

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY  
AT NEW DELHI  
(APPELLATE JURISDICTION)**

**IA No.234 of 2016 IN RP (DFR) NO.821 of 2014 &  
IA NO.426 OF 2016**

**Dated: 08<sup>th</sup> August, 2016.**

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

**IN THE MATTER OF:**

**GULBARGA ELECTRICITY SUPPLY CO. )  
LTD )  
Station Road, Gulbarga -585101 )  
Karnataka ) ... Applicant(s)/  
Appellant(s)**

Versus

1. **M/s NARAYANPUR POWER )  
COMPANY LTD. )  
A-21, Manyatha Residency, Arabic )  
College Post, Bangalore-560045 )**
  
2. **KARNATAKA ELECTRICITY )  
REGULATORY COMMISSION )  
6<sup>th</sup> and 7<sup>th</sup> Floor, Mahalaxmi )  
Chambers, )  
No.9/2, M.G. Road, )  
Bangalore-560001 ) ... Respondents**

Counsel for the  
Applicant(s)/Appellant (s)

Ms. Srishti Govil  
Mr. Balaji Srinivasan

Counsel for the Respondent(s)

Mr. Basava Prabhu Patil Sr. Adv.  
Mr. Shailesh Madiyal for  
**R.1**

## **ORDER**

### **PER HON'BLE (SMT.) JUSTICE RANJANA P. DESAI – CHAIRPERSON**

**1.** According to the Applicant there is 113 days' delay in filing the instant Review Petition. The Applicant has therefore filed this application for condonation of delay. It may be stated here that according to the Registry there is about 126 days delay in filing the instant Review Petition.

**2.** Before we go to the explanation offered by the Applicant for the delay and rival contentions we must note certain important facts. The order of which review is sought by the Applicant is dated 07/10/2013. The review petition was filed by the Applicant on 14/03/2014. There were several defects in the review petition. Therefore, the Registry of this Tribunal sent a letter dated 24/03/2014 to the Applicant. In the said letter the defects were listed and the Applicant was asked to remove them

within 7 days. The Applicant, however, did not take any steps to remove the defects. The defective review petition was kept pending in the Registry. When the Registry brought this fact to the notice of the Chairperson by an administrative order, the review petition was directed to be listed before this Tribunal for “directions”. Accordingly, it was listed on 18/03/2016. On that day counsel for the Applicant appeared and sought time to seek instructions from the Applicant as to whether the Applicant wants to prosecute this matter, and therefore, the matter was adjourned to 04/04/2016. On 04/04/2016 the matter was listed again before this Tribunal. Till then no steps were taken by the Applicant to remove the defects. This was noted by this Tribunal in Order dated 04/04/2016. This Tribunal observed that this review petition is kept pending from the year 2014 and expressed its unhappiness about the conduct of the Applicant. In the interest of justice and as a last chance, time was granted to the Applicant to remove the defects. Ultimately, the Applicant removed the defects and the matter was again listed on 25/04/2016. In the circumstances, direction was given by this Tribunal to the Registry to number the review petition and list the same on 12/05/2016.

**3.** It appears that there was delay in filing the review petition. Hence, the Registry directed the Applicant to file an application for condonation of delay. The Applicant filed writ petitions in the Karnataka High Court making a grievance that the Registry of this Tribunal had directed the Applicant to file an application for condonation of delay in view of Rule 13 of the Appellate Tribunal for Electricity (Procedure, Form, Fee and Record of Proceedings) Rules, 2007 ("**the said Rules**"). The Applicant sought quashing of Notifications dated 24/02/2012 and 14/09/2012, whereby procedural directions were issued relating to review. The said writ petitions were dismissed by the Karnataka High Court on 30/06/2014 by holding that this Tribunal was justified in calling upon the Applicant to file application for condonation of delay in filing review petition beyond 30 days by exercising jurisdiction vested under Rule 13 of the said Rules. It appears that in the meantime the Applicant had filed the instant application for condonation of delay before this Tribunal, on which notice was issued on 12/05/2016. After service of notice, Respondent No.1 filed its reply. The said application is listed today before us for hearing.

**4.** We have noted the above facts with a purpose. It is clear from the above facts that the Applicant has been extremely remiss in prosecuting this review petition. The matter was kept pending since 2014. Had this Tribunal, on its own, not placed the matter for directions, perhaps the Applicant would not have taken any steps to remove the defects. The conduct of the Applicant indicates that it had lost interest in the matter. Otherwise such inertia, indolence or inaction would not have been shown by the Applicant. When the Applicant was directed by the Registry to file an application for condonation of delay, the Applicant rushed to the Karnataka High Court to challenge the relevant notifications and direction issued by the Registry to the Applicant to file application for condonation of delay. Those writ petitions were dismissed.

