

COURT – I
Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)

IA Nos. 349 & 350 of 2012 in
DFR No.1347 of 2012

Dated : 6th November, 2012

Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. V.J. Talwar, Technical Member

Central Railway Mumbai **... Appellant(s)**
Versus
Maharashtra State Electricity Distribution
Co. Ltd. & Anr. **....Respondent(s)**

Counsel for the Appellant(s) : Dr. Ashwani Bhardwaj

ORDER

This is an Application to condone the delay of 2180 days in filing the Appeal as against the main Order dated 16.05.2006. Apart from that, another application has been filed to condone the delay of 64 days in re-filing the Appeal.

We have heard the learned counsel for the Applicant/Appellant.

It is noticed that from the very beginning, there was consistent delay on the part of the Applicant/Appellant both in filing the Review Petition before the State Commission and also in filing the Appeal before this Tribunal as well as in re-filing the Appeal after curing the defects.

The main Order had been passed on 16.05.2006, but the Applicant/Appellant had chosen to file the Review before the State Commission only on 14.07.2010, i.e., after four years. The State Commission has rightly dismissed the said Review Petition on 28.10.2010 on the ground that the same was filed with huge delay, which was not explained properly, and also on the ground that the same was not maintainable as there was no error apparent on the face of the record.

Thereafter, the Applicant/Appellant filed an Appeal No. 16 of 2011 before this Tribunal as against the Review Order. However, the same had been withdrawn on 14.03.2011 on the ground that the Appeal against the Order passed in Review is not maintainable.

Even then, the Applicant/Appellant has not chosen to file the Appeal as against the main Order dated 16.05.2006 immediately after the withdrawal of the Appeal against the Review Order. On the contrary, the Applicant/Appellant filed the Appeal only on 27.07.2012, i.e., after one year, and the same was filed with some defects.

The Registry noticed the defects and directed the learned counsel for the Applicant/Appellant to cure those defects by sending a defect notice in the month of August 2012. Despite the

receipt of the notice, the defects in filing the Appeal were not cured within the stipulated time. But they re-filed Appeal only on 18.10.2012 along with an Application to condone the delay of 64 days in re-filing the Appeal.

Thus, on a perusal of the affidavit explaining the delay, it would indicate that there is consistent lack of diligence on the part of the Applicant/Appellant to approach the proper forum either by filing the Review Petition before the State Commission or by filing an Appeal before this Tribunal.

In view of the above, we find that there is no sufficient cause to condone the enormous delay of 2180 days in filing the Appeal as well as to condone the unexplained delay of 64 days in re-filing the Appeal.

Accordingly, both the Applications to condone the delay are dismissed. Consequently, the Appeal is also rejected.

(V.J. Talwar)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

ts/vs