. Lethargic attitude of Applicant has resulted in delay in filing the present appeal.

With the above submissions, Respondent No.1 – BESCO seeks for dismissal of the application.

ANALYSIS & CONCLUSION:

The above application itself is seriously contested by the Respondent-Discom.

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 and other project proponents, appeal was not filed in time.

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.

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. Therefore, one cannot expect the farmer-cum-land owner i.e., the Appellant to invest huge money on its own.

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.

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 in commissioning the plant has occurred.

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 IA is allowed and delay of 489 days in filing the Appeal is condoned. The application is disposed of.

Admit. Reply to the main matter shall be filed by the Respondents within six weeks from today with advance copy to the other side. Thereafter, the Appellant shall file rejoinder, if any within two weeks with advance copy to the other side.

Registry is directed to number the Appeal and list the matter on **08.09.2021.**

Pronounced in the Virtual Court on this the 26th day of July, 2021.

**Ravindra Kumar Verma
(Technical Member)**

**Justice Manjula Chellur
(Chairperson)**

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