

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
NEW DELHI
(APPELLATE JURISDICTION)**

**IA No. 1717 of 2019 in
DFR No. 2291 of 2019 & IA No. 1719 of 2019**

Dated: 12th April, 2022

**Present: Hon'ble Mr. Justice R.K. Gauba, Officiating Chairperson
Hon'ble Mr. Sandesh Kumar Sharma, Technical Member**

In the matter of:

- (1) Southern Power Distribution Company of Telangana Ltd.
Rep. by the Chairman and Managing Director,
Corporate Office, Mint Compound,
Hyderabad, Telangana – 500063.
- (2) Northern Power Distribution Company of Telangana Ltd.
Rep. by the Chairman and Managing Director,
Corporate Office, Vidyuth Bhavan,
Hanamkonda, Warangal, Telangana – 506001.

.... Appellant(s)

Vs.

- (1) Central Electricity Regulatory Commission,
3rd & 4th Floor, Chanderlok Building, 36, Janpath,
Rep. by Chairman/Managing Director,
New Delhi – 110001.
- (2) M/s. ACME Mahaboobnagar Solar Energy Private Ltd.,
Plot No. 152, Sector – 44, Gurugram, Haryana – 122002,
Rep. by Chairman/Managing Director
- (3) M/s. ACME Yamunanagar Solar Power Private Ltd.,
Plot No. 152, Sector 44, Gurugram, Haryana – 122002,
Rep. by Chairman/Managing Director.
- (4) M/s. Azure Power Thirty Seven Ltd.,
Asset No. 301–4, World Mark 3, Aero City,
New Delhi - 110017.

- (5) The Chairman/Managing Director,
NTPC Ltd.,
Core – 7, SCOPE Complex,
7, Institutional Area,
Lodhi Road, New Delhi - 110003.
- (6) The Chairman/Managing Director,
NTPC Vidyut Vyapar Nigam Ltd.,
Core – 7, SCOPE Complex,
7, Institutional Area, Lodhi Road,
New Delhi – 110003.

...Respondents

Counsel for the Appellant (s) : Mr. Harsha Peechara
Mr. Ashish Tiwari
Mr. Deeptiman Acharya
Ms. Kritika Narayan

Counsel for the Respondent (s) : Mr. Sajan Poovayya, Sr. Adv.
Mr. Shreshth Sharma
Ms. Nehul Sharma
Ms. Raksha
Mr. Hemant Sahai
Mr. Apoorva Misra
Ms. Puja Priyadarshini
Mr. Nitish Gupta
Mr. Aditya K. Singh
Ms. Shefali
Ms. Soumya Prakash
Ms. Anukriti Jain
Ms. Jyotshna Khatri
Ms. Parichita Chowdhury
Mr. Samarth Kashyap
Mr. Nived Veerapaneni
Mr. Pratibhanu for R-2 & R-3

Mr. Aniket Prasoon
Ms. Priya Dhankhar
Ms. Akanksha Tanvi
Mr. Md. Aman Sheikh
Mr. Rishabh Bhardwaj for R-4

Mr. Sri Venkatesh

Mr. Jatin Ghuliani
Ms. Isnain Muzamil
Mr. Nishtha Kumar
Mr. Somesh Srivastava
Mr. Vikas Maini
Mr. Suhael Buttan
Mr. Ashutosh Kumar Srivastava M
Ms. S. Lasya Pamidi for R-5

ORDER

PER HON'BLE MR. SANDESH KUMAR SHARMA, TECHNICAL MEMBER

IA NO. 1717 OF 2019

[Appl. for Condonation of Delay in Filing the Appeal]

1. The present main appeal i.e. DFR No. 2291 of 2019 ("main appeal") has been filed by M/s. Southern Power Distribution Company of Telangana Ltd., the first Appellant (in short "Appellant" or "TSPDC" or "Southern Discom") against the common order dated 09.10.2018 ("Impugned Order") passed by Central Electricity Regulatory Commission (CERC) in Petition Nos. 232/MP/2017, 233/MP/2017, 13/MP/2018. Along with the main appeal, the Appellant also filed the IA no. 1717 of 2019 ("IA 1717") for condonation of delay and is under objection. The Respondents have objected to the reasons cited by the Appellant for seeking the condonation of the delay.
2. The Appellants namely Southern Power Distribution Company Ltd and Northern Power Distribution Company Ltd are the Distribution Licensees in the State of Telangana.
3. The first Respondent is the Central Electricity Regulatory Commission (in short "CERC" or "Central Commission") constituted under section 76 of the Electricity Act, 2003 (the "Act 2003").
4. Respondent no 2 to 4 are the Solar Power project Developers ("SPDs"), Respondent no. 5 ("NTPC") is a government undertaking engaged in the business of generation, Respondent no. 6 ("NVVN") is a subsidiary

company of Respondent no. 5 engaged in the business of trading of electricity.

