

**BEFORE THE APPELLATE TRIBUNAL FOR ELECTRICITY  
Appellate Jurisdiction, New Delhi**

**Interlocutory Application No. 214 of 2007  
in AFR No. 1168/2007**

*Dated this 06<sup>th</sup> 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:**

**Konkan Synthetic Fibres Processed yarn Unit**

[Proprietor Century Enka Ltd.]

Plot No. C-61, MIDC Mahad,

Dist. Raigad 402 309

Maharashtra

... Applicant(s)/appellant

Versus

**1. The Maharashtra Electricity Regulatory Commission**

World Trade Centre,

Cuffe Parade, Mumbai 400 005.

**2. The Maharashtra Electricity Distribution Co. Ltd.**

Plot No. G-9,

Prakash Gad, Bandra (East),

Mumbai – 400 051 and Branch Office at

Pen Circle, Pen Dist. Raigad,

Maharashtra

... Respondents

Counsel for the applicant(s) : Mr. O. P. Gaggar

Counsel for the respondents : Mr. Buddy A. Ranganadhan for  
MERC

## **ORDER**

**Ms. Justice Manju Goel, Judicial Member**

The appeal which is accompanied by the application for condonation of delay which is under consideration in the present order is directed against the order passed by the Maharashtra Electricity Regulatory Commission on 20.10.2006 determining the charges chargeable by respondent No.2 for a period of 01.10.06 to 30.04.2007 as "Additional Supply Charge". The appeal is presented on 22.11.2007. Section 111(2) of the Electricity Act 2003 provides for a period of 45 days from the date on which the copy of the impugned order is received by the aggrieved person as the period in which the appeal has to be preferred. As such the appeal should have been filed by 05.12.06. The appellant/applicant filed an affidavit along with the application. Subsequently an additional affidavit is also filed giving the facts in detail relevant for the prayer of condonation of delay. The facts given in the new affidavit are as under:

2) The impugned tariff order was received by the appellant on 22.10.06. The appellant objected to the next bill received on 22.11.06 by a letter dated 25.11.06. The applicant made similar objections to the subsequent bills. The applicant filed an application before the Consumer Redressal Forum of the respondent No.2 on 16.02.2007. The Consumer Redressal Forum

passed a final order on the application on 28.04.07. The applicant thereafter made representation to the Electricity Ombudsman on 22.06.07. The order of the Ombudsman was received on 04.08.07. The appellant thereafter engaged a counsel and the appeal was filed on 22.11.07. The delay is caused due to ignorance and wrong advice and aforesaid remedies believing them to be appropriate Forum for Redressal of the grievance. The applicant pursued the above proceedings on an earnest belief that this Forum could provide efficacious remedies. Two other appeals against the same Additional Supply Surcharge are pending before this Tribunal being Nos. 108 and 144 of 2007. Accordingly, the delay be condoned.

3) We have heard the counsel for the parties and have considered the law cited before us.

4) The Supreme Court in the case of *State of Nagaland Vs. Lipok AO and Others 2005 (3) SCC 752* has advised that proof of sufficient cause is a condition precedent for exercise of the extra ordinary discretion vested in court by Section 5 of the Limitation Act and further what counts is not the length of delay but the sufficiency of cause and shortness of delay is one of the circumstances to be taken into account in using the discretion.

5) In the present case the 45 days period expired on 05.12.06. The appeal is presented on 22.11.07. Thus a delay is of nearly one

year. The appellant/applicant is apparently seeking protection under Section 14 of the Limitation Act under which the period spent in proceeding bona fide in a court without jurisdiction can be excluded in computing the period of limitation. If the principles of Section 14 have to be applied to the present case the applicant has not only to prove the time spent in proceeding fora without jurisdiction but also that such proceedings were taken on a bona fide belief that the fora did have the jurisdiction to decide the issue. The Consumer Redressal Forum was approached on 16.02.07 i.e. after a lapse of nearly four months of the order and the period for filing the appeal was long over. The Consumer Redressal Forum passed an order on 23.04.07 which was received by the appellant/applicant on 28.04.07. On 28.04.07, it was sufficiently clear to the applicant/appellant that the Consumer Redressal Forum did not have any jurisdiction to go into the question of propriety of a tariff order. In fact, even during the hearing before the Consumer Redressal Forum this question was most likely to have been raised and the appellant/applicant then would have known that the Consumer Redressal Forum did not have any jurisdiction in deciding the application made by the appellant/applicant.

