

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

Interlocutory Application No. 169 of 2006  
( AFR No. 784 of 2006 )

**Present: Hon'ble Mr. Justice E. Padmanabhan, Judicial Member  
Hon'ble Mr. H.L. Bajaj, Technical Member**

Haryana Power Generation Co. Ltd. ... Applicant

Versus

Central Electricity Regulatory Commission & Anr. ... Respondents

Counsel for the Applicant : Mr. Neeraj Kumar Jain, Advocate along with  
Mr. R. K. Arora, Executive Engineer (T), HPCGL

Counsel for the Respondents -

Dated : 05<sup>th</sup> October, 2006

**ORDER**

1. Heard, Mr. Neeraj Kumar Jain, learned counsel appearing for the applicant.

2. This application has been taken out to condone an inordinate delay in preferring the appeal. Even according to the applicant, the delay is 259 days while according to us it is more than the said number of days.

3. With respect to the tariff order for the period 01.09.01 to 31.03.2001, an order has been passed by the 1<sup>st</sup> respondent, Regulator, as early as 30<sup>th</sup> June 2003 in Petition No. 23/99 and 81/02. A review sought for by the applicant in Review Petition No. 72/03 came to be rejected as early as 17.04.04.

4. Thereafter the applicant moved the Punjab & Haryana High Court by way of Writ Petition No. 13656/05 after nearly a year. Here again there is a delay in moving the Writ Petition. At the instance of applicant, on 01.09.05, the Hon'ble High Court permitted the applicant to withdraw the Writ Petition with liberty to prefer appeal under Section 111 of The Electricity Act 2003. Having withdrawn the Writ Petition, with leave of the

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Court, appeal should have been filed immediately thereafter but the present appeal has been preferred on 14.07.06. In calculating the period of limitation, 259 days has been arrived at reckoning the date of High Court order, which is not correct. The delay is more than 500 days.

5. We were taken through the application to condone the delay. We do not find any reason much less sufficient cause to condone the inordinate delay. Having secured leave on 01.09.05 nothing prevented the appellant to prefer the appeal immediately after 01.09.05 or within a reasonable time thereof. The applicant had failed to prefer the appeal. The applicant suggested that it addressed the Government of India, Ministry of Power to secure certain information about NTPC and was awaiting information. The said information is neither required nor called for. Even otherwise pending the appeal the second respondent could have been called for to furnish the details. This will not constitute a valid ground to condone the delay.

6. In our considered view no sufficient cause has been shown at all. Mr. Neeraj Kumar Jain, Advocate during the hearing sought to explain that the file has been misplaced on instructions from the officer who is instructing him before this Appellate Tribunal. But we do not find such an averment either in the application or supporting affidavit. At any rate it is possible for the applicant to reconstruct the papers immediately as it has already got back the papers from High Court of Judicature Punjab & Haryana and it could have easily reconstructed the same. Such a cause sought to suggested is not at acceptable.

7. On a consideration of the entire matter, we hold that there is no reason at all much less sufficient reason to condone the inordinate delay. Further a right has validly accrued in favour of the second respondent and there is no justification or valid reason to dislodge the same at this point of time. The application is dismissed.

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

**( Mr. Justice E. Padmanabhan )**  
**Judicial Member**