

BEFORE THE NATIONAL GREEN TRIBUNAL

PRINCIPAL BENCH, NEWDELHI

Appeal No. 78 OF 2014

1. Grama Panchayat Salana Jeevan Singh Wala,
R/O Tehsil Amlloh, Dist.
Fatehgarh Sahib, Punjab.
2. Kesar Singh S/o Arjan Singh, Ex Sarpanch,
R/O Village Salana Dara Singh Wala,
Tehsil Amlloh, Dist. Fatehgarh Sahib, Punjab.
3. Amandeep Singh S/o Sh. Balbir Singh,
R/O Village Salana Dara Singh Wala,
Punjab.
4. Hari Singh S/o Ram Singh,
R/O Village Salana Dara Singh Wala,
Tehsil Amlloh, Dist. Fatehgarh, Punjab.
5. Paramjit Singh S/o Labh Singh,
R/O Salana Dara Singh Wala,
Tehsil Amlloh, Dist. Fategarh, Punjab.

Vs

----- Appellants

1. Union of India, through its Secretary
Ministry of Environment and Forests,
Paryavaran Bhawan, CGO Complex,
Lodhi Road, New Delhi.
2. Ministry of Environment and Forests,
Paryavaran Bhawan, CGO Complex,
Lodhi Road, New Delhi through its Director.
3. Central Ground Water Authority
West Block-II, Wing -3 (Ground Floor),
R. K .Puram, New Delhi through its
Chair Person.

4. Punjab Pollution Control Board,
Vatavaran Bhawan, Nabha Road,
Patiala, Punjab, through its Chairman.

5. M/S Nahar Industrial Enterprises Limited,
At Village Salana Jeon Singh Wala,
Tehsil Amloh, Dist. Fategarh Sahib, Punjab
Through its Vice- Chairman- cum- Managing Director.

----- Respondents

Counsel for the appellant

Mr. A.R. Takkar Advocate

M/s. Sungandha

Counsel for the Respondents

1. M/s. Panchajanya Batrasingh Advocate- Counsel for Respondent No1 & 2
2. Mr. B B Niren – Counsel for Respondent No 3
3. Mr. Shubham Bhalla- Counsel for Respondent No 4
4. Mr. Raj Panjwani- Senior Advocate, Suveni Bhagat, Advocate- Counsel for R5

QUORAM

HON'BLE JUSTICE DR. P. JYOTHIMANI (JUDICIAL MEMBER)

HON'BLE MR. BIKRAM SINGH SAJWAN (EXPERT MEMBER)

ORDER

**DELIVERED BY HON'BLE JUSTICE DR. P. JYOTHIMANI (JM) DATED 17th
AUGUST 2015**

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- 1) Whether the judgement is allowed to be published on the internet ----- yes / no
- 2) Whether the judgement is to be published in the All India NGT Report ----- yes / no

1. The above appeal has been filed by the residents of Village Salana Jeon Singh Wala in Punjab challenging the environment clearance (EC) granted to 5th respondent for

starting the project of Grain/ Molasses based Distillery Plant (200 KLPD) and 5MW Co-generation Power Plant at Village Salana Jeon Singh Wala, Tehsil Amloh, District Fatehgarh Sahib, Punjab. The challenge is on various grounds including that the project is proposed in a “over exploited” area and the same is notified by the Central Ground Water Authority which prohibits extraction of ground water resources without specific approval of the Authorised Officer and that the public consultation process has not been properly conducted as per the EIA Notification 2006 and that the EC has been granted hastily and in a negligent manner. That apart, it is the contention that considering the capacity of the boiler of the unit, substantial amount of emission will be generated resulting in environmental degradation apart from many other grounds.

2. The impugned order of EC issued by the MoEF is dated 19-05-2014 and in the column relating to limitation, the appellants have stated that the EC was uploaded in the website of the industry recently which came to the knowledge of the appellants on 20th September 2014 and immediately thereafter the appeal was filed 13th Oct 2014 before the National Green Tribunal under s.16 r/w s.18 (1) of National Green Tribunal Act 2010 (NGT Act). According to the appellants, before the said date there was no publication in the website and website link was not working most of the time. There was no newspaper publication. The appellants have also relied upon a decision of the Hon’ble Principal Bench of the Tribunal in Save Mon Region Federation by its General Secretary v. Union of India and Others, reported in ALL (1) NGT PB (1) (1) in which it was held that the communication of the order has to be by putting it in the public domain for the benefit of public at large. The limitation may trigger from the date when the Project Proponent uploaded the EC with its conditions and safeguards and publishes the same as prescribed under Regulation 10 of the Environmental Clearance Regulation 2006. According to the appellants, the MoEF has not uploaded

the EC on its website and therefore applying the above said judgement the appeal is filed within time.

