

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

I.A. No.231 of 2012
IN
DFR No.1092 of 2012

Dated: 20th July, 2012

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

In the Matter of:

**Indian Oil Corporation Ltd.
Pipelines Division
A-1, Udyog Marg, Sector-1
NOIDA -201 301(U.P)**

...Appellant/Applicant

Versus

- 1. Gujarat Electricity Regulatory Commission(GERC) 1ST
Floor, Neptune Tower
Ashram Road,
Ahemedabad-380009.**
- 2. Paschim Gujarat Vij Company Ltd., (PGVCL)
Registered and Corporate Office at
Laxim Nagar, Nana Mava Main Road
Rajkot
Gujarat – 360 004**

3. **Uttar Gujarat Vij Company Ltd., (UGVCL),
Registered and Corporate office at
Visnagar Road
Mehasana – 384 001**
4. **Gujarat Energy Transmission Corporation Ltd., (GETCO)
Corporate office at
Sardar Patel Vidyut Bhawan
Race Course
Vadodara – 390 007**

...Respondent(s)

Counsel for the Appellant(s) : Mr. V.N. Koura
Ms. Mona Aneja

Counsel for the Respondent(s):-

ORDER

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

1. This is an Application filed by the Appellant/Applicant to condone the delay of 715 days in filing the Appeal as against the impugned order dated 13.5.2010.
2. The explanation of this huge delay has been given by the Applicant/Appellant, which is follows:-

“ (a) The Applicant filed the Petition No.1004 of 2010 praying for direction to the Distribution Licensee Respondents to pay the applicable tariff to the Applicant as determined by the State Commission.

(b) The State Commission after hearing the parties passed the impugned order dated 13.5.2010 disallowing the said relief prayed by the Applicant/Appellant and held that since the Distribution Companies have already discharged Renewable Purchase Obligations, the Applicant would not be entitled to the applicable tariff rate determined earlier.

(c) Thereafter, the Applicant came to know that another petition No.1029 of 2010 filed by some other party before the State Commission was pending. Therefore, the Applicant waited for the outcome of the decision taken by the State Commission in the said petition No.1029 of 2010 in order to take a decision as to whether to file an Appeal against the impugned order dated 13.5.2010 passed in the Applicant's petition by the State Commission.

(d) Ultimately, the said petition was decided by the order dated 10.8.2010. Thereafter, the said order dated 10.8.2010 was challenged before the Appellate Tribunal in Appeal No.190 of 2010 by the concerned party.

(e) Even then, the Appellant did not file the Appeal against this impugned order since the Applicant was advised to wait for the outcome in Appeal No.190 of 2010 before taking recourse to file an Appeal before the Tribunal.

(f) Ultimately, the Appeal was disposed of by the Tribunal on 31.5.2011. Thereupon the Applicant instead of filing an Appeal filed a petition for review before the State Commission for review on 12.7.2011 before the State Commission. The same was dismissed on 16.4.2012.

(g) Thereupon on the advice of the legal counsel the Applicant has now filed this present Appeal along with application for condonation of delay of 715 days.”

3. The crux of the explanation is that since the Applicant was asked to await the outcome firstly in the Petition No.1029/2010 and then in the Appeal No.190 of 2010, as per

the advice of legal counsel, the Applicant did not file the Appeal in time.

4. We have heard the learned Counsel for Applicant/Appellant and carefully consider his submission regarding this explanation.
5. We are not satisfied with the above explanation since the details would not indicate that there is sufficient cause to condone the delay. The impugned order was passed on 13.5.2010. The Applicant/Appellant must have filed Appeal immediately within 45 days from the said date. On the other hand, he wanted to await the outcome of the similar petitions filed before the Commission and the application was decided on 10.8.2010. Even thereafter, he would have filed the Appeal. He did not do so. Merely because an Appeal was pending against the other order, he wanted to wait to know about the result of the said Appeal in the Tribunal. Even after this, the Applicant has not chosen to file an Appeal after coming to know of the outcome in the Appeal. On the other hand, the Applicant chose to file the review before the State Commission and the same was dismissed on 16.4.2012.
3. These admitted facts would show that the Applicant is not diligent enough to pursue the proceedings by filing an Appeal

in time. Mere explanation that he was acting under the wrong advice of the Counsel would not suffice to conclude that the Applicant was bona-fide.

4. In the light of the lack of diligence on the part of the Applicant/Appellant we are unable to accept the explanation as there is no sufficient cause to condone delay. Hence, the application is dismissed. Consequently, the Appeal is also rejected.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated: 20th July, 2012

✓ ~~REPORTABLE/NON-REPORTABLE~~