

TAMIL NADU ELECTRICITY REGULATORY COMMISSION

Order of the Commission dated this the 25th Day of July 2024

PRESENT:

Thiru M.Chandrasekar Chairman
Thiru K.Venkatesan Member
 and
Thiru B.Mohan Member (Legal)

I.A.No.1 of 2024

1. Tamil Nadu Transmission Corporation (TANTRANSCO)
Chairman and Managing Director,
NPKRR Maaligai,
No. 144, Anna Salai
Chennai – 600 002.
2. Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
Reo.by its Chairman and Managing Director,
NPKRR Maaligai, No. 144, Anna Salai,
Chennai – 600 002.
3. The Superintending Engineer,
Commercial Operation,
TANTRANSCO,
No. 144, Anna Salai,
Chennai – 600 002.

... Petitioners
(Tvl.N.Kumanan&A.P.Venkatachalapathy
Standing Counsels for TANGEDCO &
TANTRANSCO/SLDC)

Versus

M/s.OPG Power Generation Pvt. Ltd.
Represented by its Authorised Signatory,
Mr.T.Venkateswaran
having its registered office at OPG Nagar,
Periya Oalapuram Village, Nagaraja Kandigai,
Madharapakkam Road,
Thiruvallur -601 201.

..... Respondent
Thiru. Rahul Balaji
Advocate for the Respondent

This petition coming up for final hearing on 09-07-2024 in the presence of Tvl. N.Kumanan and A.P.Venkatachalapathy, Standing Counsel & Senior Counsel P.Wilson for the Petitioner and Thiru.Rahul Balaji, Advocate for the Respondents and on consideration of the submission made by the Counsel for the Petitioner and the Respondents, this Commission passes the following:

ORDER

1. This is an application to condone the delay of 46 days in preferring the Review petition in regard to the order dated 12.03.2024 passed by this Commission in D.R.P.No.8 of 2023.

2. The Case of the petitioner in a nutshell :-

2.1. The Hon'ble Commission vide order dated 12.03.2024 passed in D.R.P.No.8 of 2023 had directed the present petitioners, who were

arrayed as respondents 1 to 3, to refund the transmission charges of Rs.1,71,19,692/- paid by the respondent / petitioner in respect of its units under MTOA 1 and MTOA 2 within 30 days failing which to pay interest on the said sum at the rate of 12% per annum from the date of default.

2.2. The petitioners have filed a review petition in regard to the above referred order with a delay of 46 days. In obtaining necessary information and data from the field office; in having the petition vetted by the Senior Counsel by submitting additional documents delay has occurred. The delay occasioned is neither wilful nor deliberate but purely an administrative one. If the delay caused is not condoned, the petitioners will be seriously prejudiced whereas no prejudice would be caused to the respondent if the delay is condoned. The petitioners therefore pray for condonation of the delay and to have the review petition decided on merit.

3. The gist of the case of the respondent:-

3.1. The petition deserves to be dismissed in limini as the petitioners have not properly explained the reason for each and every day delay in filing the review petition. The grounds set out in the Review Petition make it abundantly clear that information and the date from the field office are not required for drafting the review petition.

As no new documents have been produced along with the review petition, it is patent that the averments of the petitioners that delay in procuring additional documents and placing them before the Senior Counsel for vetting is the cause for delay is a mendacious one.

3.2. Merely because the petitioner happens to be the Government, the delay caused cannot be mechanically condoned by placing the Government in a high pedestal than that of an ordinary litigant. This principle of law stand propounded by our Supreme Court in the case of *Office of the Post Masters and others Vs. Living Media and another 2012 AIR SCW 1812*. Further bureaucratic delay does not constitute sufficient explanation as emphasized by our Hon'ble Supreme Court in case of *Sheo Raj Singh (deceased) through LRS(Civil Appeal No.5867 of 2015)*.

3.3. The right of review available to the petitioners stand forfeited as the petitioners have not preferred the review petition within the period of limitation. The petition smacks bonafides and also merit. The petition deserved to be dismissed on all accounts.

4. Heard the counsel for the petitioners and the respondent. Records perused. Relevant provisions of law traversed.

5. The Seminal point that arises for determination is as to whether the discretionary power vested with Commission can be exercised in favour of the petitioners for condoning the delay caused in preferring the Review petition?

6. **Findings of the Commission on the Point:-**

6.1. The indisputed facts which are necessary and germane for the disposal of the petition are as follows:-

In the petition D.R.P.No.8 of 2023 preferred by the respondent against the petitioners, vide order dated 12.03.2024 this Commission passed an order directing the petitioners to refund the transmission charges of Rs.1,71,19,692/- to the respondent herein within 30 days from the date of order failing which to pay interest on the adjudicated sum at the rate of 12% per annum from the date of default till the date of actual payment. No appeal has been preferred against the said order by both the parties. The present petitioners have preferred a petition to review the order dated 12.03.2024 along with the present application to condone the delay of 46 days in preferring the Review Petition.

6.2. According to the petitioners, delay in collecting information and data from the field office and submitting additional documents to the

Senior Counsel for the purpose of vetting is the root cause for the delay in filing the Review Petition and as such since the delay is in the nature of administrative delay, to do substantial justice to the parties by disposing the matter on merit, the delay has to be condoned more so when the length of delay is trivial.

6.3. Refuting the above said contention, the learned counsel for the respondent argued with vigour that merely because the applicant happens to be the Government, the delay cannot be condoned in the absence of any plausible explanation for the delay that had occasioned. The learned counsel argued with aplomb that in the instant case the petitioners have not assigned any sufficient cause for the delay and as such the delay caused cannot be condoned only on the premise that the length of delay is trivial. To buttress the above argument the learned counsel placed reliance on some of the judgments rendered by our Apex Court.

6.4. The legislature had conferred power u/s 5 of the Limitation Act in order to enable the courts to do substantial justice to the parties by disposing the matters on merit. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the interest of

justice that being the life purpose for the existence of the institution of Courts. When substantial justice and technical consideration are pitted against each other, the former has to be preferred.

6.5. Generally delays in preferring appeals are to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bonafides is imputable to the party seeking condonation of delay. Explained delay should be clearly understood in contradistinction to inordinate, unexplained delay to warrant a condonation. To exclude from considerations that go into the judicial verdict those factors which are peculiar and characteristics of the functioning of the Government is unrealistic. Therefore a certain limit of latitude is therefore not impermissible while considering an application filed on behalf of the Government or its instrumentalities to condone the delay.

6.6. In the present case, the length of delay in preferring the Review Petition is 46 days only. The cause assigned is administrative delay. No material has been placed from which it can be inferred, even remotely, that the delay had occasioned due to gross negligence or deliberate inaction on the part of the officials of the petitioners. Further, since condonation is sought for in respect of filing a review petition, it is apparent

that no prejudice or injustice will be caused to the respondent if the delay is condoned. Further it would be improper to put an instrumentality of a State like that of the petitioners on the same footing as an individual since the petitioners are impersonal machineries operating through its officers.

6.7. In the upshot of the above discussion this Commission decides that the discretionary power vested with the court u/s 5 of the Limitation Act, has to be necessarily exercised in favour of the petitioners and the delay caused in preferring the review petition has to be condoned to render substantial justice by having the matter decided on merit.

According the point is answered in favour of the petitioners.

In the result the petition is allowed. Delay of 46 days in preferring the Review Petition is condoned. No order as to cost.

(Sd.....)
Member (Legal)

(Sd.....)
Member

(Sd.....)
Chairman

/True Copy /

**Secretary
Tamil Nadu Electricity
Regulatory Commission**