5. The present IA 1717 under objection has been filed by the Appellants along with the main appeal having grievances against the Impugned Order wherein CERC rejected the submissions of the Appellant herein on the maintainability of the petition and held that it has jurisdiction to adjudicate in the matter of claim made by the Respondents (SPDs) herein against NTPC, the Implementation Agency, under a Power Purchase Agreement (PPA) in which NTPC has a back to back Power Sale Agreement (PSA) with Telangana State Power Distribution Licensees (TSDISCOMs) for sale of Solar Power bundled with Thermal Power from various NTPC Thermal Power Stations in the ratio 2:1 on MW basis.

6. The Appellants vide the present application: IA 1717, seek the following interim reliefs:

- (a) Permission to condone the delay of 292 days in filing the present appeal.
- (b) Any other relief as this Tribunal may deem fit in the interest of justice.

7. The IA 1717 was taken up for hearing on 15.02.2020 whereby this Tribunal, taking serious note of the seemingly false submissions made in the IA 1717, directed the Appellants to ensure the presence of the officer responsible for verifying the pleadings in the application and the senior most officer approving the contents of the application. The order dated 15.02.2022 is quoted herein for reference:

“IA NO. 1717 OF 2019

[Application for condonation of delay in filing the Appeal]

The application at hand was filed in September 2019 alongwith the main appeal and has remained pending all along, substantially also

for the reason that the appellants would not complete the pleadings, though the time was extended more than once.

When the matter was called out there was no appearance on behalf of the appellants and so it was passed over. When it was called out again, Ms. Kritika Narayan, advocate, appeared and submitted that the main counsel Mr. Harsha Peechara was preoccupied before the division bench of High Court. When she was reminded that there is another counsel Mr. Ashish Tiwari, advocate, who has also signed Vakalatnama, she submitted the said other counsel is busy elsewhere. There being no good reason to adjourn, we asked her to arrange the presence of the counsel. Midway the hearing, a proxy counsel Mr. Deeptiman Acharya has joined the proceedings. He submits he has been instructed by his senior to appear and assist.

We have heard the learned counsel for the respondents for some time. The delay computed is of 292 days in filing the appeal on 11.09.2019 against the judgment rendered by the Central Commission on 09.10.2018. During this period one of the respondents (NTPC) has abided by the directions in the judgment of CERC and awaits discharge of its responsibility by the appellants on part of which there have been defaults on the plea that the appeal is pending.

The delay is sought to be explained in the application moved seeking condonation (IA 1717/2019) primarily on the ground that the appellant came to be aware of the judgment of the Central Commission only on 05.02.2019, whereafter time was taken in seeking approvals of the appropriate authorities firstly to file the appeal and then to engage counsel and finally to give approval for the appeal that had been drafted by the counsel who could be contacted only after the court vacations were over. The learned counsel for the respondents pointed out from the material filed with the reply of second, third and fourth respondents that the judgment was not only uploaded by the Central Commission on the website on 10.10.2018 but also its copies were formally communicated immediately, this being followed by certain exchange of communications on 22.11.2018, 24.11.2018 and 17.12.2018, the last said communication having emanated from the office of Telangana State Power Coordination Committee, of which the appellant is a constituent. The communication dated 17.12.2018

seems to show that the appellants had much earlier addressed a letter indicating their decision to file an appeal against the judgment of CERC, similar impression having been communicated formally even to NTPC. In these circumstances, prima facie, the stand taken in the application for condonation of delay that the appellant came to acquire knowledge as to the decision of CERC dated 09.10.2018 only on 05.02.2019 seems to be false.

We cannot take the above fact situation lightly, also against the backdrop of the reluctance shown by the counsel to appear and assist. There is no affidavit filed in support of the application. We, thus, direct that the officer who verified the pleadings in the application at hand seeking condonation of delay and the senior most functionary of the appellants who had taken the final decision to approve pleadings as drafted, assumably upon instructions to the counsel, shall remain present in person before us on the next date of hearing, having filed their personal affidavits in advance explaining the conduct seen in above light.

