

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI
(APPELLATE JURISDICTION)**

**IA No.372 OF 2016
IN
DFR NO.493 OF 2016**

Dated : 18th October, 2016

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

In the matter of:-

1. **JHARKHAND URJA VIKAS NIGAM**)
LIMITED (in short "JUVNL"),)
through its)
Chairman-cum-Managing Director)
Having its office at Engineers Bhawan,)
HEC, Dhurwa, Ranchi – 834004)
2. **THE CHIEF ENGINEER**)
(COMMERCIAL & REVENUE))
Jharkhand Urja Vikas Nigam Limited)
Having its office at Engineers Bhawan,)
HEC, Dhurwa, Ranchi - 834004) ... **Appellant(s)**

AND

1. **M/S INLAND POWER LIMITED**)
Having its Registered Office at P-221/2)
Strand Bank Road,)
Kolkata – 700001)
2. **JHARKHAND STATE ELECTRICITY**)
REGULATORY COMMISSION)
2nd Floor, Rajendra Jawan Bhawan-)
cum-Sainik Bazar)
Mahatma Gandhi Marg (Main Road),) ... **Respondent(s)**
Ranchi – 834001

Counsel for the Appellant(s) : Mr. Ramesh P. Bhatt, Sr. Adv.
Mr. Himanshu Shekhar
Mr. Aabhas Parimal
Mr. Jamnesh Kumar
Mr. Mohit Kumar

Counsel for the Respondent(s) : Mr. Devashish Bharuka
Mr. Ravi Bharuka
Mr. Arpit for **R-1**

Mr. Farrukh Rasheed for **R-2**

ORDER

1. In this appeal the Appellants have challenged order dated 29/07/2015 passed by the Jharkhand State Electricity Regulatory Commission (“**the State Commission**”). There is 150 days’ delay in filing this appeal. Hence, in this application, the Appellants have prayed that the said delay be condoned.

2. In the application it is stated that after the impugned order was passed on 29/07/2015 by the State Commission, the Appellants decided to file a review petition before the State Commission. However, during the pendency of the review petition the Appellants decided to file appeal in this Tribunal. The appeal was filed on 10/02/2016. The review petition was finally disposed of by the State Commission vide its order dated 03/03/2016. It is further stated that the delay caused is

bona fide and unintentional and was due to the reason that the Appellants were advised to pursue their remedy before the State Commission.

3. Respondent No.1 filed reply taking strong exception to the explanation offered by the Appellants. It is pointed out that review petition itself was grossly delayed and was limited only to the imposition of cost upon the Appellants. The said review petition was disposed of by the State Commission in view of the pendency of the present appeal on 03/03/2016. Relying on **Postmaster General & Ors. v. Living Media India Ltd & Anr.**¹ it is urged that for condonation of delay sufficient cause has to be made out but no sufficient cause is made out by the Appellants. It is also submitted that no different treatment can be given to the Government or Government companies. In this connection reliance is placed on **Union of India & Ors. v. TATA Yodogawa Limited & Anr.**². Reliance is also placed on **Commissioner of Central Excise v. Customs, Excise and Gold (Control) Appellate Tribunal**³.

¹ (2012) 3 SCC 563

² (2015) 9 SCC 102

³ (2005) 120 DLT 549

4. To meet the allegation that the explanation offered by the Appellants is not satisfactory the Appellants have filed rejoinder affidavit of its Asst. Liaison Officer Shri Alda. In this affidavit the Appellants have explained how the file of the case was processed and what steps were taken till filing of the appeal. Counsel for Respondent No.1 has severely criticised the chronology of events set out in the rejoinder affidavit. Counsel tendered a table which gives the gist of dates and events and submitted that this table indicates that file just kept moving from one table to another without any substantial steps being taken to expedite the filing of the appeal. Counsel submitted that this table completely bears out Respondent No.1's case that the Appellants adopted dilatory tactics. The delay therefore should not be condoned.

5. In view of the above submission of Respondent No.1 it is necessary to reproduce the said table. It is as follows:

LIST OF DATES IN THE SUPPLEMENTARY AFFIDAVIT

29/07/2015	Impugned Order
29/07/2015	Copy of the IO received by Adv.
03/08/2015	Adv. informed the appellant by email and sent a copy of IO.

11/08/2015	ESE endorsed the file to CE and proposed to challenge IO.
12/08/2015	CE endorsed the file to MD and proposed to challenge IO.
13/08/2015	M.D. (C&R) approved challenge.
18/08/2015	Write to AoR in SC to file appeal.
21/08/2015	AoR – send court fee.
24/08/2015	Internal proceeding.
01/09/2015	M.D.(JBVNL) directed to discussion.
28/09/2015	EEE prepared note.
30/09/2015	Note to MD for approval.
01/10/2015	Ranchi Adv. advised Review Petition.
05/10/2015	MD approved forming of committee to decide on filing of appeal.
06/10/2015	05/10/2015 order amended by constituting the committee.
20/11/2015	IPL letter.
18/12/2015	No meeting of the committee.
24/12/2015	ESE note for taking legal opinion for Sr. Standing Counsel (JBVNL).
15/01/2016	Opinion of Sr. Standing Counsel(JBVNL)
19/01/2016	Opinion received.
01/02/2016	MD approved filing of appeal.
10/02/2016	Appeal filed.

6. We must first consider the submission that the State cannot be shown latitude while considering delay condonation

application. This submission was considered by us in our order dated 18/10/2016 in **IA No.490 of 2016 in DFR No.2718 of 2016 (Jaipur Vitran Nigam Limited & Ors. v. M/s Adani Power Rajasthan Limited & Anr.)**. In that case we have referred to the Supreme Court's judgments in **Commissioner of Wealth Tax, Bombay v. Amateur Riders Club**⁴, **The State of Haryana v. Chandra Mani & Ors.**⁵, **State (NCT of Delhi) v. Ahmed Jaan**⁶, **Postmaster General, Pundlik Jalam Patil v. Executive Engineer, Jalgaon Medium Project & Anr.**⁷, **Esha Battacharjee v. Managing Committee of Raghunathpur Nafar Academy & Ors.**⁸, **State of Rajasthan & Anr. v. Balkishan Mathur**⁹ and held that though in matters of condonation of delay the State cannot as a matter of right claim preferential treatment, certain amount of latitude can be shown to it if there is no lack of *bona fides*. We may quote the relevant paragraphs of the said order.

“8. In the **State of Haryana v. Chandra Mani & Ors.** the Supreme Court observed as under:

⁴ (1994) Supp(2) SCC 603

⁵ (1996) 3 SCC 132

⁶ (2008) 14 SCC 582

⁷ (2008) 17 SCC 448

⁸ (2013) 12 SCC 649

⁹ (2014) 1 SCC 592

“11. When the State is an applicant, praying for condonation of delay, it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the note-making, file-pushing and passing-on-the-buck ethos, delay on the part of the State is less difficult to understand though more difficult to approve, but the State represents collective cause of the community. It is axiomatic that decisions are taken by officers/agencies proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it on [the] table for considerable time causing delay intentional or otherwise——is a routine. Considerable delay of procedural red tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default, no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression “sufficient cause” should, therefore, be considered with pragmatism in justice-oriented approach rather than the technical detection of sufficient cause for explaining every day’s delay.’

(9) This Hon’ble Court in *Union of India v. Jain and Associates*¹⁰ decided on 6-2-2001 has held that delay ought to be condoned when sufficiently explained particularly where party seeking condonation is the Government.....”

It is clear therefore that the Supreme Court acknowledged the slow pace with which files move in Government departments and expressed that certain amount of latitude is permissible while examining the

Government's explanation for delay because a rigid approach may defeat public interest.

9. In **State (NCT of Delhi) v. Ahmed Jaan** the High Court had dismissed criminal revision petition filed by the State on the ground of inordinate delay in filing and re-filing it. The Supreme Court referred to its judgement in **G. Ramegowda** where it is held that while assessing what constitutes sufficient cause for purposes of Section 5 of the Limitation Act, it might perhaps be somewhat unrealistic to exclude from the considerations that go into judicial verdict factors which are peculiar to and characteristic of the functioning of the Government. The Supreme Court observed that the Government decisions are proverbially slow encumbered, as they are, by a considerable degree of procedural red tape in the process of their making. The Supreme Court further observed that certain amount of latitude is therefore not impermissible.

