

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

IA No.160 of 2012 in
DFR No. 610 of 2012

Dated: 10th September, 2012

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

In the matter of:

Federation of Karnataka Chambers of Commerce & Industry (FKCCI) ...Appellant (s)
Federation House, K.G. Road
Bangalore – 560 009

Versus

- 1. Bangalore Electricity Supply Company Limited ...Respondent (s)**
K.R. Circle
Bangalore – 560 001
- 2. Karnataka Electricity Regulatory Commission**
6th & 7th floor, Mahalaxmi Chambers
No.9/2, M.G. Road
Bangalore – 560 001

Counsel for the Appellant (s) : Mr. Rohit Rao N.
Mr. L. Roshmani,

Counsel for the Respondents (s):

ORDER

Federation of Karnataka Chambers of Commerce and Industry had filed two applications on 26.3.2012, namely IA No.159 of 2012 regarding exemption for depositing the court fee and IA No. 160 of 2012 regarding condonation of delay in filing the Appeal against the order passed by the Karnataka Electricity Regulatory Commission on 28.10.2011 regarding ARR and Retail Supply Tariff for the distribution licensee for the FY 2011-12. The distribution licensee and the State Commission are the Respondent nos. 1 and 2 respectively.

2. When the matter came up before this Tribunal for the first time on 27.4.2012, IA No.159 of 2012 was dismissed as withdrawn as the Tribunal did not find any ground for waiver of fee. Thereafter, the Appellant deposited the court fee and notice was issued to all

- Respondents in IA No.160 of 2012 for condonation of delay.
3. While considering the IA No. 160 of 2012 on 24.7.2012, this Tribunal felt that there was no proper explanation for condonation of delay in filing the Appeal against the order dated 28.10.2011. It was also noticed that before approaching this Tribunal the Appellant had filed an Application in the pending Writ Petition before the High Court of Karnataka for grant of relief in respect of waiver of court fee. Therefore, the Tribunal did not entertain the Appeal. Ld. Counsel for the Applicant also sought time to seek instructions from the client.
 4. On the next date of hearing on 13.8.2012, the Applicant submitted that an application had been

- moved before the Karnataka High Court to withdraw the application filed by them with regard to waiver of court fee. However, the Applicant wanted to get the order from High Court and sought adjournment, which was allowed.
5. On next date of hearing on 3.9.2012 also the Appellant/Applicant sought for some time.
 6. When the matter came up finally on 3.9.2012, it was informed by the learned counsel for the Applicant that the order from Karnataka High Court was awaited. However, he made submissions in IA No.160 of 2012 regarding condonation of delay.
 7. We notice that in IA No.160 of 2012, the Applicant had requested for condonation of delay of 71 days in filing the Appeal against the impugned order dated

- 28.10.2011. The Appellant was an objector before the State Commission and had filed detailed objections to the application of the distribution licensee for the ARR and Tariff for the FY 2011-12.
8. According to the Applicant, immediately on passing of the impugned order dated 28.10.2011 they applied for certified copy of the order and the same was given only on 1.12.2011. However, the Applicant along with another consumer filed a Writ Petition no. 5993 – 5994 of 2011 before the High Court of Karnataka, wherein the provision regarding levy of court fee for filing an Appeal before this Tribunal against the order of the State Commission was challenged. The Applicant also moved an application being IA no.1 of 2011 in the said Writ Petition seeking order for waiver of court fee in filing the instant Appeal. On 2.1.2012 the High Court passed an order that the

matter would be taken for hearing along with the main Writ Petition itself and the matter was notified for 24.1.2012 for final hearing. However, the matter was not listed/taken up for hearing.

9. Finally, in the first week of March, 2012, the Appellant decided that the Appeal against impugned order be filed before this Tribunal with an application for exemption for depositing the court fee. Accordingly, the Appeal was filed on 26.3.2012 along with IAs for condonation of delay and waiver of court fee.
10. We have heard the learned counsel for the Applicant.
11. We notice that the State Commission passed the impugned order regarding ARR and Retail Supply Tariff for the FY 2011-12 of the distribution licensee

on 28.10.2011. As the Applicant was an objector before the State Commission, the delay has to be reckoned from the date of order. Though the Appellant had filed application for condonation of delay for 71 days, we find that the delay from the date of order that is 28.10.2011 till the filing of Appeal on 26.3.2012 is about 104 days after deducting the period of 45 days allowed for filing the Appeal. We notice that instead of filing an Appeal immediately after passing of the impugned order by the State Commission, the Appellant approached High Court of Karnataka for waiver of fee and only after lapse of about 5 months, filed the Appeal along with application for waiver of court fee and condonation of delay before this Tribunal.

12. We find that the reason which has been given by the Applicant for the delay is the time taken in pursuing

- up the matter for waiver of court fee in the High Court.
13. Even after filing of the Appeal, the Appellant sought adjournments for getting order from the High Court of Karnataka. The IA for condonation of delay was finally heard on 3.9.2012.
 14. We notice that the impugned Tariff Order is for the FY 2011-12 and the said FY is already over. Subsequent to that, the State Commission has also passed Tariff Order for the FY 2012-12 which is currently in operation. We find that the Applicant has not been diligent through out. Instead of filing an Appeal against the impugned order immediately after passing of the impugned order the Appellant had filed an application before Karnataka High Court seeking directions for waiver of court fee and continued to

pursue the same even though this Tribunal is itself empowered to waive the court fee in deserving cases. In this case, we felt that there was no justification for the Applicant which is a Federation of Commerce and Industry for waiver or reduction of court fee.

15. Thus, the Applicant has not been diligent and the reasons for the delay do not show the sufficient cause. As indicated above the Applicant instead of filing the Appeal before the Tribunal continued to pursue the matter relating to waiver of court fee before the High Court. Even after filing the Appeal the Appellant sought adjournments. In the meantime, the State Commission passed Tariff Order for the subsequent year.

16. Therefore, we reject the IA no. 160 of 2012, due to lack of diligence and there being no proper explanation for the delay. Accordingly, the application is dismissed. Consequently the Appeal is also rejected.

17. Pronounced in the open court on this 10th day of September, 2012.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

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REPORTABLE/~~NON-REPORTABLE~~

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