



Delhi Electricity Regulatory Commission
Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi –110017.

F.11(2265)/DERC/2024-25/8253

IA No. 16/2024
in
Review Petition No. 54/2024

In the matter of: **Application for condonation of delay in filing the Review Petition.**

Review Petition No. 54/2024

In the matter of: **Review Petition under Section 94(1)(f) of the Electricity Act, 2003 read with Delhi Electricity Regulatory Commission Comprehensive (Code of Conduct) Regulations, 2001 seeking review of the Order dated 24.03.2021 passed by the Commission in Petition No. 24 of 2020.**

New Delhi Municipal Council

... Review Petitioner/Applicant

Vs

Indraprastha Power generation Co Ltd

Respondent/1

State Load despatch Centre

Respondent/2

Coram:

Justice (Retd.) Jayant Nath, Chairperson

Sh. Ram Naresh Singh, Member

Sh. Surender Babbar, Member

Appearance:

- 1. Mr. Anil K. Airi, Sr. Advocate, NDMC**
- 2. Ms. Kanika Agnihotri, Standing Counsel, NDMC**
- 3. Mr. Ravi Krishan Chandna, Addl. Standing Counsel, NDMC**
- 4. Mr. Mudit Ruhella, Advocate, NDMC**
- 5. Ms. Shruti Agrawal, Advocate, NDMC**

ORDER

(Date of Order: 16.01.2025)

1. The Review Petitioner has filed the instant Review Petition seeking review of the Order dated 24.03.2021 passed by the Commission in Petition No. 24 of 2020, wherein M/s Tata Power Delhi Distribution Ltd. was the Petitioner and Indraprastha Power Generation Co Ltd. and SLDC were the two Respondents. NDMC, the Review Petitioner in the instant matter has, *inter-alia*, submitted that in the said Petition No. 24 of 2020, NDMC was neither a party nor was ever impleaded as a party to the said proceedings and yet the Commission has passed an Order (under review), directing it to enter into a Power Purchase Agreement (PPA) that too after expiry of the useful life of the GTPS Plant. The Review Petitioner submitted

that the passing of the said Order in itself is an error apparent on the face of it and therefore the same is liable to recalled.

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2. The Review Petitioner has also filed an Application for condonation of delay in filing the Review Petition and prayed the following:
 - a) Condone the delay of 1260 days in filing the Review Petition before the Commission review of the order dated 24.03.2021 in Petition No. 24 of 2020 passed by this Commission.
3. The Review Petitioner in its Application submitted as follows: -
 - I. The Review Petitioner prior to the filing of the present Petition had filed appeals before the Hon'ble APTEL and the Hon'ble Supreme Court of India and has duly explained the delay in filing the said Petitions. The Petitioner had applied for certified copy of the Order dated 24.03.2021, however, the same got tagged with some other file. Therefore, there was delay in providing the information regarding the certified copy of impugned Order to the Petitioner by his Counsel, due to which some delay occurred.
 - II. That after receiving copy of the Order, the Petitioner sought legal advice as best suited legal remedy available from his previously engaged Counsel due to which some more delay has occurred.
 - III. That in the aforesaid matter, after getting the copy of the impugned order, the appellant has taken some time to arrange the required formalities and complete file/documents for filling the present Petition which caused further delay in filing the Petition before the Hon'ble APTEL and the Hon'ble Supreme Court of India.
 - IV. The Petition was withdrawn from the Hon'ble Supreme Court of India vide Order dated 09.08.2024 and the present Review Petition is being filed within a period of 90 days from the said date.
 - V. That thereafter some delay was caused in preparation and filing of the Review Petition which was caused inadvertently. That the short delay in filing the Review Petition is neither deliberate nor intentional and therefore the same may be condoned.

Commission's Analysis

4. The matter was heard on admissibility of the Review Petition on 11.12.2024. During the hearing, the Learned Senior Counsel for the Review Petitioner reiterated the submissions made in the Review Petition and in the I.A. for condonation of delay.
5. While considering the issues raised in this Review Petition, it is important to understand the scope and applicability of Review of an Order. Section 94 of the Electricity Act, 2003 vests the power with the Commission to review its decision, directions and orders and is reproduced below:-

“ (1) The Appropriate Commission shall, for the purposes of any inquiry or proceedings under the Act, have the same powers as are vested in a civil court under the Code of Civil Procedure 1908 (5 of 1908) in respect of the following matters, namely:-

- a. summoning and enforcing the attendance of any person and examining him on oath;*
- b. discovery and production of any document or other material object producible as evidence;*
- c. receiving evidence on affidavits;*
- d. requisitioning of any public record;*
- e. issuing commission for the examination of witnesses;*
- f. reviewing its decisions, directions and orders;*
- g. any other matter which may be prescribed.*

(2) The Appropriate Commission shall have the powers to pass such interim order in any proceeding, hearing or matter before the Appropriate Commission, as that Commission may consider appropriate.

(3) The Appropriate Commission may authorize any person, as it deems fit, to represent the interest of the consumers in the proceedings before it.”

6. The right to review has been conferred by Section 114 of Civil Procedure Code, 1908. The limitation and conditions are provided under Order 47, Rule 1 of Civil Procedure Code, 1908, as reproduced below:

“The Order 47, Rule (1) of the Code is given below: “Application for review of judgment. - (1) Any person considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) ,

(c) ,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.”

7. Further, the power to review is also subject to the laws of limitation. Section 5 of the Limitation Act 1963, deals with cases where condonation of delay may be accepted by the Courts. It provides:-

“5. Extension of prescribed period in certain cases.—Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation.—The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.”

7. In the case of 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.
8. In the case of Ajit Singh Thakur Singh v. State of Gujarat, 1981 LawSuit (SC) 21, the Hon'ble Supreme Court held as under:

“..the sufficient cause must establish that because of some event or circumstances arising before limitation expired, it was not possible to file the appeal within time. No event or circumstance arising after the expiry of limitation can constitute such sufficient cause.”

9. The Hon'ble Supreme Court in Brijesh Kumar & Others V State of Haryana [2014 (3) CCC 470 (SC)], had observed that the delay due to inaction and negligence cannot be condoned. The relevant extract of the Judgement is placed below:

“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. Merriam Webster Dictionary defines the word “sufficient” to mean enough to meet the needs of a situation or a proposed end. “Sufficient Cause” means an adequate and enough reason which prevented the appellant to approach the court within limitation. (Basawaraj v. Land Acquisition Officer, (2013) 14 SCC 81). Relying upon the above, similar view was taken by the Hon'ble APTEL in its Order dated

21.10.2024, wherein the appeal DFR No.125 of 2024, titled NDMC Vs. DERC, was dismissed on account of delay of 371 days in filing the said appeal.

11. In the light of the settled principles of law, the Commission now proceeds to consider whether the Review Petitioner has made out a case for 'sufficient cause' for condonation of delay. The Order, which has been sought to be reviewed, was passed on 24.03.2021 vide a common Order in respect of Petition Nos. 35 and 24 of 2020. The said order was posted in the website of the Commission on 24.03.2021. Accordingly, the period of 30 days would start from the date the said order was posted in the website of the Commission i.e. 24.03.2021 and culminates on 23.04.2021. The Petitioner has submitted that the Review Petition has been filed on 08.11.2024, viz., after a delay of 1260 days. It is also observed that the Appeal against the Commission's order dated 24.03.2021 was filed in the Hon'ble APTEL on 02.03.2023 after the lapse of limitation period in preferring an appeal. Hon'ble APTEL, without going into the merits of the case, dismissed the appeal on 05.10.2023 on the ground of non-payment of cost of Rs. 50,000. Thereafter, on 15.05.2024 Civil Appeal filed by the Review Petitioner before the Hon'ble Supreme Court. The same was dismissed as withdrawn vide Order dated 09.08.2024.
12. 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, there has been casual and relaxed approach in pursuing the filing of the Review Petition. Had the Review Petitioner paid due care and attention and not been negligent in pursuing the matter before the right forum, ie., the Commission, the inordinate delay in filing the petition before the Commission, could have been avoided. Thus, there exists no sufficient cause, which may entitle the Petitioner to get the benefit of condonation of delay. Accordingly, the Commission finds that as the Review Petitioner has failed to establish 'sufficient cause' to condone the inordinate delay of 1260 days, as prayed, in filing the present Review Petition, the IA for condonation of delay is dismissed, and the Review Petition stands rejected on the ground of limitation; without going into the merits of the case.
13. The Review Petition No.54 of 2024 alongwith IA No.16 of 2024 is disposed of in the above terms.
14. Ordered accordingly.

Sd/-
(Surender Babbar)
Member

Sd/-
(Ram Naresh Singh)
Member

Sd/-
(Justice (Retd.) Jayant Nath)
Chairperson