

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

**I.A. No.30 of 2012**  
**IN**  
**DFR No.110 of 2012**

**Dated: 10<sup>th</sup> April, 2012**

**Present : HON'BLE MR. JUSTICE M KARPAGA VINAYAGAM,  
CHAIRPERSON  
HON'BLE MR. RAKESH NATH, TECHNICAL MEMBER**

**In the Matter of:**

**Gridco Limited  
Janpath,  
Bhubaneswar-751 022  
Orissa**

**...Appellant/Applicant**

**Versus**

- 1. M/s. Global Energy Pvt. Ltd.  
8<sup>th</sup> Floor, Le Meridian Commercial Tower  
Raisina Road, New Delhi-110 001**
- 2. The Secretry,  
Ministry of Power,  
Government of India  
Shrama Sakti Bhawan,  
Rafi Marg,  
New Delhi-110 001**
- 3. State of Orissa  
Represented by the Commissioner-cum-Secretary  
Department of Energy, Govt of Orissa  
Bhubaneswar-751 001  
Orissa**

4. **Orissa Electricity Regulatory Commission (OERC),  
Bidyut Niyamak Bhawan, Unit-VIII,  
Bhubaneswar-751 012, Orissa**
5. **Orissa Power Transmission Corporation Limited  
Janpath, Bhubaneswar,  
Orissa-751 022**
6. **Shri Ramesh Ch. Satapathy  
Plot No.302 (B), Behera Sahi, Nayapalli,  
Bhubaneswar-12**
7. **Shri R P Mahapatra,  
Plot No.775 (Part), Lane-3,  
Jayadev vihar, Bhubaneswar-13**

**...Respondent(s)**

Counsel for the Appellant(s) : Mr. R.K. Mehta  
Mr. David A  
Mr. Antaryami Upadhyay

Counsel for the Respondent(s): Mr. Rajiv Yadav for R.1  
Mr. Sanjay Sen

## **ORDER**

**PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM,  
CHAIRPERSON**

1. This is an Application filed by the Appellant/Applicant to condone the delay of 433 days in filing the Appeal as against the impugned order dated 18.9.2010.

2. GRIDCO Limited is the Appellant. M/s. Global Energy Private Limited is the 1<sup>st</sup> Respondent.
3. The Appellant GRIDCO Limited is wholly owned Company of the Government of Orissa. It is carrying on the functions of Bulk Supply of Electricity to four Distribution Companies in the State of Odhisha.
4. M/s.Golbal Energy Private Limited, the Respondent filed an Application before the State Commission praying for grant of Intra-State Trading Licence.
5. The Appellant being the deemed trading licensee, has filed its objection to the grant of such Intra State Trading Licence to M/s. Global Energy Private Limited.
6. Rejecting the said objection, the State Commission allowed the Application of the Global Energy Private Limited and granted Intra State Trading Licence to it.
7. Aggrieved over this order, the Appellant has filed this Appeal challenging the said impugned order. Since there is a delay of 433 days in filing the Appeal, the Appellant has filed this Application to condone the said delay in IA No.30 of 2012.
8. Having entertained this Application, this Tribunal issued notice to the Respondents M/s. Global Energy Private Limited and Others. On receipt of the notice, M/S. Global Energy Private Ltd, the contesting Respondent filed its

objection to this condonation of delay on the ground that the inordinate delay of 433 days has not been explained and that the said delay was due to the dilly-dallying tactics adopted by the Applicant/Appellant.

9. According to the Learned Counsel for the Applicant/Appellant, after the impugned order that was passed on 18.9.2010 by the State Commission, the Applicant filed a Review Petition before the State Commission on 15.12.2010 and the same was dismissed only on 25.8.2011 by the State Commission and that thereafter the Applicant spent some time to seek approval for filing an Appeal and collected all the documents and sent it to its Counsel who in turn took some time to get verification of relevant particulars and ultimately after preparing the Appeal papers the Appeal has been filed before this Tribunal on 16.1.2012 and thus there was a delay of 433 days from the date of the impugned order in filing the Appeal and so the same may be condoned. He has cited the following judgments passed by the Hon'ble Supreme Court (1) (2005) 3 SCC 752 State of Nagaland Vs Lipok AO and Others (2) (2005) SCC 237 Divisional Manager, Plantation Division, Andaman & Nicobar Islands Vs Munnu Barrick and Others and (3) (2010) 4 SCC 509 Suvarnalata Vs Mohan Anandrao Deshmukh and Another in order to show that the Court while considering the

Application to condone the delay has to adopt a liberal approach and the pendency of the Review before the other Forum also may be taken as a ground for condoning the delay. He also submitted that the Appeal has got merits and on that ground also, the delay be condoned.

