Chhattisgarh State Electricity Regulatory Commission

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Petition No.07 of 2008(M)

In the matter of condonation of delay in filing review application.

M/s Shrishrimal Plantation Ltd .... Applicant
Vill. Chandandh
Raipur

V/s

Chhattisgarh State Electricity Board .... Respondent
Raipur

Present : S.K.Misra, Chairman
B.K.Sharma,Member

Counsel for applicant : Shri Satish Agrawal
Shri Thakur Anand Mohan Singh

O R D E R

(Passed on 28.6.2008)

Shrishrimal Plantation Ltd., a company registered under the Companies At, 1956 has submitted an application for review of the tariff order dated 15.06.2005, passed by this Commission in petition No. 5 of 2005, under Regulation 43 of Chhattisgarh State Electricity Regulatory Commission (Conduct of Business) Regulations, 2004 (Conduct of Business Regulation, hereinafter) read with regulation 49 of the same regulations and section 94 of the Electricity Act, 2003 (the Act, hereinafter). The review application seeks review of the Commission's tariff order for the year 2005-06 aforementioned for reclassification of the petitioner to be eligible for agriculture tariff (LV-3) or agriculture hi-tech tariff as per a circular issued by the Chhattisgarh State Electricity Board (CSEB or the Board, hereinafter) on 11.07.2001. The review application has been submitted to the Commission on 14.05.2008, nearly three years after the impugned order was passed, accompanied by an application for condonation of delay under regulation 49 and 52, inherent power of the Commission, (power to relax time period specified in the Regulation) of the Conduct of Business Regulations. The application for condonation of delay has been made mainly on the ground that the applicant who should have filed a review petition under regulation 43 of the Conduct of Business Regulations to challenge the tariff order dated 15.06.2005 of this Commission, took up the matter under *wrong legal advice* first with the CSEB and thereafter with the Electricity Consumer

Grievance Redressal Forum, the Electricity Ombudsman, the Hon'ble Appellate Tribunal for Electricity and ultimately the Hon'ble High Court of Chhattisgarh before approaching this Commission with this petition. The applicant has also made a plea that the Act and the Commission being new was not understood and appreciated by the legal practitioners at Raipur which resulted into wrong legal advice to the applicant and which prompted him to take up the matter in wrong judicial fora. It has also been pleaded that the delay in this case was not deliberate and condonation of delay will cause no loss to the respondent Board which is already in a command by the Hon'ble ATE vide order dated 16.10.2006 to treat tree crops as agriculture, while non-condonation of delay would result in irreparable loss to the applicant.

2. We have heard the learned counsels for the petitioner on the application for condonation of delay. The consideration of this matter would involves examination of the legal position in respect of condonation of delay and provisions of the Limitation Act in this regard as also the factual position in this case.

3. Before discussing the legal position it would be necessary to place on record the chronology of events on this case:

15.6.2005	:	The Commission passes orders on the application for tariff for the year 2005-06 submitted by CSEB under Sec. 64 of the Act, in petition No. 5/2005(T).
1.7.2005	:	The tariff order comes into force in the State.
13.10.2006	:	The petitioner submits an application to the Consumer Grievance Redressal Forum constituted under section 42(5) of the Act regarding billing.
28.12.2006	:	The application of the petitioner is rejected by the Forum on the ground that the Forum has no jurisdiction to entertain any grievance challenging a tariff order.
7.2.2007	:	The petitioner makes a representation against the order of the Forum before the Electricity Ombudsman, under section 42(6) of the Act.
26.4.2007	:	The representation is rejected by the Ombudsman on the same ground as the Forum.
26.6.2007		The petitioner's appeal against the order of the Ombudsman is dismissed as withdrawn by the ATE on the request of the petitioner that "he wants to approach the appropriate Commission for Redressal of his grievance".
19.12.2007	:	The petitioner approaches the Hon'ble High Court of Chhattisgarh with a writ petition under Article 226 of the Constitution of India in the matter.
23.4.2008	:	The Hon'ble High Court dismiss the petition as withdrawn with liberty to approach this Commission.
14.5.2008	:	The present petition is filed.

It is seen that there was a gap of more than one year (15.06.2005 to 13.10.2006) between the impugned order and the petitioner's first approaching the Grievance

Redressal Forum. The applicant approached the Hon'ble High Court with a writ petition six months after the appeal filed before the Hon'ble ATE was withdrawn. The reasons for these delays have been only partly explained by the petitioner.

4. The facts of the case, in brief, are that the petitioner has a biotech laboratory and a research center by the name of Aditya Biotech Lab and Research Pvt.Ltd., which has an LT electricity connection from the CSEB. The electricity tariff applicable to him apparently was a tariff meant for hi-tech agriculture and this tariff was chargeable as per CSEB's circular dated 11.07.2001. This Commission passed the first tariff order (the impugned order) in which the applicant was placed in non-domestic category LV-2. The tariff order had no separate tariff for so-called hi-tech agriculture. The rate of non-domestic tariff (LV-2) was apparently higher than what was applicable to the applicant. In the first week of October, 2005 the applicant received his electricity bill from the Board and came to know that he has been charged at a higher tariff as per the impugned tariff order. On receipt of the bill the applicant made a representation to the concerned Assistant Engineer of the Board regarding the bill. The Assistant Engineer informed the applicant that after change in tariff there is no 'hi-tech agriculture' tariff category and from July 2005 non-domestic tariff would be applicable to him. The applicant thereafter made a representation to the Chairman CSEB on 31.10.2005. In the meantime the applicant also filed a complaint before the Consumer Grievance Redressal Forum on 13.10.2006. The Forum rejected the complaint by order dated 28.12.2006 on the ground that it had no jurisdiction to entertain any representation regarding change in tariff category. Another development in respect of the tariff order, from which the applicant seeks to claim support, is that the Chhattisgarh Krishi Vaniki Samaj, an association of tree planters had submitted a review petition against the tariff order of the Commission which was rejected by the Commission. Against this order the Krishi Vaniki Samaj had preferred an appeal before the Hon'ble Appellate Tribunal for Electricity (the ATE). Vide their order dated 16.10.2006 the Hon'ble ATE accepted their contention that tree plantation should be treated as agriculture and ordered that the tariff for agriculture be applied to them. The applicant sought support of this order before the Forum claiming that biotech laboratory is also concerned with agriculture. A representation was made against the rejection of their contention by the Forum, to the Ombudsman on 7.2.2007 which was also rejected by the Ombudsman vide order dated 26.04.2007 on the same grounds. The applicant appealed against this order before the Hon'ble ATE. The Hon'ble ATE passed the following order on 26.06.2007:

> "After arguing for a while, Mr.Arun K.Beriwal, Advocate, says that he wants to approach the appropriate Commission for redressal of his grievances and wants to withdraw the present appeal. He is allowed to withdraw the appeal and the appeal is dismissed as withdrawn."

This order was passed on 26.6.2007. Instead of approaching the Commission the applicant approached the Hon'ble High Court of Chhattisgarh through a writ petition under Art. 226 of the Constitution of India. The Hon'ble High Court passed the following order in this case on 23.4.2008:

> "The petitioner's Interlocutory Application No.s 104 to 108 of 2007 in AFR No. 706 of 2007 before the Appellate Tribunal for Electricity Appellate Jurisdiction, was dismissed as withdrawn with liberty to approach appropriate commission for redressal of his grievances. However, the petitioner, instead of raising his grievance before appropriate commission, has filed the instant petition.

Learned counsel for the petitioner fairly submits that he ought to have approached the Chhattisgarh State Electricity Regulatory Commission and the instant petition has wrongly been filed and he may be permitted to withdraw this petition with liberty to approach the Regulatory Commission.

The petition is accordingly dismissed as withdrawn with liberty as prayed for."

The present review application has been submitted thereafter before this Commission.

5. We have heard the learned counsel for the applicant on the issue of condonation of delay. The enabling legal provision is contained in Sec. 5 of the Limitation Act, 1963 (Limitation Act, hereinafter). Sec. 5 provides that "any appeal or any application xxxxxx may be admitted after prescribed period, if the appellant or the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period". This review petition has been filed under Regulation 43 of the Conduct of Business Regulations read with Sec. 94 of the Act. Sec. 94 of the Act says inter alia that for reviewing its own decisions, directions and orders the Commission shall have the same powers as are vested in civil court under the Code or Civil Procedure. Regulation 43 aforementioned lays down the general provision for review of decisions, directions and orders by the Commission and this regulation provides for a period of 90 days from the order within which a review application may be made to the Commission. However, this being a review of a tariff order the specific provision in Regulation 33 of the CSERC (Details to be furnished by the licensee or generation company for determination of tariff and manner of making application) Regulation, 2004 shall apply in which the time limit for filing of review petition is 60 days from the date of the tariff order. Similarly, regulation 49 and 52 of the Conduct of Business Regulations will not be fully applicable to the case in the face of specific provisions in the tariff related regulations aforementioned. This application, as already mentioned, has been submitted more than two years after the impugned order. Condonation of this long period shall depend on the applicant having "sufficient cause" for not making the application within the 60 days time limit laid down for review of tariff order in terms of Sec. 5 of the Limitation Act. What should be considered as "sufficient cause" is now well established in various judicial pronouncements by the highest Court of the land. The learned counsel for the applicant Shri Satish Agrawal has drawn out attention to several rulings of the Hon'ble Supreme Court in this regard. The apex Court has in its seminal judgement of 5.9.1968 in Civil Appeal No.970 of 1968 (1969-AIR SC-0-57) has examined this issue. Relying on the ruling laid down in Krishna v/s Chathappan case (1890/ILR-13 Mad 269, 271) the Hon'ble Court had ruled that "Sec.5 gives the Courts a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words "sufficient cause" receiving a liberal construction so as *to advance substantial justice when no negligence nor inaction nor want of bona fides is imputable to the appellant*" (Emphasis added). In their subsequent order in Civil Appeal No.821 to 823 of 1968 the Hon'ble Supreme Court has held as follows:-

"The legal position when a question arises under S.5 of the Limitation Act is fairly well settled. It is not possible to lay down precisely as to what facts or matters would constitute 'sufficient cause' under S.5 of the Limitation Act. But it may be safely stated that the delay in filing an appeal should not have been for reasons which

indicate the party's negligence in not taking necessary steps, which he could have or should have taken. Here again, what would be such necessary steps will again depend upon the circumstances of a particular case and each case will have to be decided by the courts on the facts and circumstances of the case. Any observation of an illustrative circumstances or fact, will only tend to be a curb on the free exercise of the judicial mind by the Court in determining whether the facts and circumstances of a particular case amount to 'sufficient cause' or not. It is needless to emphasis that courts have to use their judicial discretion in the matter soundly in the interest of justice"." (1972 AIR SC-0-749)

