

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Review Petition No.18/RP/2018

with

I.A No. 42/2018

in

Petition No. 168/MP/2017

Coram:

**Shri P.K. Pujari, Chairperson
Dr. M.K. Iyer, Member**

Date of Order: 3rd December, 2018

In the matter of

Petition seeking review of Commission's order dated 29.1.2018 in Petition No. 168/MP/2017 for directions on CTU for grant of connectivity

And

In the matter of

West Bengal State Electricity Transmission Company Limited
Vidyut Bhavan, Bidhannagar, Block - DJ, Sector - II,
Kolkata - 700 091

...Petitioner

Vs

1. India Power Corporation Limited
D-2, 5th Floor, Southern Park
Saket Place, Saket, New Delhi- 110017

2. Power Grid Corporation Of India Limited
"Saudamini", Plot No.2, Sector-29, Gurgaon - 122001

3. Central Electricity Authority
Sewa Bhawan, Sector-1, R.K. Puram,
New Delhi- 110066

4. West Bengal State Electricity Distribution Company Ltd.
Vidyut Bhavan, 7th Floor, Bidhan Nagar,
Block-A, Sector- II, D J Block,
Kolkata- 700091

5. West Bengal Electricity Regulatory Commission
Poura Bhavan, 3rd Floor,
Block-FD, 415-A, Bidhan Nagar,
Kolkata- 700106

...Respondents



Parties present:

Shri Diggaj Pathak, Advocate, WBSETCL
Ms. Shweta Sharma, Advocate, WBSETCL
Ms. Suparna Srivastava, Advocate, PGCIL
Shri Tushar Mathur, Advocate, PGCIL
Ms. Jyoti Prasad, PGCIL
Shri Swapnil Verma, PGCIL

ORDER

The Petitioner, WBSETCL has filed this Petition challenging the Commission's order dated 29.1.2018 in Petition No. 168/MP/2017 with the following prayers:

- “(a) Admit the present Review Petition;*
- (b) Allow oral hearing of the present Review Petition before deciding the present Review Petition;*
- (c) Consider the above mentioned submissions made by the Review Petitioner and review the order dated 29.1.2018 passed in Petition No. 168/MP/2017 to grant appropriate relief to the Review Petitioner;*
- (d) Direct IPCL to approach the WBERC and submit requisite details along with investment proposal;*
- (e) Direct IPCL to approach the Review Petitioner for getting its No-objection / recommendation on its connectivity application;*
- (f) To direct the CEA, the CTU-PGCIL to act as per manual on transmission planning of CEA in the matter of connectivity of a distribution licensee with inter-State network; and*
- (g) Pass any other or further orders as this Hon'ble Commission may deem fit in the facts and circumstances of the present case.”*

Background

2. Petition No. 158/MP/2012 was filed by India Power Corporation Limited (IPCL) (Respondent No.1 herein) before this Commission seeking directions on the CTU (PGCIL) (Respondent No. 2 herein) for grant of connectivity to ISTS under the CERC (Grant of Connectivity, Long term Access and Medium term Open Access in Inter-State Transmission and related matters) Regulations, 2009 (hereinafter referred to as the “Connectivity Regulations”). By order dated 21.9.2012, the Commission disposed of this Petition directing as under:



“15. We direct the CTU to expeditiously process the application of the petitioner for grant connectivity in accordance with Connectivity Regulations and convey its decision to the applicant within two weeks of receipt of this order.

16. We further direct the CTU to ensure that the applications for connectivity and long term access and medium term open access are processed and decisions on the applications are conveyed within the timeline specified in the Connectivity Regulations.”

3. In terms of the above directions of the Commission, the Respondent, CTU (PGCIL) vide letter dated 12.10.2012 granted connectivity to IPCL through LILO of Mejia-Maithon 400 kV at Chalbalpur sub-station of IPCL. However, due to land acquisition issues, restricted RoW choices and shifting of demand, IPCL had opted for change in location of connectivity from Chalbalpur to Debipur vide letter dated 29.8.2016 and accordingly requested the Respondent, CTU for modification in grant of connectivity. In response, the CTU, on 27.10.2016 cancelled the connectivity granted to IPCL with direction to file fresh connectivity application. Accordingly, IPCL on 18.1.2017 submitted application for connectivity and uploaded the application in the category of bulk consumer as no provision was available online for uploading application for distribution licensees. The CTU vide letter dated 12.4.2017 rejected the said connectivity application. Further, CTU denied the request of IPCL to reconsider the closure of its application for connectivity vide its letter dated 24.5.2017 on the ground that IPCL’s application was not in conformity with the Regulations.