10. Refuting these submissions made by the Learned Counsel for the Applicant/Appellant, the Learned Counsel for the Respondent vehemently opposed the Application on the ground that no credible explanation has been given by the Applicant for condoning the inordinate delay of 433 days and in fact even after the disposal of the Review i.e. on 25.8.2011 there was further delay of 139 days in filing the Appeal on 16.1.2012 and that thus, the Application to condone the delay is liable to be dismissed not only on the ground of absence of the plausible explanation to show that there was sufficient cause but also on the ground that it lacks bonafide. He has cited the judgment of Hon'ble Supreme Court in case No. (2010) 5 SCC 23 Chhattisgarh State Electricity Board Vs Central Electricity Regulatory Commission and Others.
11. We have carefully considered the respective submissions made by the Learned Counsel for both the parties and also gone through the records and the authorities cited by them.

12. On perusal of the Application to condone the delay and reply filed by the contesting Respondent as well as the records, it is noticed that this matter has got a chequered history.

13. Let us now see the admitted facts as contained in the Application to condone the delay filed by the Applicant and the reply filed by the Respondent. Those facts are as follows:

(a) On 24.2.2007 M/S. Global Energy Private Limited (R1) filed an Application before the State Commission U/s 15 of the Electricity Act read with OERC (Conduct of Business) Regulations, 2006 for grant of a license to undertake the Intra-State Trading in electricity upto 50 MUs per month in the State of Odhisa.

(b) After entertaining this Application, the State Commission by the order dated 17.4.2007, directed M/s. Global Energy Private Limited to publish a preliminary notice of its Application in two widely circulated newspapers inviting the objections if any from the public and others in compliance with the requirement of Section 15 (2) of the Act. Accordingly, the said public notice inviting objections to its Application for intra-state trading license was duly published in the two news

papers. However, the State Commission did not receive any objection from any local authority, utility or any person. However, the State Commission suo-moto decided to implead the GRIDCO and the Government of Orissa in the proceedings to hear their views on this Application. Accordingly, notices were issued to these parties.

- (c) After receipt of this notice, GRIDCO, filed its objections to the Application of the Respondent, M/s.Global Energy Private Limited for grant of Intra-State Trading licence contending that the grant of intra-state trading licence to it would adversely affect the GRIDCO's revenues.
- (d) After rejecting the said objection, the State Commission by the interim order dated 6.5.2008 held that M/s. Global Energy private Limited has prima-facie fulfilled the preliminary technical requirement and the State Commission wanted to find out the fulfilment of other requirements by the Global Energy Private Limited namely creditworthiness and financial viability including all the other information impinging upon its business ethics etc., before granting licence to enable to

pass the final order to decide finally as to whether M/s. Global Energy Private Limited would be granted the said licence. So, it directed for the publication of 2<sup>nd</sup> notice to the public under Section 15 (5) of the Act in two leading newspapers inviting for the public opinion and suggestions.

- (e) Even though final order was not passed with reference to grant of licence in favour of M/s. Global Energy Private Limited, the Applicant, had decided to challenge the interim order directing for the publication of public notice filed the Review Petition before the State Commission instead of raising further objection before the State Commission in pursuance of the public notice u/s 15 (5) of the Act or instead of filing an Appeal with this Tribunal. The said Review Petition was ultimately dismissed by the State Commission by the order dated 1.10.2009 holding that there was no error apparent on the face of the record. Even then, the Applicant did not resort to file objection u/s 15 (5) of the Act before the State Commission.
- (f) Instead, the Appellant, GRIDCO preferred an Appeal before this Tribunal against the order



directing for the publication of notice dated 6.5.2008 in Appeal No.26 of 2010. There was also a delay in filing this Appeal on account of pendency in Review Petition. Therefore, the GRIDCO filed the Application to condone the delay as well.

- (g) Though this Tribunal condoned this delay, on noticing that no final orders had yet been passed and Appeal had been filed only as against the interim order, this Tribunal dismissed the Appeal by the order dated 8.2.2010 as not maintainable at the admission stage itself. However, this Tribunal by the said order directed the State Commission to consider the Applicant's objections and then pass a final order with regard to grant of licence.
- (h) Accordingly, the Applicant filed the objection on the grant of licence. Then, the State Commission heard both the parties, considered the objections, perused the records and passed the final order on 18.9.2010 granting the intra-state trading licence in favour of M/s. Global Energy Limited, after rejecting the objections of the Applicant.
- (i) This time also, the GRIDCO, Appellant, instead of filing a direct Appeal against the final order before

this Tribunal thought it fit to file another review before the State Commission contending that the final order was wrong.