3. The 5th respondent in the reply has raised a preliminary objection on the ground that the appeal is filed beyond the period of limitation in terms of Section.16 of NGT Act 2010 without any application for condonation of delay. It is stated that pursuant to one of the conditions of the EC, the 5th respondent Project Proponent has issued a public notice on 06-06-2014 in a regional and a national newspaper regarding the grant of EC and therefore the appellants are aware of the same. The 5th respondent has relied upon a decision of the Tribunal rendered in *Sudiep Shrivastava v. Union of India and Others*, in Appeal No. 33/2013 wherein it was held that under Section. 16 of NGT Act 2010, in excess of 90 days (30+60) after the expiry of the said date the Tribunal will have no jurisdiction to condone the delay. Such objection regarding limitation was raised by the Ministry of Environment and Forest also.
4. As the point of limitation has been raised, at the instance of both the learned Counsel appearing for appellant and respondents, arguments were restricted only on the point of limitation. As per Section.16 of NGT Act 2010, an appeal can be filed before the Tribunal by any person aggrieved, within a period of 30 days from the date on which the order or decision or direction or determination is communicated to him. The section also provides that if the Tribunal is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, it may allow the appeal to be filed under the said section within a further period of not exceeding 60 days. Section.16 (h) enables any person aggrieved to file appeal before the Tribunal against the grant of EC. The term 'communicated to him' and its connotation came to be discussed by the Hon'ble Principal Bench of the NGT in *Sane Mon Region Federation, through its General Secretary Lobsang Gyatso and another Vs Union of*

India through the Secretary MOEF, New Delhi, reported in ALL (1) NGT PB (1) (1).

Regarding the point of limitation it was held as follows:

“19. The limitation as prescribed under Section 16 of the NGT Act, shall commence from the date the order is communicated. As already noticed, communication of the order has to be by putting it in the public domain for the benefit of the public at large. The day the MoEF shall put the complete order of Environmental Clearance on its website and when the same can be downloaded without any hindrance or impediments and also put the order on its public notice board, the limitation be reckoned from that date. The limitation may also trigger from the date when the Project Proponent uploads the Environmental Clearance order with its environmental conditions and safeguards upon its website as well as publishes the same in the newspapers as prescribed under Regulation 10 of the Environmental Clearance Regulations, 2006. It is made clear that such obligation of uploading the order on the website by the Project Proponent shall be complete only when it can simultaneously be downloaded without delay and impediments. The limitation could also commence when the Environmental Clearance order is displayed by the local bodies, Panchayats and Municipal Bodies along with the concerned departments of the State Government displaying the same in the manner aforeindicated. Out of the three points, from which the limitation could commence and be computed, the earliest in point of time shall be the relevant date and it will have to be determined with reference to the facts of each case. The applicant must be able to

download or know from the public notice the factum of the order as well as its content in regard to environmental conditions and safeguards imposed in the order of Environmental Clearance. Mere knowledge or deemed knowledge of order cannot form the basis for reckoning the period of limitation.”

5. The condonation period and the principle to be followed by the applicant/ appellant to show sufficient cause is explained as follows:

“40. Once we examine the provision of Section 16 of the NGT Act 2010 in light of the above principle, it is clear that the provision is neither ambiguous nor indefinite. The expressions used by legislature are clear and convey the legislative intent. The communication of an order granting the Environmental Clearance has to be made by the MoEF as well as the Project Proponent in adherence to law. The communication would be complete when it is undisputedly put in the public domain by the recognised modes, in accordance with the said provision.

The limitation of 30 days would commence from that date. If the appeal is presented beyond the period of 30 days, in that event, it becomes obligatory upon the applicant to show sufficient cause explaining the delay. The delay must be bonafide and not a result of negligence or intentional inaction or malafide and must not result in the abuse of process of law. Once these ingredients are satisfied the Tribunal shall adopt a balanced approach in light of the facts and circumstances of a given case.”