10. In **Esha Bhattacharjee** the Supreme Court was considering a situation where the Calcutta High Court had condoned delay of about seven years in filing appeal. While setting aside the High Court's order the Supreme Court referred to its previous judgements on the point and laid down the principles which should guide the courts while considering condonation of delay applications. One of the principles laid down by the Supreme Court is found in paragraph 21.13(xiii) of the judgement. It reads thus:

“21.13 (xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.”

11. We must also refer to **Commissioner of Wealth Tax, Bombay v. Amateur Riders Club** which is referred to in the judgment of the Supreme Court in **Postmaster General** and on which reliance is placed by Mr. Kapur. In that case there was a delay of 264 days in filing the special leave petition by the Commissioner of Wealth Tax, Bombay. While refusing to condone the delay the

Supreme Court acknowledged that the Government should not be treated as any other private litigant and further stated that in the case of the former the decisions to present and prosecute appeals are not individual but are institutional decisions necessarily bogged down by the proverbial red tape. The Supreme Court added a caveat that there are limits to this also. In the facts of the case before it the Supreme Court noted that even with all this latitude, the explanation offered for the delay merely served to aggravate the attitude of indifference because the affidavit was again one of the stereotyped affidavits susceptible to the criticism that no importance was attached to promptitude by the Government. This judgment acknowledges that latitude needs to be shown to the Government unless its conduct indicates complete inertia or indifference and its actions are not bona fide.

12. **Pundalik Jalam Patil** is also referred to in **Postmaster General**. In that case the High Court had condoned delay of 1724 days in filing appeal by Respondent No.1 therein – Executive Engineer, Jalgaon Medium Project against the award passed in land acquisition cases. Respondent No.1 therein had in the application made an incorrect statement that he was unaware of the stand taken by the Special Land Acquisition Officer as well as the impugned judgment and award. This statement was found to be incorrect. The Supreme Court observed that a party taking a false stand to get rid of the bar of limitation should not be encouraged to get premium on the falsehood. In those circumstances the Supreme Court held that the High Court wrongly exercised the jurisdiction to condone the delay. The Supreme Court acknowledged that the State and its instrumentalities may be entitled to certain amount of latitude but observed that the Limitation Act does not provide a different period of limitation to the Government. The observations of the Supreme Court must be understood in the background of huge delay of 1724 days and a wrong statement made by Respondent No.1.

13. In **Postmaster General** there was 427 days' delay in filing special leave petition. The Supreme Court noted that the order impugned was dated 11/09/2009. The Appellant's counsel had applied for certified copy only on 08/01/2010 i.e. after about four months from the date of the order. The Supreme Court had afforded another opportunity to the Appellant to file a better affidavit but that opportunity was not used properly. There was delay at every stage. It is in those circumstances that the Supreme Court refused to condone the delay observing that the law of limitation binds everybody including the Government. It is pertinent to note that the Supreme Court expressed that it was conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides a liberal construction has to be adopted to advance substantial justice, taking into account the facts and circumstances of the case before it, it was observed that the Government cannot take advantage of various earlier decisions. Thus this judgment turns on its own peculiar facts.

14. It is necessary here to refer to **Balkishan Mathur** where the Supreme Court was considering whether the High Court had rightly refused to condone the delay of 98 days in filing appeal by the State. The Supreme Court found that there was no negligence on the part of the State. While condoning the delay the Supreme Court observed that while it is true that the State cannot claim any preferential treatment unless there is gross negligence liberal view needs to be taken. The Supreme Court clarified that while it was not striking any discordant note, its observations in **Postmaster General** must be understood in the context of its facts. Following are the relevant observations of the Supreme Court.

“8. It is correct that condonation of delay cannot be a matter of course; it is also correct that in seeking such condonation the State cannot claim any preferential or special

treatment. However, in a situation where there has been no gross negligence or deliberate inaction or lack of bona fides this Court has always taken a broad and liberal view so as to advance substantial justice instead of terminating a proceeding on a technical ground like limitation. Unless the explanation furnished for the delay is wholly unacceptable or if no explanation whatsoever is offered or if the delay is inordinate and third-party rights had become embedded during the interregnum the courts should lean in favour of condonation. Our observations in Postmaster General v. Living Media India Ltd. and Amalendu Kumar Bera v. State of W.B. do not strike any discordant note and have to be understood in the context of facts of the respective cases.”

