

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)**

ORDER ON IA NO. 1621 OF 2019

IN

DFR NO. 2200 OF 2019

Dated : 2nd December, 2019

Present: Hon'ble Mrs. Justice Manjula Chellur, Chairperson

Hon'ble Mr. S.D. Dubey, Technical Member

IN THE MATTER OF:

**M/s Inland Power Limited (IPL)
Through Director – Finance & Corporate Affairs
30, Chowringhee Road,
Flat No. 12, 3rd Floor,
Kolkata – 700016**

....Appellant

VERSUS

**1. Jharkhand State Electricity Regulatory
Commission
Through its Secretary
2nd floor, Rajendra Jawan Bhawan-cum-Sainik
Bazar
Mahatma Gandhi Marg (Main Road)
Ranchi-834001**

**2. Jharkhand Bijli Vitran Nigam Limited
Through its Managing Director
Engineer Building, HEC, Dhurwa
Ranchi – 834004**

...Respondents

Counsel for the Appellant (s) : Anand K. Ganesan
Swapna Seshadri
Ritu Apurva
Aadishree Chakraborty

Counsel for the Respondent(s) : Farrukh Rasheed for R1

Aabhas Parimal
Himanshu Shekhar
Jamnesh Kumar for R2

ORDER

PER HON'BLE MR. S. D. DUBEY, TECHNICAL MEMBER

1. The Application being IA No. 1621 of 2019 has been filed along with the present Appeal (DFR No. 2200 of 2019) for condoning the delay in filing the Appeal for a period of 438 days on account of administrative reasons and processing of file at multiple levels of the Appellant/Applicant' organization. The present Appeal is filed under Section 111 of Electricity Act, 2003 against the Order dated 19.03.2018 in Petition No. 06 of 2017 passed by the Jharkhand State Electricity Regulatory Commission relating to true up of financials for the year 2015-16.
2. There has been a delay of 438 days in filing the appeal calculated from the date of communication of the Impugned Order dated 19.03.2018. The details of the timeline in filing of the present Appeal are as follows :

a)	The Tariff Determined by the State Commission for tariff year FY 2015-16	27.05.2014
b)	The State Commission passed the True Up Order for FY 2015-16 (Impugned Order)	19.03.2018
c)	Impugned Order communicated to the Appellant	21.03.2018
d)	Review Petition (Case No. 08 of 2018) filed by the Appellant.	17.04.2018
e)	State Commission dismissed the Review Petition	13.05.2019

f)	Review Order Communicated to the Appellant	14.05.2019
g)	Present Appeal being DFR No. 2200 of 2019 filed against the Impugned Order by the Appellant before the Hon'ble Tribunal.	15.07.2019

3. Learned Counsel for the Applicant/Appellant submitted that the Appellant had sought review primarily on the operating norms determined by the State Commission. The review was filed in view of the fact that the State Commission had, in the truing up proceedings inter-alia, reopened the norms of operation of the generating station contrary to the tariff order passed, which was impermissible. However, by order dated 13.05.2019, the State Commission has dismissed the review petition without examining any of the issues raised by the Appellant on merits.
4. He further submitted that after the review order was passed by the State Commission and communicated to the Appellant on 14.05.2019, the delay was primarily on account of the intervening holidays and the counsel for the Appellant not being available to discuss the issue, drafted the appeal and finalize it for filing. The reasons have been explained in the application filed by the Appellant.
5. Learned Counsel for the Applicant was quick to submit that in the present case, out of the total delay of 438 days, it is relevant to note major delay of 392 days is accountable to the pendency of the review petition before the State Commission. In view of the above mentioned circumstances, Applicant Counsel submitted that the conduct of Appellant was bonafide in prosecuting the review petition before the State Commission and has thereafter filed the present appeal without any undue delay. In the circumstances, it is respectfully submitted that the delay of 438 days be condoned by this Hon'ble Tribunal.
6. Learned Counsel appearing for the Respondent Jharkhand State Electricity Regulatory Commission (JSERC) submitted that he has no further arguments on the reasons and justifications submitted by the Applicant in his instant application for condonation of delay. He further contended that admittedly, out of the total 438 days of

delay, the major delay period of 392 days has occurred due to pendency of the Review Petition before the State Commission. He summed up that in the light of these facts, the Hon'ble Tribunal may take appropriate decision in the matter of condonation of delay.

7. Second Respondent namely Jharkhand Bijli Vitran Nigam Limited (JBVNL) was not represented despite notice being served on 31.08.2019.

OUR CONSIDERATION AND FINDINGS

1. We have carefully considered the details contained in the IA No. 1621 of 2019 regarding condonation of delay in filing the instant appeal by the Applicant/Appellant. It is not in dispute that a delay of 438 days has occurred in filing the appeal, however out of the same 392 days have been lost due to pending decision of the State Commission on the Review Petition filed on 17.04.2018. The State Commission dismissed the Review Petition on 13.05.2019 and the present appeal has been filed on 15.07.2019.
2. While looking at the details of events leading to filing of this appeal, it is relevant to note that the State Commission has been taking considerably long time in deciding the petitions. For example, the true up order for the FY 2015-16 (Impugned Order) was passed after almost 4 years and the Review Petition was disposed of after 392 days, (about 13 months). We also note that the Applicant/Appellant has acted in bonafide manner and excepting some marginal delays here and there it has rendered due regard to the rules and regulations including the limitation and as such the delay in filing the appeal can be termed as unintentional.
3. Having regard to various judgements of the Hon'ble Supreme Court as well as this Tribunal relating the condonation of delay, it is pertinent to consider that for condonation of delay the same should be explained satisfactorily and in addition sufficient cause as implied by the legislator ought to be interpreted in the true spirit

and philosophy of law. Some of the Judgements in this regard are mentioned as under :

- (i) Collector, Land Acquisition, Anantnag & Anr. vs. Mst Katiki & Ors. (1987) 2 SCC 107**
 - (ii) The case of “State of Nagaland v LipokAo (2005) 3 SCC 752”,**
 - (iii) In case of O. P. Kathpalia v. Lakhmirf Singh [(1984) 4 SCC 66]**
 - (iv) In the case of “Ram Nath Sao v Gobardhan Sao (2002) 3 SCC 195**
- 4. Through the above mentioned judgements, it has been held that the expression “sufficient cause” implied by the Legislator is adequately elastic to enable the courts of apply the law in a meaningful manner which subserves the ends of justice that being the live purpose for the existence of the institution of courts.
 - 5. It is also noticed from the review order of State Commission that the Review Petition filed by the Applicant/Appellant was dismissed without considering the merits of the case aimed in the Review Petition. We therefore opine that the delay has been explained satisfactorily and sufficient cause has been shown thereof.
 - 6. In the light of above, we are of the considered view that the balance of convenience lies in favour of the Applicant/Appellant and the delay deserves to be condoned in the interest of justice. Accordingly, the delay of 438 days in filing the instant appeal is hereby condoned and the IA No. 1621 of 2019 is disposed of.

Pronounced in the open Court on this 2nd Day of December, 2019.

Registry is directed to number the Appeal and list the matter for admission on 29.01.2020.

(S.D. Dubey)
Technical Member
mkj

(Justice Manjula Chellur)
Chairperson