We must also add that we shall expect that the counsel for the appellants to appears, duly briefed, ready to assist on the first call of the matter hereafter.”

8. The subject application: IA 1717 was taken up for final hearing on 08.04.2022 and after hearing the Learned Counsels on all sides, the Order was reserved.

9. The Appellants through their learned counsel, Mr. Harsha Peechara submitted that, in compliance to the directions issued by this Hon'ble Tribunal vide its order dated 15.02.2022 in I.A No. 1717 of 2019 in DFR No. 2291 of 2019, the affidavit has been filed and submitted apologies for the errors that were submitted in the present Application.

10. Further, submitted that the errors were inadvertent and not done with intention citing that the Appellants were in the process of filing another appeal: Appeal no. 109 of 2020 against the Central Commission order dated 05.02.2019 in petition no. 187/MP/2018 on similar issues and the date 05.02.2019 was erroneously taken in the subject Appeal before this

Tribunal. And, as such, in the process of drafting and filing these appeals, there was miscommunication with the counsel and it was erroneously instructed to the Counsels that the Appellants were not aware of the orders of the Hon'ble Central Commission issued in respect of the Respondents. The primary reason for the delay which cited as being unaware of the impugned order was not meant for the present appeal.

11. For the delay in filing the appeal, the Appellants submitted that upon receipt of the impugned CERC order dated 09.10.2018 with subsequent corrigendum dated 05.11.2018, they wrote to NTPC (which is the intermediary between DISCOMs and the Solar Power Developers) for preferring an Appeal before APTEL and a good amount of time was lost in the said process. However, upon noticing the reluctance of NTPC to file the Appeal, the administrative process on behalf of the Appellant was initiated for getting the approval towards filing the Appeal against the CERC order. The Appellants being a government organization required various levels of approval in order to take the decision to file the present appeal. Also, the Appellants are not geographically co-located, taking a call for filing of an appeal and the first round of administrative approval took some time. The non-availability of counsel during summer vacations was also pleaded by the Appellants.

12. The above reasons placed before us, for the errors committed and inordinate delay in filing the Appeal, cannot be relied upon and are unacceptable from such a high government office. We decline to accept such a vague submission made by the Appellant. The revised submissions made by the Appellant are contrary to what were submitted earlier, it is only after the Respondents raised their objections and serious observations were made by this Tribunal that the reasons for condonation of delay were revisited and revised.

13. For the sake of brevity, Mr. Sajan Poovayya, senior advocate, submitted a brief list of dates along with the short summary of Respondents response.

S. No.	Date	Particular
1.	09.10.2018	The Ld. CERC passed the impugned Order.
2.	10.10.2018	The impugned Order was uploaded on the website of the Ld. CERC and automated email was sent to the Appellants.
3.	05.11.2018	The Ld. CERC issued the Corrigendum to impugned Order.
4.	22.11.2018	NTPC by way of its letters informed the Appellants of the claims arising from the impugned order, coupled with invoices furnished by the Answering Respondents.
5.	17.12.2018	Telangana State Power Co-ordination Committee by way of its letter to the Appellants and NTPC, clearly explained and discussed the future course of action and clearly records Appellants request to NTPC to file an appeal.
5.	05.02.2019	The date on which the Appellants allegedly became aware of the impugned Order.
6.	11.09.2019	The present Appeal was filed before the Hon'ble Tribunal along with I.A No. 1717 of 2019 seeking condonation of delay in filing the Appeal
7.	07.02.2020	Reply to I.A No. 1717 of 2019 was filed on behalf of Answering Respondents.
8.	15.02.2022	The I.A No. 1717 of 2019 was taken up for hearing before the Hon'ble Tribunal.

