

**Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

**I.A. No. 100 of 2012 in
DFR No. 304 of 2012**

Dated: 9th July , 2012

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. Rakesh Nath, Technical Member**

In the matter of:

Beverly Park II Condominium,
DLF City, Phase-II,
M.G. Road,
Gurgaon-122 002

....Applicant

Vs.

1. Haryana Electricity Regulatory Commission,
Bay No. 33-36, Sector-4,
Panchkula- 134 113,
Haryana.

2. M/s. Dakshin Haryana Bijli Vitran Nigam Ltd.,
SE, Operation Circle,
Mehrauli Road,
Gurgaon-122 001

... Respondents

Counsel for the Applicant(s) : Ms. Rashmi Virmani

Mr. Ashish Kothari

Counsel for the Respondent(s) : Mr. Anukul Raj for R-2

ORDER

Rakesh Nath, Technical Member

M/s. Beverly Park II Condominium has filed
I.A. No. 100 of 2012 for condonation of delay of 469
days in filing the Appeal against the order dated

03.09.2010 of the Haryana Electricity Regulatory Commission (“State Commission”). The State Commission and Dakshin Haryana Bijli Vitran Nigam Ltd., the distribution licensee are the Respondents 1 and 2 respectively.

2. The brief facts of the case are as under:

2.1 The Applicant is a consumer of the Respondent no. 2 and takes bulk supply at 11kV voltage level for use of the residents of the Condominium and for running common facilities.

2.2 On 13.10.2006 the State Commission by its order allowed creation of a separate category called “Bulk Domestic Supply” and introduction of separate schedule of tariff for the said category subject to certain conditions. One of the conditions was that the

connected load of residential and domestic use should be at least 85% of the total connected load. The balance 15% shall be for common facilities and no industrial activity will be permitted.

2.3 On 4.7.2008 the Respondent no. 2 granted approval to charge Bulk Domestic Supply tariff from the Applicant. The Applicant was thereafter being charged as per bulk domestic supply tariff till July, 2010.

2.4 On 8.7.2010 the Respondent no. 2 issued a demand notice on the Applicant for an amount of about Rs. 27 lacs on the ground that the load towards common facilities was more than 15% of the total load supplied to the Applicant and, therefore, Bulk Non-Domestic Supply tariff would apply to them instead of Bulk Domestic Supply tariff.

2.5 On 11.8.2010, the Applicant filed a petition before the State Commission for review of its order dated 13.10.2006 and setting aside the demands made by the Respondent no. 2.

2.6 The State Commission by its order dated 3.9.2010 disposed of the petition by allowing connected loads of lift, fire fighting equipment and water supply pump to be included as part of domestic use to be implemented prospectively i.e. from the date of issue of the order. The State Commission did not pass any order on issue of arrears claimed by the Respondent no. 2 and gave liberty to the consumers to approach the Consumer Grievance Redressal Forum (“CGRF”) for redressal of individual grievances.

2.7 Accordingly, the Applicant filed an application before the CGRF claiming refund of about Rs. 26 lacs. deposited as arrears on the demand raised by the Respondent no.2.

2.8 On 25.11.2010 the CGRF passed its order rejecting the claim of the Applicant as the order of the State Commission dated 3.9.2010 was to be implemented prospectively.

2.9 On 31.3.2011 the Applicant filed a Review Petition before the State Commission against its order dated 3.9.2010.

2.10 On 30.9.2011 the State Commission passed a detailed order on the Review Petition dismissing the Review Petition. A copy of the order dated 30.9.2011 was received by the Applicant on 07.10.2011.

2.11 Aggrieved by the order of the State Commission, an Appeal was filed before the Tribunal being Appeal No. 03 of 2012 on 21.11.2011. When the Appeal came up for hearing before the Tribunal for admission, the Tribunal felt that the Appeal against the review order dated 30.9.2011 was not maintainable. However, the Tribunal granted opportunity to the Applicant to verify the legal position on the issue and make submissions on the same.

2.12 The learned counsel for the Applicant realising the difficulty in pursuing the Appeal against the Review order sought to withdraw the Appeal with liberty to file a fresh Appeal against the main order dated 3.9.2010. On 01.02.2012, the Tribunal dismissed the Appeal as withdrawn with liberty to file

an Appeal challenging the order of the State Commission dated 03.09.2010.

2.13 On 16.02.2012, the Applicant filed the Appeal challenging the impugned order dated 03.09.2010 of the State Commission.

3. The learned counsel for the Applicant stated that the delay in filing the Appeal was mainly caused in approaching the CGRF as per the directions given by the State Commission in the impugned order and the time taken in the disposal of the review petition. She also submitted that there has been no negligence or lack of diligence on the part of the Applicant and the Applicant has not resorted to any dilatory tactics in pursuing the matter. Further the amount of arrears has already been deposited with Respondent no. 2 and the Applicant is only claiming refund of the amount.

