

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

I.A. No.134 of 2012
IN
DFR No.891 of 2011

Dated: April, 2012

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

In the Matter of:

**Haryana Vidyut Prasaran Nigam Limited
Sector-6,
Panchkula-134 109**

...Appellant/Applicant

Versus

- 1. Haryana Electricity Regulatory Commission
Bays No.33-36, Sector-4
Panchkula-134 109**
- 2. Uttar Haryana Bijli Vitran Nigam Ltd
Vidyut Sadan,Plot No.C-16,
Sector-6,
Panchkula-134 109**
- 3. Dakshin Haryana Bijli Vitran Nigam Limited
Vidyut Nagar, Hisar-125 005**

...Respondent(s)

**Counsel for the Appellant/Applicant: Mr. Neeraj Kr Jain, Sr Adv.
Mr. Pratham Kant
Mr. Sanjay Singh**

Counsel for the Respondent(s): -

ORDER

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

1. This is an application to condone the delay of 279 days in refiling the Appeal filed by the Applicant/Appellant.
2. Haryana Vidyut Prasaran Nigam Limited is the Appellant Applicant. The Applicant is a Transmission Company.
3. It submitted its Annual Revenue Requirement for transmission business for the Financial Year 2011-12 on 6.12.2010.
4. After observing the procedure, the State Commission passed the impugned order on 26.4.2011 approving the Annual Revenue Requirement of the Applicant for Rs.8687.18 million as against the proposal of the Applicant to the tune of Rs.12,936.33 million.
5. As some of the claims made by the Applicant were disallowed by the State Commission, the Applicant filed the Appeal on 15.6.2011.
6. The Registry informed the Applicant and its Counsel about seven defects through the defect notice asking the Applicant to cure the defects within seven days.
7. Though the Appeal papers were resubmitted after curing the defects, it was found that one defect about the absence of verification in the memorandum of Appeal had not been

cured. On coming to know about that, the defects have been cured by the present Counsel and refiled the matter along with fresh Vakalatnama and Demand Draft after a long delay.

8. So on 3.4.2012, the Applicant has filed this Application for condonation of delay of 279 days in refiling the Appeal as against the impugned order dated 26.4.2011.
9. The Learned Senior Counsel appearing for the Applicant praying for the condonation of 279 day's delay in filing the Appeal would submit that the Applicant was under the impression that all the defects were cured in time and refiled the Appeal in time but when the matter has not been posted for hearing, the present Counsel made inquiry about the Appeal in the Registry and he was informed that one defect was not cured and hence, the Applicant has made arrangements to cure the said defect and refiled the Appeal again along an application to condone the delay with Vakalatnama and Demand Draft for Court Fee on 27.3.2012 and as such delay was caused due to the above reason and so the delay may be condoned.
10. We have considered the submissions made by learned Senior Counsel for the Applicant/Appellant.
11. On going through the Affidavit praying for condonation of

delay in refiling the Appeal and on hearing the oral submissions of the learned Senior Counsel for the Applicant, we find that there was no satisfactory explanation given either in the Affidavit or in the oral submissions made before this Tribunal.

12. According to the Affidavit filed by the Applicant, the Appeal had been filed on 15.6.2011 and the defect notice was received on 17.6.2011 and immediately thereafter the Applicant through its representative went to the Registry on 25.6.2011 and cured all the defects pointed out by the Registry of this Tribunal. This statement cannot be accepted to be true in view of the fact that the defect notice issued on 17.6.2011 referred to 7 defects including the defect i.e. the absence of the verification in the Memorandum of the Appeal. This was admittedly not cured. Therefore, the statement made by the Applicant through the Affidavit that on 25.6.2011 its representative visited the Registry and cured all the defects pointed out by the Registry is not correct. Even assuming that the statement is true and that the Applicant was under the impression that all the defects have been cured on 25.6.2011 itself, there was no valid reason for the Applicant to keep quiet till 27.3.2012 on which date the fresh Vakalatnama had been filed.
13. Even according to the Applicant, the Demand Draft of

Court fee was furnished to the Registry only on 27.3.2012 even though the Appeal was filed on 15.6.2011. Learned Senior Counsel submits that the Applicant even though inquired the Counsel about the status of the listing of the Appeal, the Counsel did not give a satisfactory answer. This cannot be plausible explanation in view of the fact that the Applicant cannot merely put a blame on the Counsel and escape from the liability for the inaction and lack of diligence on the part of the Applicant.

14. As a matter of fact, the Act, 2003 provides the Appeal has to be disposed of by this Tribunal within 180 days from the date of receipt of the Appeal.
15. In this case even though the Appeal has been presented on 15.6.2011, no adequate steps have been taken by the Applicant to ensure that the defects have been cured within time stipulated and the Appeal papers were refiled within time. As indicated above, even in the Affidavit, it is said that the representative of the Applicant along with its Counsel visited the Registry on 25.6.2011 and cured the defects on the same day itself. When that being the case, the same representative should have pursued the matter by visiting the Registry again and verify with regard to the status of the Appeal. This was admittedly not done.
16. Further, there is a huge delay of 279 days in refiling the

present Appeal which has not been explained when the Act itself says that it has to be disposed of within 180 days. In view of the above, we are not inclined to condone this 279 days' delay in refiling the present Appeal as it would defeat the object of the Act namely the expeditious disposal of the Appeal.

17. As we find that there is a lack of diligence on the part of the Applicant in prosecuting the matter from the beginning, we are not inclined to condone the delay of 279 days. Hence, this application to condone the delay of 279 days in refiling the Application is dismissed and consequently the Appeal is also rejected.

18. There is no order as to costs.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated: April, 2012

✓ ~~REPORTABLE/NON-REPORTABLE~~