While considering about the contents of the public notice including the bringing out of the contents to public domain, it was held that the person must be capable of knowing the contents of the order against which he has a right to challenge in an appeal. The observation of the Tribunal in this regard is as follows:

“55. Besides the fact that there is a statutory obligation upon the authorities and the Project Proponent to bring the order in the public domain by the specified modes aforementioned, the approach that we have afore-stated can also be supported by the reasoning that to make the remedy of an appeal effective, efficacious and meaningful, the availability of reasons, conditions and safeguards stated in the order would be necessary. A person must know the content of the order which he has a right to challenge in an appeal. It is only when the content of the order is available and known to a prospective appellant that such appellant would be able to effectively exercise the right of appeal. Thus, 'communication of the order' would mean and must be construed as meaning the date on which the factum and content both, of the Environmental Clearance order are made available in the public domain and are easily accessible by a common person. These provisions have to be interpreted by giving them the meaning that will advance the purpose of the provision and make the remedy practical and purposeful. This is the requirement of law and is tilted in favour of the larger public interest. Mere inconvenience or the expenses incurred by the parties or by the authorities would not be a ground to adopt a different approach. *Necessitas publica major est quam private* (The public necessity is greater than the private interest).”

6. In a subsequent judgement rendered in, *Ms. Medha Patkar and others Vs Ministry of Environment and Forests and others*, in Appeal No 1/2013 dated 11th July 2013, the Hon'ble Principal Bench while referring to the above decision has further elaborated about the meaning of communication in terms of the scheme of notification on law to the effect that there are three stake holders involved namely a). Project Proponent b). MoEF&CC c).Other agencies which are required to fulfill their obligations to make the communication complete in terms of the provisions of the Act and the notification concerned. In this regard it was held as follows:

“13.The MoEF shall discharge its onus and complete its acts to ensure communication of the environmental clearance so as to trigger the period of limitation. The MoEF upon granting of the environmental clearance must upload the same on its website within seven days of such order, which would remain uploaded for at least 90 days, as well as put it on its notice board of the Principal as well as the Regional Office for a period of at least 30 days. It should be accessible to the public at large without impediments (Refer *Save Mon Region Federation & Anr Vs. UOI & Ors.*).

14. The project proponent, upon receipt of the environmental clearance, should upload it permanently on its website. In addition thereto, the project proponent should publish it in two local newspapers having circulation where the project is located and one of which being in vernacular language. In such publication, the project proponent should refer to the factum of environmental clearance along with the stipulated conditions

and safeguards. The project proponent then also has to submit a copy of the EC to the heads of the local authorities, Panchayats and local bodies of the district. It will also give to the departments of the State a copy of the environmental clearance.

15. Then the Government agencies and local bodies are expected to display the order of environmental clearance for a period of 30 days on its website or publish on notice board, as the case may be. This is the function allocated to the Government departments and the local bodies under the provisions of the notification of 2006. Complete performance of its obligations imposed on it by the order of environmental clearance would constitute a communication to an aggrieved person under the Act. In other words, if one set of the above events is completed by any of the stakeholders, the limitation period shall trigger. If they happen on different times and after interval, the one earliest in point of time shall reckon the period of limitation. Communication shall be complete in law upon fulfilment of complete set of obligations by any of the stakeholders. Once the period of limitation is prescribed under the provisions of the Act, then it has to be enforced with all its rigour. Commencement of limitation and its reckoning cannot be frustrated by communication to any one of the stakeholders. Such an approach would be opposed to the basic principle of limitation.”

7. Therefore from the above decisions and also the regulation it is clear that the MoEF while granting EC must upload the entire EC along with the conditions in its official website capable of being downloaded and such contents shall be maintained for 90 days. That apart, the Project Proponent has obligation to upload in its website the entire contents of the EC apart from the publication in the news papers and display in the prescribed Government offices. It is made very clear that the full contents must be displayed which facilitates the aggrieved person to effectively exhaust his appellate remedy. It is also made clear that in the event when the dates of upload are different in respect of above said stake holders the earliest upload into the public domain would trigger the period of limitation.
8. Applying the above said principles to the facts of the present case, let us analyse few of the dates and actual events that are available on record. This is relevant because while the appellant's contention is that the industry namely the Project Proponent has uploaded in its website the EC on 20th Sep 2014 and the appeal was filed before the Tribunal on 13th Oct 2014 which is within 30 days and therefore no condonation application is required. On the other hand it is the case of the MoEF which has also raised the period of limitation stating that the EC dated 19-05-2014 is challenged on 13-10-2014 and therefore is beyond even the period of condonation limit. In the affidavit filed by Mr. Aditya Narayan Singh, Scientist-D of the Ministry of Environment, Forest and Climate Change dated 20-02 -2015 it is stated that the EC dated 19-05-2014 was uploaded on the website of MoEF on 9-07-2014. To substantiate the same, an information furnished by NIC regarding the date of uploading which is in the form of a note is filed. It shows that on a letter of section officer dated 10-12-2014 requesting the NIC to provide the date of uploading the EC