Similarly in their judgement of 10.3.1988, passed in Civil Appeals 856, 857 and 899, the Hon'ble Court held that "the expression sufficient cause in Sec. 5 must receive a liberal construction so as to advance substantial justice and generally delays in preferring appeals are required to be *condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the period seeking condonation of delay*" (Emphasis added). In this judgement the Hon'ble Court has also referred their judgement in Collector, Land Acquisition v/s Katiji case (AIR 1987 SC 1353) that "when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because a non-deliberate delay". The same view has been held by the apex Court in the case of Ram Nath Sao v/s Govardhan Sao (2002 AIR SC 1201). In this judgement it has been held: "Thus it becomes plain that the expression 'sufficient cause' within the meaning of the Sec. 5 of the Act or Order 22 Rule 9 of the Code or any other similar provision should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fide is imputable to a party. In a particular case whether explanation furnished would constitute 'sufficient cause' or not will be dependent upon facts of each case. There cannot be straightjacket formula for accepting or rejecting explanation furnished for the delay caused in taking steps. But one thing is clear that the courts should not proceed with the tendency of finding fault with the cause shown and rejects the petition by a slipshod order in over jubilation of disposal drive. Acceptance of explanation furnished should be the rule and refusal an exception more so when no negligence or inaction or want of bona fide can be imputed to the defaulting party". (2002-AIR SC 1201). The ratio of these rulings of the Hon'ble Supreme Court is that the courts should take a liberal view while considering the matter of delay in submission of the application; that the objective should be to advance substantial justice; but also that to constitute 'sufficient cause' there should be no negligence or inaction or lack of bona fides on the part of the applicant; and that this has to be ascertained from the facts of individual cases and no general rule in this regard can be laid down. The learned counsel for the applicant, on the basis of these rulings of the apex court, has pleaded that the Commission should take a liberal view of the delay to ensure that substantial justice is done to him in the matter of tariff applicable to him, particularly in the light of the judgement of the Hon'ble ATE that agriculture tariff should be applicable to plantations. It has been pleaded that irreparable loss would accrue to the applicant in case the delay in filing this review petition is not condoned. It has been further contended that there was no negligence on the part of the applicant in pursuing this case nor any inaction or want of bona fide.

6. In the light of the legal position stated above, let us now examine the facts of this case to see whether the applicant has been active and diligent in pursuing his

case. The Commission passed the impugned tariff order on 15.6.2005 and the order came into force on 1.7.2005. The applicant raised his grievance before the Electricity Consumer Grievance Redressal Forum on 13.10.2006, about one year after he received his electricity bill as per the tariff order aforementioned. He has stated that before approaching the Forum he had taken up the matter of his tariff first with the Assistant Engineer, then the Superintending Engineer and thereafter with the Chairman of the Board. That does not explain delay of one year. The petitioner's complaint was rejected by the Forum on the ground that the matter related to the tariff on which the Forum had no jurisdiction. The Forum passed the order on 28.12.2006. The applicant approached the Electricity Ombudsman and the Ombudsman rejected his representation on 26.4.2007 on the same ground. Under the Act there is no appeal from Ombudsman's order to the ATE, but the applicant elected to approach the ATE and thereafter the Hon'ble High Court on 19.12.2006 nearly six months after the appeal before the ATE was withdrawn. No explanation has been offered by the applicant why he approached the Hon'ble High Court six months after having withdrawn the appeal before the ATE on the ground that he wanted to approach the appropriate Commission for redressal of his grievance. There is also no explanation why the applicant approached the Hon'ble High Court instead of this Commission. The plea of the applicant that the impugned tariff order was the first tariff order passed by the Commission in the State and that he was misled by wrong legal advice does not stand scrutiny because of the following:-

(i) The applicant was aware of the jurisdiction of this Commission in the matter of determination of tariff. In fact, the applicant had submitted representations to the Commission on behalf of himself and also Aditya Biotech Lab on 4.4.2005 in course of the hearing of the tariff petition on which the impugned order was passed. He had represented that CSEB had made a separate tariff 'hi-tech agriculture' for biotech laboratories and that the effective tariff under this category came to approximately Rs.4.50 per unit and that the Commission should fix lower tariff for such labs. These representations are listed at Nos. 39 and 40 on page 54 of the impugned order. This Commission had considered all representations submitted to it and had determined the tariff for various categories of consumers. The applicant, in fact, had also submitted representation before this Commission during the hearing of the tariff petition of the Board for the year 2006-07 also and his representation is listed at No. 16 in the Annexure-II of the tariff order for 2006-07 passed on 13.9.2006 in petition No. 24 of 2006(T). The plea of the petitioner that he was unaware that in the matter of his tariff he should have approach this Commission only, is therefore not tenable. His plea that since there was no separate tariff for biotech labs he was under the impression that the tariff fixed earlier by CSEB in 2001 remained unchanged is similarly not tenable.