- (j) After hearing both the parties, the State Commission through its order dated 25.8.2011 again dismissed the said review petition as there was no error apparent on the face of the record.
- (k) Thereupon, the Applicant/Appellant, filed this Appeal as against the main order passed on 18.9.2010 along with an Application to condone the inordinate delay of 433 days in filing the Appeal.

14. The above chronological events would show the following factors:

- (a) M/s. Global Energy Private Limited filed an Application on 24.2.2007 for the grant of intra-state trading license in the State of Orissa. Under Section 15 of the Act this Application has to be disposed of within 90 days. In the meantime, the GRIDCO filed its objection. After rejecting the said objection, the State Commission passed the interim order on 6.5.2008 holding that M/s. Global Energy Private Limited has fulfilled the technical

and financial requirements and directed for the publication of fresh notice in the two leading news papers Under Section 15 (5) of the Electricity Act inviting the objections or suggestions from the public to enable it to pass the final order for grant of licence on the basis of credit worthiness and financial viability of the utility. Thus, even though the Application had been filed on 24.2.2007 by M/s. Global Energy Private Limited, the State Commission was able to pass the interim order only on 6.5.2008 i.e. beyond 90 days.

- (b) Thereupon, the Appellant/Applicant, instead of making further objections before the State Commission with regard to grant of licence in favour of M/s. Global Energy Private Limited by allowing the State Commission to proceed with the matter for deciding to pass the final order or instead of filing the Appeal as against the said interim order before this Tribunal thought it fit to file Review petition before the State Commission. Then this was dismissed on 1.10.2009 by the State Commission after hearing the parties.

- (c) By this process, no progress was made on the licence Application filed by M/s. Global energy Limited for more than 2 ½ years.
- (d) Thereafter, the Applicant filed an Appeal in Appeal No.26 of 2010 before this Tribunal as against the interim order dated 6.5.2008 along with an Application for condonation of delay.
- (e) There was no reason as to why they have not preferred any Appeal immediately after the interim order was passed on 6.5.2008. Due to pendency of the said review petition before the State Commission as against the order dated 6.5.2008 which was ultimately dismissed on 1.10.2009, there was a further delay in filing the Appeal. Accordingly, the delay Application had also been filed along with the Appeal No.26 of 2010. Ultimately this Appeal was dismissed by this Tribunal holding that it was not maintainable since it was against the interim order and directing the State Commission to pass the final order after considering the objections raised by the GRIDCO.
- (f) Thereupon, the State Commission heard both the parties and passed the final order on 18.9.2010 granting intra-state trading license to M/s. Global

Energy Private Limited after rejecting the objection of GRIDCO. This time also, the Applicant instead of filing a Appeal the order deemed it fit to file another Review Petition before the State Commission against the final order dated 18.9.2010. This also has caused further delay in filing the Appeal in time. The said review petition was dismissed by the State Commission after hearing the parties on 25.8.2011 holding that the Review petition was not maintainable as there was no error on the face of the record.

- (g) Thereafter, after the delay of nearly 4 months, the Appellant filed the Appeal only on 16.1.2012 as against the main order dated 18.9.2010 along with the Application to condone the delay of 433 days in filing the Appeal.

15. Thus, it is clear that the State Commission was allowed to finally decide the matter and pass the final order in favour of M/S. Global Energy Private Limited, Respondent only on 18.9.2010 and to pass the review order on 25.8.2011. In other words due to the various hurdles put by the GRIDCO, the State Commission was unable to dispose of the original Application within time frame and was able to dispose of the said Application only on 18.9.2010 and 25.8.2011 i.e.

beyond 90 days even though the Application was filed as early as on 24.2.2007.

16. These factors would reflect two aspects with regard to conduct of the Applicant/Appellant:

(a) Even though the interim order was passed on 6.5.2008 on the Application filed by M/s. Global Energy Limited on 24.2.2007, the GRIDCO instead of directly filing the Appeal before this Tribunal thought it fit to file a Review petition before the State Commission as against the order dated 6.5.2008 and ultimately got the dismissal order on 1.10.2009 on the ground that there was no error on the face of the record. Only thereafter, the GRIDCO decided to file the Appeal as against the order dated 6.5.2008 and filed the same along with an Application to condone the delay. The said Appeal was dismissed on 8.2.2010.

