

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

**Appeal No. 69 of 2010**  
**IA Nos. 88, 89 & 90 of 2010**

**Dated: 19<sup>th</sup> July, 2010**

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

**Pramod Ramesh Bhogate** .... **Appellant (s)**  
**Versus**  
**Tata Power Company Ltd. & Anr.** ... **Respondent (s)**

Counsel for the Appellant (s) : Mr. Siddharth Singla with Mr. Rajeev  
Kumar

Counsel for the Respondent(s) : Mr. Amit Kapur with Mr. Mansoor Ali &  
Ms. Poonam Verma for R.1  
Mr. Buddy A. Ranganadhan for R.2

**ORDER**

**I.A.NO. 88 OF 2010**  
**(Condone Delay Application)**

This is an application to condone the delay of 185 days in filing the appeal as against the impugned Order dated 28.5.2009.

We have heard the learned counsel for the parties.

On going through the affidavit, we feel that there is no proper explanation between the date of the Order i.e., 28.5.2009 and the date of filing of the appeal i.e., 13.1.2009. Even according to the Appellant, he did not choose to participate in the hearing held on 24.3.2009. Despite the fact that he filed an objection before the Commission as a respondent and also a rejoinder to the reply filed by

the petitioner, he neither pursued the matter nor took any steps to find out the result of the matter. As a matter of fact, the order had been passed on 28.5.2009 and only on 18.9.2009, the Appellant sent the request letter to the Commission asking for the information about the disposal of the matter. He got the reply from the Commission on 16.10.2009 informing that the matter had been disposed of on 28.5.2009.

Thereafter, the Appellant got a copy of the order on or about 13.11.2009, and subsequently, he filed the appeal on 13.1.2010. It is noticed that there is no explanation for the period between the date of the Order 28.5.2009 and 18.9.2009, on which date the letter of request had been sent by the Appellant to the Commission.

In spite of the fact that the Appellant came to know about the disposal of matter through the letter dated 16.10.2009 sent by the Commission, he did not take any steps to get the copy of the order and to file an Appeal before this Tribunal. On the other hand, he applied and obtained the order copy on 13.11.2009 and even thereafter, he did not choose to file the Appeal immediately but he filed the Appeal only on 13.1.2010.

Strangely, it is noticed that in the Appeal in paragraph 6, the Appellant has mentioned that the Appeal has been filed within the

period specified in sub-section (2) of Section 111 of the Act. This means, according to the Appellant, there is no delay in filing the Appeal. Though this Appeal has been filed on 13.1.2010, the Appellant has filed the application to condone delay only on 4.3.2010. When he chose to file the Appeal with a delay of 185 days, there is no reason as to why the Appellant has to state in para-6 of the Appeal that the Appeal was within the time.

Even though the decision cited by the learned counsel for the Appellant in *N. Balakrishnan vs. M. Krishnamurthy – (1998) 7 SCC 123*, would state that the liberal approach must be taken by the courts concerned to condone the delay, the said decision will be of no help to the Appellant as in the very same decision, the Hon'ble Supreme Court held that when there is a lack of diligence on the part of the Applicant, delay should not be condoned.

In this case we have been noticing from the beginning that the Appellant has been showing lack of diligence in pursuing the matter. For instance, even after the objection filed on 17.3.2009 by the Appellant, he had not chosen to appear on 24.3.2009 before the Commission to participate in the proceedings.

Thus, it is clear that he has not shown interest in pursuing the matter from the beginning. Therefore, we feel that no ground has

been made out to condone the delay. However, it is to be observed that the issues raised in this Appeal can be raised by the Appellant while the truing up process is taken up by the Commission at the appropriate stage.

With these observations, all the petitions as well as the Appeal is dismissed. No costs.

**(Justice P.S. Datta)**  
Judicial Member

**(Rakesh Nath)**  
Technical Member

**(Justice M. Karpaga Vinayagam)**  
Chairperson

ts/vn