

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

**I.A. No.84 OF 2015**  
**[For Condonation of Delay]**  
**IN**  
**D.F.R. NO.303 OF 2015**

**Dated: 15<sup>th</sup> September, 2015**

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

**In the matter of:-**

**CHHATTISGARH STATE POWER )  
DISTRIBUTION CO. LTD., )  
Vidyut Sewa Bhawan, Danganiya, )  
Raipur – 492 013, Chhattisgarh. )  
Through its Executive Engineer. ) ... **Applicant****

**AND**

1. **CHHATTISGARH STATE )  
ELECTRICITY REGULATORY )  
COMMISSION, )  
Irrigation Colony, Shanti Nagar, )  
Raipur – 492 001. )  
Through its Secretary. ) ... **Respondent No.1****
2. **CHHATTISGARH BIOMASS )  
ENERGY DEVELOPERS )  
ASSOCIATION, )  
C-33, 3<sup>rd</sup> Floor, Ashoka )  
Millennium Ring Road No.1, )  
Rajendranagar Chowk, Raipur )  
– 492 001 Chhattisgarh. ) ... **Respondent No.2****

Counsel for the Applicant (s) : Ms. Suparna Srivastava  
Mr. Arvind Banerjee (Rep.)  
Mr. Rahul Srivastava  
Ms. Neelmanil

Counsel for the Respondent(s) : Mr. Ravi Sharma for **R-1.**  
  
Mr. Buddy A. Ranganadhan  
Mr. Raunak Jain for **R-2.**

## **ORDER**

### **PER HON'BLE (SMT.) JUSTICE RANJANA P. DESAI - CHAIRPERSON**

1. In this Appeal the Appellant/Applicant has challenged tariff order dated 31/10/2014 passed by Chhattisgarh State Electricity Regulatory Commission ("**the State Commission**") in Suo Motu Petition No.34 of 2014(M). There is a delay of 47 days in filing this Appeal. In this application the Applicant has prayed that the said delay be condoned.

2. In support of the application for condonation of delay, an affidavit is filed by Mr. Arvind Banerjee, who is working as Executive Director of the Applicant. From the application and from the affidavit of Mr. Banerjee it appears that the impugned order was received in the office of the Applicant on

12/11/2014. The Appeal against the said tariff order was initially decided to be filed on the issue of fuel cost allowed under the impugned order. The said Appeal was ready in the month of December, 2014 but could not be filed due to late receipt of demand draft for filing fee. It appears that in the meantime a view was expressed by the Applicant that additional issues regarding operational parameters of station heat rate and gross calorific value should also be raised. To discuss the said issue Mr. Banerjee visited the office of the Applicant's counsel on 5/1/2015. Non-receipt of demand drafts for filing fee was also to be discussed. The discussion was inconclusive. As such, the Appeal was finalized and affidavits were given by Mr. Banerjee on 5/1/2015. The speed post containing the demand draft for filing fee was received on 6/1/2015. However, since the Applicant continued to hold a view that operational parameters regarding station heat rate and gross calorific value had been operating to the detriment of the Applicant it was decided to discuss the said issues once again with the counsel with a view to including them in the grounds of Appeal. It appears that therefore the filing of

Appeal was withheld. Thereafter, the said issues were discussed with the counsel and it was ultimately decided to include them in the grounds of Appeal. According to Mr. Banerjee he verified the additions/modifications made in the Appeal on 9/2/2015 and the Appeal was filed on 9/2/2015. It is submitted that the delay of 47 days in filing the Appeal is caused on account of the afore-mentioned circumstances. The delay is not intentional. It is submitted that sufficient cause has been made out by the Applicant for condonation of delay.

3. Mr. Ravi Sharma and Mr. Buddy Ranganadhan counsel for the Respondents have strenuously opposed the prayer for condonation of delay. Mr. Buddy Ranganadhan drew our attention to paragraph-7 of the impugned order where it is stated by the State Commission that station heat rate and calorific value of fuel were already specified in RE Tariff Regulations 2012 and therefore review of these parameters is not the subject matter of the present regulatory process. Counsel submitted that there was, therefore, no question of raising the said issues in the present Appeal. Obviously,

therefore there could have been no discussion on these issues between Mr. Banerjee and the Applicant's counsel.

4. We are not impressed by this submission. It appears to us that initially the above issues were not raised by the counsel in the Appeal probably because of the observations of the State Commission to which our attention is drawn by Mr. Ranganadhan. However, the Applicant was of the view that the said parameters were operating to the detriment of the Applicant and hence they need to be included in the Appeal. Such situations are not unknown. On this issue there were deliberations between Mr. Banerjee and the Applicant's counsel as stated in the affidavit of Mr. Banerjee. We have no reason to disbelieve this statement made by Mr. Banerjee on oath and Ms. Srivastava, counsel for the Applicant who has reiterated these facts. It appears that after discussion, the Applicant prevailed over his counsel and the said points were included in the Appeal. It is not for us at this stage to say whether these points are rightly included in the Appeal memo or not. That will be decided at the final hearing of the Appeal

if it is admitted. For the purpose of disposal of this application, we have to only see whether the Applicant has made out sufficient cause. We are of the considered opinion that the Applicant has successfully explained the delay.

5. Mr. Ranganadhan drew our attention to the judgment of this Tribunal in **I.A. No.189 of 2012 in DRF No.665 of 2012 decided on 14/8/2012**. In that case, there was 662 days' delay in filing the Appeal. It appears that the Appellant therein had filed review petition against the impugned order. The said review petition was dismissed. Thereafter, the Appellant therein filed the Appeal. This Tribunal observed that the Appellant therein wasted a lot of time by filing review petition before the Central Commission even though there was no material to show that there was an error apparent on the face of the record. In our opinion, this judgment turns on its own facts. It must be remembered that in that case there was a gross delay of 662 days in filing the Appeal. Facts of the said case materially differ from the facts of the present case

and hence the said judgment is not applicable to the present case.

6. Having carefully gone through the application for condonation of delay and affidavit of Mr. Banerjee we are of the opinion that the Applicant has satisfactorily explained the delay. The delay deserves to be condoned as sufficient cause has been made out. In the circumstances delay is condoned and the application is disposed of.

7. Pronounced in the Open Court on this 15<sup>th</sup> day of September, 2015.

**I.J. Kapoor**  
**[Technical Member]**

**Justice Ranjana P. Desai**  
**[Chairperson]**

**✓** ~~REPORTABLE~~ / **NON-REPORTABLE**