4. The learned counsel for the Respondent no. 2 opposing the condonation of delay application submitted that the Applicant without preferring an Appeal within the limitation period before the Tribunal against the prospective application of the impugned order, chose to avail other remedies making the Appeal barred by limitation. It is further submitted that the Applicant itself has chosen wrong remedies out of sheer ignorance of law which cannot be an excuse for claiming condonation of delay and therefore, the Application is liable to be dismissed.

We have carefully considered the submissions of both the parties.

5. We notice that the period from the date of impugned order to the filing of the Appeal can be divided into the following spells:

- i) A copy of the impugned order dated 3.9.2010 was received by the Applicant on 10.09.2010. Immediately on receipt of the impugned order, the Applicant approached the CGRF and filed an application on 24.09.2010. The CGRF disposed of the Application vide its order dated 25.11.2010 without granting any relief to the Applicant. A copy of the CGRF order was received by the Applicant on 21.12.2010. Thus, the delay between the date of communication of the impugned order i.e. 10.09.2010 to date of communication of the CGRF's order i.e. 21.12.2010, viz. 102

days, was caused due to the Applicant seeking remedy with CGRF.

- ii) The Applicant filed a Review Petition against the order dated 03.09.2010 before the State Commission on 31.03.2011. The State Commission passed the order in the Review Petition on 30.09.2011. A copy of the order dated 30.09.2011 was received by the Applicant on 7.10.2011. Thus, the period from 21.12.2010 to 07.10.2011 i.e. 289 days was spent in filing the Review Petition and its disposal and communication of the order.
- iii) After receipt a copy of the order dated 30.9.2011 on 7.10.2011, the Applicant filed an Appeal, being Appeal No. 3 of 2012 before this Tribunal on 21.11.2011 and the same

was withdrawn on 01.02.2012 with liberty to file a fresh appeal challenging the order of the State Commission dated 03.09.2010 which was granted by the Tribunal. Thus, the period from 7.10.2011 to 01.02.2012, i.e. 116 days was spent in filing and disposal of the Appeal No. 3 of 2011 which was filed against the Review Order dated 30.09.2011.

- iv) Finally, on 16.02.2012 i.e. after a period of 15 days from the date of dismissal of Appeal No. 3 of 2011, the Applicant has filed this Appeal.

6. We notice that the Applicant in its Petition before the State Commission had sought to set aside the demand of arrears raised by the Respondent no. 2 due

to change in consumer category from Bulk Domestic to Bulk Non-Domestic supply tariff. However, the State Commission did not pass any order on the issue of arrears and advised the consumers to approach CGRF. The relevant extracts of the order dated 03.09.2010 is reproduced below:

“The Commission is not passing any order on the issue of arrears claimed by the Nigam as the status may vary from consumer to consumer. In such an eventuality the consumer(s) may approach the Consumer Grievances Redressal Forum (CGRF) set up by the distribution licensee in their respective licensed area for redressal of individual grievances”.

7. It is not clear that when the State Commission had decided to implement its order with prospective effect i.e. from the date of issue of the impugned order, why the Applicant was asked to approach CGRF in

respect of the arrears claimed by the Respondent no. 2. Thus, only in pursuance of the said directions, the Applicant filed the petition before the CGRF.

8. We also notice that the State Commission while disposing of the Review Petition by its order dated 30.09.2011 has given a detailed order giving reasonings in support of the prospective implementation of its order dated 03.09.2010 which was not given in the main order. Therefore, we would like to go into the merits of the Original Order dated 3.9.2010 as well as the Review Order dated 30.9.2011.

9. It is noticed that the arrears claimed by the Respondent no. 2 due to change in consumer category from Domestic Bulk Supply to Non-Domestic Bulk Supply have already been paid by the Applicant.

10. Considering the above factors, we feel that the Applicant had sought alternate remedy in good faith. Thus, we are inclined to condone the delay caused in the Applicant seeking remedy from the CGRF and the time taken in disposal of the Review Petition by the State Commission and communication of the CGRF order to the Applicant i.e. from 3.9.2010 to 7.10.2011.

11. If the above delay is excluded the remaining delay in filing the Appeal works out to 95 days after deducting the time period of 45 days permitted for filing the Appeal. We notice that 116 days were spent in disposal of the Appeal no. 3 of 2011 which was filed against the review order and later on withdrawn with liberty to file fresh Appeal against the main order dated 3.9.2010, which was granted by the Tribunal. We are inclined to condone the delay of additional 95

days due to time taken in disposal of the Appeal no. 3 of 2011. Thus the Applicant has been able to show the sufficient cause for condoning the delay in filing the Appeal, as the good faith is reflected in the explanation offered by the Applicant.

12. Accordingly, I.A. no. 100 of 2012 is allowed. Registry is directed to number the Appeal and post the matter on **13th July, 2012** for admission.

13. Pronounced in the open court on this **9th day of July, 2012.**

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

√
REPORTABLE/~~NON-REPORTABLE~~

VS