4. Against the letter of CTU dated 24.5.2017, IPCL filed Petition No. 168/MP/2017 to (a) quash the impugned communication dated 24.5.2017; and (b) direct CTU to grant connectivity to IPCL in terms of the Commission’s order dated 21.9.2012. By order dated 29.1.2018, the Commission set aside the letter of CTU dated 24.5.2017 and disposed of Petition No. 168/MP/2017 directing the CTU to grant connectivity to IPCL. The relevant portion of the said order is extracted hereunder:



“20. The Commission was aware that Regulation 2(1)(b)(i) did not include a distribution licensee as applicant. The Commission therefore considered Regulation 2(25) of the Central Electricity Authority (Technical Standards for Connectivity to the Grid) Regulations, 2007 which defined the term „requester“ for connectivity to include „distribution licensee“. Accordingly, the Commission in its order dated 21.9.2012 had interpreted the provisions of Regulation 2(1)(b) of the Connectivity Regulations and the definition of the term „requester“ which included the distribution licensee and came to the conclusion that a distribution licensee cannot be denied connectivity to ISTS. Further, the Commission considered the provisions of Regulation 12 of the Connectivity Regulations in the context where the consultation with STU is required. As per Regulation 12, STU is required to be consulted for long term access if the system of STU is used. In the same analogy, the Commission decided that if the transmission system of STU is not used, there is no requirement for consultation with STU. Accordingly, the Commission allowed the prayer of the Petitioner and directed the CTU to grant connectivity. The Petitioner has made a fresh application for connectivity from the new location as advised by CTU and the said application for connectivity should have been considered by the CTU in the light of our decision in Petition No.158/MP/2012.....

21.....The Petitioner is already connected to the ISTS as the transmission of DVC has been declared as ISTS. There is no reason, why the Petitioner should be disallowed to be connected to the ISTS of PGCIL.

22. In view of the above discussions, we set aside the letter of the CTU dated 24.5.2017 and direct the CTU to grant the Petitioner connectivity to the ISTS within two weeks of receipt of this order.”

5. Aggrieved by order dated 29.1.2018, the Petitioner, WBSETCL has filed this Review Petition with the prayers as mentioned in para 1. The petitioner has sought review on the following grounds:

(a) IPCL is a distribution licensee of WBERC and all its existing and proposed network comprising of sub-stations and lines of any voltage level shall be ‘State Network’ as per Regulation 2(1)(u) of the CERC Connectivity Regulations. Consequently, IPCL falls in the domain of planning by the concerned STU i.e. WBSETCL and any request of IPCL for direct connectivity with ISTS can be processed only with concurrence of WBSETCL.

(b) IPCL is not even eligible to apply for ISTS connectivity as it is neither a generating company nor bulk consumer and does not fall within the definition of ‘Applicant’ as per the CERC Connectivity Regulations. The said regulation does not contemplate an application by a distribution licensee.

(d) IPCL ought to have taken regulatory approval from WBERC and then submit the proposal to WBSETCL for technical examination. The procedure is mandatory under the Connectivity Regulations and by passing the same is a jurisdictional error.



(e) IPCL is an intra-State distribution licensee granted license by WBERC. IPCL is not supplying power to any other state under this license and by passing the WBERC in the present case is also a jurisdictional error.

(f) The Commission has misinterpreted the Tribunal's judgment dated 23.11.2007 in Appeal No. 271 of 2007 etc. by concluding that IPCL is already connected to ISTS. The said judgment only declared the transmission system of DVC to be ISTS. As a result of order dated 29.1.2018, the STU (Review Petitioner) is being prevented from performing the functions mandated under the 2003 Act.

(g) The Commission has overlooked the fact that IPCL which falls within the territorial jurisdiction of State Electricity Commission seeking inter-connection agreements for supply of electricity in that state is amenable to the jurisdiction of the State Commission.

(h) The Commission has committed an error in its order dated 21.9.2012 by relying on the definition of 'Applicant' under Regulation 2(1)(b)(ii) for grant of LTA & MTOA instead of Regulation 2(1)(b)(i) which is for grant of connectivity.

