

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI**

(APPELLATE JURISDICTION)

**IA No. 138 of 2014 in DFR (RP) 798 of 2014
in Appeal No. 153 of 2012**

Dated: 17th April, 2014

**Present: Hon'ble Mr. Rakesh Nath, Technical Member
Hon'ble Mr. Justice Surendra Kumar, Judicial Member**

IN THE MATTER OF

M/s East Coast Railway **Review Petitioner/
Appellant**

VERSUS

Orissa Electricity Regulatory Commission & Ors. **Respondents**

Counsel for the Appellant(s) ... Ms. Gitanjali Mohan

Counsel for the Respondent(s) ... Mr. R.K. Mehta
Ms. Ishita C. Dasgupta for R-2

Mr. Hasan Murtaza

ORDER

PER HON'BLE MR. JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER

We have heard Ms. Gitanjali Mohan on behalf of M/s East Coast Railway which is the Review Petitioner/Appellant in the instant case. This is the Petition under Section 120 of the Electricity Act, 2003 seeking review of judgment dated 29.1.2014 passed by this Tribunal in M/s East Coast Railway vs Orissa Electricity Regulatory Commission & Ors. This Petition appears to have been filed in the office but there is no endorsement of the office whether the review petition is within the time or beyond the time. Even there is no report of the Registry of this Tribunal; we are surprised to see that this petition has been presented before us without any report of the Registry. The proper practice should be that if any petition or appeal is sought to be filed before this Tribunal,

the same should be presented before the Registry in the first instance and after the report of the Registry of the Tribunal, the same should be presented before the Bench to enable the Bench to see whether the said petition or appeal is within the limitation or not, but we do not find such thing in this matter.

2. On our query, the learned counsel for the review petitioner has submitted that since the review petition alleged to have been filed on 12.3.2014 is beyond the period of limitation, application for condonation of delay in filing review petition under Section 151 CPC has also been filed. According to the learned counsel for the review petitioner, there is a delay of 12 days in filing the review petition and the reason of the delay is that the decision to file review petition had to be taken by the Railway Administration from higher level officials and that too after seeking legal opinion from the legal branch of the Railways. When the hearing on application for condonation of delay started, Ms. Mohan candidly and meekly has submitted that this Appellate Tribunal in Appeal No. 105 of 2008 titled as Shrishrimal Plantation Plantation Limited vs Chhattisgarh State Power Distribution Co. Ltd. & Anr. vide judgment dated 18.1.2010 did not find any sufficient reason to condone the delay in filing review petition and observed in para 10 thereof as under:

“Hence, we are of the view that the Order rejecting the condonation of delay petition in filing a Review by the State Commission is well justified and there need be no interference. In the result the Appeal is dismissed. No costs.”

3. Ms. Mohan has requested that this matter requires reference to the Larger Bench so as to finally settle the dispute on the point of hearing on condonation of delay in filing the review petition.

4. After going through the material on record and aforesaid legal position, we are unable to accept the submissions of Ms. Mohan because each matter depends upon its own facts and circumstances and has to be decided on merits. Ms. Mohan can argue on the bonafides, etc. resulting in delay in filing the review petition. The Registry of this Tribunal is directed to do the needful as stated above and fix this matter for hearing on application for condonation of delay on **23rd April, 2014.**

Pronounced in open Court on this 17th day of April, 2014.

**(Justice Surendra Kumar)
Judicial Member**

**(Rakesh Nath)
Technical Member**

vt