

**The HPPTCL Versus M/s Bajoli Holdi Hydropower Pvt.
Ltd. and others.**

Filing No. 113 of 2025

17.06.2025

Present: Sh. Vikas Chauhan, Ld. Counsel for the Petitioner.
Sh. Rohan Sachdeva, Ld. Counsel for the Respondent
No.1
Sh. Kamlesh Saklani, Authorized Representative for the
Respondent No. 2.
Sh. Aman Dixit, Advocate for the Respondent No. 3.

DAILY ORDER

Heard on application for condonation of delay.

A Review Petition has been filed by the Petitioner seeking review of order dated 10.09.2024 passed by the Commission in Petition No.99 of 2024. An application for condonation of delay has been filed in the Review Petition that though the copy of the order dated 10.09.2024 was received on 16.09.2024 but a considerable time was consumed in examining/analyzing the same in coordination with the consultant and the matter was put up before the Competent Authority on 08.10.2024 for necessary direction and approval. Thereafter, the requisite documents required to file the review were collected from the Field/Finance units which also consumed a significant time. Also, a significant time was consumed in preparing the Petition based upon the inputs, as such, the Petition could only be filed on 25.02.2025 after a lapse of 162 days which is on account of unavoidable circumstances. It is mentioned that the Petitioner/Applicant has a good cause on merit

and a grave prejudice will be caused in case the delay is not condoned. The application is duly supported by an affidavit.

The application has been contested by the Respondents No. 1 and 2 by filing separate replies.

The Respondent No.1 in its separate reply has averred that delay in filing of the review ought not be condoned and the Review Petition is liable to be dismissed. Also averred that no sufficient cause has been shown to explain the delay of 162 days as the reasons provided in the application do not justify sufficient cause for considering the delay. A breakdown of the dates of delay has also been mentioned in the tabular form. It is mentioned that the delay is entirely attributable to the HPPTCL. Also a mere statement of receipt of approval, internal discussion and deliberation, finalization of draft, Diwali Holidays, as cited, cannot be termed as sufficient cause. Reliance has been placed in a Order dated 10.04.2012 in I.A. NO. 30 of 2012 passed by Hon'ble APTEL in DFR No. 110 of 2012 titled GRIDCO Ltd. v. Global Energy Pct. Ltd. and Ors., Hon'ble APTEL Order dated 14.12.2018 in I.A. No. 1085 of 2018 in DFR No. 2307 of 2018 titled ***Punjab Energy Development Agency v. Punjab State Electricity Regulatory Commission***, Judgment dated 04.07.2017 in I.A. Nos, 710,708 and 709 of 2016 passed by Hon'ble APTEL, DFR No. 3024 of 2016 and Law laid down by Hon'ble Supreme Court in ***Post Master General & Ors, v, Living Media Ltd, (2012) 3 SCC 563 & Union of India & Ors, v. Nav Bharat Nirman Company & Anr:2003 (70) DRJ 551.***

The Respondent No. 2 in its reply has averred that Petitioner had ample time and opportunity to seek Legal recourse within the prescribed period and any internal or Administrative delay cannot be foisted upon the respondent and cannot be treated as a valid

ground to justify the delay. Further, the Petitioner/Applicant has failed to establish genuine and sufficient cause for the delay and explanation tendered lacks merit and the application being devoid of merits, be dismissed. The reply is supported by an Affidavit.

We have heard the Ld. Counsel for the parties and have pursued the record carefully. It is mentioned in the application that though the order under review was received on 16.09.2024 but the Review Petitioner, being a State Govt. Undertaking is bound by the mandatory internal procedures and protocols and despite taking all necessary step to avoid delay, a delay of 162 days has occurred mainly on account of examining and analyzing the order under Review in coordination with Consultant, taking approval of Competent Authority, collecting and collating the documents/information from the Field/ Finance units and preparation of Petition.

Sh. Vikas Chauhan, Ld. Counsel for the Applicant/Petitioner has submitted that the Petitioner was diligent in pursuing the cause but the inputs/data was required to be collected from Filed units and Finance wing and a significant time was consumed in obtaining and analyzing the same and preparation of Petition, as a result, a delay of 162 days has occurred which is neither intentional nor deliberate and the delay of 162 days be condoned in the interest of justice so that merits of the Review Petition are appreciated by the Commission. He has also submitted that there are fair chances of the Review Petition being considered and in case the application is dismissed on technical aspect, a serious prejudice would occasion to the Petitioner.

