Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)

IA No. 57 of 2011 in DFR No. 270 of 2011

Dated 16th March, 2011

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

In the matter of:

Haryana Power Purchase Centre … Appellant (s)

Versus

Magnum Power Generation Ltd. Anr. Respondent(s)

ORDER

This is an application for condonation of delay of 327 days in filing the Appeal as against the order dated 23rd March, 2010.

We have heard the Learned Counsel for the parties. We have also gone through the affidavit filed by the Appellant.

According to the Appellant, even though the order was passed on 23.03.2010 they decided not to file the Appeal since the other party approached them for settlement talks. The settlement talks between them were going on for some time. Ultimately they came to know that the Respondent has filed an appeal against the order dated 23.03.2010 in Appeal

No. 118/2010 in May 2010. After coming to know the fact that an Appeal has been filed by the other party in June 2010 they sought legal opinion from their Legal Cell and ultimately in September 2010 they decided to file an Appeal and the procedure for preparing the Appeal was started and subsequently the Respondent in their Appeal no. 118/2010 filed an application before the State Commission seeking interim relief and an order was passed by the Tribunal directing the Commission to deal with the prayer seeking interim relief. Accordingly, the Commission had to deal with that application for interim relief and the Commission ultimately passed an order on 13.01.2011. They waited to see the result of the Order of the petition filed by the Respondent before the Commission seeking the interim relief. Ultimately, after coming to know that the application has been dismissed on 13.01.2011, they resorted to file this Appeal in this Tribunal against the main order dated 23.3.2010 and that was how the delay was occurred.

We have heard the Learned Counsel for the Respondent also. There are three phases. The first phase is the period between the date of the order i.e. 23.3.2010 and the date of the Appeal filed by the Respondent in May 2010. The second phase is the period between May 2010 and September, 2010 when the Appellant took a decision to file an appeal. Thereupon the Appellant waited to see the result of the application filed by the Respondent

and the said application seeking interim relief was dismissed on 13.01.011. Then third phase is the period between September, 2010 and the date of the Appeal i.e. on 14.02.2011.

Thereafter this appeal has been filed on 14.02.2011. On going through the affidavit, we find that there is no proper explanation for delay caused during these three phases i.e. the period between 23.3.2010 i.e. the date on which the impugned order was passed by the Commission and the date of filing of the appeal by the Respondent before this Tribunal i.e. 14.02.2011. It is quite strange to see, initially, the Appellant decided not to file the Appeal but they changed their decision and decided to file the Appeal after coming to know that the Respondent filed the Appeal. Even according to the Appellant they decided to file the Appeal only in September, 2010. There is no reason as to why they had to wait for so long to file the Appeal even though the decision was taken in September, 2010 without filing the Appeal immediately. Further, it is stated by the Appellant that they waited till they knew the result of the interim application filed by the Respondent before the Commission. This cannot be the ground to condone the delay for the said period. Ultimately interim application was decided on 13.01.2011. Even thereafter the Appellant chose to file the Appeal on 14.2.2011.

Thus, the period from 23.03.2010 to May 2010 and from June, 2010 to September, 2010 and from September, 2010 to 14.02.2011 on which date the Appeal has been filed have not been explained. Learned counsel for the Appellant strenuously contends that there was some procedural delay and it is the Public Utility and so some sort of latitude be shown to the Appellant, the Public Utility. She has cited two decisions reported as **(1996) 3 Supreme Court Cases 132 titled as State of Haryana V. Chandra Mani & Ors. And (2005) 3 Supreme Court Cases 752 titled as State of Nagaland V. Lipok Ao and Others. She has mainly relied upon paragraph 11 of judgment of (1996) 3 Supreme Court Cases 132.**

"It is notorious and common knowledge that delay in more than 60 per cent of the cases filed in this Court – be it by private party or the State – are barred by limitation and this Court generally adopts liberal approach in condonation of delay finding somewhat sufficient cause to decide the appeal on merits. It is equally common knowledge that litigants including the State are accorded the same treatment and the law is administered in an even-handed manner. When the State is an applicant, praying for condonation of delay, it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the note-making, file-pushing, and passing-on-the-buck

ethos, delay on the part of the State is less difficult to understand though more difficult to approve, but the State represents collective cause of the community. It is axiomatic that decisions are taken by officers/agencies proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it on table for considerable time causing delay-intentional or otherwise – is a routine. Considerable delay of procedural red-tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characterstic of the functioning of the governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice-oriented process. The Court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-à-vis private litigant could be laid to prove strict standards of sufficient cause. The Government as appropriate level should constitute legal cells to

examine the cases whether any legal principles are involved for decision by the Courts or whether cases require adjustment and should authorize the officers to take a decision or give appropriate permission for settlement. In the event of decision to file appeal needed prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while State is an impersonal machinery working through its officers or servants. Considered from this perspective, it must be held that the delay of 109 days in this case has been explained and that it is a fit case for condonation of the delay.

As correctly pointed out by the Learned Counsel for Respondent, the Appellant is not a State Authority but is only a Government Company and these decisions would apply to the State Government only. It is also noticed that the Hon'ble Supreme Court observed in the said decision that in the event of decision to file the appeal needed prompt action should be pursued by the officer responsible to file the appeal and should be made personally responsible for lapses. The affidavit

does not show that such an action has been taken by the Appellant as against the concerned officer. In fact no details have been furnished in the affidavit to establish that prompt action has been taken for filing the Appeal in time.

There is delay on 327 days which is inordinate and unexplained. Further, we find that there is a lack of diligence throughout. As such it is clear that no sufficient cause has been shown for condonation of delay. Hence the present application for condonation of delay is liable to be dismissed.

Before parting with this petition, we shall record our note of appreciation for the sincere endeavour made by the Learned Counsel for the Applicant/Appellant who advanced her arguments so effectively to this Tribunal in this Application to condone the delay.

With these observations, this Application is dismissed. No costs.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson