

2. We have heard the learned Counsel, Mr. Ashok Panigrahi for Appellant and Mr. Mehta representing Respondent No. 2. The OERC who is the Respondent No. 1 herein passed an order on 23.3.2007 57 in proceeding No. 57 to 60 of 2006 and we are told that the order was communicated to Mr. Panigrahi's client on 1.4.2007. The Appellant filed a writ petition before High Court of Orrisa at Cuttack on 10.12.2007 instead of preferring an Appeal under Section 111 of the Electricity Act 2003, on the purported ground that according to the Appellant they required an interpretation of Section 108 of the Act. The High Court disposed of the writ petition and passed the order dated 31.3.2009 inter alia stating that the matter has to be disposed of by the Appellate Authority being the Appellate Tribunal for Electricity. Since the proposed Appeal was going to be barred by limitation, there was an observation by the High Court that this Tribunal may consider any application for condonation of delay sympathetically. Then the Appellant preferred this appeal on 30/7/2009.

3. By order dated 22.3.2010 with respect to the application for condonation of delay there was an observation by this Tribunal that there was no explanation of delay for the period between 23.3.2007 when the tariff order was passed and 10.12.2007 on which date the writ petition was filed.

Furthermore, there was no explanation of delay between the date of disposal of writ petition i.e. 31.3.2009 and date of filing of the appeal i.e. 30.7.2009. Accordingly, directions were given to Appellant to give a better affidavit explaining the condonation of delay. Pursuant thereto, the Appellant put in a supplementary affidavit with a view to assigning explanation of the delay for the aforesaid period. In terms of the supplementary affidavit, it appears that Appellant has contended that it preferred the writ petition bonafide and in good faith before the Orissa High Court desiring to have an order containing interpretation of Section 108 of the Act and it took a long time for the High Court to get the writ petition disposed of. With regard to the delay of the second phase i.e. between 31.3.2009 to 30.7.2009 it has been contended that necessary formalities towards preparation of appeal required certain time and delay is attributed to completion of these formalities. Mr. Panigrahi has submitted that High Court of Orissa has not put any question as to the delay in making the writ petition on 10/12/2007 when the Commission's order was passed on 22.3.2007. The submission of Mr. Panigrahi is that since the High Court has expressed that the Appellate Authority should sympathetically consider the application for condonation of delay, this Tribunal may take note of

such observation and the reasons for delay have been assigned in the two affidavits which are on record.

4. Mr. Mehta, learned Counsel appearing for the Respondent No. 2 has objected to the application for condonation of delay and submitted that in terms of the law the delay has not been strictly explained. Mr. Mehta states that statute enjoins that the intended appeal has to be preferred within 45 days from the date of Commission's order. The Appellant instead of moving the High Court should have come to the Tribunal within 45 days and even in going to the High Court they took inordinate time to file the writ petition. According to Mr. Mehta, the Appellant has not explained any delay between the period from 22.3.2007 to 10.12.2007. Secondly, it has been submitted by Mr. Mehta that the explanation of the delay with respect to the 2nd phase i.e. 31.3.2009 to 30.7.2009 is not satisfactory because day-today explanation has not been given in terms the decision of the Supreme Court in the case titled as U.P. Jal Nigam and Another versus Jaswant Singh and Others reported in (2006) 11 Supreme Court Cases 464.

5. Mr. Panigrahi has a point that in terms of Section 14 of the Limitation Act he is entitled to condonation of delay as he had been to the High Court on a bonafide ground, and now

that statutory appeal has been filed, this Tribunal may take into consideration of the proceedings taken before the High Court and condone the delay.

6. Mr. Panigahi further submitted that an appeal has also been filed before this Tribunal by some other party against the impugned order of the OERC against which the Appellant also has preferred this appeal and since an identical matter has already been admitted for hearing, he may be given a chance to address his grievance.

7. Having heard the learned Counsel for the parties, we find that though the order dated 23.3.2007 which was communicated on 1/4/2007 is an appealable order under section 111 of the Electricity Act, the Appellant filed a writ petition in the Orissa High Court. The only ground on which the Appellant filed the writ petition was to have an interpretation of section 108 of the Act. It is true that there is no period of limitation for preferring a writ petition under Article 226 of the Constitution of India and that being the position High Court has not questioned the delay caused in preferring the writ petition. Secondly, the High Court has also expressed its pious wish that this Tribunal may consider sympathetically the delay in preferring the intended appeal before this Tribunal. In the fitness of the

things, we do not venture to critically scrutinize the delay between the period from 1.4.2007 to 10.12.2007 although strictly speaking provision of the section 14 of the Limitation Act does hardly have any manner of application to this case. The fact is that, a writ petition was filed and it has been disposed of on 31.3.2009 by the High Court of Orissa with the observation as above as to the condonation of delay provided any appeal is filed. As to the second spell of the delay between 31.3.2009 and 30.7.2009, we cannot ignore the arguments of Mr. Mehta that there has not been adequate explanation of day today delay of the period of 4 months, yet some amount of explanation has been given in the supplementary affidavit and absolute adequacy may not be pushed too far. We are, however, impressed by the submission that another appeal is pending before this Tribunal which relates to the self-same order in respect of which the present appeal has also been filed. We think that since an identical matter is already pending for disposal before this Tribunal, Appellant may be given an opportunity to ventilate its point of appeal that arises from one and the same order of the Commission and in that view of the matter we are of view that the appeal may be heard on merit by condonation of delay. But we do not propose to condone the delay without any rider. The Appellant should be saddled with costs.

8. Since there is some amount of explanation with regard to condonation of delay, we are satisfied with that and we condone the delay, and accordingly we dispose of this IA No. 59/10 with the condition that the Appellant shall pay a cost of Rs.20,000/- to the Blind School RITES within 2 weeks and the Appellant is directed to submit proof of the payment thereof whereafter, the appeal will come up for hearing for admission.

Post the matter on 15.7.2010.

(Justice P.S. Datta)
Judicial Member

(Rakesh Nath)
Technical Member

PK/JS