

COURT-I
IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

IA NO. 1028 OF 2019 IN
DFR NO. 2118 OF 2019

Dated: 14th November, 2019

Present: Hon'ble Mrs. Justice Manjula Chellur, Chairperson
Hon'ble Mr. Ravindra Kumar Verma, Technical Member

In the matter of:

TANGEDCO

...Appellant(s)

Versus

Tamil Nadu Electricity Regulatory Commission & Ors. ...Respondent(s)

Counsel for the Appellant(s) : G. Umapathy
S. Vallinayagam

Counsel for the Respondent(s) : Senthil Jagadeesan For Res2
Kumar Mihir For Res3

ORDER

1. This is an Application seeking for the Condonation of Delay of 358 days in filing the Appeal against the Impugned Order dated 13.04.2018 passed in T.O. No. 6 of 2018 by Tamil Nadu Electricity Regulatory Commission.
2. The prayer of Applicant/Appellant as follows:-

- a) Condone the delay of 358 days in filing the appeal against the order, dated 13.04.2018 passed by the Tamil Nadu Electricity Regulatory Commission in Wind Tariff Order Mo. 6 of 2018; and
 - b) Pass any other order or orders as this Appellate Tribunal may deem fit and proper in the facts and circumstances of the case.
3. The learned counsel appearing for the Applicant/Appellant submitted that the issue involved in the appeal relates to the grant of banking facility and 60% cross subsidy surcharge to the wind energy generators. The grant of this facility costs an unwarranted and unjustified financial burden on the distribution licensee which is ultimately borne by the consumers in the general tariff. The banking facility and 60% cross subsidy surcharge instead of 100% cross subsidy surcharge causes technical as well as financial hardship to the Applicant/Appellant.
4. The Applicant/Appellant submitted that a series of litigations by WEG's insisting on zero backing down of wind energy generated by them and refusal to comply with the Renewable Energy

Obligation Regulations vide a stay order from the Hon'ble High Court; coupled with the fact that certain private conventional generators also moved the Hon'ble High court getting stay orders against the distribution licensee not to back them down has resulted in a situation where the distribution licensee had to take a decision to challenge the banking facility extended to the WEG's under the impugned Tariff Order No. 3 of 2016 in the larger public interest.

5. The Wind Tariff Order No.6 of 2018 has been issued on 13.04.2018 and the hard copy received by the Applicant/Appellant on 19.04.2018. After obtaining the orders from the State Commission, the order was circulated to all the wings of the Applicant/Appellant Distribution licensee dealing with accounts, legal, operation, transmission and finance for offering their comments. Subsequent to obtaining the comments and suggestions from all the wings, draft implementation instructions were prepared and circulated among all the directors and the CMD for implementing the Tariff Order on 25.10.2018. However, there was a unanimous decision taken by the Distribution licensee

to prefer an appeal on the banking issue, which was extended to the WEG's commissioned before 01.04.2018 and the 60% cross subsidy surcharge as per the Tariff Orders of the State Commission.

6. The Applicant/Appellant submitted that since the appeals filed by the Applicant/Appellant against Tariff Order of the State Commission in T.O. No.3 of 2016 and R.A. No. 6 of 2013 is already pending before this Tribunal numbered as Appeal No. 380 and 381 of 2017 against the orders passed in T.O. No.3 of 2016 and R.A. No. 6 of 2013, the issue regarding the course of action, whether to file a review petition before the State Commission or an appeal before this Tribunal was under discussion with accounts and legal wing.
7. The Applicant/Appellant submitted that at this juncture due to the "GAJA" storm in Tamil Nadu during November, 2018, all the Directors of the Applicant/Appellant and TANTRANSCO including the CMD/TANGEDCO were engaged in the rescue and restoration of distribution and transmission system of the State in Tiruvarur, Nagapattinam, Thanjavur, Cuddalore, Pudukkottai and

Ramanatha puram Districts to normalize supply to the public at the earliest as per the directions of the Government of Tamil Nadu. There was massive destruction of infrastructures like uprooting of many tower lines and damage of around 3,71,000 poles costing the Applicant/Appellant Rs.2378 crores.

8. The restoration work due to the above cycle, took nearly 3 months to normalize the supply and stabilize the power system in the affected five districts of the State. After the conditions become normal, CMD/TANGEDCO sought to obtain the opinion of senior Advocate before filing an appeal at APTEL. The opinion to file the appeal was obtained in the month of February, 2019. After obtaining the opinion of Senior Advocate for vetting during March 2019. After receiving the vetted copy of draft appeal during April 2019, the draft approval note was forwarded for the approval of the CMD. The draft was approved by CMD, TANGEDCO on 08.05.2019. Accordingly, the present appeal was filed on 17.05.2019.
9. We have heard the learned counsel appearing for the Applicant/Appellant at length.

10. In the light of the submissions of the learned counsel appearing for the Applicant/Appellant explaining the delay in filing the Appeal, we allow the application on payment of cost of **Rs. 5000/- (Rupees five thousand only) to a charitable organization,** namely, **“National Defence Fund, PAN No. AAAGN0009F, A/c No. 11084239799, State Bank of India, Institutional Division, 4th Floor, Parliament Street, New Delhi”** within two weeks from today. Application is disposed of.

List the matter for admission on **19.12.2019**

Pronounced in the Open Court on this **14th day of November, 2019.**

(Ravindra Kumar Verma)
Technical Member

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(Justice Manjula Chellur)
Chairperson