The Ld. Counsel for the Respondents No. 1, 2 and 3 on the other hand have contended that merely because the Petitioner is a State Govt. Utility, separate Yardstick cannot be applied to the

Petitioner. Accordingly to them, a careful analysis of the application would suggest that the explanation offered by the Petitioner for the delay is neither genuine nor satisfactory and the delay is directly attributable to the Petition and the application is liable to be dismissed as held by the Hon'ble APTEL and Supreme Court in the various judgment mentioned in the reply of Respondent No.1.

Undisputedly, the Petitioner being a State Utility, cannot be given any undue indulgence as compared to an ordinary litigant. It is also settled Principle of Law the delay cannot be condoned without sufficient cause. However, it is to be kept in mind that if in a particular cause, the merits have to be examined, the same cannot be scuttled merely on the basis of limitation. Coming to the application, it is mentioned that a significant time was consumed in examine and analyzing the order in coordination with Consultation, taking approval from the Competent Authority, collecting and collating the information, documents/data from the Field/ Finance wings and preparation of the Petition. A careful perusal of the present application and reply of respondent No. 3 shows that the review has been sought in as much as on five grounds. Not only this, the Petitioner has annexed 625 documents alongwith the Review Petition. This clearly suggests that a significant time was consumed in Collecting and collating the information, documents and data from the Field and Finance Units. Thus, the explanation offered in the application appears to be genuine and satisfactory and the Petitioner had been diligently pursuing filing the Review Petition.

The Hon'ble Supreme Court in 2025 SCC online SC 600 Inder Singh versus State of Madhya Pradesh has held that while considering the application for condonation of delay, a major

aspect which has to be kept in mind is that, if in a particular case, the merits have to be examined, it should not be scuttled merely on the basis of limitation, Para 14,15,16,17 and 18 of the Law laid down by the Supreme Court are reproduced as under:-

14. There can be no quarrel on the settled principle of law that delay cannot be condoned without sufficient cause, but a major aspect which has to be kept in mind is that, if in a particular case, the merits have to be examined, it should not be scuttled merely on the basis of limitation.

15. In the present case, the filing of the Review Petition before the First Appellate Court was with a delay of two years and four months and the Second Appeal before the High Court was delayed by about a year from the date of the dismissal of the Review Petition i.e., 30.09.2019. Pausing for a moment, it is necessary to indicate that in the present case, the dispute over title of a land is not between private parties, but rather between the private party and the State. Moreover, when the land in question was taken possession of by the State and allotted for public purpose to the Youth Welfare Department and the Collectorate and has continued in the possession of the State, the claim of the State that it is government land cannot be summarily discarded. We find, upon a perusal of the record, that the appellant had, in fact, filed an execution case for taking over possession of the land, which would demonstrate clearly the admitted position that he was not in possession thereof. Thus, the matter would, in our considered view, require adjudication on its own merits due to various reasons, *inter alia*, the fact that a new district has been formed after the initial claim of the appellant of being allotted the land in the years 1975- 1976/1977-1978. Therefore, the delay of 1537 days reckoned from 01.10.2015 i.e. when the First Appellate Court decreed the suit, includes two years and four months delay in filing a Review Petition (which was itself dismissed on the ground of delay by the First Appellate Court) and of about a year thereafter for filing the Second Appeal before the High Court, in the peculiar facts and circumstances of the case, which, at the cost of repetition relate to land claimed by the State as government land and in its possession, persuade us to not interfere with the Impugned Order. Relevantly, initially the suit was dismissed by the Trial Court, which decision was reversed by the First Appellate Court.

16. The Court in *Ramchandra Shankar Deodhar v. State of Maharashtra*, (1974) 1 SCC 317 held:

'10. ...There was a delay of more than ten or twelve years in filing the petition since the accrual of the cause of complaint, and this delay, contended the respondents, was sufficient to disentitle the petitioners to any relief in a petition under Article 32 of the Constitution. We do not think this contention should prevail with us. In the first place, it must be remembered that the rule which says that the Court may not inquire into belated and stale claims is not a rule of law, but a rule of practice based on sound and proper exercise of discretion, and there is no inviolable rule that whenever there is delay, the Court must necessarily refuse to entertain the petition. Each case must depend on its own facts. The question, as pointed out by Hidayatullah, C.J., in *Tilokchand Motichand v. H.B. Munshi* [(1969) 1 SCC 110, 116 : (1969) 2 SCR 824] "is one of discretion for this Court to follow from case to case. There is no lower limit and there is no upper limit It will all depend on what the breach of the fundamental right and the remedy claimed are and how the delay arose".'