6) The proceeding before the Ombudsman, following an order of the Consumer Redressal Forum, is akin to an appeal. The Ombudsman also did not have any jurisdiction in interfering with a

tariff order. In any case the proceedings before the Ombudsman were taken when the appellant had been fully apprised by the Consumer Redressal Forum about the lack of jurisdiction in the Redressal Forum or in the consequent mechanisms of the Ombudsman. Even if it is presumed that the proceedings before the Consumer Redressal Forum were taken bona fide it is difficult to hold that the proceeding before the Electricity Ombudsman was also taken bona fide.

7) What the applicant/appellant has to show is due diligence. In the present case the appellant has shown total lack of diligence in pursuing his relief. The first challenge to the tariff order itself, although before a wrong Forum, was made four months after the passing of the tariff order. The representation before the Electricity Ombudsman was pursued even after the attention of the appellant/applicant was drawn to the proper Forum. Finally, even after the Ombudsman gave his opinion on 04.08.07, the appellant came to this Tribunal on 22.11.07. There is absolutely no explanation for this delay of 105 days. There is not even a whisper as to why the appellant/applicant could not come to this Tribunal immediately after the order of the Electricity Ombudsman. As stated initially it is not the length of the delay but the sufficiency of the cause. If some cause is narrated the court may apply its mind and assess the sufficiency of the cause. However, if no cause is at

all stated in the application this Tribunal cannot say that the delay for the period for which no cause at all is stated was on account of any sufficient cause.

8) Starting from *Collector, Land Acquisition Vs. Mst Katiji & Others 1987 (2) SC 107* the Supreme Court has repeatedly advised that the expression “each days delay must be explained” does not mean that a pedantic approach should be made. The Supreme Court said that doctrine must be applied in a rational, commonsense and pragmatic manner. This, however, does not mean that no explanation whatsoever is required to be given or that any narration of facts will constitute sufficient cause for condonation of delay. The Supreme Court rejected an application for condonation of delay made by State of Punjab in the case of *State of Punjab Vs. Raj Kumar 1992 Supp (2) SCC 128* where the delay was sought to be explained only by stating “due to exchange of correspondence between different departments of the State and advocates for the petitioner regarding the swearing of the affidavit etc. by the concerned officer”. Similarly, a prayer for condonation of delay made by Union of India was rejected in the case of *Union of India & Others Vs. Vidarbha Venaer Industries 1994 Supp (2) SCC 696* where the delay was sought to be explained by pleading that the relevant file was misplaced. The Supreme Court observed that no action had ever been taken to identify the person responsible for the lapse and to fix the responsibility for the same. The Supreme Court

said that a mere statement that the relevant file was lost in some office cannot be treated as sufficient cause for condonation of inordinate delay.

9) The present case, as compared to the two cases, of State of Punjab and Union of India, mentioned above is much worse in as much as no explanation whatsoever has been either given for 105 days immediately preceding filing of the appeal or for the four months even before approaching Consumer Redressal Forum. Further we are not inclined to accept the plea that the procedures before the Consumer Redressal Forum or before the Electricity Ombudsman were taken on the bona fide belief that they had the jurisdiction to grant the relief viz. to alter the tariff order relating to 'Additional Supply Charge'.

10) We find that the appellant/applicant has failed to make out sufficient cause for condoning the delay in filing the appeal. The interlocutory application No. 214 of 2007 is accordingly dismissed and the appeal rejected.

11) Pronounced in open court on this **06<sup>th</sup> day of May, 2008.**

**( Justice Manju Goel )**  
**Judicial Member**

**( H. L. Bajaj )**  
**Technical Member**

The End