letter on website, the answer given in the form of note from NIC runs as follows “ as per the data available on the portal, the date of uploading of EC is on 9th July 2014. Other details given above have been updated”. This endorsement signed on 11-12 - 2014 shows that the uploading of EC in the MoEF website is 9-07-2014.

9. Further, the news paper publications, one in Indian Express and the other in the regional news paper dated 6-06-2014 shows that it is an information to public that the 5th respondent unit has been accorded EC by MoEF to locate their 200 KLPD Distillery Unit and 5 MW Co-generation Power Plant in Village Salana Jeon Singh Wala and that copies of clearance are available with the State Pollution Control Board and may also be seen at the website of MoEF at <http://envfor.nic.in>. It is not in dispute that Indian Express news paper is widely circulated. Even otherwise by going through the MoEF website dated 9-07-2014 about which we have no reason to disbelieve especially when the NIC official has certified, 9-07-2014 must be taken as the earliest day of putting the EC in public domain by one of the stake holders namely the MoEF. The news paper publication dated 6-06-2014 cannot be in any event taken as publication of any particulars. When it is stated in the publication that copy of EC is available in the SPCB the applicants have not chosen to take any efforts either by getting the copies or finding out from the MoEF. This only shows the lethargic and unhealthy attitude of the appellants especially when admittedly public hearing took place in the area concerned and therefore it cannot be presumed as if the project proposal has come up suddenly without any information.
10. Even otherwise as a matter of abundant caution we can safely take the date of publication of the EC in the official website of MoEF as 9-07-2014 for triggering the period of limitation. If that is considered from 9-07-2014 till date of filing of the appeal namely 10-12-2014 there are 95 days which are beyond 30 days of right of

filing and 60 days of condonation limits as per Section.16 of the NGT Act 2010. It is true that the appellants have not chosen to file any application for condonation of delay, but on the factual matrix, even filing of such application does not serve any purpose. It was held by the Hon'ble Principal Bench in *Sudiep Shrivastava Vs Union of India and others* in Appeal No. 33 of 2013:

“The Tribunal can condone the delay if an appeal is filed beyond the prescribed period of 30 days but within the further period of 60 days and not further. This admitted position, in fact, is in consonance with the principle of law stated by different Benches of this Tribunal in the case of *Kehar Singh v. State of Haryana*, 2013 ALL (I) NGT REPORTER (DELHI) 556, *Nikunj Developers & Ors. v. State of Maharashtra & Ors.* 2013 ALL (I) NGT PB 40 and *Munnial Girijanand Shukla v. Union of India*, 2014 ALL (I) NGT REPORTER (2) (PUNE) 72, wherein it has been held that the Tribunal is not vetsted with the jurisdiction to condone the delay in any case, whatever be the cause stated for condonation of delay, if the delay is beyond 90 days.

8. The order made after the commencement of the NGT Act granting Environmental Clearance in the specified area is appealable to the Tribunal under Section 16 (h) of the NGT Act. Such appeal has to be preferred within the period of 30 days from the date on which the order is