(i) The Commission has erroneously come to the conclusion that IPCL is covered by the definition of 'requestor' as per CEA (Technical Standards to the Connectivity to the Grid) Regulations, 2007 and for that reason it will fulfill the conditions of being an 'applicant' in terms of grant of connectivity Regulations, 2009. The approval of WBERC & WBSETCL is a must and cannot be given a go-by.

(j) CERC has failed to appreciate that the export requirements through the ISTS has been envisaged to be within the planning realm of the concerned STU and the system strengthening schemes of STU for delivery of power from ISTS grid points up to the level of distribution licensee is also envisaged to be planned by STU. The demand/ projection/ load forecast of IPCL has not been approved by WBERC which is mandatory as per the grid code of WBERC.

6. The Petitioner has submitted that a certified copy of order dated 29.1.2018 was supplied to the petitioner only on 26.4.2018 and there is a delay of 53 days in filing the Review Petition. Accordingly, it has submitted that a separate application for condonation of delay has been filed with the Petition. Based on the above, the Petitioner has submitted that it would cause great prejudice to the Petitioner since its stand was never put forth before this Commission and any such order would be



against the principles of natural justice and opportunity of hearing the Petitioner. Accordingly, the Petitioner has prayed that the Commission's order dated 29.1.2018 may be reviewed after hearing the parties.

Interlocutory Application (I.A No. 42 of 2018)

7. The Petitioner has filed the said I.A for condonation of delay of 53 days in filing the Review Petition and has submitted the following:

(i) WBSETCL (the Petitioner) never entered appearance before the Commission in Petition No. 168/MP/2017. At all times it expected that the CTU (PGCIL) would effectively espouse the cause of the Petitioner as it had always communicated its stand to it in various communications and also in the Standing Committee meetings on power planning.

(ii) The order dated 29.1.2018 however came to be passed against both PGCIL as well as the Petitioner. The Petitioner first gained knowledge of the said order vide letter dated 5.2.2018 sent by PGCIL and received by MD, WBSETCL on 7.2.2018, by Director (Operations) on 9.2.2018 and by the Chief Engineer, Central Planning Department of WBSETCL on 12.2.2018. The letter of PGCIL requested the Petitioner to hold consultation process through circulation for grant of connectivity to IPCL. In response, the Petitioner vide letter dated 12.2.2018 stated that the proposed connectivity was not in consonance to the Electricity Act, 2003 apart from being non-economical.

(iii) Thereafter, PGCIL by letter dated 16.2.2018 to the Petitioner (received on 21.2.2018) stated that they would be proceeding in terms of the Commission's order dated 29.1.2018.

(iv) During the last week of February, 2018, the Petitioner requested PGCIL to approach CERC and file review against the said order. However, PGCIL conveyed to the Petitioner that it would not be seeking a review of the said order and that it has accepted the CERC order as it is.

(v) During the first week of March, 2018, the Board of Directors of the Petitioner decided to file appeal before the APTEL. Accordingly, the Petitioner collated the documents to obtain legal opinion about the available courses of action. For this, it had sought opinion from the Senior Advocate who advised the Petitioner to file Review Petition. Accordingly, the Board of Directors of the Petitioner in the end of March, 2018 decided to prefer Review Petition before this Commission.



(vii) In the first week of April, 2018, the Petitioner was informed by its lawyers that a certified copy of order dated 29.1.2018 would be required to prefer a Review Petition and accordingly the Advocate was authorized to collect the certified copy on its behalf.

(viii) On 26.4.2018, the Petitioner's Advocate collected the certified copy from the Registry of this Commission who was informed about the filing formalities like online registration of the Petitioner, payment of court fees etc. Since the court fees payable was substantial, the Petitioner again took approval of the Board of Directors, which took some time.

(ix) The Petitioner is an inexperienced litigant preferring a Review Petition for the first time before this Commission. Due to multi-hierarchical level of involvement of various departments of the Petitioner, the filing of the Review Petition has been delayed. The merit of the case should be paramount consideration for condonation of delay as no party would be prejudiced if decision is taken on merit.

The Petitioner has submitted that the said delay is bonafide and not at all intentional and hence in the interest of justice, the period of delay in filing the Review Petition may be condoned. Accordingly, the Petitioner has prayed that the delay of 53 days may be condoned for the reasons stated above.

8. In compliance with the directions of the Commission during the hearing on 3.7.2018, the Respondent, IPCL vide affidavit dated 20.7.2018 has filed its reply in the I.A and the Petitioner has filed its rejoinder to the same vide its affidavit dated 2.8.2018.

