

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

**IA -285 of 2010 in  
D.F.R. No. 816 of 2009**

**&**

**IA -286 of 2010 in  
D.F.R. No. 817 of 2009**

**Dated : 11<sup>th</sup> October, 2011**

**Present : Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson  
Hon'ble Mr. V.J. Talwar, Technical Member**

**In the matter of:**

**U.P. Power Corporation Limited  
Versus  
Jagannath Steel Pvt. Ltd. & Anr.**

**.... Appellant (s)**

**... Respondent (s)**

Counsel for the Appellant (s) : Mr. Daleep Kr. Dhyani for Mr. Pradeep Misra  
Counsel for the Respondent (s) : Mr. U.C. Tripathi for R.1  
Mr. Kunal Verma & Mr. Ashok Kr. Singh for R.2

**ORDER**

**IA -285 & 286 of 2010  
(Condone delay Appl.)**

An Application-I.A. No. 285 of 2010 has been filed for condonation of delay of 1590 days in filing the Appeal as against the Order dated 12.01.2005.

The Application has been stoutly opposed by the Respondents. We have gone through the affidavit as well as counter affidavit filed by the Respondents. As against the Order dated 12.01.2005, the Appellant has filed the Appeal before Lucknow Bench of Allahabad High Court in Appeal No.39 of 2005 and the same had been dismissed as withdrawn on 07.05.2009 giving

liberty to the Appellant to file an Appeal before this Tribunal. Thereafter, the Appellant filed an Appeal before this Tribunal on 22.05.2009. That was how the delay was caused.

Similarly, an Application-I.A. No. 286 of 2010 has been filed to condone the delay of 1721 days in filing the Appeal as against the impugned Order dated 03.09.2004 passed by the State Commission. The reason for the delay mentioned in the affidavit is that as against the said Order dated 03.09.2004 they filed an Appeal No. 62 of 2004 in September 2004 before the High Court and the same was pending. This Appeal also was ultimately dismissed on 06.05.2009 giving liberty to the Appellant to file an Appeal as against the main Order dated 03.09.2004 before this Tribunal. When the matters were disposed of by the High Court, the learned counsel for the Respondent filed an Application for permission to raise the question of maintainability before this Tribunal as according to him the Appeals are not maintainable. Accordingly, the liberty was granted.

Both the matters are heard together on the question of maintainability. This Tribunal by Order dated 20.09.2011 held that both the Appeals are maintainable and decided to take up the Applications for condonation of delay.

It is noticed that the liberty had been given by the High Court only to raise the question of maintainability, but they have not raised any question before the High Court with regard to the condonation of delay. Therefore, we have to consider whether the delay has been properly explained.

As against both the impugned Orders dated 12.01.2005 and 03.09.2004, the Appeals had been filed within the time before the High Court. Immediately, after the Order had been passed by the High Court on 07.05.2009 and 06.05.2009, respectively, the Appellant has filed the Appeals before this Tribunal on 22.05.2009. As such, there is delay in respect of filing of Appeals, in view of the fact that the Appeals were pending before the High Court.

As correctly pointed out by the learned counsel for the Respondent even though the Appeals have been filed on 22.05.2009, the Appellant had not chosen to pay the court fee on that day. He paid the court fee only in November 2009. So, the delay for the period between 22.05.2009 and November 2009, has not been explained.

Keeping in view that the High Court has allowed the party to approach this Tribunal to file the Appeals, we deem it appropriate to condone the delay especially when we have held that the Appeals

are maintainable, of course by imposing some costs for non-explanation for the period of delay between 22.05.2009 and November 2009.

Accordingly, as far as I.A. No. 285 of 2010 filed for condonation of delay of 1590 days is concerned, we impose the cost of Rs.40,000/- and as far as I.A. No. 286 of 2010 filed for condonation of delay of 1721 days is concerned, we impose the cost of Rs.50,000/-. Accordingly, the Appellant is directed to pay the cost of Rs.90,000/- (Rs. 40,000 + Rs. 50,000) to a charitable organization, namely, **“Sai Deep Dr. Ruhi Foundation, A-508, Sector 19, Noida – 201301, Uttar Pradesh”** on or before 10.11.2011.

The Registry is directed to send a copy of this Order to the charitable organisation. The Registry is also directed to number the Appeals and post for reporting compliance and for Admission on **11.11.2011.**

(V.J. Talwar )  
Technical Member

(Justice M. Karpaga Vinayagam)  
Chairperson

Ts/ss