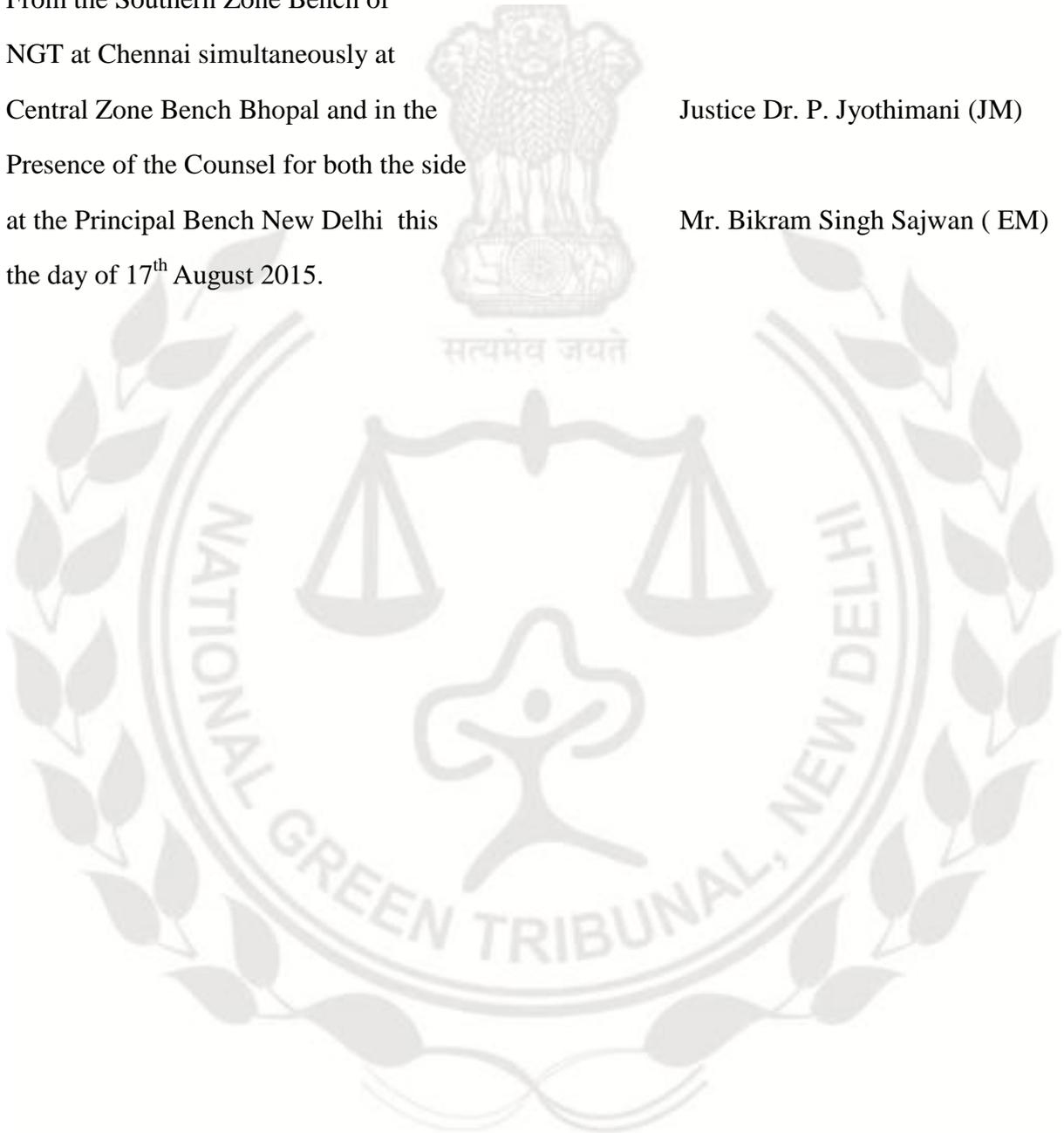
communicated to the aggrieved person. In terms of proviso to Section 16 of the NGT Act, the Tribunal may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the period of 30 days, allow it to be filed within a further period, not exceeding 60 days. On a plain construction of Section 16, it is clear that the Tribunal would not allow even filing of an appeal under this provision, if it is filed in excess of 90 days (30+60). After the expiry of the said period of 90 days as already stated, the Tribunal will have no jurisdiction to condone the delay.

11. Therefore on the factual matrix, as the appeal has been filed beyond 90 days from the date of the public domain of the EC by one of the stake holders namely MoEF to the date of filing of the appeal is beyond 90 days, this Tribunal has no jurisdiction to condone delay even if such application was filed. Accordingly on the point of limitation we hold that the appeal is beyond the jurisdictional limit of this Tribunal in so far as it relates to period of limitation under Section. 16 of NGT Act 2010. Accordingly the appeal cannot be entertained and therefore dismissed on the point of limitation.

Delivered by Video conferencing
From the Southern Zone Bench of
NGT at Chennai simultaneously at
Central Zone Bench Bhopal and in the
Presence of the Counsel for both the side
at the Principal Bench New Delhi this
the day of 17th August 2015.

Justice Dr. P. Jyothimani (JM)

Mr. Bikram Singh Sajwan (EM)



NGT