Reply of IPCL to the IA

9. IPCL vide affidavit 20.7.2018 has submitted that the Petition is not maintainable and the delay is not liable to be condoned for the following reasons:

(a) In terms of Regulation 103 of CERC (Conduct of Business regulations) 1999, as amended from time to time, the Review Petition is to be filed within a period of 45 days from the date of order. It has been consistently held by the Hon'ble Supreme Court that statutory authorities cannot travel beyond the powers conferred under the statutory provisions and derive powers from the Regulations / Acts. In the absence of any express provisions



to permit the Commission to condone the delay in filing of a Review Petition, the delay in filing this Review Petition cannot be condoned.

(b) The Petitioner has failed to sufficiently explain the delay in filing the Review Petition. The Petitioner was a party to proceedings under review but has chosen not to appear in the proceedings before this Commission on the ground that PGCIL would effectively espouse the cause of the Petitioner. Though order in the main Petition was passed on 29.1.2018, the Petitioner became aware of the order on 5.2.2018. This is due to the petitioner's own negligence and unwarranted reliance on other party to place its stand before this Commission.

(c) Even after becoming aware of the Commission's order, the Petitioner took no immediate steps to either file a review or appeal before APTEL and has been negligent in its approach as evident from the facts narrated. The very fact that it wrote to PGCIL requesting them to file Review Petition is proof that the Petitioner was not aggrieved by the order.

(d) Only after PGCIL refused to file the Review Petition, the Petitioner decided to file appeal before APTEL. Therefore, it took two months to the Petitioner to decide that it was aggrieved by the order.

(e) The Petitioner has submitted that it has applied for certified copy in the first week of April and collected the same on 26.4.2018. However, it is evident from the certified copy that the Petitioner had presented the application for certified copy on 25.4.2018 and received it on 26.4.2018.

(f) After expiry of over four months, the Petitioner has filed the Review Petition along with the application for condonation of delay. Except for making bare submissions to explain the delay, the Petitioner has not substantiated the same with any document for support. This approach of the Petitioner warrants no interference by the Commission.

(g) The Petitioner has not even pleaded that it was not served any notice in the original proceedings or that it had sufficient cause for not appearing in the matter. In fact, the Petitioner was served notice but has chosen not to appear in the main proceedings.

(h) The Petitioner in the Review Petition has merely reiterated the submissions already made by PGCIL and the Commission has also not stated anything in its order dated 29.1.2018 which has not been already stated in order dated 21.9.2012 regarding grant of connectivity.

(i) The Petitioner has made CEA, WBSERC and WBSEDCL as additional respondents in this Review Petition who were not parties before this Commission in the original proceedings. The provisions of law under which



the parties have been added has not been explained. The Petition is liable to be dismissed for mis-joinder of parties.

Accordingly, the Respondent, IPCL has prayed that the Review petition is not maintainable and is liable to be dismissed.

Rejoinder of Petitioner

10. The Petitioner in its rejoinder affidavit dated 2.8.2018 has submitted that Regulation 116 of the CERC Conduct of Business Regulations provides for extension of time for sufficient reasons. It has also submitted that the Commission, on several occasions, has relied upon this provision to condone the delay in filing the Review Petitions. Referring to Commission's Order in various Petitions, the Petitioner has submitted that delays have been condoned for various reasons such as, the approval required from various levels of the Company apart from obtaining legal opinion, getting clearances from various departments and approval of management for filing Review Petition, time taken to study and understand the implications of orders etc., before preferring a Review Petition. The Petitioner has further submitted that IPCL has chosen not to implead parties like CEA, WBSEDCL & WBERC as it was aware that they would oppose the grant of connectivity to IPCL as it had failed to obtain technical clearance from the CEA and investment approval from WBERC. In the above background, the Petitioner has submitted that liberal approach needs to be adopted while considering the delay applications to advance the cause of justice. Accordingly, it has prayed that the delay of 53 days in filing the Review Petition may be condoned and the Review Petition be heard on merits.

11. During the hearing of the IA on 23.10.2018, the learned counsel for the Petitioner prayed that the delay of 53 days may be condoned and the Review Petition may be admitted. The learned counsel for the Respondent, IPCL submitted that since the explanation offered by the Petitioner for delay was not satisfactory



and bonafide, the delay may not be condoned. Accordingly, the Commission reserved its order in the I.A filed by the Petitioner for condonation of delay. Based on the submissions of the parties, we proceed to dispose of the said IA.

