

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 36/RP/2017

alongwith

I.A. No. 64/IA/2017

Coram:

Shri A.S. Bakshi, Member

Dr. M.K. Iyer, Member

Date of Order : 10.04.2018

In the matter of:

Petition for review and modification of the order dated 21.3.2016 in Petition No. 142/TT/2014 under section 94(1)(f) of the Electricity Act, 2003

And in the matter of:

Power Grid Corporation of India Limited

...

Petitioner

Vs

1. Madhya Pradesh Power Management Company Limited
Shakti Bhawan, Rampur, Vidyutnagar,
Jabalpur- 482008
2. Maharashtra State Electricity Distribution Corporation Limited
Prakashgad, 4th Floor
Andheri (East), Mumbai- 400052
3. Gujarat Urja Vikas Nigam Limited
Sardar Patel Vidyut Bhawan,
Race Course Road
Vadodara- 390007
4. Electricity Department, Government of Goa,
Vidyut Bhawan, Panaji,
Near Mandvi Hotel, Goa- 403001



5. Electricity Department,
Administration of Daman & Diu,
Daman- 396210
6. Electricity Department,
Administration of Dadra Nagar
Haveli U.T., Silvassa- 396230
7. Chhattisgarh State Electricity Board,
P.O. Sunder Nagar, Dangania,
Raipur Chhatisgaarh- 492013
8. Madhya Pradesh Audyogik Kendra Vikas Nigam (Indore) Limited
3/54. Press Complex,
Agra-Bombay Road,
Indore- 452008

.....Respondents

For petitioner: Shri S.B. Upadhyay, Senior Advocate, PGCIL
Shri Hemant Singh, Advocate, PGCIL
Ms. Ankita Batra, Advocate, PGCIL
Shri S.S. Raju, PGCIL
Shri S.K. Venkatesh, PGCIL
Shri Vivek Kumar Singh, PGCIL
Shri Aryaman Saxena, PGCIL
Shri Rakesh Prasad, PGCIL
Shri B. Dash, PGCIL
Shri A. Choudhary, PGCIL

For respondents: None

ORDER

Power Grid Corporation of India (PGCIL) has filed Petition No.36/RP/2017 seeking review and modification of order dated 21.3.2016 in Petition No. 142/TT/2014.

2. In Petition No. 142/TT/2014, the tariff for 2014-19 period was allowed for Asset-I consisting of extension of bays at 765/400 kV Indore Sub-station including switchable line reactor at Indore and Asset-II consisting of 765 kV Indore-Vadodara Transmission Line bypassing Vadodara pooling Sub-station under interim contingency scheme under



IPP Projects in MP and Chhattisgarh. There was time over-run of 155 days and 121 days in COD of Assets-I and Asset-II respectively. The time over-run of 121 days in COD of Asset II was condoned. In case of Asset I, time over-run of 62 days out of 155 days was not condoned in order dated 21.3.2016. The relevant portion of the said order is as under:-

“13.....The petitioner has not submitted any justification for delay in filing of the application for forest clearances. Generally it is observed that a period of 3 months (90 to 92 days) is sufficient for detailed survey from the date of I.A, even if this is taken into account there is still a delay of 2 months (60 to 61 days) in the instant case. In view of the above, out of total time over-run of 155 days, 62 days is not condoned for Asset-I.”

3. The Review Petitioner has submitted that the Commission disallowed part of the time over-run on the premise that there was delay on the part of the Review Petitioner in approaching the authorities for forest clearance. The Review Petitioner has submitted that it made the application to DFO on 16.1.2012 which was followed by similar letters to Deputy Conservator of Forest on 2.2.2012, 25.2.2012, 28.2.2012 and 2.3.2012. The Conservator of Forest accorded the permission for survey etc. on 3.3.2012. The Review Petitioner has submitted that it made the application to forest authorities in time and if the date of the first application is taken as 16.1.2012, there is no delay on the part of the Review Petitioner and hence, the Review Petitioner is entitled for condonation of 62 days and consequently for allowance of the IDC and IDEC for the said period. The Review Petitioner has submitted that the Commission has considered the letter dated 28.3.2012 as the date of application to the forest authorities whereas the said letter was written to the Superintendent, Kharmour Wild Life Sanctuary which was much after the first letter to the forest authorities made on 16.1.2012. The Review Petitioner has submitted that it has a meritorious case and if this mistake is not corrected, it would



amount to defeating the the interest of justice and the public interest.

