

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

I.A. No.146 of 2012

&

I.A. No.147 of 2012

Dated: 01st May, 2012

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

HON'BLE MR. RAKESH NATH, TECHNICAL MEMBER

In the Matter of:

Tamil Nadu Electricity Board

**(Now, Tamil Nadu Generation and Distribution Corporation
Ltd)**

Rep. by its Chairman Cum Managing Director,

144, Anna Salai

Chennai-600 002

...Appellant/Applicant

Versus

1. M/s. MMS Steel & Power Pvt. Ltd.

**6-3-1109/A/1-3rd Floor,
Navabharat Chambers,**

Somajguda

Raj Bhavan Road

Hyderabad-500 082.

**2. Tamil Nadu Electricity Regulatory Commission at
Chennai.**

TIDCO Office Building

No.19A, Rukmini Lashmipathy Salai

Egmore

Chennai-600 008
Rep. by its Secretary.

...Respondent(s)

Counsel for the Appellant(s) : Mr. S.Vallinagayam

Counsel for the Respondent(s): -

ORDER

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

1. Both these Applications have been filed by the Applicant to condone the delay of 360 days in filing the Appeal and to condone the delay of 83 days in re-filing the said Appeal.
2. Tamil Nadu Electricity Board is the Applicant/Appellant.
3. M/s MMS Steel and Power Private Ltd the 1st Respondent is a captive generating plant.
4. The Applicant has been supplied power by the 1st Respondent M/s MMS Steel and Power Private Ltd. Since payment of charges had not been made by the Appellant in time, the 1st Respondent filed a petition before the State Commission for a direction to the Applicant/Appellant for

payment of the suitable charges at the minimum rate of Rs.6.70/- per unit amounting to Rs.4,75,90,341/- for the power supplied by the Respondent-1 (M/s MMS Steel and Power Private Ltd) to the Appellant/Applicant between the period 01.10.2008 and 31.01.2009.

5. After hearing the parties, the State Commission passed the impugned order dated 07.9.2010 directing the Appellant/Applicant to make the payment at the rate of Rs.6.70 per kWh for the purchase of energy from M/s MMS Steel and Power Private Ltd(R-1) during the period between 01.10.2008 and 31.1.2009.
6. As against the impugned order dated 07.9.2010 the Appellant has filed the Appeal before this Tribunal on 30.11.2011. Since the Appeal was not filed within 45 days and there was some delay, the Applicant along with the Appeal filed an Application in I.A. No.147/2012 to condone the delay of 360 days in filing the Appeal.
7. The Registry after noticing some defects issued defect notice dated 16.12.2011 to the Appellant/Applicant and to re-file the same after rectification within 7 days. The Applicant after curing the defects refilled the Appeal belatedly on 16.4.2012.

8. Thus there is a delay of 83 days in re-filing the Appeal also. Hence, the Applicant filed an application in I.A. No.146 of 2012 to condone the delay in re-filing the Appeal.
9. Through these two applications namely I.A. No.147 of 2012 and I.A.No.146 of 2012 the Applicant is seeking for the condonation of 360 days in filing the Appeal and the delay of 83 days in re-filing the Appeal respectively.
10. The Learned Counsel for the Applicant/Appellant by referring to the circumstances for the delay including the procedural red-tape in the process of decision making, has prayed this Tribunal to condone the delay of 360 days, in filing the Appeal. He also made submission giving explanation with reference to the delay of 83 days in re-filing the Appeal stating that the file in the Advocate's office was misplaced and could not be traced in time. He also cited the judgment of Hon'ble Supreme Court in Civil Appeal Nos. 9726-9727 of 2010 decided on 12th November,2010. In this judgment various other judgments of Hon'ble Supreme Court were referred to in order to show that in the matter of condonation of delay, liberal approach should be adopted and the adoption of strict standard of proof in the Government cases is not always

necessary and certain amount of latitude to the Government is permissible.