Analysis & decision

12. We have heard the learned counsels for the Petitioner and the Respondent, IPCL. Under clause (f) of sub-section (1) of Section 94 of the 2003 Act, the Commission has been given the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 as regards review of its decisions, directions and orders. Regulation 103(1) of the CERC (Conduct of Business) Regulations, 2009, as amended, provides as under:

“Review of Decisions, Directions and orders

103(1) *The Commission may, on an application of any of the persons or parties concerned made within 45 days of making such decision, directions or order, review such decision, directions or orders and pass such appropriate orders as the Commission deems fit.*

13. Further, Regulation 116 of the Conduct of Business Regulations provides as under:-

Extension or abridgement of time prescribed

116. *Subject to the provisions of the Act, the time prescribed by these Regulations or by order of the Commission for doing any act may be extended (whether it has already expired or not) or abridged for sufficient reason by order of the Commission.”*

It is evident from the above provisions that a Review Petition can be filed by a party within a period of 45 days from the date of issue of the order. This period can be enlarged or curtailed, if the party is able to show sufficient reasons.

14. Petition No. 168/MP/2017 filed by the Respondent, IPCL was disposed of by the Commission’s order dated 29.1.2018. The said order was also posted in the website of the Commission on 31.1.2018. Even as per the admission of the Review Petition, the order came to its knowledge through the letter of PGCIL dated 5.2.2018. It is a



settled principle that the limitation would start from the date the order was posted on the website. Accordingly, the period of 45 days would start from the date it was posted on the website of the Commission. The Review Petition has been filed by the Petitioner on 9.5.2018 and thus there is a delay of 53 days.

15. The Petitioner has referred to the Commission's Order dated 13.2.2018 in Petition No. 59/RP/2016 (PGCIL v RRVPNL & ors.), Order dated 19.4.2017 in Petition No. 6/RP/2017 (PGCIL v RRVPNL & ors.), Order dated 30.3.2017 in Petition No. 2/RP/2017 (PGCIL v MPPMCL) and Order dated 15.1.2018 in Petition No. 32/RP/2017 (NTPC v MPPMCL) and has submitted that the Commission in these orders had condoned the delay of 120 days, 204 days, 86 days and 76 days respectively on grounds such as (i) delays in approval required from various levels of the Company apart from obtaining legal opinion, (ii) getting clearances from various departments and approval of management for filing Review Petition, (iii) time taken to study and understand the implications of orders before preferring a Review Petition. Accordingly, the Petitioner has submitted that Regulation 116 empowers the Commission to extend the time for 'sufficient reasons' and therefore the delay in filing the Review Petition may be condoned. We have gone through the Commission's orders in the aforesaid Petitions. In our view, these orders cannot automatically be made applicable in the case of the Review Petitioner, considering the number of days of delay, since in those cases, the delays had been condoned based on 'sufficient cause' shown by the applicants therein for the exercise of such discretion by the Commission. Each case will have to be considered on the particularities of its own facts. It is pertinent to mention that 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



had observed that the delay due to inaction and negligence cannot be condoned.

The relevant portion of the said judgment 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.”

16. 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. The expression “sufficient reasons” has not been defined in the Conduct of Business Regulations and hence the expression “sufficient reasons” shall receive the same interpretation as the expression “sufficient cause” in Section 5 of the Limitation Act, 1963. It has been held that the existence of sufficient cause is a condition precedent for the exercise of discretion under Section 5 of the Limitation Act. The cause should be beyond the control of the party invoking the said section. A cause for delay, which by due care and attention, the party could have avoided, cannot be a sufficient cause. The test therefore, whether or not a cause is sufficient is to see whether it could have been avoided by a party by the exercise of due care and attention. In the case of *The State of West Bengal vs. The Administrator, Howrah Municipality and ors* [1972 (2) SCR 874], the Supreme Court, while considering the scope of the expression 'sufficient cause' within the meaning of Section 5 of the Limitation Act, reiterated that the said expression should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fide is imputable to a party. In the light of the settled principles of law, we now proceed to consider



whether the Review Petitioner has made out a case for 'sufficient reasons' for condonation of delay.

