

55(3) *The Tribunal may, to advance the cause of justice and in suitable cases, waive payment of such fee or portion thereof, taking into consideration the economic condition or indigent circumstances of the petitioner or appellant or applicant or such other reason, as the case may be.”*

2. The applicant prays for waiver of fee contending that it does not have financial capacity to pay the fee of Rs.1 Lac. It further contends that unless the Impugned Order namely the tariff order dated 24th February, 2007 of the Himachal Pradesh Electricity Regulatory Commission is set aside, the consumers of the State of Himachal Pradesh will have to pay impermissible higher tariff and that the application should be allowed in order to advance the cause of justice. The rule quoted above clearly shows that the economic condition or indigence of the appellant is not the only consideration which the Tribunal has to take into account for waiving the cost. Apart from the indigent condition other factors for waiving the court fees are (1) whether it will advance the cause of justice and (2) whether it is a suitable case.

3. The applicant has submitted its audited balance sheet to show that its net current asset is only worth Rs.102052/-. The financial position of the appellant can be a subject matter of inquiry and we could have proceeded to initiate the enquiry by giving notice to respondents had we found it a suitable case for waiving fees and the waiver would advance the cause of justice.

4. The appellant/applicant challenges the order of the Regulatory Commission dated 24.02.2007 passed on the tariff petition filed by Jay Prakash Hydro Pvt. Ltd. (JPHL), a generating company. The applicant is also a generating company. The applicant does not disclose in the Memorandum of Appeal as to how the applicant is aggrieved by the tariff fixed by the Commission on the tariff application of JPHL. It is contended in the appeal that the appellant has been engaged in the field of Hydro power activities and is providing consultancy services besides working as a watch dog on various issues of public interest, affecting electricity consumers in general in the power sector. The Memorandum of Association, however, does not show that the applicant company was formed with objectives of working as a watch dog as claimed. The first objective, as per this Memorandum, is to carry on the business to generate, receive, produce, improve, buy, sell, re-sale, acquire, use, transmit, accumulate, employ, distribute, develop, handle, protect, supply and act as agent, broker, representative, consultant, collaborator or otherwise to deal in electric power and steam in all its branches of such places or places as may be permitted by appropriate authorities. One of the objectives is to carry out work of consultancy relating to power projects. The applicant company, however, does not have, as one of its objectives, to take care of ultimate consumers of electricity or to act as a watch dog for such consumers in the matters of fixation of tariff by the appropriate Commission. The applicant nowhere discloses as to how the applicant itself as a generating company

or as a company engaged in the activities mentioned above has been adversely affected by the Impugned Order of the Commission. This being the situation we do not feel that this is an appropriate case in which the fees for filing the appeal should be waived. Nor do we think that waiving the fees in this matter will advance the cause of justice.

5. It is vehemently argued before us, on the basis of the judgment of Supreme Court in the case of *State of Bombay Vs. Supreme General Films Exchange Ltd. AIR 1960 SC 980* that amended court fees cannot be applied for appeals if the suit was filed before such amendment. According to the applicant the present appeal is continuation of proceedings before the Commission and the fees payable for the present appeal should be the same as was applicable on the day the proceedings before the Commission were initiated and that since on such date the fee payable for appeal before this Tribunal was only Rs.10,000/-, charging Rs.1 Lac for this appeal would give retrospective effect to the amendments. It may be mentioned here that the amendment was notified on 22nd January, 2007. The rule bringing about the amendments says “*they shall come into force on the date of publication in the official gazette*”. Apparently, therefore, the amended rule comes into effect on 22nd January, 2007. The application under consideration is only for the waiving of fees and we have found that this is not an appropriate case in which the fees should be waived. The other submissions regarding retrospective effect or the legitimacy of the

amendments for that reason is not required to be gone into for the disposal of the application made before us. Nor do we want to pass any comments on the arguments made by the counsel for the applicant. If the applicant wants to challenge the validity of the amendments he may do so before the appropriate forum.

6. The application for waiver of fee is accordingly rejected. The appellant may pay the fees for the appeal in case it wants to proceed with the matter.

(Mrs. Justice Manju Goel)
Judicial Member

(Mr. H.L. Bajaj)
Technical Member