4. The Review Petitioner has also filed an Interlocutory Application No.64/IA/2017 for condonation of the delay of 425 days in filing the instant review petition. As regards the reasons for delay, the Review Petitioner has submitted that it is practically difficult to prefer a review immediately amidst several pending petitions and ongoing litigations. The Review Petitioner has submitted that during the year 2016-17, it filed 55 tariff petitions, 25 true-up petitions, 39 review petitions and 9 Miscellaneous Petitions. Further, 132 orders in case of new assets and 163 orders in true-up petitions were issued by the Commission during the said period. The Review Petitioner has submitted that it has to attend to several pending cases before the Appellate Tribunal for Electricity, High Courts and the Supreme Court, besides attending to 411 hearings before the Commission. The Review Petitioner has submitted that it also has to perform the functions of the CTU. The Review Petitioner has also submitted that the multi-hierarchical level of involvement of various departments of the Review Petitioner has also delayed the filing of the instant review petition. The Review Petitioner submitted that there is merit in the instant Review Petition and therefore, in the interest of justice, the delay in filing the present review petition may be condoned and the petition may be set down for hearing on merit.

5. Madhya Pradesh Power Management Company Limited in its reply filed vide affidavit dated 20.1.2018 has submitted that the reasons given by the Review Petitioner are devoid of merits and the justification given for condonation of delay are not acceptable and therefore the request for condonation of delay should be rejected out



rightly.

6. Learned senior counsel for the Review Petitioner submitted that it approached the forest authorities on 16.1.2012 and not on 28.3.2013 as observed by the Commission in the impugned order which is an apparent error which needs to be rectified in review. Learned senior counsel further submitted that since there is merit in the review petition, the Commission may consider condoning the delay in filing the review petition. Learned senior counsel further requested permission to file written submissions in a week in the matter. Relying on the judgements of the Hon'ble Supreme Court in State of Haryana vs. Chandra Mani & Ors. [1996 (3) SCC 132] and in Manoharan vs. Shiv Rajan [2014 (4) SCC 163], learned counsel submitted that the merit of the case should be the paramount consideration for condonation of delay as no party would be prejudiced if decision is taken on merit.

6. We have considered the submissions of the Review Petitioner. The Review Petitioner has submitted that there is delay of 425 days. The impugned order was issued on 21.3.2016 and was posted on the Commission's website on 25.3.2016. As per Regulation 103(1) of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 (CBR), a petition for review has to be filed within 45 days of making the Commission's decision, directions and orders. Accordingly, the period of 45 days would start from the date it was posted on the website, which was 25.3.2016. Thus, there is delay of 528 days in filing of the instant review petition and not 425 as contended by the Review Petitioner. Without going into the details, it is observed that the Review Petitioner has attributed the delay in filing the review petition to the huge



amount of work that it had to do during 2016-17 and the various stages it has to go through before filing the review petition. As regards the procedural requirements to be fulfilled for filing the review petition, we are of the view that the Review Petitioner had also made similar submissions earlier in many other cases, where the Review Petitioner was directed by the Commission to streamline its working procedure and decision making process so that the review petitions are filed within the statutory time limit. It appears that despite the Commission's observations, the Review Petitioner has not put in place a streamlined procedure for taking decisions to file review petitions in time. The other reason given by Review Petitioner is that it had to deal with huge workload during 2016-17 before this Commission, Appellate Tribunal, High Courts and Supreme Court. In our view, the Review Petitioner being a commercial organisation should have taken suitable steps to augment the manpower to deal with the increased work load including dealing with the cases for filing the review petitions in time. Increased workload cannot be a reason for delay of more than 15 months in filing the review petition. Since the reasons given by the Review Petitioner for the delay in filing the review petition were within the control of the Review Petitioner, we are not inclined to condone the delay.

7. We have gone through the judgements relied upon by the Review Petitioner. In the State of Haryana vs. Chandra Mani & Others [1996 (3) SCC 132], Hon'ble Supreme Court has observed as under:

"It is notorious and common knowledge that delay in more than 60 per cent of the cases filed in this Court - be it by private party or the State - are barred by limitation and this Court generally adopts liberal approach in condonation of delay finding somewhat sufficient cause to decide the appeal on merits. It is equally common knowledge that litigants including the State are accorded the same treatment and



the law is administered in an even-handed manner. When the State is an applicant, praying for condonation of delay, it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the note-making, file-pushing, and passing-on-the-buck ethos, delay on the part of the State is less difficult to understand though more difficult to approve, but the State represents collective cause of the community. It is axiomatic that decisions are taken by officers/agencies proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it on table for considerable time causing delay intentional or otherwise - is a routine. Considerable delay of procedural red tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the Governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice-oriented process. The Court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-a-vis private litigant could be laid to prove strict standards of sufficient cause. The Government at appropriate level should constitute legal cells to examine the cases whether any legal principles are involved for decision by the courts or whether cases require adjustment and should authorise the officers take a decision or give appropriate permission for settlement. In the event of decision to file appeal needed prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while State is an impersonal machinery working through its officers or servants. Considered from this perspective, it must be held that the delay of 109 days in this case has been explained and that it is a fit case for condonation of the delay."

