

**BEFORE THE CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**I.A. No. 99/2023**  
**in**  
**Review Petition No. 38/RP/2023**  
**in**  
**Petition No. 252/MP/2021**

**Coram:**  
**Shri Jishnu Barua, Chairperson**  
**Shri Arun Goyal, Member**  
**Shri P.K. Singh, Member**

**Date of order: 17<sup>th</sup> May, 2024**

**In the matter of**

Application under Regulation 116 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 seeking condonation of delay in filling petition seeking review of orders dated 8.2.2023 passed by this Commission in petition no. 252/MP/2021.

**And  
In the matter of**

Haryana Vidyut Prasaran Nigam Limited,  
Shakti Bhawan, Sector-6, Panchkula, Haryana

**Review Petitioner**

Vs

1. Union of India,  
Irrigation and Power Department, New Delhi.
2. Union Territory of Chandigarh,  
Chandigarh Administration, Chandigarh,
3. Union Territory of Chandigarh,  
Engineering Department, Sector-9, Chandigarh,
4. The Bhakra Beas Management Board, Sector-19,  
Madhya Marg, Chandigarh

**...Respondents**

**Parties Present:**

Shri. Raheel Kohli, Advocate, HVPNL

## ORDER

The Petitioner, Haryana Vidyut Prasaran Nigam Limited (hereinafter referred to as “HVPNL”/ “Review Petitioner”) has filed this Review Petition seeking a review of the Commission’s order dated 8.2.2023 in Petition No. 252/MP/2021.

2. The Petition No. 252/MP/2021 was filed by the Review Petitioner with the following prayers:

*“1. The present petition may kindly be allowed to adjudicate and the dispute with respect to the recovery of the excess tariff paid may kindly be referred to arbitral proceedings in terms of Section 79(1)(f) of the EA Act, 2003; and*

*2. This Commission may kindly be pleased to appoint an Arbitral Tribunal in terms of Section 158 of the EA Act, 2003; AND/OR*

*3. This Commission may kindly pass any order/directions as it deems it and proper, in the interest of justice.”*

3. The Commission, after due consideration of the pleadings and documents on record and the parties’ submissions during the hearings, dismissed the petition vide order dated 8.2.2023 on the ground that the Petition was not maintainable before the Commission under Section 79(1)(f) of the Act.

“14. The principles enunciated in the above judgements establish that the Commission has the plenary power to regulate the inter-State transmission of electricity which extends beyond the transmission of electricity through the inter-State transmission system, keeping in view the objects of the Act to promote competition, encourage investment, development of efficient, coordinated and economical inter-State transmission system, promote non-discriminatory open access and protect consumer interest. However, the power to “regulate inter-State transmission of electricity” cannot extend to fraud or pilferage of electricity which are not the functions to be legitimately required to be carried out under the provisions of the Act. Further, the Act makes special provision under Section 135 of the Act with regard to theft of electricity, makes it a punishable offence with imprisonment and fines extending from three times to five times of the financial gains on account of such unauthorized abstraction or pilferage of electricity. Further, Section 135 of the Act has been kept out of the purview of the Commission and trial of such offences has been vested in the special court to be created for such purpose under Section 153 of the Act. In our view, the pilferage

of electricity which has taken place from 66 kV substation at Chandigarh cannot be covered under the scope of Section 79(1)(c) of the Act and hence any dispute thereto cannot be adjudicated under Section 79(1)(f) of the Act.

15. In the light of the above discussion, the Commission is of the view that the dispute raised in the petition neither pertains to regulation of tariff of BBMB under Section 79(1)(a) or (b) of the Act nor pertains to inter-State transmission of electricity under Section 79(1)(c) of the Act. Therefore, the dispute is not amenable to adjudicatory jurisdiction under Section 79(1)(f) of the Act.”

4. The Review Petitioner has filed the review petition with the following prayers:

*“(a) Allow the present Review Petition.*

*(b) Pass appropriate orders/directions reviewing the Order dated 08.02.2023 passed by this Hon’ble Commission in Petition No. 252/MP/2021 thereby referring the dispute to arbitration.*

*(c) Pass such other and further orders that this Hon’ble Commission may deem fit considering the facts and circumstances of the present case and in the interest of justice and equity.”*

5. The Review Petitioner has filed Interlocutory Application No.99 of 2023 seeking condonation of delay of 171 days in filing the review petition. The Review Petitioner has explained the delay in filing the review petition with the following reasons:

a) On 8.2.2023, the Review Petitioner came to know about the Order dated 8.2.2023 passed by the Commission in Petition No. 252/MP/2021. Thereafter, detailed in-house discussions were held, and opinions were sought from the legal department and from erstwhile counsel. On 31.3.2023, it was decided to file an appeal before the APTEL.

b) Subsequently, the case was submitted to the Managing Director, HVPNL, for his approval, which was granted on 18.04.2023. Thereafter, the present counsel was appointed to file an appeal before the APTEL, and on 5.5.2023, requisite documents were shared with him. After perusal of documents and the original order, the counsel recommended to prefer a review petition instead of

filing an appeal, and in this regard, a meeting was held on 23.05.2023 between the Counsel and the concerned officials of HVPNL. On 25.05. 2023, acceding to the suggestions of the present counsel, HVPNL decided to file the review petition. In this regard, on 6.6. 2023, the Managing Director, HVPNL, granted his approval for filing the review petition.

