

COURT-I

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)**

(Energy Conservation)

**Appeal No. 228 of 2016 &
IA No. 491, 492 & 516 of 2016**

Dated : 6th October, 2016

**Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson
Hon'ble Mr. I.J. Kapoor, Technical Member**

In the matter of:

Mukund V. Bhandare

... Appellant(s)

Vs.

Bureau of Energy Efficiency & Anr.

... Respondent(s)

Counsel for the Appellant(s) : Mr. Pardeep Dahiya

Counsel for the Respondent(s) : Mr. Abhishek Kumar for R.1

ORDER

**IA No. 516 of 2016
(Appl. for recall of the order)**

On 31.08.2016 we condoned the delay of 45 days in filing this appeal. On that day, though served the Respondents were not represented. In the circumstances, after perusing the explanation offered by the Appellant and after hearing the Appellant's counsel we condoned the delay.

The present application is preferred by Respondent No.1 praying that the Order, dated 31.08.2016, condoning the delay in filing the appeal be recalled. It is stated in the application that on 31.08.2016 due to heavy

rains and chaotic traffic conditions the counsel for Respondent No.1 could not remain present and therefore the delay was condoned *ex parte*. It is further stated that the delay in filing the appeal is not *bona fide* and therefore Order dated 31.08.2016 be set aside and I.A. No. 322 of 2016 be re-heard.

Since it is stated that counsel for Respondent No.1 could not remain present on account of inclement weather conditions, we have heard him at length and perused the contents of the instant application very carefully.

Counsel has drawn our attention to paragraph No. 7 of the application and contended that the reason for not filing the appeal in time is stated to be a clerical error in the impugned order, which was got corrected and in that process some time was taken. It is pointed out that in fact the Appellant had requested for corrected copy of the order only on 16.03.2016 i.e., three days after the last date for filing had expired. Hence, the explanation is not *bona fide*. The Appellant is guilty of negligence.

We are unable to accept this submission. It is not the case of Respondent No.1 that there was no error in the impugned order. Therefore, if the Appellant took some time to get the error corrected, the Appellant cannot be faulted for that. Moreover, we have noted that the impugned Order, dated 25.01.2016, was received by the Appellant on 28.01.2016. Since there was error in the date of the impugned order the Appellant brought this fact to the notice of Respondent No.2 and vide e-mail dated 02.02.2016 it was clarified that the date of the order may be read as 25.01.2016 instead of 25.01.2015. Thereafter on legal advice from

the counsel Appellant sent e-mail dated 16.03.2016 to the Respondents seeking the corrected copy of the impugned order. It was provided to the Appellant through his counsel on 28.03.2016 and on receipt of the same, after answering the queries made by the Registry of this Tribunal about the maintainability of this appeal, the Appellant filed the instant appeal. These important stages mentioned in I.A. No. 322 of 2016 have been overlooked by Respondent No.1. Having regard to the peculiar circumstances narrated by the Appellant in his application, we are of the opinion that the delay has been rightly condoned. Respondent No.1 has not made out any case for recall of our Order dated 31.08.2016. In the circumstances the application is dismissed.

Appeal No. 228 of 2016

Admit. Issue notice. Mr. Abhishek Kumar takes notice on behalf of Respondent No.1 and seeks four weeks time to file reply. Notice be issued to the other Respondents returnable on 28.11.2016. Dasti, in addition, is permitted.

List the matter on **28.11.2016**. In the meantime, learned counsel for the Respondents may file reply on or before 04.11.2016 after serving copy on the other side. Thereafter, rejoinder may be filed on or before 21.11.2016 after serving copy on the other side.

(I.J. Kapoor)
Technical Member

(Justice Ranjana P. Desai)
Chairperson

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