

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**W.P.(C) No. 24276 of 2012**

***SMC Power Generation Limited and .... Petitioners***  
***Another***

Mr. Durga Prasad Nanda, Senior Advocate

Mr. Satyajit Mohanty, Advocate

*-versus-*

***State of Odisha and Others ... Opposite Parties***

Mr. Debakanta Mohanty, Addl. Govt. Advocate

**CORAM:**  
**THE CHIEF JUSTICE**  
**JUSTICE R.K. PATTANAİK**

**Order No.**

**ORDER**  
**02.08.2022**

11. 1. The Petitioners have challenged an order dated 12<sup>th</sup> September, 2003 passed by the Chief Secretary, Government of Odisha rejecting the Petitioners' prayer for condoning the delay in making an application for grant of exemption from electricity duty in terms of para 18.10 (A) of the Industrial Policy Resolution, 2001 (IPR, 2001).
2. Mr. D.P. Nanda, learned Senior Counsel for the Petitioners has two fold submissions; the first is that the decision on whether the delay in filing such an application by the Petitioners should be condoned are to be considered by the Secretary, Industries in terms of para 13.5 of IPR, 2001 which reads as under:

“13.5 Time frame for filing applications for different incentives:

A unit shall forfeit its entitlement to the grant of incentives if it does not file its claim complete in all respects, within 6 (six) months of its starting commercial production. The power to condone the delay not exceeding six months in submission of the above claim, shall vest with the Director of Industries, Orissa, while Secretary, Industries shall be competent to condone the delay exceeding six months and maximum upto one year in that context.”

3. The second submission is that while dealing with the said application a committee was constituted under the Chairmanship of the Chief Secretary and in the course of the deliberations, the query was posed by the Finance Secretary as to the “total financial outlay of the State, if such condonation is allowed” and it was revealed by the officials of the Energy Department that this would be approximately Rs.10 crores. Mr. Nanda points out that the very purpose of granting benefits under the IPR 2001 is to give a financial benefit and therefore, that cannot be a reason for denying the relief.

4. It is seen that in terms of para 13.5 of the IPR, 2001 the delay up to a period of six months was to be considered for condonation by the Director of Industries and for delay exceeding six months up to a maximum of one year, it had to be considered by the Secretary of Industries. The said clause does not envisage a Committee being constituted for that purpose. In fact, it was noted in the letter dated 8<sup>th</sup> February, 2012 addressed by the Commissioner-cum-Director of Industries, Odisha to the Additional Secretary, Industries Department while forwarding the application of the Petitioners for grant of exemption that the delay was 9 months and 8 days.

5. Mr. Debakanta Mohanty, learned Additional Government Advocate, while not disputing that under Clause 13.5 of the IPR, 2001 the question of condonation of delay beyond six months is to be considered by the Secretary, Industries, submits that this Court should not express any view on the merits of the Petitioner's claim for exemption as that would have to be considered only after the question of condonation of delay is answered.

6. With the wording of para 13.5 of the IPR, 2001 being clear that for a delay exceeding six months up to a maximum of one year in the making of an application for grant of incentives, it is the Secretary, Industries who is competent to condone the delay, the question of condoning the delay in the filing of the Petitioner's application ought to have been considered only by the Secretary, Industries. On that short ground, the impugned decision of the Committee chaired by the Chief Secretary dated 17<sup>th</sup> September, 2012 declining to condone the delay is hereby set aside and the matter is directed to be placed before the Secretary, Industries who shall take a fresh decision on the issue of condonation of delay uninfluenced by the decision that has been set aside. In the event, the Secretary, Industries condones the delay then the further question of allowing the incentive as prayed for by the Petitioners will be considered on its merits.

7. The entire exercise will be completed within a period of two months from today and till such time the interim order passed by this Court on 30<sup>th</sup> October, 2014 will continue.

8. The writ petition is disposed of in the above terms. An urgent certified copy of this order be issued as per rules.

***(Dr. S. Muralidhar)***  
***Chief Justice***

***(R.K. Pattanaik)***  
***Judge***

*S.K. Jena/Secy.*