- c) Since June 2023, the Counsel's father, a chronic liver disease patient, has been hospitalized frequently in New Delhi, impacting his professional deliverables. A meeting with HVPNL officials was held on 19.6.2023 to discuss energy calculations.
- d) The first draft was shared by the counsel on 10.7.2023; thereafter, certain changes were suggested by HVPNL in the same on 14.7.2023. The final draft review petition was submitted for approval on 7.8.2023. After obtaining necessary internal approvals on the final draft, an approved copy of the petition was shared with the Counsel on 22.8.2023. On 25.8.2023, XEN/ISMC was nominated to sign the petition. Accordingly, the review petition was filed on 12.9.2023.

#### **Hearing dated 4.4.2024**

6. The Interlocutory Application was listed for 'admission' on 4.4.2024. During the hearing the learned counsel for the Petitioner prayed for admission of the Review Petition after condonation of the delay. Accordingly, the Commission reserved its order in the Interlocutory Application.

#### **Analysis and Decision**

7. We have heard the learned counsel for the Petitioner. Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 (CBR 1999), which was in force when the review petition was filed, specifies a 45-day

period of limitation for filing the review petition. Regulation 116 of CBR 1999 provides that the time limit prescribed by the said regulations can be extended or abridged for sufficient reasons by the order of the Commission.

8. Petition No. 252/MP/2021 was disposed of by the Commission, vide order dated 8.2.2023, which admittedly came to the notice of the Review Petitioner on the same day. The due date for filing the review petition is 45 days from the date of the order, i.e., by 25.3.2023. However, the review petition was filed on 12.9.2023 after a delay of 171 days. The Petitioner has submitted that the delay is attributable to (i) time taken to study the order and understand its implications; (ii) change in the legal advice from filing an appeal initially to filing a review petition; (iii) time taken in obtaining approval required from various levels of the Company for filing a review petition.

9. As already mentioned, the Commission can enlarge the timeline for completing an act under CBR 1999 for sufficient reasons. A similar provision exists in Section 5 of the Limitation Act, 1963, which enables the court of law to admit any appeal or application after the prescribed period if the appellant or applicant satisfies the court that he had sufficient cause for not preferring the appeal or application within such period.

10. In the case of *G. Ramegowda v. Spl. Land Acquisition Officer*, [(1988) 2 SCC 142], the Hon'ble Supreme Court made the following observations:

**"17.** Therefore, in assessing what, in a particular case, constitutes "sufficient cause" for purposes of Section 5, it might, perhaps, be somewhat unrealistic to exclude from the considerations that go into the judicial verdict, these factors which are peculiar to and characteristic of the functioning of the government. Governmental decisions are proverbially slow encumbered, as they are, by a considerable degree of procedural red tape in the process of their making. A certain amount of latitude is, therefore, not impermissible. It is rightly said that those who bear responsibility of Government must have "a little play at the joints". Due recognition of these limitations on governmental functioning — of course, within reasonable limits — is necessary if the judicial approach is not to be rendered unrealistic. It would, perhaps, be unfair and unrealistic to put government and private parties on the same footing in all respects in such matters. Implicit

in the very nature of governmental functioning is procedural delay incidental to the decision-making process.....”

11. As per the above-quoted judgement, the procedural delays which are peculiar to the Government’s functioning should be given due consideration while considering the sufficient cause for the purpose of condonation of delay. The concerned officials of HVPNL decided to file an appeal, obtain the approval of the competent authority, engage a counsel, and entrusted the case to file an appeal. However, the counsel, after perusal of the papers, advised that the review petition be filed, and thereafter, the usual process of approval was followed, which resulted in a delay in filing the review petition. There appears to be the absence of any mala fide or intentional delay on the part of the Review Petitioner. Accordingly, we allow condonation of the delay in filing the review petition. IA No.99 of 2023 is accordingly disposed of.

12. The review petition is admitted. Notice is issued to the Respondents to file their replies to the review petition in four weeks and the Review Petitioner to file its rejoinder within two weeks thereafter.

13. The Review Petition will be listed for hearing on **18.7.2024**.

**Sd/-  
(P.K. Singh)  
Member**

**Sd/-  
(Arun Goyal)  
Member**

**Sd/-  
(Jishnu Barua)  
Chairperson**