

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2453 OF 2015**

Saharsh Daga	..Petitioner
versus	
The State of Maharashtra & Ors.	..Respondents

Ms Kausar Banatwala with Ms Dipti Shah i/b. Mr. Tushar Goradia for Petitioner.

Mr. M. P. Jadhav - AGP for State - Respondent No. 1.

Mr. Sagar Patil for MCGM - Respondent No. 2.

Ms Kavita Anchan i/b. M/s. M. V. Kini & Co. for Respondent No. 3.

**CORAM: S. C. DHARMADHIKARI &
SMT. BHARATI HARISH DANGRE, JJ.**

DATE : 31ST JANUARY, 2018

P. C. :

1] The present petition challenges the order passed by the Appellate Authority and which is to the following effect:

That aggrieved and dissatisfied with the assessment made in terms of the power conferred by section 126 of the Electricity Act, 2003 an appeal is provided by section 127 of the said Act. However the objection of the Appellate Body appears to be that the law prescribes a period within which this appeal is to be brought and particularly by sub section (1) of section 127. That period is of 30 days from the order made under section 126 of the Electricity Act, 2003. The appeal of the petitioner having been brought after this period expired the Appellate Authority cannot condone the delay. The order is to the further effect that it has no power to condone the delay.

2] Precisely this controversy was dealt with in Writ Petition No. 1674 of 2016 by the learned Single Judge of this Court and a detailed judgment and order came to be delivered on 18th October 2016 (Rakhee Gupta vs. The State of Maharashtra, The Municipal Corporation of Greater Mumbai and the BEST & Ors.).

3] The petitioner's counsel says that the other reasons for which the appeal was dismissed do not survive for compliance has been made with those conditions and 50% of the amount which was assessed and demanded has already been deposited / paid. Any other surviving condition would also be met provided this Court extends the time for doing so.

4] The only contention therefore surviving for our consideration is whether the view taken by the Appellate Authority that it has no power to condone the delay in filing the appeal is correct, legal and proper. Fortunately for us, we are spared of this exercise because the learned Single Judge (His Lordship the Hon'ble Mr. Justice R. M. Savant) held that such a view of the Appellate Authority is erroneous and illegal. The Authority has a power to condone the delay. The only requirement is that the applicant seeking to condone the delay must make an application in writing setting out sufficient cause for the delay. It is for the Appellate Authority to consider that cause and if it is sufficient and reasonable the delay would be condoned and not otherwise.

5] On the earlier occasion, we requested Ms Anchan appearing for the BEST to take instructions as to whether the BEST accepts the view taken by the learned Single Judge and referred above, or whether it is

disagreeing with it and therefore has brought proceedings to challenge it in a higher court. She sought time yesterday to take instructions. At her request, the matter was placed today. Today, on instructions Ms Anchan says that the BEST has accepted the view taken by the learned Single Judge and would proceed to abide by it. Such a statement made on instructions is accepted as an undertaking to this Court.

6] We therefore do not decide any larger issue or wider controversy. The order of the Appellate Authority to the extent it holds that it has no power to condone the delay in filing appeal is quashed and set aside. The petitioner applicant / appellant will now make an application requesting the Appellate Authority to condone the delay and which application shall set out the sufficient cause for not bringing the appeal in time.

7] The writ petition is therefore disposed of in the above terms but by clarifying that we have not expressed any opinion on the issue as to whether any cause was shown for the delay and whether that the cause shown is sufficient and reasonable. The Appellate Authority shall decide the matter in accordance with law but after hearing the petitioner / applicant.

8] The writ petition is disposed of in the above terms. No costs.

(SMT. BHARATI H. DANGRE, J.)

(S. C. DHARMADHIKARI, J.)