(b) Similarly, as against the final order dated 18.9.2010, the Applicant instead of filing the Appeal directly before this Tribunal as against the said order, again approached the State Commission by filing another Review Petition as against the final order dated 18.9.2010. This

Petition was also dismissed on 25.8.2011 on the ground that there was no error on the face of the record. Only, thereafter, with further delay of 139 days, the Appellant had decided to file the Appeal as against the main order dated 18.9.2010 and filed the same on 16.1.2012 along with the Application to condone the delay of 433 days. No reasons have been given by the Appellant as to why it resorted to file Review after Review before the State Commission instead of filing the Appeal in the Tribunal.

17. The Respondent on the basis of the above admitted facts submitted that the GRIDCO Applicant in order to create uncertainty in respect of M/s. Global Energy Private Limited's intra state trading licence which would prevent the potential parties from entering into contract for sale and purchase of electricity, the Appellant deliberately filed review after review before the State Commission in order to serve the GRIDCO's interest by resulting in perpetuation of the GRIDCO's monopoly as the only buyer available to power generators in Orissa.
18. As indicated above, even though the Application filed by the Respondent has to be disposed of within 90 days by the State Commission, the Applicant has raised objection after

objection and filed review after review before the State Commission thereby prevented the State Commission from passing the final order within the time frame probably to keep the issue alive for a long time.

19. Bearing these facts in our mind, we have to consider the question as to whether the explanation offered by the Applicant for delay of 433 days would show that there was sufficient cause to condone the said delay.

20. According to the Appellant, after the impugned order that was passed on 18.9.2010, the Appellant filed a Review Petition before the State Commission on 15.12.2010 and after receipt of the dismissal order dated 25.8.2011 in the Review Petition, the Appellant moved to seek approval to file an Appeal and after getting the approval, the papers were forwarded to the Counsel at Delhi on 29.9.2011 and after receipt of papers, the Counsel sought for the presence of the concerned officer for necessary briefing to facilitate preparation of the Appeal and however since, the officers were pre-occupied with filing of the Annual Revenue Requirement before the State Commission, they could not go immediately and only they were able to go on 11.11.2011 to Delhi and after briefing the counsel the Appeal was prepared and the same was filed on 16.1.2012 and as such,



the delay of 433 days was due to the reason of pendency of the review as well as due to the time taken for preparation of the Appeal and thus the delay which has got sufficient cause, has to be condoned.

21. As mentioned earlier both the Learned Counsel have cited various judgments rendered by the Hon'ble Supreme Court, in order to substantiate their respective pleas. Let us refer to the guidelines and the ratio decided in those Appeals. They are as follows.

- (i) *“The proof by sufficient cause is a condition precedent for exercise of the extraordinary discretion vested in the court. What counts is not the length of the delay but the sufficiency of the cause. The shortness of the delay is one of the circumstances to be taken into account in using the discretion. But what constitutes sufficient cause cannot be laid down by hard and fast rules.*
- (ii) *The discretion given in Section 5 of the Limitation Act should not be defined or crystallised so as to convert a discretionary matter into a rigid rule of law. The expression “sufficient cause” should receive a liberal construction.*
- (iii) *The true guide for a court to exercise the discretion under Section 5 of the Limitation Act is whether the Appellant acted with reasonable diligence in prosecuting the appeal. Unless want of bonafide of such inaction or negligence as would deprive a part of the protection of Section 5 is proved, the Application to condone the delay cannot be refused to be condoned.*

- (iv) *The expression “sufficient cause “is adequately elastic to enable the court to apply the law in a meaningful manner which sub serves the ends of justice.*
- (v) *The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even handed manner. There is no warrant for according a step motherly treatment when the State is the Applicant.*
- (vi) *Generally delays in preferring the appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides in imputable to the party seeking condonation of delay.*
- (vii) *The Law of limitation is, no doubt, the same for a private citizen as for Governmental authorities. Government like any other litigant must take responsibility for the acts and omissions of its officers. But a somewhat different complexion is imparted to the matter where Government makes out a case where public interest was shown to have suffered owing to acts of fraud or bad faith on the part of its officers or agents and where the officers were clearly at cross purposes with it.*
- (viii) *When delay was caused on account of the pendency of the review petition, before the lower court, the same may be considered as a valid ground to condone the delay.*
- (ix) *Section 111 of the Act, 2003 lays down that any person aggrieved by an order made by an appropriate Commission may prefer an Appeal to the Tribunal within a period of 45 days. Section 111 (5) mandates that the Tribunal shall deal with*