9.	03.03.2022	Affidavits filed on behalf of Appellants in terms of directions passed by the Hon'ble Tribunal in Order dated 15.02.2022
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14. Further, submitted that in response to the appeal, Respondents filed the reply dated 07.02.2020 objecting to contentions as raised by the Appellants as being factually incorrect and misleading. The Affidavit dated 03.03.2022 filed by the Appellants fails to explain the reasons as sought by this Tribunal in its Order dated 15.02.2022. Further, submitted that the reasons cited by the Appellants regarding delay due to intra-departmental approvals has already been considered by this Tribunal vide order dated 14.12.2018 in PEDDA vs. PSERC: Case in IA No.1085 of 2018 in DFR No.2307 of 2018. Relevant extract of the judgment is quoted here:

“25. It is pertinent to note as to how the concerned officer, in spite of having all the infrastructure at his disposal, that too, in digital era of whatsapp, e-mail, messages and all scientific and technological improvements, expert assistance, well equipped learned officials working in the Department is not forthcoming in their application, additional affidavit nor written submissions. Therefore, we hold that the statement made in the Application / Additional Affidavit is not applicable to the facts and circumstances of the case in hand and further it would not give any assistance to the learned counsel appearing for the Appellant/Applicant to substantiate the statement made in the application for condoning the delay in filing. Therefore, we do not find any force in the submissions of the learned counsel appearing for the Appellant/Applicant to condone the delay in filing the Appeal.

....

28. It is not in dispute that the person(s) concerned were well aware or conversant with the issue of the period of limitation prescribed for taking the steps by way of filing an Appeal before this Tribunal. They cannot claim that they have a

separate period of limitation when the Department/Organisation was possessed with competent persons familiar with court proceedings, and also have got well qualified legal assistance. In absence of reasonable explanation, we are at a loss to understand as to why the delay has to be condoned mechanically merely because the Government or a wing of the Government is a party before us. Though we are conscious of the fact that in a matter of condonation of delay, a liberal approach has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances of the case in hand, the Appellant/Applicant organization cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technology being used and available. The law of limitation undoubtedly binds everybody including Government Departments.

29. We thus, hold that it is a right time to inform all the Government bodies, local authorities, their agencies and instrumentalities thereof, that unless they have reasonable and acceptable explanation for delay and there were proper efforts and if there is no plea except to say that the file was kept pending for several months/years, the statement of considerable degree of procedural red-tape in the process. The Government Departments are under special obligation to ensure that they perform their duties with diligence and commitment. The condonation of delay is an exception and should not be used as an anticipated benefit for the Government Department. The law shelters everyone under the same light and should not swirl for the benefit of a few.”

(Emphasis supplied)

15. Hon'ble Supreme Court of India in State of Madhya Pradesh & Anr. V. Chaitram Maywade (2020) 10 SCC 667 has held that:

“4. We have also expressed our concern that these kinds of the cases are only “certificate cases” to obtain a certificate of

dismissal from the Supreme Court to put a quietus to the issue. The object is to save the skin of officers who may be in default. We have also recorded the irony of the situation where no action is taken against the officers who sit on these files and do nothing.

5. Looking to the period of delay and the casual manner in which the application has been worded, the wastage of judicial time involved, we impose cost on the petitioner/State of Rs.35,000/- to be deposited with the Mediation and Conciliation Project Committee. The amount be deposited within four weeks. The amount be recovered from the officer(s) responsible for the delay in filing and sitting on the files and certificate of recovery of the said amount be also filed in this Court within the said period of time. We have put to Deputy Advocate General to caution that for any successive matters of this kind the cost will keep on going up.

6. The Special Leave Petition is dismissed as time barred in terms aforesaid.”

16. Our reliance was also placed in State of Madhya Pradesh & Ors. V. Bherulal (2020) 10 SCC 654:

“3. No doubt, some leeway is given for the Government inefficiencies but the sad part is that the authorities keep on relying on judicial pronouncements for a period of time when technology had not advanced and a greater leeway was given to the Government (Collector, Land Acquisition, Anantnag & Anr. vs. Mst. Katiji & Ors. (1987) 2 SCC 107). This position is more than elucidated by the judgment of this Court in Office of the Chief Post Master General & Ors. v. Living Media India Ltd. & Anr. (2012) 3 SCC 563 wherein the Court observed as under (Postmaster General case, SCC pp. 573-74, paras 27-30)

...

Eight years hence the judgment is still unheeded!

....

5. A preposterous proposition is sought to be propounded that if there is some merit in the case, the period of delay is to be given a go-by. If a case is good on merits, it will succeed in any case. It

is really a bar of limitation which can even shut out good cases. This does not, of course, take away the jurisdiction of the Court in an appropriate case to condone the delay.

6. We are also of the view that the aforesaid approach is being adopted in what we have categorized earlier as “certificate cases”. The object appears to be to obtain a certificate of dismissal from the Supreme Court to put a quietus to the issue and thus, say that nothing could be done because the highest Court has dismissed the appeal. It is to complete this formality and save the skin of officers who may be at default that such a process is followed. We have on earlier occasions also strongly deprecated such a practice and process. There seems to be no improvement. The purpose of coming to this Court is not to obtain such certificates and if the Government suffers losses, it is time when the concerned officer responsible for the same bears the consequences. The irony is that in none of the cases any action is taken against the officers, who sit on the files and do nothing. It is presumed that this Court will condone the delay and even in making submissions, straight away counsels appear to address on merits without referring even to the aspect of limitation as happened in this case till we pointed out to the counsel that he must first address us on the question of limitation.

7. We are thus, constrained to send a signal and we propose to do in all matters today, where there are such inordinate delays that the Government or State authorities coming before us must pay for wastage of judicial time which has its own value. Such costs can be recovered from the officers responsible.

8. Looking to the period of delay and the casual manner in which the application has been worded, we consider appropriate to impose costs on the petitioner State of Rs.25,000/- (Rupees twenty-five thousand) to be deposited with the Mediation and Conciliation Project Committee. The amount be deposited in four weeks. The amount be recovered from the officers responsible for the delay in filing the special leave petition and a certificate of

recovery of the said amount be also filed in this Court within the said period of time.

9. The special leave petition is dismissed as time barred in terms aforesaid.”

(Emphasis supplied)

17. From the cited judgments, it is amply clear that the reasons as placed before us by the Appellants for the errors committed and the delay in filing the subject appeal are equivocal, misleading and cannot be relied upon. It is a settled principle of law that each day of delay has to be explained with cogent reasons. However, the Appellant failed to bring the specific delays and the reasons for the delays including the officers responsible for it. We, thus, decline to accept the same. At this stage, even tending to impose cost, confined to do so.

18. The Appellants in IA 1717 have submitted that:

“That the Appellant found out about the impugned order only on 05.02.2019. Therefore, after becoming aware of the impugned order passed by the Central Commission, the Appellant, being a Government organization, required various levels of approval in order to take the decision to file present appeal. It is submitted that immediately after the Appellant became aware of the impugned order, same was processed on the official files. After, the approval of the competent authority, a decision was taken to engage the counsel in Delhi to file the present appeal. However, due to ongoing vacations and non-availability of the counsel, the Appellant was compelled to wait till reopening of courts. The Appellant once again approached its counsel after the vacation i.e. in the first week of July 2019 and provided all the necessary papers as required to draft and file the present appeal.”

19. However, on being asked to submit the details with cause of delay with reference to specific time taken at each level of decision, submitted that:

“Further, the appellants initially upon receipt of the impugned CERC order dated 09.10.2018 with subsequent corrigendum dated 05.11.2018 wrote to NTPC (which is the intermediary between DISCOMs and the Solar Power Developers) for preferring an Appeal before APTEL and a good amount of time was lost in the said process. However, upon noticing the reluctance of NTPC to file the Appeal, the administrative process on behalf of the Appellant was initiated for getting the approval towards filing the Appeal against the CERC order. The Appellants being a government organization required various levels of approval in order to take the decision to file the present appeal.”

20. From the above, it may be seen that, the Appellants have not only revised their reasons but also changed and contradicted the stand taken earlier, however, it is only when they are opposed and exposed by the precise facts put up by the Respondents, still failed to submit reasons convincing. Their reply only added to the casual approach and inattentive behaviour of the concern officers of the Discoms.

21. The two replies submitted by the Appellants have not indicated the specific reasons with dates and days for the delay at every stage, and as such cannot be accepted.

22. Considering the fact that Appellants have failed to submit satisfactory and convincing explanation for the delay except some vague reasons, the Application, being IA 1717 of 2019, filed by the Appellants for the condonation of delay, has no merit and accordingly, dismissed.

23. In view of the above, the subject appeal, DFR 2291 of 2019, being time barred, cannot be entertained and is disposed of accordingly.

Pronounced in the Virtual Court on this 12th Day of April, 2022.

(Sandesh Kumar Sharma)
Technical Member

(Justice R.K. Gauba)
Officiating Chairperson

REPORTABLE / ~~NON-REPORTABLE~~

pr/mkj