

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

**I.A. Nos. 154 & 155 of 2007 in
in AFR No. 1029 of 2007**

Dated: November 13, 2007

**Present: Hon'ble Mr. A.A. Khan, Technical Member
Hon'ble Mrs. Justice Manju Goel, Judicial Member**

**Jaipur Vidyut Vitran Nigam Ltd. -Applicant(s)
V/s. -Respondent(s)
RERC & Ors.**

Counsel for the Applicant(s) : Mr. Shyam Moorjani and Mr. Hem Raj, Advts.
along with Mr. H.G. Gupta, Sr. A.O.

Counsel for the Respondent(s) : Mr. P.N. Bhandari and Ms. Shuchi Jain for
Resp no. 2
Mr. R.C. Sharma, Dy. Secy., RERC for R-1

ORDER

I.A. No. 154 of 2007

The present appeal has been filed after a delay of 361 days. The appellant wants the delay to be condoned and the following facts are offered as sufficient causes.

When the impugned order dated 25.7.2006 was passed in petition no. 101 of 2006 by the RERC ['Commission' for short], the petition no. 100 of 206 was pending. In petition no. 100 of 2006 the question of law involved was the same, i.e, involving banking arrangement accounting principles. In petition no. 100 of 2006 which was filed by Rajasthan State Mines & Minerals Ltd against the Ajmer Vidyut Vitran Nigam Ltd., the Commission issued notices to all the other distributing companies of the State although the distributing companies other than Ajmer Vidyut Vitran

Nigam Ltd. did not have any privity of contract with the Rajasthan State Mines & Minerals Ltd. It is commonly understood by both sides that the Commission did so to facilitate a fuller discussion on the issue. In petition no. 100 of 2006, the Commission passed judgment on 4.11.2006 which was similar to the impugned order dated 25.7.2006. A review petition was filed in petition no. 100 of 2006 in March, 2007 by Ajmer Vidyut Vitran Nigam Ltd. The review petition was dismissed on 13.4.2007. An appeal was filed soon thereafter on 10.5.2007 with the application for condonation of delay. The delay has since been condoned in that appeal, being appeal no. 74 of 2007.

The appellant contends that the appellant believed that since the Commission had impleaded the appellant in Petition no. 100 of 2006, the interest of the appellant in petition no. 101 of 2006 was being taken care of, while deciding the petition no. 100 of 2006 and therefore the appellant was advised not to take any further step to challenge the impugned order dated 25.7.2006. Only subsequently, after the appeal was filed by the Ajmer Vidyut Vitran Nigam Ltd. and the appellant was impleaded as party in that appeal that the appellant thought it proper to file the present appeal and hence the appeal.

We are not impressed by the explanation advanced by the appellant. The parties to the dispute in petition no. 100 of 2006 were entirely different from the parties to the dispute in petition no. 101 of 2006. Even if in petition no. 100 of 2006, the Commission had taken a different view that would not have set aside the Commission's impugned order in petition no. 101 of 2006. It cannot be believed that the appellant was advised that the Commission might set aside the impugned order while deciding petition no. 100 of 2006.

Further, in Ajmer Vidyut Vitran Nigam Ltd, a review petition was filed. The appellant did not take any steps to file any review petition either in Petition no. 100 of 2006 or in the Petition no. 101 of 2006. Even after the Review petition was dismissed in Petition no. 100 of 2006 the appellant did not wake up. Ajmer Vidyut Vitran Nigam Ltd. filed its appeal within 45 days of the order passed in its review petition. The appellant repeatedly contends in the application for condonation of delay that it was pursuing its case through the petition no. 100 of 2006. Such a plea has to be stated to be rejected. The facts above show that the appellant remained entirely dormant after the impugned order was passed on 25.7.2006. None of the facts mentioned above construes sufficient cause for condonation of delay. *The I.A. No. 154 of 2007 is, accordingly dismissed.*

AFR No. 1029 of 2007

The appeal being barred by limitation cannot be admitted. Hence, the appeal is *dismissed in limini*.

(Manju Goel)
Judicial Member

(A. A. Khan)
Technical Member