

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI**

(APPELLATE JURISDICTION)

I.A. NO.189 OF 2015
IN
D.F.R. NO.755 OF 2015

Dated: 24th September, 2015

**Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson
Hon'ble Mr. I.J. Kapoor, Technical Member.**

In the matter of:-

**BANGALORE ELECTRICITY)
SUPPLY COMPANY LIMITED,)
K.R. Circle, Bangalore – 560 001.) ... **Appellant****

AND

1. **KARNATAKA ELECTRICITY)
REGULATORY COMMISSION,)
6th & 7th Floor, Mahalaxmi)
Chambers, No.9/2, M.G. Road,)
Bangalore – 560 001.)**
2. **M/S. CLP WINDFARMS (INDIA))
PRIVATE LIMITED,)
Flat No.D-1, 3rd Floor, Salcon Ras)
Vilas, District Centre, Saket, New)
Delhi.)**

**Counsel for the Appellant(s) : Mr. V.S. Raghavan
Mr. Mohit Chadha
Ms. Trisha**

Counsel for the Respondent(s) : Mr. Jafar Alam
Mr. Deep Rao Palapu for **R-2.**

ORDER

PER HON'BLE (SMT.) JUSTICE RANJANA P. DESAI - CHAIRPERSON

1. The Applicant/Appellant ("**the Applicant**") is a Government of Karnataka Undertaking. It is a distribution licensee within the State of Karnataka. In this appeal, the Applicant has challenged order dated 14/08/2014 passed by the Karnataka Electricity Regulatory Commission ("**the State Commission**") in O.P. No.21 of 2013. There is a delay of 169 days in filing the appeal. Hence, the Applicant has filed the instant application praying for condonation of delay.

2. The gist of explanation offered by the Applicant for delay in filing the appeal is as under:-

The certified copy of the impugned order dated 14/08/2014 was received by the Applicant on 19/08/2014. Thereafter, the Applicant had internal meetings to discuss the

possibility of filing an appeal against the impugned order. It was decided to file the appeal through a different counsel and not through those representing the Applicant before the State Commission. The Applicant had accordingly commenced the process of handing over the matter to another counsel. In the meantime, Respondent No.2 filed a review petition seeking review of the impugned order before the State Commission. The Applicant was served with a notice of the review petition. The Applicant was under the impression that since a review of the impugned order had been sought the impugned order had not yet attained finality and an appeal would lie upon the disposal of the review petition. Therefore, the Applicant did not proceed with the appeal. The Applicant instead appeared before the State Commission to prosecute the review petition. During the pendency of the review petition, the Applicant's present counsel told the Applicant that pendency of the review petition does not bar filing of an appeal. The Applicant then gave instructions to prepare and file the appeal. The appeal was then filed on 25/03/2015. Due to the above

circumstances, there is a delay of 169 days in filing the appeal.

3. Counsel for the Applicant submitted that the delay caused in filing the appeal is not deliberate. It was caused on account of the circumstances stated above. The reasons for delay are *bona fide* and, therefore, the delay deserves to be condoned. In support of his contentions, counsel relied on **State (NCT of Delhi) v. Ahmed Jaan**¹.

4. Counsel for Respondent No.2 on the other hand strenuously opposed the prayer for condonation of delay. He submitted that the Applicant has made a wrong statement that the Applicant did not file the appeal in time because Respondent No.2 had filed a review petition and the Applicant carried an impression that till the review is decided, the impugned order does not become final. Counsel submitted that the appeal ought to have been filed by 4/10/2014 i.e. within 45 days from 19/08/2014 when the Applicant claimed

¹ (2008) 14 SCC 582

to have received a certified copy of the impugned order. Counsel pointed out that Respondent No.2 filed review petition on 12/11/2014 well after 04/10/2014 when the limitation period of the appeal had expired. Therefore, the explanation given by the Applicant is false. The Applicant has not given any acceptable explanation for condonation of delay and in fact the Applicant is guilty of making false statement. The delay should, therefore, not be condoned. In support of his contentions, counsel relied on judgment of the Supreme Court in **Pundalik Jalam Patil (Dead) by LRs. v. Executive Engineer, Jalgaon Medium Project and Anr.**²

5. While considering the explanation offered by the Applicant, it must be kept in mind that the Applicant is a Government undertaking. While it is true that red tapism, which is generally associated with the functioning of Government department is not to be appreciated, one has to take notice of this fact while considering applications for condonation of delay filed by the Government or its

² (2008) 17 SCC 448

Undertakings where it is felt that cause of justice may suffer. Even otherwise, the courts have always adopted a liberal approach while condoning delay if the explanation is acceptable and there are no *mala fides*.

