

**BEFORE THE COURT OF ELECTRICITY OMBUDSMAN, JHARKHAND
4th floor, Bhagirathi Complex, Karamtoli Road, Ranchi – 834001**

Case No. EOJ/04/2017

M/s Santosh Ispat

Vrs.

JUVNL & Ors.

Extract Copy of Order

21.07.2017 The instant appeal is fixed for order on the point of admission and petition dated 19-05-2017 and 5/6-07-2017, filed on behalf of appellant, wherein, it is stated that instant appeal has been filed on 15.05.2017. There is delay in filing this appeal for about 79 days due to unavoidable circumstances. In his first application dated 19.05.17, it is submitted that the Appellant was not well & delay was also caused for consultation of the legal experts & therefore this appeal has been filed bonafide & in the interest of justice. It is also mentioned that delay is not intentional rather delay is due to unavoidable circumstances. Where in second application dated 5/6-07-2017, it is stated that the appellant was ill from 20.02.17 till 16.04.17 and, as such, he could not file this petition in time. Xerox copies of medical certificate have been annexed as Annexure-1. It is also stated that impugned judgement & order was delivered on 25.01.17, whereas, the Appellant got the copy after 3 days. Lastly he requested to condone the delay in filing the appeal and admit the appeal for hearing.

Admittedly the instant appeal has been filed on 15.05.2017 without any application for condonation of delay. After checking by the office, it was reported that this appeal has not been filed within the time limit prescribed under the JSERC (Guidelines for Establishment of Forum for

Redressal of Grievances of the Consumers & Electricity Ombudsman) Regulation, 2005 & further there is no petition on condonation of delay, hence this appeal is barred by limitation.

It is relevant to mention at very outset that learned VUSNF & this forum are functioning on the **Guidelines of the Establishment of Forum vide notification no. 9th Nov. 2011 ,issued by the Jharkhand State Electricity Regulatory Commission. As per section 14 of the aforesaid guidelines, there is provision for appeal against the order/ Judgement, passed by the VUSNF to this forum, which is as follows:**

“The licensee or any consumer aggrieved by an order made by the Forum(s) may prefer an appeal against such order to the Electricity Ombudsman within a period of thirty days from the date of the receipt of the order, in such form and manner as may be laid down in these regulation.”

“Provided further that electricity Ombudsman may entertain an appeal after the expiry of the said period of thirty days, if sufficient cause is shown for not filing the appeal within that period; but not exceeding a maximum period of 60 days from the date of receipt of the order .”

Thus, there is specific period of 30 days for filing the appeal but there is also proviso clause, which extend further period of 30 days. Therefore, as per aforesaid provision, it is clear that Electricity Ombudsman may entertain an appeal after expiry of the said period of thirty days, if sufficient cause is shown for not filing the appeal within that period. It means that the total period for filing the appeal is 60 days.

It is admitted fact that this appeal has been filed after 79 days. In proviso, a discretionary power is vested with this forum to entertain an

appeal after the expiry of 30 days, if sufficient cause is being shown by the appellant.

In this instant appeal, the appellant has filed medical certificate (Annexure-1) & further filed Xerox copies of the medical prescription and pathological reports on 20.07.17.

I would like to mention here that on 13.06.2017, the learned counsel for the appellant has specifically submitted that he has got certified copy of the impugned order at belated stage therefore he could not file the appeal within prescribed time but on 06.07.2017, the learned counsel appearing on behalf of appellant has submitted that appellant was medically unfit & even went to Vellore for medical treatment. On being asked to furnish medical certificate of Vellore hospital, thereupon, the Ld. Counsel for appellant prayed for time to file the same but till last date, no medical prescription of Vellore hospital has been brought on the record. Moreover, it is statement of the appellant namely S.K.pandey, supported with an affidavit dated 05.07.2017 that he was ill from 20.02.17 till 16.04.17. In support of his statement, he has furnished a medical certificate issued by Dr. I.M.Singh of Kumardhubhi, wherein, it is mentioned that appellant was suffering infected hepatitis & UTI & advised rest on above period & now he is fit to do his normal work from 16.04.17. On 20.07.17 altogether 14 medical prescriptions have been filed on the record to show that appellant was ill during period from 20.2.17 to 16.04.17. Out of them, first to fifth prescription is written by Dr. A.P.Mandal vide dated 24.05.15, 22.04.15, 29.06.15, 16.06.15 & 25.07.15 respectively. Prescription serial no. 6, and 7 are pathological report, dated 21.06.15 & 23.06.15, prescription no. 8, & 9 are also the report dated 19 may, 2015, prescription 10 is written by Dr.

I.M.Singh dated 20.02.17 ,in which no bed rest was advised. Prescription no. 11 written by Dr. P. N. Singh, dated 11.07.15, prescription 12&13 are the report of Sona Diagnostics, dated 11.07.15 & the last prescription is dated-04.07.16.

Thus, from perusal of the aforesaid medical prescription & reports, it does not prove that appellant was under the treatment of Dr. I.M. Singh during the period of 20.02.17 to 15.04.17. Though there is one prescription of Dr. I.M.Singh dated 20.02.17, in which the age of appellant has been mentioned as 48 years old but no bed rest was advised. Thus, I do find that the medical certificate issued by Dr. I .M. Singh, dated 16.04.2017 does not find support with aforesaid medical prescriptions. Therefore, I find and hold that appellant has failed to prove sufficient cause for not filing appeal within prescribed time.

It is also pertinent to mention at this juncture that in a case, Chhattisgarh State Electricity Board Vs Central Electricity Regulatory Commission and Others, reported in(2010)5 Supreme Court Cases, page 23, it is held by the Hon'ble Apex Court , held in para 27 that, it is thus evident that electricity act is a special legislation within the meaning of section 29 (2) of the Limitation Act, which lays down that where any special or local laws prescribes for any suit, appeal or application a period of limitation different from one prescribed by the schedule, the provision of section 3 shall apply.....”

Therefore, taking in to consideration of the aforesaid facts and settled principle of law, I find and hold that appellant has not offered any sufficient and cogent explanation as to why this instant appeal could not be filed

within prescribed period. Further, as per section 14 of the guidelines for establishment of forum for redressal of grievances of the consumers and electricity ombudsman 2011, this forum has got no power to allow the appeal to be presented beyond the period of 60 days. The language used makes the position clear that the JSERC intended the appellate authority to entertain the appeal by condoning delay only up to 30 days after expiry of 30 days, which is normal period for preferring appeal; meaning thereby total period of 60 days. Therefore, there is complete exclusion of section 5 of the Limitation Act.

Therefore, there is no escape from the conclusion that this appeal has been filed after 106 days from the date of communication, dated 28-01-2017 of the Learned VUSNF , Hazaribag, and impugned order was passed on 25-01-2017, as such , the same can not be entertained .

In the result, this appeal is dismissed on this score alone at admission stage and an aforesaid petition filed by the appellant for condonation of delay in filing appeal is hereby rejected.

Let a copy of this order be served on to the appellant.

Sd/-
Electricity Ombudsman