11. Let us first take the application filed for condoning the delay of 360 days in filing the Appeal. As admitted by the Applicant, the impugned order was passed on 07.9.2010. Legal opinion was obtained on 15.9.2010. Legal cell also gave the opinion on 05.10.2010 for implementation of the impugned order dated 07.9.2010. Thus, initially, the Applicant decided not to file the Appeal. Accordingly, the approval of Chairman of the Electricity Board was obtained on 23.11.2010 for placing the proposal before the Board for implementation of the order. Then the matter was placed before the Board on 7.12.2010 for approval but the Board sought some data. The matter was again placed before the Board in the meeting held on 29.1.2011 along with the desired data but the Board deferred the decision. Thereafter, the matter was put-up in several Board meetings on 7.2.2011, 24.3.2011 and 4.5.2011 but the decision was deferred.
12. Thus, even though the approval was obtained from the concerned officials as early as 23.11.2010 for implementation, the Board went on deferring the decision. Since one of the parties filed contempt petition for non-implementation on 30.3.2011 before the State Commission the

Appellant/Applicant filed a clarifactory petition before the State Commission on 13.6.2011. This was disposed on 17.6.2011.

13. On noticing that the Board was not sincere enough to implement the impugned order dated 07.9.2010 M/s MMS Steel and Power Private Ltd(R-1) filed a petition under Section 142 before the State Commission on 26.7.2011. The State Commission admitted this petition on 12.9.2011.
14. After having noticed the conduct of the Board of non compliance, the State Commission even at the time of the admission of the said petition issued direction to the Applicant Board to comply with the impugned order dated 07.9.2010 by making payment within 3 months to M/s MMS Steel and Power Private Limited. Then also, the decision to implement the order was deferred by the decision of the Board.
15. Ultimately, on 03.10.2011 on the advice of the Senior lawyer the Board decided to file an Appeal. Accordingly, the Appeal was prepared and filed on 30.11.2011. This is the explanation offered for the delay of 360 days in filing the Appeal.
16. The particulars which have been referred to above, given in the application to condone the delay would reveal that the Chairman approved the proposal for implementation on

23.11.2011 itself and then the Applicant placed the proposal before the Board. However, the Board kept on deferring the implementation of the impugned order. Thus, it is clear that the Appellant neither took steps to implement the order nor made arrangements to file the Appeal before this Tribunal.

17. M/s MMS Steel and Power Private Ltd, the 1st Respondent having waited for about 10 months and having noticed that neither Appeal was filed nor implementation process was started, filed contempt petition under section 142 on 26.07.2011 before the State Commission. On entertaining this petition, the State Commission immediately passed the interim order directing the Applicant Board to make payment to the 1st Respondent within 3 months. This order was passed on 12.9.2011. Even thereafter, no steps have been taken to implement the order as per the order dated 7.9.2010 or to make payment as per the order dated 12.9.2011. On the other hand, the Appellant/Applicant after a long delay decided to file an Appeal after getting the fresh legal advice from the Senior Counsel. Thereupon they filed this Appeal on 30.11.2011 before this Tribunal.
18. There are three aspects noticed from the above facts:-
 - i) Initially, the Board took decision not to file an Appeal on the basis of the legal opinion given by the Standing

Counsel on 15.9.2010 and legal Cell on 05.10.2010 and consequently decided to implement the impugned order. This was approved by the Chairman of the Board for placing before the Board. Till then they have decided not to file an Appeal.

- ii) In the meantime, one of the parties aggrieved over the non-implementation of the order filed a contempt petition before State Commission. Then the Board woke up from the slumber and filed petition on 13.6.2011 seeking clarification of the order dated 7.9.2010. This petition was dismissed by the State Commission on 17.6.2011. There is no reason as to why the Applicant Board without taking steps to file the Appeal as against the impugned order dated 07.9.2010 in time, chose to file a petition for clarification before the State Commission which was ultimately dismissed. This may be due to gain some time.
- iii) Since the Appeal was not filed in time and Board did not start the process of implementation for a long time, the 1st Respondent (M/s MMS Steel and Power Private Ltd) filed a petition under section 142 of the Act,2003 on 26.7.2011. The State Commission directed the Applicant Board on 12.9.2011 to make the payment

within 3 months. The Applicant did not take steps to comply with this order also. Thereupon, after nearly 2 ½ months, this Appeal had been filed on 30.11.2011 along with an Application to condone the delay of 360 days in filing the Appeal.

