

BEFORE THE APPELLATE TRIBUNAL FOR ELECTRICITY
Appellate Jurisdiction, New Delhi

Interlocutory Application No. 156 of 2007
in AFR No. 190 of 2007

Dated this 08th day of May, 2008

Coram: Hon'ble Mr. H. L. Bajaj, Technical Member
Hon'ble Mrs. Justice Manju Goel, Judicial Member

IN THE MATTER OF:

Punjab State Electricity Board
The Mall,
Patiala, Punjab – 147 001

...applicant(s)/appellant

Versus

1. Punjab State Electricity Regulatory Commission
SCO No.220-221, Sector 34A,
Chandigarh – 160 022.

2. Gujarat Ambuja Cement Ltd.
Through its General Manager
Vill. Nuhon, P.O. Laudi Majra,
Distt. Ropar,
Punjab – 140 113

...Respondents

Counsel for the applicant(s) : Mr. Rupinder Suri
Ms. Suruchi Suri
Er. J. P. Singh, Director, TR-II
Er. Sham Lal, DD, Resp. No.4

Counsel for the respondents : Mr. Rohit Singh for Resp. No.2
Mr. G. Umapathy for Resp.
No.2

Mr. J. C. Shukla, Registrar,
PSERC
Mr. Raghvinder Singh, Asstt.
Director, PSERC

ORDER

The present application seeks condonation of delay in filing an appeal to challenge the order dated 04.08.06 passed by the Punjab State Electricity Regulatory Commission. The delay till the date of filing is of 106 days. The appeal was returned by the Registry for removing certain defects. The appeal thereafter was re-filed and in re-filing there is a delay of 117 days. The interlocutory application which does not take care of the delay in re-filing deals with delay of 106 days. It is stated that the delay was caused as the file was being moved within the appellant's department for preparation of review and subsequently in presenting the appeal. It may be stated here that the appellant/applicant had first attempted to obtain the intended relief by filing a review petition but did not succeed as the same was found to be not maintainable.

2) Coming to the re-filing it is stated that the appeal was returned on account of the objections which has been raised keeping in view the changes introduced by a notification dated 22.01.07 under the APTEL (Forms, Verification and the Fee for Filing an Appeal) Rules 2004, that fresh drafts prepared by the

counsel got lost in post and thereafter another copy of the draft had to be sent by the counsel which caused the delay. Another affidavit has been filed by the appellant stating therein as to how the 106 days were spent by different sections of the applicant and attempted to explain the delay. It may be mentioned here further that much of the delay is attributed to the fact that the applicant is based in Patiala whereas the counsel responsible for filing the appeal is based in Delhi.

3) The application is opposed by the respondent who says that sufficient ground has not been made out and the application is an abuse of the process of the court. In the reply it is contended that the impugned order is justified and that despite rejection of the review petition the appellant has taken a long time to come to this Tribunal and therefore the delay should not be condoned.

4) So far as re-filing is concerned, the loss of draft in post cannot be attributed to the negligence of the appellant or the counsel. Although the reply has been filed the truth of the allegations in the two affidavits has not been disputed. Therefore, so far as re-filing is concerned the delay has to be excused.

5) So far as the filing is concerned the delay is of 106 days. Although the respondent objected to condonation of delay, it does not dispute the facts alleged in the affidavit. It cannot be denied that

there is a need to improve the functioning of public sector undertakings in the matter of pursuing litigations. The Supreme Court in several judgments have talked about the delay made by the State mechanisms. In the case of *State of Nagaland Vs. Lipok AO and Others 2005 (3) SCC 752* the Supreme Court stated that the State as an impersonal machinery working through its officers and servants cannot be put on the same footing as an individual. Further the Supreme Court advised that the public interest is also involved when matters are pursued by the State. Although we would have been happier if the appellant/applicant had shown more diligence in approaching this Tribunal. We cannot say that the delay has not been explained or that the cause is not sufficient.

6) In a recent case, in the case of *Sainik Security Vs. Sheel Bhai & Others 2008 AIR SCW 1948*, the Supreme Court on being satisfied that there was sufficient ground condoned the delay but imposed a cost as a condition precedents for condoning the delay. In view of the facts in the present case as explained above we think it will be appropriate to condone the delay but subject to some cost in order to compensate the respondent for the loss of time. Accordingly, we allow the application for condonation of delay subject to a cost of Rs.5,000/- (Rupees Five Thousand Only) which should be deposited before the next date of hearing.

7) The appeal be listed for hearing on **July 28, 2008**.
Meanwhile, the appeal will be numbered after the cost is deposited.

8) Pronounced in open court on this **08th day of May, 2008.**

(Justice Manju Goel)
Judicial Member

(H. L. Bajaj)
Technical Member

The End