**5.** We shall now come to the explanation offered by the Applicant. According to the Applicant Order dated 07/10/2013 was uploaded on the website of this Tribunal on 11/10/2013. Copy of the said order was thereafter sent to the Applicant on 12/10/2013 and it was received by the Applicant at Gulbarga on

16/10/2013. It is the case of the Applicant that on receiving the copy, internal opinion was sought from the Department of Regulatory Affairs on 25/10/2013. The Department of Regulatory Affairs after considering the matter in detail sought an opinion from its standing counsel with regard to further course of action to be adopted, on 02/11/2013. Legal opinion was given on 11/11/2013 wherein it was recommended that review petition may be filed. According to the Applicant the Corporate Office of the Applicant took a decision to prefer a review petition on 25/11/2013. The communication in this regard, with instructions, was sent to the counsel on 29/11/2013 which was received by the counsel on 03/12/2013. It is further stated in the application that the counsel drafted the review petition and sent it to the Applicant on 13/12/2013. The Applicant communicated certain modifications in the review petition to the counsel on 20/12/2013. The counsel incorporated the changes and sent it back to the Applicant on 28/12/2013. The draft review petition was thereafter finalised on 31/12/2013 and final approval to file the review petition was given on 06/01/2014. It is further the case of the Applicant that, in the interim, the officer dealing with the present case was transferred. Therefore, the

process of obtaining demand drafts was delayed. Demand drafts were obtained on 05/03/2014 and sent to the office of the counsel. The final draft of the petition along with the documents was sent to the counsel at New Delhi on 07/03/2014 which was received in New Delhi on 10/03/2014 after which the review petition came to be filed on 14/03/2014. So far as several office objections which were not cured by the Applicant are concerned it is stated that the Applicant by its letter dated 01/04/2015 requested for additional affidavits, duly signed by the authorized signatory of the respective companies to be furnished. Thereafter, the affidavits were received by the office of the Advocate at Bangalore on 16/04/2015 from Gulbarga. However, as the same had not been notarised, they were returned to the Applicant. Fresh affidavits were thereafter received by the Advocate of the Applicant on 25/04/2015 and they were forwarded to Delhi on 28/04/2015. The application for condonation of delay and accompanying affidavits were received on 02/05/2015 by the Advocate on record at Delhi. It is further the case of the Applicant that, in the *interregnum*, the Advocate on record at Delhi took a sabbatical to pursue his higher studies. Due to the same by inadvertence, the application and signed

affidavits continued to remain with the earlier Advocate. According to the Applicant it was under a *bonafide* belief that necessary application had been filed and the defects had been cured. Only when this Tribunal listed the matter on 04/04/2016 that the Applicant realised that the defects were not cured. Therefore new counsel was entrusted to represent the Applicant and to cure the defects. The defects were thereafter cured and the review petition was re-filed. It is contended that the delay in filing the review petition is unintentional and was due to reasons completely beyond the control of the Applicant and hence the delay may be condoned.

**6.** A detailed reply is filed by Respondent No.1 refuting each and every averment made in the application for condonation of delay.

**7.** Ms. Shrishti Govil, learned counsel for the Applicant has reiterated the contents of the application for condonation of delay and has contended that the delay deserves to be condoned. Mr. Patil, learned senior counsel for Respondent No.1, on the other hand, has contended that the explanation offered by the



Applicant is totally unacceptable and the application deserves to be dismissed.

**8.** Having examined the explanation offered by the Applicant against the backdrop of the Applicant's conduct of not taking any action on the petition filed in this Tribunal till it was listed by the Registry for directions, we are of the opinion that the present application for condonation of delay deserves to be dismissed. After the order was received by the Applicant at Gulbarga on 16/10/2013, the Applicant dragged its feet and caused delay at every stage. The Applicant spent time in obtaining opinion of the standing counsel, taking decision on the same, sending instructions to the standing counsel to draft the petition, sending modified draft to the counsel, finalising the modified draft received from the counsel and again getting final approval to file the petition on 06/01/2014. Thus, from 16/10/2013 to 06/01/2014 the file just kept moving from one end to the other. Even the alleged modified draft is stated to have been further finalised. Surprisingly, though decision to finalise the draft was taken, again final approval was obtained on 06/01/2014. This explanation lacks credibility. It does not inspire confidence at all.