19. These factors would show that the Applicant Board neither took steps to file an Appeal immediately nor took efforts to implement the impugned order even though the legal opinion as well as approval was obtained for implementation. This shows that there has been the continued negligence on the part of the Appellant Board. Furthermore, the specific direction had been issued by the State Commission on 12.9.2011 to make the payment to the 1st Respondent (M/s MMS Steel and Power Private Ltd) in compliance with the impugned order. Even this order was not given due respect by the Applicant Board.

20. Now, the only ground taken in the application to condone the huge delay of 360 days is that the time was taken during the decision making process by the officers of the Appellant/Applicant Board and the process of pushing files from table to table and the procedural red-tape in the process has resulted in the delay. This vague reason is not only unsatisfactory but also is not in consonance with the

chronological events referred to in the Application to condone the delay.

21. Of course, the Hon'ble Supreme Court says in the decision cited by the Learned Counsel for the Appellant/Applicant that the Courts generally should adopt liberal approach in condonation of delay but the said approach should be adopted only when there is no negligence and inaction on the part of the Applicant while considering the application to condone the delay.
22. In this context, we should bear in mind two important aspects. (1) The first aspect is that expiration of the period of limitation prescribed for filing an Appeal gives rise to a right in favour of the opposite party who obtained the favourable orders which is binding between the parties. This legal right which has accrued to the opposite party by the lapse of time should not be lightly disturbed. (2) The next aspect is that only when sufficient cause for excusing delay is shown, then the Courts have to exercise discretion to advance substantial justice. So, these two aspects would make it clear that while considering the matter, the Courts should not lose sight of the fact that due to the failure in taking steps to file an Appeal within the time frame prescribed, a valuable right would accrue to the other party which should not be lightly defeated

by condoning delay in a routine-like manner that too in the absence of the sufficient cause.

23. The decision cited by the Learned Counsel for the Appellant though would observe that certain amount of latitude is permissible in Government cases, the Supreme Court specifically held that when the conduct of Applicant/Appellant indicates that there is inaction or negligence, then the delay should not be condoned.
24. In this case, as indicated above, the Applicant, even though took the decision to implement the impugned order, had not taken any steps to implement the order but on the other hand it had made the 1st Respondent to wait for long time and had driven the opposite party to approach the State Commission to file a petition under section 142 complaining about non compliance against the Appellant Board and praying for taking action for the said inaction.
25. As mentioned earlier, in spite of the fact that the State Commission has passed interim order under section 142 directing the Applicant to make the payment, the Applicant did not care to obey the said order. Till now no payment has been made. This is unfortunate.

26. Thus, there has been a continued lack of diligence and negligence on the part of the Appellant either in filing the Appeal in time or in implementing the impugned order with promptness.
27. In view of the above, we do not find any reason to condone the delay of 360 days especially when the explanation given in the petition to condone the delay does not show sufficient cause, but it reflects inaction and lack of diligence on the part of the Applicant/Appellant. Therefore, the petition in I.A. No.147 of 2012 to condone the delay in filing the Appeal is dismissed.
28. The next petition is to condone the delay of 83 days in re-filing in I.A.No. 146 of 2012. In this matter Appeal was filed on 30.11.2011. The Registry sent a defect notice on 16.12.2011 giving 7 days time to cure the defects and re-file the Appeal. But the Appeal was re-filed only on 16.4.2012. Thus there is a delay of 83 days. The only explanation offered for the delay is that the file could not be traced as it is misplaced in the office of the Appellant's Counsel. This indicates that there is lack of promptness and diligence on the part of the Appellant's Counsel also in not taking sufficient interest in re-

filing the Appeal in time. Thus, there is no sufficient cause shown for this delay as well. Hence, this petition also is liable to be dismissed.

29. Thus both applications are dismissed. Consequently, the Appeal is rejected.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated: 01st May, 2012

✓ ~~REPORTABLE/NON-REPORTABLE~~