(emphasis supplied)

17. No doubt, *Ramchandra Shankar Deodhar* (supra) relates to a writ petition, but the statement of law laid down is clear. *Sheo Raj Singh* (supra) has also considered the impersonal nature of the functioning of the State, taking note of what was observed in *State of Manipur v. Kotin Lamkang*, (2019) 10 SCC 408. In *A B Govardhan v. P Ragothaman*, (2024) 10 SCC 613, the Court considered as under:

‘37. In Collector (LA) v. Katiji [Collector (LA) v. Katiji, (1987) 2 SCC 107], the Court noted that it had been adopting a justifiably liberal approach in condoning delay and that “justice on merits” is to be preferred as against what “scuttles a decision on merits”. Albeit, while reversing an order of the High Court therein condoning delay, principles to guide the consideration of an application for condonation of delay were culled out in Esha Bhattacharjee v. Raghunathpur Nafar Academy [Esha Bhattacharjee v. Raghunathpur Nafar Academy, (2013) 12 SCC 649 : (2014) 1 SCC (Civ) 713 : (2014) 4 SCC (Cri) 450 : (2014) 2 SCC (L&S) 595]. One of the factors taken note of therein was that substantial justice is paramount [Para 21.3 of Esha Bhattacharjee v. Raghunathpur Nafar Academy, (2013) 12 SCC 649 : (2014) 1 SCC (Civ) 713 : (2014) 4 SCC (Cri) 450 : (2014) 2 SCC (L&S) 595]].

38. In N.L. Abhyankar v. Union of India [N.L. Abhyankar v. Union of India, 1994 SCC OnLine Bom 574 : (1995) 1 Mah LJ 503], a Division Bench of the Bombay High Court at Nagpur considered, though in the context of delay vis-à-vis Article 226 of the Constitution, the decision in Dehri Rohtas Light Railway Co. Ltd. v. District Board, Bhojpur [Dehri Rohtas Light Railway Co. Ltd. v. District Board, Bhojpur, (1992) 2 SCC 598], and held that: (N.L. Abhyankar case [N.L. Abhyankar v. Union of India, 1994 SCC OnLine Bom 574 : (1995) 1 Mah LJ 503], SCC OnLine Bom para 22)

“22. ... The real test for sound exercise of discretion by the High Court in this regard is not the physical running of time as such, but the test is whether by reason of delay there is such negligence on the part of the petitioner, so as to infer that he has given up his claim or whether before the petitioner has moved the writ court, the rights of the third parties have come into being which should not be allowed to be disturbed unless there is reasonable explanation for the delay.”

(emphasis supplied)

39. The Bombay High Court's eloquent statement of the correct position in law in N.L. Abhyankar case [N.L. Abhyankar v. Union of India, 1994 SCC OnLine Bom 574 : (1995) 1 Mah LJ 503] found approval in Municipal Council, Ahmednagar v. Shah Hyder Beig [Municipal Council, Ahmednagar v. Shah Hyder Beig, (2000) 2 SCC 48] and Mool Chandra v. Union of India [Mool Chandra v. Union of India, (2025) 1 SCC 625].

40. In the wake of the authorities abovementioned, taking a liberal approach subserving the cause of justice, we condone the delay and allow IA No. 16203 of 2019, subject to payment of costs of Rs. 20,000 (Rupees twenty thousand) by the appellant to the respondent.’

(emphasis supplied)

18. Considering the above pronouncements and on an overall circumspection, we are of the opinion that the Second Appeal deserves to be heard, contested and decided on merits. However, a note of caution is sounded to the respondent to exhibit promptitude in like matters henceforth and *in futuro*, failing which the Court may not be as liberal.

In, view of the aforesaid, we are of the considered opinion that there are merits in the application which is accordingly allowed subject to costs of Rs. 5000/-.The delay of 162 days is ordered to be condoned, However, being a regulated entity, the Petitioner is directed to be diligent in future in pursuing such applications so that there is no delay.

The Application disposed of be tagged to the main file for record.

The Review Petition be registered. Let reply to the Review Petition be filed within 2 weeks with advance copy to the opposite parties. List on 16.07.2025 at 11:00 A.M.

sd/-

(Shashi Kant Joshi)

Member

sd/-

(Yashwant Singh Chogal)

Member (Law)

sd/-

(Devendra Kumar Sharma)

Chairman