But the matter does not rest there. After the final approval was given, it is stated that the officer dealing with the case was transferred and therefore the process of obtaining demand drafts was delayed. Demand drafts could be obtained only on 05/03/2014 i.e., almost three months after the draft of the petition was finalised. Thereafter, final draft of the petition was sent to Delhi on 07/03/2014 and review petition was filed on 14/03/2014. This shows a callous approach. By no stretch of imagination, this explanation can be called acceptable. Transfer of an officer is an internal affair of the Applicant. Demand draft cannot be withheld because one officer is transferred. Delay caused on account of such callous approach is noticed at every stage till filing of the petition.

**9.** As we have already noted, the petition was kept pending in this Tribunal without curing defects. The matter was listed for directions on 04/04/2016. The Applicant then woke up from slumber. It is stated that notarised affidavits for condonation of delay application were received in Delhi on 02/01/2015. But the Applicant's advocate took a sabbatical to pursue higher studies. It is further stated that due to inadvertence, the application and

signed affidavits continued to remain with the said advocate. The Applicant was stated to be under a *bonafide* belief that necessary application for condonation of delay was filed. But when the matter was listed before this Tribunal the Applicant is stated to have realised that the defects have not been cured. Thereafter, the defects were cured on 08/04/2016. This explanation merits outright rejection. Counsel taking a sabbatical for higher studies can be no ground to explain inaction of the Applicant. It is not possible to accept the story that the Applicant was under a *bonafide* belief that the application was filed. If the Applicant was serious, it would have pursued the matter diligently and cured the defects in time. The Applicant chose to approach the Karnataka High Court to challenge the Registry's directions to file an application for condonation of delay. Those writ petitions were dismissed. These are all signs of casual approach exhibiting lack of interest in prosecuting this matter.

**10.** We must also mention certain important facts to which our attention is drawn by Mr. Basava Prabhu Patil, learned senior counsel for Respondent No.1. By Order dated 07/10/2013 passed in Appeal No. 20 of 2013 of which review is sought, this

Tribunal granted the prayer made by the Appellant in the appeal. This Tribunal held that the termination of Power Purchase Agreement (“**PPA**”) through Termination Notice dated 23/04/2012 was justified and valid in law. This Tribunal directed the State Commission to pass consequential order in terms of findings and directions given in the Judgment dated 07/10/2013. In accordance with the said directions, the State Commission based on an application filed by Respondent No.1, passed the consequential Order on 12/12/2013 holding that Respondent No.1 is entitled to open access or any other facility as admissible under the relevant regulations, in view of the fact that in terms of the orders of this Tribunal in Appeal No. 20 of 2013, the termination of PPA is valid in law. The Applicant did not appear before the State Commission. The Applicant did not oppose the grant of consequential order. It is further pointed out that based on the consequential order Respondent No.1 pursuant to contractual commitments made to third parties has commenced supply of electricity to them after entering into Wheeling and Banking Agreement (“**WB Agreement**”) with Karnataka Transmission Corporation Limited, BESCO and the Applicant. Respondent No.1 has produced two official

memoranda issued by the Applicant during January 2015 showing that Respondent No.1 is supplying energy to third parties under the WB Agreement. Thus, Order dated 07/10/2013 passed by this Tribunal in Appeal No. 20 of 2013 has been acted upon. It appears to us that a belated attempt is now being made by the Applicant to unsettle the steps taken on the basis of Order dated 07/10/2013 passed by this Tribunal.

**11.** Generally Courts or Tribunals are lenient in considering applications for condonation of delay for fear of defeating cause of justice by not condoning the delay. But where it is apparent that the Applicant is guilty of casual and lackadaisical approach and the explanation offered is totally unacceptable and in the interim the parties have acted on the order which is sought to be impugned or reviewed, the delay cannot be condoned. Such condonation of delay will set a bad precedent. In this case, we are of the considered opinion that the Applicant has not made out any sufficient cause for condonation of delay. Hence, the application is dismissed. Consequently, the review petition stands dismissed as being beyond limitation. Needless to say that therefore all pending IAs stand disposed of.

**12. Pronounced in the Open Court on this 08th day of August, 2016.**

**I.J. Kapoor**  
**[Technical Member]**

**Justice Ranjana P. Desai**  
**[Chairperson]**

**√REPORTABLE/NON-REPORTABLE**