

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

Interlocutory Application No. 4 of 2006

**Present** : **Hon'ble Mr. Justice E. Padmanabhan, Judicial Member**  
**Hon'ble Mr. H.L. Bajaj, Technical Member**

**Uttar Haryana Bijli Vitran Nigam Ltd.** ... **Appellant**  
**Versus**  
**HERC** ... **Respondent**

Counsel for the Appellant : Mr. Neeraj Kumar Jain, Adv., Mr. Amit  
Dewan, Adv. and Mr. Anurag Nanchahal,  
Adv.

Counsel for the Respondent : Mr. Ashwani Talwar, Adv. With Mr. Rajesh  
Kumar Monga, Law Officer, HERC

Dated : 04<sup>th</sup> April, 2006

**ORDER**

This application is to condone the inordinate delay in preferring the appeal. Heard Mr. Neeraj Kumar Jain learned counsel appearing for the appellant and Mr. Ashwani Talwar learned counsel appearing for the respondent, Regulatory Commission assisted by Mr. Rajesh kumar Monga, Law Officer.

This appeal has been presented on 13.01.06. In this appeal the appellant has challenged the tariff order dated 20.08.2003 passed by the Regulatory Commission as well as the order dated 21.09.04 passed in the review application filed by the appellant herein seeking review of tariff order dated 28.08.2003.

The applicant moved the Hon'ble High Court of judicature Punjab & Haryana against the order dated 29.01.04 passed in the review application No. 3 of 03. Concedingly no appeal has been preferred against the tariff order dated 20.08.03.

The applicant moved the Hon'ble High Court in CM No. 21251-CII of 2005 in FAO No. 2385 of 2004 seeking liberty to withdraw the appeal and preferred the present appeal before this Appellate Tribunal constituted under Section 82 of The Electricity Act

2003. By order dated 28.10.05 the Hon'ble Judge of Punjab & Haryana High Court passed the following order :

“ This is an application wherein prayer has been made to allow the Appellant to withdraw the appeal so as to enable it to move the Appellate Tribunal constituted under Section 82(1) of The Electricity Act, 2003.

Heard Mr. J. S. Ahluwalia learned counsel for the Appellant and Mr.Y.P.Khullar, learned counsel for the respondents. In view of the prayer made, this First Appeal is dismissed as withdrawn. Liberty, as prayed for is granted.”

There after the present appeal has been presented on 13.01.06. It is rightly pointed by Mr.Talwar, advocate appearing for respondent, that before this Appellate Tribunal the applicant has challenged not only the order rejecting the review application but also the tariff order passed on 28.08.03 and the delay is inordinate. The learned counsel also points out that no valid reason has been assigned. It is also pointed out that the applicant having failed to challenge the tariff order and having allowed the same to reach finality, has come forward with the present appeal as an after thought.

Per contra Mr. Neeraj Kumar Jain appearing for the applicant contends that the applicant has since been advised to file appeal against tariff order as well as rejection of review application. Mr. Jain also contents that from the notified date within 45 days delay the appeal could be filed. Therefore the delay is not intentional nor deliberate and is only due to administrative reasons. The learned counsel also adds that the applicant had to secure certified copy of the tariff order.

We have considered the respective case advanced by either side.

Concedingly no appeal has been preferred as against the tariff order dated 28.08.03 and it has reached finality. It is true that the review application was moved which has since been rejected challenging order passed on the review application, an appeal was preferred before the High Court under the Haryana Electricity Reform Act 1997 (Haryana Act 10 of 1998). There is no doubt that as against the tariff order, no appeal was presented before the Hon'ble Court. The liberty granted by the High Court is in respect of appeal preferred against the order rejecting review petition. There after also the appellant has taken considerable time to file the present appeal only on 13.01.06.

It is pointed out by Mr. Jain that order granting liberty to the applicant to move this Appellate Tribunal was furnished only on 23.11.05. But such liberty has to be confined to the said appeal preferred against the order passed on the review application only. No liberty could have been granted to file an appeal against the tariff order, which order was not challenged at all before the High Court.

Be that so the applicant having allowed the tariff order to reach finality had chosen to file the appeal against tariff order after lapse of two years. Having allowed the tariff order to reach finality, it is not open to the applicant to come forward and content that it is still open to the applicant to file an appeal in terms of provisions of The Electricity Act 2003 or the notification issued by Ministry of Power. We decline to condone the delay with respect to appeal preferred against tariff order. However as sufficient cause has been shown to condone the delay against order dated 29.01.04 passed in the review application we are persuaded to condone the delay in so far as the appeal preferred against the review order. While condoning the delay in preferring appeal against the review order dated 21.01.04, we reject the request to condone the delay with respect to preferring that portion of the appeal preferred against the tariff order dated 28.08.03.

We direct that the appeal be restricted to the order passed in the review application on 29.01.04 in HERC RA of 2003.

Dated : 04<sup>th</sup> April, 2006

**( Mr. H.L. Bajaj )**  
Technical Member

**( Mr. Justice E. Padmanabhan )**  
Judicial Member