

COURT-I

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

**I.A. No. 328 of 2013 in
DFR No. 1924 of 2013**

Dated : 18th November, 2013

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. Rakesh Nath, Technical Member**

Batot Hydro Power Ltd. Appellant(s)

Versus

**Himachal Pradesh Electricity Regulatory
Commission & Anr. Respondent(s)**

**Counsel for the Appellant(s): Mr. Sanjay Sen, Sr. Adv.
Ms. Swapna Seshadri**

**Counsel for the Respondent(s): Mr. Pradeep Misra,
Mr. Shashank Pandit for R-1
Ms. Suparna Srivastava for R-2**

ORDER

**I.A. No. 328 of 2013
(Appl. for condonation of delay)**

This is an Application to condone the delay of 325/278 days in filing the Appeal as against the main Order dated 05.09.2012.

This is stoutly opposed by the learned counsel for the Respondent No.2.

The reasons given by the Applicant/Appellant in the Application to condone the delay are as follows:

“The main Order was passed on 05.09.2012 by the State Commission. Thereafter, Applicant filed the Review Petition before the State Commission on 19.02.2013 along with an Application to condone the delay. However, the State Commission did not choose to consider the Application to condone the delay, on the other hand, it went into the merits of the matter and dismissed the Review Petition on 18.06.2013 on the ground that there was no apparent error on the face of the record. Thereafter, the Applicant/Appellant on the advice of the local counsel filed a Writ Petition on 26.06.2013 before the High Court of Himachal Pradesh. Ultimately, on the preliminary objection raised by the learned counsel for the Respondent, the High Court dismissed the Writ Petition on 22.08.2013 giving liberty to the Applicant to approach the Appellate authority by filing an Appeal. The High Court in the said Order specifically observed as follows:

“Needles to observe that the Appellate Authority should not non-suit the petitioner on the ground of limitation, as it will have

to reckon the time spent by the petitioner in pursuing the present petition before this Court and exclude that period”.

On the basis of the above observation of the High Court, the Applicant has now filed this Appeal before this Tribunal on 12.09.2013. That was how the delay was caused”.

The learned counsel for the Respondent No.2 has rightly pointed out that even though there was some delay during the pendency of the Writ Petition, there was no proper explanation for the delay caused for the earlier period in filing the Review Petition before the State Commission. She further contended that even assuming that the delay of 59 days which was caused due to the pendency of the Writ Petition, in the absence of any explanation for the balance period, the application to condone the huge delay may not be entertained and in the absence of sufficient cause to condone the said delay, the same may not be condoned.

The learned counsel for the Respondent has cited a decision rendered by this Court in I.A. No. 46 of 2013 in (R.P.) DFR No. 165 of 2013 in Appeal No. 24 of 2011 in support of her submission. This objection, in our view, is so formidable.

However, the important thing to be noticed in this case is that when the Applicant filed the application to condone the delay in filing the Review before the State Commission, the respondent has not chosen to file the counter before the State Commission raising objection to the application to condone the delay of 126 days in filing the review. As a matter of fact, they had filed the reply only to the main Review Petition opposing the merits of the matter. It is for this reason, the State Commission probably did not go into the aspect of the condonation of delay, but straight away it went into the merits and passed the Order dismissing the Review Petition on merits.

It is strenuously submitted by the learned Senior counsel for the Applicant that because of the wrong advice given by the local counsel, the Applicant had approached the High Court, which was purely a mistake, and the party should not suffer due to the mistake committed by the local counsel.

It is to be noticed that the Applicant having got the correct advice from the local counsel, who advised to file a Review Petition before the State Commission, the Applicant was not vigilant to get correct advice to approach this Tribunal in time.

As objected to by the Respondent, the huge delay of 126 days in filing the Review has not been properly explained. But admittedly, this objection to condone delay as mentioned earlier, had not been raised before the State Commission when the Review Petition was filed along with an application to condone the delay, even though there was no proper explanation for this in their petition.

Anyway, we feel that the State Commission must have considered the application to condone the delay with reference to the explanation and passed separate Order on that aspect irrespective of the fact whether the respondent had filed the counter to the condonation of delay petition or not.

However, at this stage, we do not intend to go into the validity of the reasons for the delay in filing the Review Petition before the State Commission, especially when the High Court observed in its Order that this Appeal may not be rejected by the Appellate Authority on the ground of limitation.

Hence, we think it to fit to condone the delay by imposing some costs. Accordingly, the Applicant/Appellant is directed to pay the cost of Rs. 50,000/- (Rupees fifty thousand only) to a charitable organization

namely "**Dr. Ruhi Foundation School, Village: Gheja, Sector - 93, NOIDA, A/c. (TRUST) :- Payable to : SAIDEEP DR. RUHI FOUNDATION, A/c No. 95266 3443**" within two weeks. Accordingly, the delay is condoned.

After receiving the compliance report, the Registry is directed to number the Appeal and post the matter for Admission on **27.11.2013.**

(Rakesh Nath)
Technical Member
ts/vs

(Justice M. Karpaga Vinayagam)
Chairperson