15. Thus it is clear from the above judgments that the State cannot as a matter of right claim preferential treatment in matters of condonation of delay. The Law of Limitation binds the State also. But a certain amount of latitude can be shown to the State in matters where there is no lack of bona fides or no evidence of dilatory tactics or conduct indicating abuse of process of law. The courts must generally lean in favour of condoning delay and hearing the matter on merit instead of terminating the lis on the ground of delay unless the delay is gross and the explanation offered is utterly worthless. Some amount of latitude can be shown to the Government in a deserving case where acceptable explanation is offered knowing how the procedural requirements in the Government offices sometimes introduce slow pace. However there should be no lack of bona fides or evidence of abuse of process of law. It must be noted that some latitude is shown by the Supreme Court to the Government in some cases as declining to condone the delay in matters filed by the Government is likely to affect public interest. However, the Government cannot take advantage of this

in all cases to get over delays where there is no explanation to offer at all.”

7. In **TATA Vodogawa Limited** on which reliance is placed by Respondent No.1, the Supreme Court refused to condone delay in filing special leave petition because there was no explanation for the delay except that legal problems had arisen in filing special leave petition. The Supreme Court also took note of the fact that in any case the impugned order was passed without giving to the Respondent the notice required in law and was therefore bad in law. Pertinently, the Supreme Court noted that it was aware of the fact that the Government being impersonal takes longer time than the private bodies or the individual. The Supreme Court further observed that even giving that latitude there must be some way or attempt to explain the cause of such delay. Such explanation not being there the Supreme Court declined to condone the delay. Thus the Supreme Court acknowledged that some latitude can be shown to the Government in deserving cases.

8. We will have to examine this case in the light of the above judgments. Undoubtedly the file has moved from one table to

another and time was spent in taking opinion and advice of officers at different levels and of lawyers. It appears that decision to file the appeal was taken. Steps were also taken to prepare a demand draft for court fees. However, in the meantime the Standing Counsel advised that review petition be filed. Accordingly, a review petition was filed restricted to imposition of cost. However, the file was again processed and it was decided to file appeal. The M.D. approved the proposal and after taking necessary steps of preparing the appeal memo and paper books, the appeal was filed on 10/02/2016. The review petition was disposed of because of pendency of appeal. Undoubtedly, there was delay in filing the review petition and also in filing the appeal, but the delay was caused because the Appellants were not certain what remedy should be adopted. The table reproduced by us shows that the file kept moving from one officer to the other. This movement could have been cut short but we do not find a complete lull. The Appellants appear to have been misdirected. This is a case where some latitude can be shown to the Appellants after saddling them with cost.

9. In this connection we may profitably refer to the Supreme Court's judgment in **G. Ramegowda v. Special Land Acquisition Officer**¹⁰ where the Supreme Court has held that the expression 'sufficient cause' in Section 5 of the Limitation Act must receive a liberal construction so as to advance substantial justice and generally delays in preferring appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of *bona fides* is imputable to the party seeking condonation of delay.

10. Though we wish that in this case the Appellants should have shown more promptitude, we cannot impute to them deliberate inaction or lack of *bona fides*. Moreover, we are of the opinion that issues involved in this case need to be looked into. But this is a case where cost needs to be imposed on the Appellants so that they understand the importance of promptitude at every level. It must be clearly borne in mind that latitude cannot be shown to the Government and its companies in all cases. The Appellants must examine why delays are caused and what can be done to minimise the time taken to file appeals.

¹⁰ (1988) 2 SCC 142

11. In the circumstances the delay is condoned on the Appellants paying cost quantified at Rs. 20,000/- (Rupees twenty thousand only) to **The Child Relief and You (CRY), 632, 2nd Floor, Lane No.3, West End Marg, Saiyadul Ajaib, New Delhi.** within three weeks from today. On proof of payment of cost the Registry shall register the appeal and place it for admission.

12. The Interim application No.372 of 2016 is disposed of in the aforesaid terms.

13. Pronounced in the Open Court on this **18th day of October, 2016.**

(I.J. Kapoor)
Technical Member

(Justice Ranjana P. Desai)
Chairperson

✓ **REPORTABLE / ~~NON-REPORTABLE~~**