17. The Petitioner vide its affidavit has furnished the following explanation for the condonation of delay as under:-

“The Review Petitioner first gained knowledge of the impugned order vide letter dated 5.2.2018 sent by PGCIL. It is also a matter of record that the said letter was received by the Managing Director, WBSETCL on 7.2.2018, by the Director Operations on 9.2.2018 and by the Chief Engineer- Central Planning Department of Review Petitioner on 12.2.2018. The said letter sent by PGCIL requested the review petitioner to hold consultation process through circulation for grant of connectivity to IPCL. Thereafter, the Review Petitioner responded to PGCIL on the very same day vide its letter dated 12.2.2018 stating that the proposed connectivity was not in consonance to the provisions of Electricity Act, 2003 apart from being non-economical. Then PGCIL wrote back to the Review Petitioner vide its letter dated 16.2.2018 received by office of the Chief Engineer- Central Planning Department on 21.2.2018 stating that they would be proceeding in terms of the CERC's order dated 29.1.2018. It is stated that pursuant to the above developments around the last week of February 2018, the Review Petitioner requested the PGCIL to approach the CERC for a review of the impugned order however PGCIL conveyed to the Review Petitioner that it will not be seeking a Review and that it has accepted the CERC order as it is. Then the Board of Directors of the Review Petitioner held a meeting in the first week of March 2018 and took a decision to file an Appeal before the Hon'ble Appellate Tribunal for Electricity. That thereafter, the Review Petitioner started collating documents for preferring the said Appeal before the Hon'ble APTEL. That the v even sent Demand Drafts for court fees for filing the said appeal to its Advocate so that time can be saved. Thereafter, the Review Petitioner sought for an opinion from senior Counsel who advised the Review Petitioner that an appeal would not be maintainable in the present facts and circumstances and that a Review Petition would be the appropriate remedy. Accordingly, the Board of Directors around the end of the month of March 2018 met again and decided that a Review Petition be preferred before the Hon'ble CERC. Then, the entire process had to be repeated again for making arrangements for preferring the Review Petition. Thus, considerable time was lost due to this”

18. The above explanation has been opposed by the Respondent IPCL, contending that the Review Petitioner has failed to sufficiently explain the delay caused in filing the Review petition.

19. From the explanation submitted by the Review Petitioner as above, it is evident that the Petitioner had gained knowledge of the Commission's order on 7.2.2018 based on the PGCIL's letter dated 5.2.2018, wherein it had requested the



Review Petitioner to hold consultation process for grant of connectivity to the Respondent, IPCL. It is however noticed that the Review Petitioner on 12.2.2018 had written to PGCIL stating that the proposed connectivity was not in consonance with the provisions of the Electricity Act, 2003 apart from being non-economical. Also, the Review Petitioner during the last week of February, 2018 had requested PGCIL to approach the Commission and seek review of the Commission's order dated 29.1.2018. In our view, the letter dated 12.2.2018 of the Review Petitioner to PGCIL is a clear manifestation of the Review Petitioner's intention not to implement the order of the Commission. Moreover, the letter of the Review Petitioner to PGCIL to seek review of the Commission's order is proof of inaction on the part of the Review Petitioner to pursue available legal remedy against the Commission's order. Instead of asking PGCIL to file the review, it would have been proper if the Review Petitioner pursued the available remedy, either in the form of review before the Commission or appeal before the Appellate Tribunal. In fact, considerable time was lost by the Review Petitioner in its correspondence with PGCIL to file Review Petition on its behalf. In our considered view, there has been negligence on the part of the Review Petitioner to pursue the remedy of review and the delay in filing the Review Petition is due to its own negligence and unwarranted reliance on the other party (PGCIL) to place its stand before this Commission.

20. The Review Petitioner has submitted that the Board of Directors of the Review Petitioner had taken a decision in the first week of March, 2018 to file Appeal before the Appellate Tribunal. However based on an opinion from Senior Counsel who advised that the appeal was not maintainable, the Board of Directors of the Review Petitioner again met in the end of March, 2018 and decided to file the Review Petition. Accordingly, the Review Petitioner has submitted that the entire



