

BEFORE THE APPELLATE TRIBUNAL FOR ELECTRICITY
Appellate Jurisdiction, New Delhi

Interlocutory Application No. 10 of 2007
AFR Nos. 99 of 2007

Dated : 22nd May, 2007

Coram : Hon'ble Mr. A. A. Khan, Technical Member
Hon'ble Ms. Justice Manju Goel, Judicial Member

IN THE MATTER OF:

1. **Uttar Haryana Bijli Vitran Nigam Ltd.**
Shakti Bhawan, Sector-6,
Panchkula.

2. Haryana Vidyut Prasarn Nigam Ltd.
Shakti Bhawan, Sector-6,
Panchkula. ... Applicants

Versus

1. **Haryana Electricity Regulatory Commission**
SCO-180, Sector-5,
Panchkula – 134 109

2. The United India Insurance Employees Co-operative
Group Housing Society,
Plot No. 78,
Sector – 20. ... Contesting Respondents

For the applicants : Mr. Neeraj Jain, Advocate
Mr. Vikrant Hooda, Advocate
Mr. Deepak Chopra, SE(Commercial)
UHBVNL

ORDER

IA No. 10 of 2007

Heard. The appellant seeks condonation of delay of 283 days in presentation of the appeal. The application was taken up for hearing on 23rd April, 2007. Mr. Neeraj Jain, Advocate appearing for the appellant / applicant, realizing that the affidavit filed did not disclose enough reasons for condonation of delay, sought to file a better affidavit with details of facts. Accordingly, a fresh affidavit was presented on or about 03rd May, 2007.

2. The appeal is directed against the order dated 16.07.2002, passed by the Haryana Electricity Regulatory Commission (HERC). An appeal against the order was filed in the High Court being FAO No. 3026/2004 which was disposed of on 19th January, 2006 by allowing the appellant to withdraw the appeal with liberty to file a fresh appeal before this Tribunal. The appeal is presented on 18th January, 2007. The appellant/applicant is therefore required to explain the enormous gap between 19th January, 2006, when the appeal was withdrawn from High Court for the purpose of presenting the same before this Tribunal, and 18th January, 2007, when the appeal was actually presented before this Tribunal. The additional affidavit filed by the appellant gives various dates when the matter regarding the filing of the appeal was handled in the office of appellant or in the office

of counsel. We are not at all satisfied that all chronicle makes out sufficient cause for condonation of delay.

3. It is contended in the additional affidavit that the order of the High Court did not come to the notice of the appellant for about two months. It is contended that the Legal Remembrancer of Haryana Vidhyut Prasaran Nigam issued a letter dated 10.04.2006 appointing the present counsel. The gap between 19th January, 2006 and 10.04.2006 is explained by saying that the order did not come to the notice of the appellant. There is no mention as to when the order came to the knowledge of the appellant and why the appellant could not have known of the order for such long period despite the fact that some officers and officials had been specifically assigned the job of looking after litigation in question (as mentioned in the earlier affidavit).

4. The additional affidavit then goes on to say that the copy of the appointment letter of the advocate was endorsed to the Superintending Engineer of the HVPNL but without a copy of the order dated 19th January, 2006 and that only after about 81 days the copy of the order was received by the Superintending Engineer. There is no effort to explain the delay of these 81 days.

5. The affidavit then proceeds to say no action was taken by the Commercial Cell of the appellant Nigam for processing the case after receiving the letter dated 10.04.2006 due to transfer of the dealing officers/officials and it was only on 07.09.2006 that

the matter came to the knowledge of new incumbents while dealing with execution petition filed by the President, Aravali Group Housing Society Panchkula on 24.08.2006. It is difficult to accept that this was sufficient cause for the delay between 10.04.2006 and 07.09.2006. This gap, between 10.04.2006 and 07.09.2006, clearly shows lack of a proper tracking system in the appellant's organisation.

6. It is stated that only after the matter came to the knowledge of new incumbents on 07.09.2006 that the copy of the High Court order was collected from the office of Legal Remembrancer. Thereafter on 13.10.2006, the Managing Director of the appellant UHBVNL, accorded approval of the appeal before this Tribunal. On 26.10.2006, the Executive Engineer of the appellant is said to have visited the office of the counsel who advised the officers to collect the brief from the counsel who was conducting the case in the High Court. On 07.11.2006 the files were collected from the office of counsel at Chandigarh.

7. The certified copy of the Impugned Order was sent to the counsel on 14.12.2006 who received the same on 18.12.2006. It appears that despite receiving copy of the order of High Court and despite being under pressure on account of execution petition filed by Aravali Group Housing Society, the concerned official of the appellant was not moved to act promptly and it continued with its careless and callous attitude in handling the matter. It appears that the officers in the appellant organization

were not at all concerned with the fact that the period of limitation had long expired.

8. The gap between 18.12.2006 and 18.01.2007 also remains unexplained. The additional affidavit only says as to who visited whom on which date or between 18.12.2006 & 18.01.2007, the date of filing of the appeal. An effort has been made to explain the delay by referring to the winter vacation in the Supreme Court saying that during this period the counsel was not available. This cannot be an explanation of the delay, as the winter vacations of the Supreme Court do not last for more than about ten days.

9. The appellant has cited an order of the Supreme Court in the case of the *Municipal Committee, Thanesar Vs. Smt. Sona Rani in Civil Appeal No. 6383 of 2000* in which the Supreme Court had set aside the High Court's order refusing the condonation delay of 110 days in preferring the appeal. The Supreme Court observed that the real reason for the delay was communication gap between the advocate and the appellant. The Supreme Court also observed that High Court should have considered realistically that when institutions are involved some latitude has to be given particularly when the matter arises in a first appeal. The counsel for the appellant also referred to *State of Haryana Vs. Chandermani (1996) 3 SCC 132* in which the Supreme Court held that 109 days delay in filing the letters

patent appeal before the High Court was condonable in view of the impersonal bureaucratic set up involved in red tapism.

10. The appellant/petitioner cannot interpret the Supreme Court judgments to mean that when institutions or bureaucracy are involved the law of limitation has to be given a total go by. The Supreme Court merely says that when the handling is impersonal due to bureaucratic set up some amount of latitude has to be given in the matter of condonation of delay. Even after giving due consideration to the submissions of the petitioner and having carefully gone through the judgments of the Supreme Court cited by him and having allowed due latitude to the impersonal bureaucratic set up of the appellant, we are unable to hold that the appellant / petitioner has been able to make out sufficient cause for condonation of delay.

11. We have also examined the financial implications of the appeal being dismissed. On examination of the merits of the case, we found the financial implication involved in the appeal is minimal. That may have been one of the reasons for the indifferent attitude of the appellant towards the matter.

12. The application for condonation of delay is accordingly dismissed.

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13. In view of the dismissal of the application for condonation of delay the appeal is rejected.

(Mrs. Justice Manju Goel)
Judicial Member

(Mr. A. A. Khan)
Technical Member