*the Appeal as expeditiously as possible and endeavour to dispose of the same finally within 180 days from the date of receipt.*

*(x) The object for the establishment of a special adjudicatory forum namely the Tribunal is to ensure that the disputes emanating from the operation and implementation of different provisions of the Electricity Act are expeditiously decided by the Tribunal being an expert body”.*

22. From the above guidelines given in the various decisions given by the Hon'ble Supreme Court, on this issue, it is evident that the crux of the ratio decided by the Hon'ble Supreme Court is that the length of the delay should not be taken as a criteria to decide to condone the delay but on the other hand if sufficient cause is shown , any length of delay can be condoned provided that the delay must reflect the bonafide promptness on the part of the Appellant. But if it is established that there was lack of diligence as well as the lack of bonafide on the part of the Appellant in not filing the Appeal in time, such a delay cannot be condoned. Keeping in view of the above principles, let us now decide the question whether the delay of 433 days in filing the Appeal could be condoned.

23. According to the Respondent, the impugned order was passed by the State Commission after extensive deliberations spread over four years.

24. As indicated above, Section 15 (6) of the Act, 2003 mandates a period of 90 days for disposal of an Application for grant of licence.
25. It is emphatically contended by the Learned Counsel for the Respondent that the extraordinary delay in disposal of the Application filed by the Appellant for intra state trading licence is largely attributable to the delaying tactics adopted by the GRIDCO from time to time by seeking review after review on identical grounds which had been duly considered by the State Commission in the orders sought to be reviewed.
26. The Learned Counsel for the Appellant, the GRIDCO admit that instead of filing the Appeal against the interim order passed on 6.5.2008 thought it fit to file the Review petition before the State Commission itself which was ultimately dismissed on 1.10.2009 on the ground that there was no error on the face of the record. Only thereafter, the Appeal against that said interim order was filed before the Tribunal which was dismissed on 8.2.2010 by the Tribunal. The reason for not filing Appeal directly has not been explained.
27. Similarly, even as against the final order dated 18.9.2010, the Applicant GRIDCO, instead of filing a Appeal directly before the Tribunal they chose to file a review petition before the State Commission which ultimately dismissed the same

on 25.8.2011 holding that there was no error on the face of the records. For this also, no explanation has been offered by the Applicant.

28. These facts would indicate that GRIDCO, the Appellant as against each and every order passed by the State Commission, first used to file review Petition before the State Commission and get a negative order after time consuming process and then only they used to file the Appeal along with the condonation of delay Application before this Tribunal. This is the regular and routine practice adopted by the Applicant.

29. As a matter of fact, we have indicated the conduct of the Appellant/Applicant even in our earlier order passed in the Appeal No.26 of 2010 filed by the GRIDCO as against the interim order dated 6.5.2008 while dismissing the same. The relevant portion of the said order is as follows:

*“2. It is noticed from the facts that Respondent No.1 filed an Application before the State Commission for issuance of Intra-State Trading Licence and the same was objected to by the Appellant by raising various grounds. The State Commission, after considering the materials placed before it, came to the conclusion that prima facie, Respondent No.1 is competent to claim for the licence, and therefore, it had become necessary for the State Commission to issue notice to the public inviting opinions and suggestions with reference to grant of licence and accordingly, the*

*notice was issued. This order had been passed on 6.5.2008.*

*3. Thereafter, **the Appellant for the best reasons known to it**, had not chosen to file an Appeal, straightway before this Tribunal but thought it fit to file a Review before the State Commission pointing out that there are some apparent errors in the order dated 06.05.2008, on the face of record. However, the State Commission dismissed the Review petition by its order, dated 01.10.2009 holding that there is no error apparent on the face of the record”.*

30. Even though we have indicated our note of displeasure for not having chosen to file the Appeal straightway before this Tribunal in Appeal No.26 of 2010 as against the interim order dated 6.5.2008, the Applicant adopted the same practice by again filing another Review Petition before the State Commission as against the main order dated 18.9.2010.

31. In the light of the above facts, we have to decide whether the conduct of the Applicant is bonafide or not ?

32. As mentioned earlier, the Learned Counsel appearing for the Respondent has made a specific allegation against the Applicant that the dilly dallying tactics has been continuously adopted by the Applicant solely with a view to create uncertainty with respect to the intra state trading licence applied by the Respondent which would deter the potential distribution companies from entering into an

agreement for the sale and purchase of electricity with M/s. Global Energy Private Limited so that such uncertainty would serve GRIDCO's interest by resulting perpetuation of GRIDCO's monopoly as the only buyer available to power generators in Orissa. As we have observed earlier, this submission by the Respondent cannot be brushed aside as we find force in it.

33. Even though there is no proper reason as to why they filed a review as against the main order before the State Commission, the fact remains that there was some delay in disposal of the review petition filed on 15.12.2010 which was dismissed on 25.8.2011.
34. It cannot be denied that the time taken for disposal of the review Petition before the State Commission can be taken as a ground to condone the delay for the period from 18.9.2010 to 25.8.2011 i.e. pendency of the Review. However, the conduct of the Applicant in not filing the Appeal directly requires consideration. Even though, the Review was dismissed by the State Commission on 25.8.2011, the Appeal had been filed only on 16.1.2012 i.e after about 139 days. The explanation offered by the Appellant for the said period is that during the said period, the Learned Counsel for the Applicant at New Delhi wanted the presence of the GRIDCO's officers to facilitate

preparation of the Appeal and at that time officers were unable to come to Delhi as they were engaged with the filing of the Application of the Annual Revenue Requirements and therefore, only on 11.11.2011, the officer was able to go to Delhi and meet the Counsel after a long delay and thereupon the Appeal was drafted and filed on 16.1.2012.

35. As correctly pointed out by the learned Counsel for the Respondent, this explanation, being artificial cannot be accepted as it does not show 'sufficient cause'. As indicated above, even though the order in the review was passed on 25.8.2011 which was received by the Applicant on 29.8.2011 there was no reasonable explanation as to why there was a long delay for getting the approval and for sending the documents to the Counsel. Similarly, there is no credible explanation as to why it took a month for preparation of the draft Appeal.
36. Even assuming that the GRIDCO officials had to travel to New Delhi it is difficult to comprehend that it would have taken long delay for preparation of first draft.
37. In the light of the above facts, it is evident that there is not only lack of diligence and lack of promptness on the part of the Applicant to file an Appeal even after the disposal of the review Petition in time but also there is a lack of bonafide on



the part of the Appellant in causing undue delay by filing a review after review before the State Commission.

38. The Hon'ble Supreme Court in the judgments referred to above has specifically held that when there is a lack of bonafide, then the sufficient cause shown in the explanation cannot be inferred and in that event the Application to condone the delay shall be dismissed. That apart, the moment, final order is passed in favour of the Respondent, the right accrues to the Respondent to oppose the delay in this Appeal in the absence of any valid explanation. This right of Respondent cannot be ignored just like that.
39. As we have discussed earlier, the GRIDCO, in order to keep the issue alive for a long time or in order to create uncertainty to ensure their monopoly, had caused artificial delay due to their lackadaisical attitude which lacks bonafide.
40. The learned Counsel for the Applicant requested this Tribunal to consider the merits of the Appeal also in terms of the public interest.
41. We are unable to appreciate this contention as in our view, the State Commission only in the public interest of the consumers, have decided to issue intra-state licence to the Respondent which would ensure healthy competition

between the utilities which would ultimately benefit the consumers thereby public interest is safeguarded.

42. In view of the above, we deem it appropriate to hold that this Application to condone the delay of 433 days is liable to be dismissed mainly on the ground of lack of bonafide and accordingly, the same is dismissed. Consequently the Appeal is also rejected.
43. Before parting with this case, we are constrained to observe that this is a fit case where exemplary cost shall be imposed on the Applicant who has adopted all sorts of tactics to create inordinate and artificial delay in filing the Appeal by filing a review after review as against each and every order that was passed by the State Commission without filing a direct appeal before this Tribunal although there was no error on the face of the record.
44. However, we refrain from doing so as we sincerely hope that the Learned Counsel appearing for the Applicant, who is well versed in the subject would suitably advise the Applicant GRIDCO, at least in the future, not to resort to filing of the Review Petition against each and every order before the State Commission even without valid ground and not to create an impression in the minds of the State Commission as well as this Tribunal that the GRIDCO, the

public utility used to adopt this sort of tactics in order to gain more time in order to achieve the oblique purpose.

45. With these observations, this Application is dismissed. Consequently, the Appeal is also rejected without imposing cost.

**(Rakesh Nath)**  
**Technical Member**

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

Dated: 10<sup>th</sup> April, 2012

REPORTABLE/NON-REPORTABLE