

COURT-II
IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

IA NO. 940 OF 2018 IN
DFR NO. 1601 OF 2018 &
IA NO. 1330 OF 2018

Dated: 09th October, 2018

Present: Hon'ble Mr. Justice N.K. Patil, Judicial Member
Hon'ble Mr. S. D. Dubey, Technical Member

In the matter of:

Power Company of Karnataka Ltd. & Ors. Appellant(s)
Versus
Southern Regional Load Despatch Center & Ors. Respondent(s)

Counsel for the Appellant(s) : Mr. Darpan K.M.

Counsel for the Respondent(s) : Ms. Suparna Srivastava
Ms. Nehul Sharma for R-3

ORDER

(IA No. 940 of 2018 – Condonation of delay in filing the Appeal)

Heard learned counsel, Mr. Darpan K.M., appearing for the Appellant and learned counsel, Ms. Nehul Sharma appearing for the third Respondent. Other Respondents, though served, are unrepresented.

Learned counsel, Mr. Darpan K.M., appearing for the Appellant, submitted that, the instant application has been filed by the Appellant for condoning the delay of 589 days in filing the appeal which has been explained satisfactorily in the application dated 17.07.2018. Thereafter, the Appellant has filed an additional affidavit dated 20.08.2018 explaining the delay by giving the dates and events. Further, he submitted that, the delay has been explained satisfactory and sufficient cause has been shown in paragraphs 3 to 15 of the application dated 17.07.2018 and also in paragraphs 6 to 14 of the additional affidavit dated 20.08.2018.

Further, learned counsel for the Appellant submitted that, the delay of 589 days from the date of the Order dated 30.06.2016 which has occurred in filing the appeal and 80 days from the date of review Order dated 19.12.2017, which has

been explained satisfactorily and sufficient cause has been shown in the application in paragraphs 3 to 15 and also in the additional affidavit in paragraphs 6 to 14. The delay in filing the appeal is bonafide and unintentional. The Appellant, being a Statutory Authority, has been processing the file from one department to another department and, finally, after due deliberation, the concerned competent authority took the decision to file the appeal.

Further, learned counsel for the Appellant submitted that, the Appellant has got good case on merits and likely to succeed. Therefore, the delay in filing the appeal may kindly be condoned and IA may kindly be allowed and the matter may kindly be heard on merits in the interest of justice and equity.

Per-contra, learned counsel, Ms, Nehul Sharma, appearing for the third Respondent, inter-alia, strenuously opposed the instant application filed by the Appellant for condonation of delay of 589 days in filing the appeal and submitted that, the delay has not been explained satisfactorily and no bonafide intention has been shown in the application as well as additional affidavit filed by the Appellant. Therefore, the instant application may kindly be dismissed.

Submissions made by learned counsel appearing for both the parties, as stated supra, are placed on record.

It is worthwhile to extract the statement made in the additional affidavit explaining the delay in filing the appeal, which reads thus:

“....

6. The reply was received from the concerned previously engaged Advocate in last week of January 2018. Due to non-receipt of reply from all the Appellants herein, again letter was addressed to all the Appellants by Appellant No. 1 in last week of January 2018 to provide their comments.

7. The comments for preparing the draft appeal were sent to the concerned Advocate in 09.02.2018.

8. However, certain grounds prepared by the Appellant No. 1 were not raised by the concerned Advocate in the draft appeal. Hence, the said points were incorporated and the final draft was sent to the concerned

Advocate on 21.02.2018. However, the concerned Advocate expressed her inability to handle the case.

9. The Appellants thereafter had to identify a new counsel in New Delhi and that process took a further 2 weeks until the end of February 2018, since quotes and other details as to experience of the potential counsel had to be obtained from various counsels and the internal approval had to be obtained. The necessary internal approvals for engaging counsel and instructions were done and on 02.03.2018, the present advocate on record was engaged for handling the matter and the relevant papers were sent to him on 05.04.2018.

10. The said Advocate thereafter sought for all the relevant papers and also certain clarifications on 16.03.2018 which were provided from time to time by the Appellants. The Advocate could send the final draft of the appeal on 06.04.2018.

11. However, after various internal discussions and discussions with the Advocate, it was decided to challenge both the Orders of CERC. Therefore, approval for court fees of further Rs. 1 Lakhs for challenging the Review Order also was sought internally and necessary clarifications were sent to the Advocate.

12. The Advocate sent the revised draft of the Appeal on 16.04.2018, which was finalized and approved by the Appellants by 01.05.2018.

13. Thereafter, the appeal papers were sent to the Advocate and without any further delay, the Appeal was immediately filed on 04.05.2018 vide Diary No. 1601 of 2018.

14. It is respectfully submitted that the delay has occurred due to bona fide reasons, and if the accompanying application for condonation of delay is not allowed by this Hon'ble Tribunal, it would cause serious hardship and prejudice to the Appellant."

After careful consideration of the submissions of learned counsel appearing for the Appellant and learned counsel appearing for the third Respondent, it is manifest from the statement made in the additional affidavit, as

stated supra, that the delay in filing the appeal has been explained satisfactorily as sufficient cause has been shown.

In view of the well settled law laid down by the Apex Court and by this Appellate Tribunal in host of judgments, wherein it is held that the Courts and Tribunals may take a lenient view while considering the delay in filing the appeal by the statutory authorities on the ground that bonafide delay will be caused while following the procedural aspect in obtaining the necessary orders from the competent authority for filing the appeal. In the instant case, as stated above, the Appellant has rightly stated in his additional affidavit by giving dates and events as to how the matter has been processed for obtaining necessary orders of the competent authority for filing the appeal.

Keeping in view the facts and circumstances of the case in hand, as stated supra, we accept the reasoning assigned by the Appellant in the instant application and in the additional affidavit for the delay in filing the appeal. The said delay is not intentional and the reasoning assigned is bonafide in nature. For the foregoing reasons, as stated above, the delay in filing the appeal is condoned. IA is allowed.

DFR NO. 1601 OF 2018 &
IA NO. 1330 OF 2018

Registry is directed to number the Appeal and list the matter along with IAs for admission on **11.10.2018** as requested by learned counsel appearing for the third Respondent to enable her to take instructions to reply to the IA No. 1330 of 2018.

(S.D. Dubey)
Technical Member
vt/js

(Justice N.K. Patil)
Judicial Member