(ii) He defaulted in approaching this Commission even after both the Forum and the Ombudsman had clearly stated that in the matter of tariff they had no jurisdiction and the applicant should appropriately approach the Commission.

(iii) It would be reasonable to presume that when the applicant chose to withdraw his appeal before the Hon'ble ATE on the ground that he would like to 'approach the Commission for redressal of his grievance', at least then he was aware that this is a matter of which concerns the Commission. Even then he did not think it appropriate to approach this Commission. While the right of the applicant to approach the Hon'ble High Court invoking the writ jurisdiction is unassailable, the writ petition was again withdrawn on the same ground on which the appeal to the ATE was

withdrawn. The conclusion from the above can only be that the applicant was grossly negligent in pursuing his case for reasons best known to him. We have already mentioned that the long gap between the withdrawal of the appeal before the ATE and submission of writ petition before the Hon'ble High Court has not been explained. We are not convinced that the applicant was under wrong legal advice for all this time. He had not been diligently pursuing his case for reasons not explained. In fact, from the facts of the case we have reasons to conclude that the applicant was well aware of the position of law and procedure and instead of submitting the present review petition immediately after the impugned order was passed about which he would have been aware, but he chose to wait till he received his electricity bill. Even after that he did not approach the Commission. This is a clear case of inaction and negligence on the part of the applicant. Therefore, the facts of this case do not reveal 'sufficient cause' for condonation of delay within the meaning of Sec. 5 of the Limitation Act, however, a liberal view we take of the delay.

7. The second contention of the applicant that he will be denied substantial justice if the delay is not condoned is similarly not tenable. The Hon'ble Supreme Court has quite clearly laid down that a liberal view of the delay should be taken so as to advance substantial justice in cases where no negligence or inaction or want of bona fide is imputable to the applicant. Since in this case the applicant has been negligent and has shown inaction he cannot claim condonation of delay only on the basis of substantial justice being done to him. We, therefore, need not discuss his plea of advancement of substantial justice. However, to be fair to the applicant, we would like briefly this aspect also. The issue of substantial justice has been raised mainly on the ground that the Hon'ble ATE on an appeal filed by the Chhattisgarh Krishi Vaniki Samaj held by their order of 16.10.2006, passed in appeal No. 95 of 2006, that plantation of trees is in the nature of agriculture activity and should attract only agriculture tariff. The applicant's business is not for plantation of trees. He was also not a party in this appeal before the ATE. His claim that a biotech laboratory should also attract the same tariff as plantation defies logic.

8. We would also like to mention that there is an elaborate and transparent procedure followed in the matter of determination of tariff as it affects the finances of the Electricity Board/licensee and the consumers in general. The procedure for determination of tariff is laid down in the Regulations by the Commission and is scrupulously followed. It includes a public hearing. Tariff is determined on cost-plus basis, i.e. on the basis of the cost to the licensee in supplying power to various consumers. Rationalisation of tariff is a continuous process. Because of the implications of a tariff order, it is not be tinkered with on the basis of individual applications. It is on this ground that not only the period for application for review of a tariff order is 60 days, which is less than the normal period of 90 days for application for review of other orders of the Commission, but the ground on which a review application may be preferred is also laid down in the relevant Regulations. In Regulation 33 of the Chhattisgarh State Electricity Regulatory Commission (Details to be furnished by the licensee etc.) Regulation, 2004, a review petition is acceptable only when there is an error apparent on the face of the record. In any case, since the applicant had made a representation during hearing of the tariff petition of the CSEB leading to the impugned order, and considering all such representations the impugned tariff order has been passed, the plea of substantial justice is not tenable in this case particularly in the face of utter negligence of

applicant and the total lack of alacrity expected of a person who pleads substantial and irreparable loss.

9. In the light of the above discussion, we find that this is not a fit case for condonation of delay there being no sufficient cause for the same. The application for condonation of delay is accordingly rejected and consequently the review petition is not admitted.

Sd/- Sd/-

Member **Chairman**