process had to be repeated again for filing the Review Petition in which considerable time was lost. In our view, this submission of the Review Petitioner lacks bonafides. The Review Petitioner is aware that as per the Conduct of Business Regulations of the Commission, the time for filing the review is 45 days from the issue of order and as per Section 111 of the Electricity Act, 2003, the time for filing the appeal is 45 days from the date of issue of order. Therefore, the Review Petitioner was expected to carry out its internal exercise in such a manner that the application for review or appeal is filed within the prescribed time. It is however noticed that after the refusal by PGCIL to seek review of the Commission's order in terms of its letter dated 16.2.2018, the Review Petitioner first approached its Board for filing appeal and after obtaining the legal opinion, again approached the Board for filing the review and thereafter started the process of collection of documents, drafting of Review Petition, obtaining internal approval on the Review Petition for filing the same. In our view, the Review Petitioner was not diligent in pursuing the Review Petition within the prescribed time limit. Moreover, the period between the first week of March (when the Board approval was obtained) to end of March, 2018 (when the Board of the Petitioner Company again met) has also not been satisfactorily explained. The Petitioner has been casual and lackadaisical in its approach on the course of action taken and the same has resulted in the delay in filing of this Review Petition.

21. The Review Petitioner has submitted that it was informed by its lawyers during the first week of April, 2018 that a certified copy of the Commission's order would be required for filing the Review Petition. Accordingly, the Review Petitioner had authorized its Advocates to collect the certified copy and the same was received on 26.4.2018 from the Registry of CERC. The Review Petitioner has submitted that



since filing formalities like online registration and payment of court fees, which was substantial, was involved, it had to again take approval of the Board of Directors and the same took some time. The Review Petitioner while pointing out that merit of the case should be paramount consideration for condonation of delay has submitted that multi-hierarchical level of involvement of the various departments of the Review Petitioner has also delayed the filing of the Review Petition and the delay was not intentional. In response, the Respondent, IPCL has argued that the Review Petitioner after expiry of four months has filed this Review Petition. It has also pointed out that except for bare submissions in an attempt to explain the delay, the Review Petitioner has not substantiated the same with any supporting documents. Accordingly, it has submitted that the indifferent approach of the Review Petitioner warrants no interference by this Commission and delay on this count may not be condoned. The Review Petitioner in its rejoinder has clarified that certified copy was applied on 25.4.2018 and the same was received on 26.4.2018. It has further clarified that several documents which were not in the possession of the Review Petitioner, was requested to be supplied by PGCIL and this took time. The Review Petitioner has also submitted that for finalization of the Review Petition, the draft had first to be approved by the Regulatory cell and then the Chief Engineer and then finally settled by the Senior Counsel and hence this delay.

22. We have considered the submissions. The Review Petitioner was not registered on the e-portal of the Commission on the date of issue of the order. However, the order was uploaded on the Commission's website on 31.1.2018 which was available in the public domain. Further, the Registry of the Commission sent a letter to the Review Petitioner on 2.2.2018 which clearly mentioned the following:

“If you require a certified copy of the order, you may make a request for the same to the bench Officer of the Commission in the e-mail ID registry.cerc@nic.in, the first certified copy will be sent free of cost.”



23. As per procedure followed by the Commission, the copies of the order are uploaded on portal and simultaneously copies are electronically sent to the account of the parties. Further, a letter is sent to the parties informing about the issue of order and advising them to apply for a certified copy, free of cost through e-mail to the Registry, if the party so desires. Since the certified copy is required to be submitted along with the Review Petition or appeal, the Review Petitioner should have taken steps to immediately apply for a certified copy on receipt of the letter dated 2.2.2018. There is no explanation as to why the letter was not acted upon by the Review Petitioner for obtaining the certified copy. Even otherwise, it is an accepted practice that parties move Interlocutory application seeking exemption from production of certified copies of the order against which review is sought. Therefore, the non-availability of the certified copy in the present case cannot be a ground for seeking condonation of delay. As stated, the Board of Directors of the Review Petitioner had approved the filing of the Review Petition in the end of March, 2018. The Review Petitioner has also submitted that it had authorized its Advocate to collect the certified copy of the order during the first week of April, 2018 for filing the Review Petition. However, from the e-mail document enclosed in Annexe -I colly of the rejoinder affidavit dated 2.8.2018, it is evident that only on 23.4.2018, the Review Petitioner had given a go ahead to its Advocate to complete the formalities for filing the Review Petition. Based on this, the certified copy of the order was applied by Review Petitioner on 25.4.2018 and received on 26.4.2018. It is therefore clearly evident that the Review Petitioner started the process of obtaining the certified copy in the last week of April, 2018. The Review Petitioner has further submitted that after collection of the certified copy of the order on 26.4.2018, several documents requested by its Advocate was not in its possession and hence requested PGCIL for supply of the same. This explanation of the Review Petitioner



