



TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
5th Floor, Singareni Bhavan Lakdi-ka-pul Hyderabad 500 004

I. A. (SR) No. 41 of 2019 in R. P. (SR) No. 38 of 2019
in
O. P. No. 61 of 2018

Dated 25.01.2021

Present

Sri T. Sriranga Rao, Chairman
Sri M. D. Manohar Raju, Member (Technical)
Sri Bandaru Krishnaiah, Member (Finance)

Between:

Southern Power Distribution Company of Telangana Limited,
#6-1-50, Corporate Office,
Mint Compound,
Hyderabad 500 063.

... Applicant/Review Petitioner/Respondent No.2

AND

M/s Sarvotham Care,
Regd. Office at H.No.1-20-248
2nd floor, Umajay Complex,
Rasoolpura, Secundrabad.

... Respondent/Respondent/Petitioner

This Interlocutory Application has come up for hearing on 19.11.2020 and on 17.12.2020 Sri Mohammad Bande Ali, Law Attaché of TSSPDCL for the applicant / review petitioner / respondent No.2 and Sri Challa Gunaranjan, Advocate for the respondent/respondent/petitioner appeared through virtual hearing on the said dates. This interlocutory application having been heard and having stood over for consideration to this day, the Commission passed the following:

ORDER

1. M/s Sarvotham Care filed O.P.No.61 of 2018 before this Commission seeking directions for treating the units fed into grid by its 3 MW solar power plant from the date of synchronisation i.e. 28.09.2015 to the date of long term open access (LTOA) agreement i.e., 13.01.2016 as deemed to have been banked or in alternative to pay

at the rate of Rs.6.78/unit and the same was allowed by this Commission to the extent indicated in the Order dated 02.01.2019.

2. Southern Power Distribution Company of Telangana Limited filed a Review Petition along with this Interlocutory Application on 28.11.2019 and for condonation of delay for review of the Order dated 02.01.2019 in O.P.No.61 of 2018 seeking directions to modify the relief (44(b)) for settlement of unutilized energy (banked energy for the period from 30.11.2015 to 13.01.2016) as per subsisting Regulation 2 of 2014 for the reasons as hereunder:

- a) That, the erstwhile Hon'ble Chairman of this Commission had demitted the office on 09.01.2019 and this Commission has become defunct from 10.01.2019.
- b) That, this Hon'ble Commission was made functional from 30.10.2019 in view of Government of Telangana appointing the Chairman and Members vide G.O.Ms.No.16 of 2019 dated 23.10.2019.
- c) That, as soon as, the Hon'ble Commission made functional the review petition along with I.A. is filed and the delay occurred was due to the de-functioning of this Commission with effect from 10.01.2019 to 29.10.2019 and if the delay is not condoned there will be irreparable injury to the applicant.

3. The Respondent in the counter sought dismissal of the I.A. for the following reasons:

- a) That, as even in the absence of the Chairman this Commission has been working and it has been accepting applications filed by various stakeholders, In fact any irreparable injury caused to the petitioner herein is on account of their inordinate delay in filing the application with the limitation period.
- b) That, filing of the review petition by the applicant on 28.11.2019 with almost inordinate delay over 253 days on top of existing limitation of 75 days is beyond the period of limitation as provided under clause 32(1) of Regulation No.2 of 2015 (Conduct of Business Regulations).
- c) That, if one fails to file review petition beyond the period of limitation i.e., $75+30=105$ days as provided under clause 32(1) of Regulation 2 of 2015, this

Hon'ble Commission has no power to entertain the review for whatsoever reason.

- d) That, filing of the review petition along with this I.A. for condonation of delay by the applicant on 28.11.2019 was clearly barred by limitation.
- e) That, the Hon'ble Supreme Court in the case of "*Chhattisgarh State Electricity Board Vs. Central Electricity Regulatory Commission and Others*" which was reported in 2010 SCC (5) 23 observed with respect to Limitation under Section 125 of the Electricity Act, 2003 by holding that no appeal can be entertained against the decision or order of the Tribunal after more than 120 days.
- f) That, the applicant filed the review petition along with this I.A. for condonation of delay in an unmindful, in a lackadaisical manner with improper explanations and without any cogent reasons in order to avoid the representations of the respondent for implementation of the Order dated 02.01.2019 passed in O.P.No.61 of 2018.

4. Heard both sides.

5. The point for determination is -

"Whether the delay which caused in filing of Review Petition by the applicant is liable to be condoned or not?"

6. The Commission is vested with the power of reviewing its decisions, directions and orders under Section 94(f) of the Electricity Act 2003 (Act 36 of 2003) and that power is regulated by clause 32(1) of the Regulation 2 of 2015 (Conduct of Business Regulations). For a better appreciation that clause 32(1) is reproduced hereunder -

"32. Review of the decisions, directions, and orders

(1) The Commission may on its own motion, or on the application of any person or parties concerned, within 75 days of any decision, direction, or order, review such decision, direction or order as the case may be and pass such appropriate orders as the Commission thinks fit.

Provided that the Commission may allow on production of sufficient cause to the petitioner, a further period not exceeding 30 days for filing the review petition on such terms and conditions as may be appropriate."

7. A plain reading of above regulation makes it clear that a review has to be preferred within 75 days from the date of the order and the Commission may allow a further period of 30 days beyond those 75 days for filing of review, if the person or party intending to file such review shows a sufficient cause.

8. In the instant matter this Commission has passed the order on 02.01.2019 in O.P.No.61 of 2018 and the applicant herein who said to be aggrieved with that order was expected to file a petition for reviewing that order within 75 days of the order. Even no attempt was made to file the review petition within further allowable period of thirty (30) days by showing sufficient cause as per the proviso of clause 32(1) of Regulation 2 of 2015 (Conduct of Business Regulations). Filing of the review petition on 28.11.2019 along with this I.A. for condoning the delay after assuming the office by the present Chairman and Members is giving an indication to say that applicant is aware of the delay. The cause shown for the delay cannot be said sufficient and the same is not worth for considering. Needless to say, filing of the review petition along with this I.A. for condonation of delay by the applicant on 28.11.2019 is beyond the stipulated period that too, without any genuine cause.

9 The learned counsel for the respondent would submit that, there is no need to consider the request of the applicant as such the I.A. is not containing any cogent reasons to accept and the explanation given is improper and the Section 5 of Limitation Act, 1963 can't be invoked to condone the delay. The counsel in support of his contentions made reliance on a citation reported in 2010 (5) SCC 23 in between "*Chhattisgarh State Electricity Board Vs Central Electricity Regulatory Commission and others*" where in it is held that Section 5 of Limitation Act of 1963 cannot be invoked for allowing the aggrieved person or party to file an appeal under Section 125 of the Electricity Act, 2003 after more than 120 days from the date of communication of the decision or order the appellate tribunal for electricity. A force is found behind the contention of the counsel for respondent.

10. This Commission is of the considered view that delay shall not be condoned beyond the prescribed period of thirty (30) days over and above seventy-five (75) days from the date of the order as provided in the proviso of clause 32(1) of Regulation 2 of 2015 (Conduct of Business Regulations).

11. Hence, for the above said reasons the point answered against to the applicant.

12. In the result, this I. A. (SR) No. 41 of 2019 is dismissed without costs and the review petition filed by the applicant vide R. P. (SR) No. 38 of 2019 is not taken on file.

This order is corrected and signed on this the 25th day of January 2021.

Sd/-
(BANDARU KRISHNAIAH)
MEMBER

Sd/-
(M.D. MANOHAR RAJU)
MEMBER

Sd/-
(T. SRIRANGA RAO)
CHAIRMAN

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