Further, in the Manoharan vs. Shiv Rajan [2014 (4) SCC 163], Hon'ble Supreme Court has observed as under:

"15. In the case in hand, the High Court, vide its impugned judgment dated 21.03.2012 held that the appellant has not provided sufficient grounds for delay in filing the appeal. This decision of the High Court is unsustainable in law. The appellant has categorically stated that he went to his advocate's office at Neyyattinkara on 24.05.2011 to enquire about the status of the suit. His advocate informed him that the learned sub Judge has rejected the suit on 11.8.2008 for non-payment of balance court fee. The advocate claimed that he has informed the same



to the appellant through a postal card but the appellant claims that the same has not reached him and he was under the impression that his application for extension of time for payment of court fee will be allowed by the learned sub Judge. He further claimed that he had applied for procurement of the certified copy of the decision of the learned sub Judge on the same day.

16. The learned senior counsel Mr. K.P. Kylasantha Pillay, appearing on behalf of the respondents alleged that the appeal of the appellant before this court is based on wrong and frivolous grounds. The material produced by them in support of their contention is totally based on the merit of the case. Since, we are not deciding the merit of the case, the material produced by the respondents in support of their contention becomes irrelevant. We have condoned the delay in paying the court fee by the appellant while answering point nos. 1 and 2. We see no reason in rejecting the application filed by the appellant for condonation of delay in filing the appeal before the High Court as well.

17. In view of the aforesaid reasons, the impugned judgment passed by the High Court is not sustainable and is liable to be set aside as per the principle laid down by this Court in as much the High Court erred in rejecting the application for condonation of delay filed by the appellant. We accordingly, condone the delay in filing the appeal in the High Court as well.”

8. In the case of State of Haryana vs. Chandra Mani & Others, Hon'ble Supreme Court condoned the delay after considering system of working in the Government. At the same time, Hon'ble Supreme Court observed that the Government at appropriate level should constitute legal cells to examine the cases whether any legal principles are involved for decision by the courts or whether cases require adjustment and should authorise the officers take a decision or give appropriate permission for settlement. The Review Petitioner being a Public Sector Navratna Company has been given full functional autonomy to take decisions on all issues which include any administrative decision to approach the Courts, Tribunals and Regulatory Commissions to protect its commercial interest. Therefore, the Review Petitioner is expected to arrange its officers in such a manner that the orders passed by the Commission are analysed and decision taken on the further course of action. Therefore, the judgement of the Hon'ble Supreme



Court in State of Haryana vs Chandra Mani & Others is not applicable in case of the Review Petitioner. Similarly, the judgement of the Hon'ble Supreme Court in Manoharan vs Shiv Rajan is also not applicable in the instant case as the Hon'ble Supreme Court has condoned the delay in that case after taking note of the specific steps taken by the Appellant in that case.

9. In Brijesh Kumar & Others V State of Haryana [2014(3) CCC 470 (SC)], the Hon'ble Supreme Court while rejecting the prayer for condonation of delay in filing appeals before the High Court observed that delay due to inaction and negligence cannot be condoned. The relevant part of the judgement is as under:-

“11. The courts should not adopt an injustice-oriented approach in rejecting the application for condonation of delay. However the court while allowing such application has to draw a distinction between delay and inordinate delay for want of bona fides of an inaction or negligence would deprive a party of the protection of Section 5 of the Limitation Act, 1963. Sufficient cause is a condition precedent for exercise of discretion by the Court for condoning the delay. This Court has time and again held that when mandatory provision is not complied with and that delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay on sympathetic grounds alone.”

10. As per the Hon'ble Supreme Court, “sufficient cause” is a condition precedent for exercising the discretion for condoning the delay and there should not be any negligence on the part of the party seeking condonation. In the instant case, the reasons given by the Review Petitioner are of general nature and if due care was taken by the Review Petitioner, the delay could have been avoided in filing of the review petition. We are of the view that the reasons given by the Review Petitioner are not satisfactory and hence we are not inclined to condone the delay of 528 days in filing Review Petition. IA No. 64 of 2017 is disallowed and consequently, the Review Petition



is rejected for not being filed within the statutory period of 45 days from the date of issue of the order.

11. The review petition is disallowed on the ground of limitation. We are not expressing any opinion on the merits of the review petition.

sd/-
(Dr. M.K. Iyer)
Member

sd/-
(A.S. Bakshi)
Member