lacks credibility. The Review Petitioner is stated to have obtained legal opinion of the Senior Counsel (during the first week of March, 2018) and had taken the approval of the Board of Directors (during the end of March, 2018) to file the Review Petition. Thus, the Review Petitioner had sufficient time to collect /collate the documents required for filing the Review Petition in time. Further, the Review Petitioner has not revealed the documents which were not available with it for which it had to spend considerable time to obtain them from PGCIL or from the files of its departments. The Review Petitioner has further submitted that the process of online registration with the e-court portal of the Commission, approvals for payment of substantial court fees etc., for filing the Review also contributed to the delay. This explanation is also not acceptable since the guidelines for online registration and the Regulations governing the payment of Court fees are all available in public domain and the Review Petitioner and/or its Advocate is expected to be aware of the same. The explanations offered by the Review Petitioner are proof of negligence and inaction on its part throughout in pursuing the filing of the Review Petition. If the Review Petitioner was serious, it would have pursued the matter diligently and filed the Review Petition in time. In this background, we find no reason to accept the explanation submitted by the Review Petitioner.

24. One more submission of the Review Petitioner in support of its prayer for condonation of delay is that the Registry of the Commission never sent a certified copy of the Order dated 29.1.2018 to the Review Petitioner, as it did not appear before this Commission in Petition No. 168/MP/2017. It has further submitted that on enquiry, the Registry had informed the Advocate of the Review Petitioner that certified copies are never sent to parties who did not put in appearance before this Commission. Accordingly, the Review Petitioner had submitted that it authorized its Advocate to collect the order on its behalf on 26.4.2018.



25. The submissions of the Review Petitioner are contrary to records. As already explained in para 22 above, the Review Petitioner was informed vide letter dated 2.2.2018 by the Registry of the Commission that if the Review Petitioner required a certified copy of the order, it may move a request for the same to the Bench Officer through e-mail which would be supplied free of cost. The Review Petitioner has never acted on the said letter nor followed the prescribed procedure to obtain the certified copy of the order immediately after receipt of the letter dated 2.2.2018. Instead, after a lapse of two months, the Review Petitioner had deputed its counsel to obtain the certified copy. As the counsel was not duly authorized by the Review Petitioner, the Registry sought for authorization letter and on submission of the same, certified copy was issued on the next date. In our view, the circumstances leading to the delay in filing the Review Petition are attributable to the Review Petitioner.

26. The Appellate Tribunal in its judgment dated 31.10.2014 in IA No. 380 of 2104 in DFR No. 2355 of 2014 (APL Vs CERC & ors) while examining the application to condone the delay had observed the following:

“33. We are not more concerned with the prejudice being caused to the Respondents, since the condonation of delay is a matter of discretion of the Court wherein the only criteria is the sufficiency of the cause. In the matter of condonation of delay, the conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken note of. Though the Courts should not adopt an injustice-oriented approach in rejecting the Application of condonation of delay, the Courts while allowing such application has to draw the distinction between delay and inordinate delay for want of bona fides of an inaction or negligence which would deprive the opposite party of the protection under the Limitation Act.

34. When the delay is not satisfactorily and convincingly explained, the Court cannot condone the delay on equitable or sympathetic grounds. The law of limitation fixes a life span for every legal remedy for the redress of the legal injury suffered. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy.

35. In other words, the delay should not be attributable to negligence, inaction or want of bona fide on the part of the defaulting party.

36. In other words, if there is material to indicate the party’s negligence in not taking necessary steps, the period cannot be extended. If the explanation offered on fanciful



or concocted, the Court should be vigilant not to expose the other side unnecessarily to face such antiquation”

27. It is evident in the present case that the circumstances leading to the delay in filing the Review Petition were all within the control of the Review Petitioner. However, the Review Petitioner has been casual and lackadaisical in its approach in pursuing the filing of the Review Petition. Based on the discussions in the aforesaid paragraphs, we are of the considered view that the Review Petitioner has not made out any sufficient cause for condonation of delay. Accordingly, the delay of 53 days in filing the Review Petition has not been condoned. IA No. 42/2018 is disallowed as above and consequently, the Review Petition stands rejected on the ground of limitation. We have not expressed any opinion on the merits of the Review Petition.

**Sd/-
(Dr. M. K. Iyer)
Member**

**Sd/-
(P. K. Pujari)
Chairperson**