6. Before we go to the facts of this case, we shall refer to **Pundalik Jalam Patil** on which counsel for Respondent No.2 has placed reliance. In that case, the High Court had condoned delay of 1724 days in filing appeal by Respondent No.1 therein – the Executive Engineer, Jalgaon Medium Project against the award passed in land acquisition cases. Respondent No.1 therein had in the application made an incorrect statement that he was unaware of the stand taken by the Special Land Acquisition Officer as well as the impugned judgment and award. This statement was found to be incorrect. The Supreme Court in the circumstances observed that a party taking a false stand to get rid of the bar of limitation should not be encouraged to get premium on the falsehood. In the circumstances, the Supreme Court held that the High Court wrongly exercised the jurisdiction to condone

the delay. Having regard to the atrocious delay of 1724 days, the Supreme Court expressed that Respondent No.1 therein cannot take advantage of his negligence after a lapse of number of years of the decision of the Government. The Supreme Court acknowledged that the State and its instrumentalities may be entitled to certain amount of latitude but observed that the Limitation Act does not provide different period of limitation for the Government. If it is shown that public interest has suffered that fact can be taken into account. While reading this judgment, it must be borne in mind that here the delay was of 1724 days and a wrong statement was made that Respondent No.1 therein had no knowledge of the award, when in fact the record showed that he had the knowledge.

7. In **Ahmed Jaan**, the High Court had dismissed criminal revision petition filed by the State on the ground of inordinate delay in filing and re-filing it. The Supreme Court referred to its judgment in **G. Ramegowda v. Special Land Acquisition**

Officer³, where it is held that while assessing what constitutes sufficient cause for purposes of Section 5 of the Limitation Act, it might perhaps be somewhat unrealistic to exclude from the considerations that go into judicial verdict factors which are peculiar to and characteristic of the functioning of the Government. The Supreme Court observed that the Government decisions are proverbially slow encumbered, as they are, by a considerable degree of procedural red tape in the process of their making. The Supreme Court further observed that certain amount of latitude is therefore not impermissible.

8. We will examine the explanation offered by the Applicant in light of above judgments. The certified copy of the judgment dated 14/8/2014 was received by the Applicant on 19/8/2014. Thereafter, the Applicant had internal meetings to discuss the way forward and possibility of filing an appeal against the impugned order. Decision was also taken to assign the filing of the appeal to some other advocate and not

³ (1988) 2 SCC 142

the one who had represented the Applicant before the State Commission. It is clear from this explanation that there was some debate as to whether the appeal should be filed or not. There was also some discussion about changing the advocate who had appeared before the State Commission. This indicates that taking the decision to file appeal and the decision as to through whom, the appeal should be filed was subject of deliberations and it took considerable time. In that process the period of limitation appears to have got over on 4/10/2014. Since the Applicant is a Government Undertaking, observations of the Supreme Court in **Ahmed Jaan** that Government decisions are proverbially slow encumbered, as they are, by a considerable degree of procedural red tape in the process of making the decisions, squarely apply to the above decisions taken in this case.

9. Thereafter, Respondent No.2 filed a review petition on 12/11/2014. Notice of the review petition was served on the same counsel who had appeared for the Applicant in the State Commission. According to the Applicant, the Applicant was

under the impression that since a review of the impugned order was sought, the impugned order had not attained finality and an appeal could be filed only after the review petition was disposed of. Therefore, the Applicant did not file the appeal but prosecuted the review petition, which caused further delay. According to the Applicant during the pendency of the review petition, the Applicant's present counsel informed him that pendency of the review petition does not bar filing of an appeal. The Applicant then immediately requested the said counsel to file appeal. Necessary instructions were given and the appeal was filed on 25/3/2015. It needs to be noted that the Applicant had indeed changed its counsel. So time must have been taken in handing over papers and instructing the new counsel. These facts indicate that till the filing of the appeal, there was a lot of uncertainty as to whether appeal should be filed or not; counsel should be changed or not and there was also misconception that appeal could be filed only after the review petition was disposed of. Delay in filing the appeal was the result of all these circumstances. The Applicant does not appear to have made

any false statement. The Applicant should have however mentioned the date of filing of the review petition and the date when he was served with the notice of review petition. But the said omission does not appear to be *mala fide*. On account of the use of the words “in the meantime” an impression is created that the Applicant wanted to project that the review petition was filed during the limitation period. We do not think so. There is no such specific assertion made in the application. Undoubtedly, the application could have been drafted very carefully and in a better manner to bring in more clarity. But, in our opinion, there is no deliberate attempt to create a false explanation. The explanation does not smack of *mala fides*. In view of the above, we are of the opinion that the Applicant has made out sufficient cause for not filing the appeal within the period of limitation. Delay is not deliberate and deserves to be condoned.

10. We, however, feel that in the circumstances of the case, the Applicant needs to be saddled with costs. Hence, delay is condoned on the Applicant depositing costs quantified at

Rs.20,000/- within four weeks from today with the National Association for the Blind, Delhi State Branch, Sector-5, R.K. Puram, New Delhi – 110 022. Needless to say that if the costs are not deposited, the appeal shall stand dismissed.

11. The application is disposed of in the aforestated terms. After receiving the compliance report, the Registry is directed to number the appeal and list the matter for admission on 29/10/2015.

12. Pronounced in the Open Court on this 24th day of September, 2015.

I.J. Kapoor
[Technical Member]

Justice Ranjana P. Desai
[Chairperson]

✓ ~~REPORTABLE/NON-REPORTABLE~~