

**Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

**Appeal No.114 of 2009 &
IA No. 214 & 215 of 2009**

Dated: 13th August, 2009

**Present : Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. H.L. Bajaj, Technical Member**

M.D. BESCO

.... Appellant (s)

Versus

Chief Manager, SBI & Anr.

... Respondent (s)

Counsel for the Appellant/ (s) : Mr. Karun Mehta
Counsel for the Respondent (s) : Mr. None

ORDER

This is an application to condone the delay of 2009 days in filing the Appeal as against the Order passed by the Commission on 7.11.2003.

There is no dispute in the fact that as against the Order passed on 7.11.2003, the Appellant filed an Appeal before the Karnataka High Court on 20.12.2003 and the same was kept pending till 24.6.2008 on the date the Order was passed by the Karnataka High Court directing the Appellant to file Appeal before this Tribunal.

Thereafter, in May 2009, the Appellant filed the Appeal before this Tribunal with an application to condone the delay of 2009 days. The only ground on the basis of which the application for condonation of delay has been filed is the pendency of Appeal before the Karnataka High Court during the period between 20.12.2003 and 24.6.2008.

It is not disputed that the Act providing Appellate forum in the Tribunal has come into force on 10.6.2003, but even then the Appellant has chosen to file an Appeal before the Karnataka High Court on 20.12.2003. The Appellant Company has filed several Appeals as against the several Orders of the State Commission before this Tribunal which started functioning from 21.7.2005. Even then, the Appellant has not chosen to take any steps to withdraw the Appeal before the Karnataka High Court and to file the Appeal before this Tribunal. There is no explanation for this.

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Similarly, although the Order had been passed by the Karnataka High Court on 24.6.2008 dismissing the Appeal and directing the Appellant to approach the Tribunal, the Appellant has not chosen to file the Appeal immediately before this Tribunal. On the other hand, it is claimed that they waited for return of papers from the Karnataka High Court and on the receipt of the papers, this Appeal has been filed on 11.5.2009. Even this delay has not been properly explained.

We have issued notice but nobody has appeared on behalf of the Respondent. The factual details given in the affidavit do not show any sufficient cause to condone the huge number of days delay. It is true that the Appeal was pending for about 5 years in the Karnataka High Court. But the Appellant has not been vigilant enough to take steps immediately to file an Appeal subsequent to the Order that was passed by the Karnataka High Court on 24.6.2008. Nearly after one year, this Appeal has been filed.

To put it briefly, the Appellant has not indicated any satisfactory reason in its affidavit to condone the delay so as to convince this Tribunal that there is sufficient cause. The main order has been passed as early as on 7.11.2003.

Since we feel that there is a lack of diligence and vigilance on the part of the Appellant, we do not find any sufficient cause to condone the delay.

Hence, the delay condonation application is dismissed and consequently the Appeal is also rejected.

(H.L. Bajaj)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson