

**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI.**

**M.A. No. 216 OF 2015 (SZ)
IN
UNNUMBERED APPEAL OF 2015 (SZ).**

IN THE MATTER OF:

P.N. Anoop,
Parekkattil House
Ambalamedu P.O.,
Ernakulam District
Kerala.

... Appellant

Versus

1. The Union of India
Rep. by its Secretary
Ministry of Environment, Forests & Climate Change
Paryavaran Bhavan,
New Delhi.
2. The State of Kerala
Rep. by its Principal Secretary
Environment Department
Thiruvananthapuram.
3. Kerala State Pollution Control Board
Rep. by its Member Secretary
Pattom P.O.,
Thiruvananthapuram - 695 004
4. M/s. Bharat Petroleum Corporation - KRL Ltd
Ambalamugal,
Kochi – 682 302. .. Respondents

Counsel appearing for the Appellant: M/s. Neha Miriam Kurian and Harish Vasudevan.

Counsel appearing for the Respondents: Mrs. M. E. Sarashwathy for Respondent No.1; Mrs. Suvitha A.S. for Respondent No.2; Mrs. Rema Smrithi V.K. for Respondent No.3 and M/s. King & Partridge for Respondent No.4

ORDER

PRESENT:

1. **Hon'ble Justice M. Chockalingam**
Judicial Member

2. Hon'ble Shri P.S.Rao
Expert Member

Dated, 06th January, 2016.

1. Whether the judgment is allowed to be published on the Internet. Yes / ~~No~~
2. Whether the judgment is to be published in the All India NGT Reporter. Yes / ~~No~~

This application is filed for condonation of delay in filing the appeal challenging the Environmental Clearance (EC) dated 12.05.2015 granted to the 4th respondent by the 1st respondent for the proposed Propylene Derivatives Petrochemical Project of Bharat Petroleum Company Limited at Ambalamugal, Puthencruz Village in Ernakulam District of Kerala. The contention of the applicant is that granting of EC for the aforesaid project which falls under Category 'A' as per the Environmental Impact Assessment Notification, 2006 (EIA Notification, 2006), has not been communicated according to the requirement of law and hence, the period of limitation has not been triggered. However, as an abundant precaution, the application has been filed with a prayer to condone the delay. He states that he came to know about the granting of EC on 16.05.2015 as per the publication made in the English daily newspaper 'The Hindu' as well as in the Malayalam daily 'Mathrubhumi' wherein only the factum of granting EC was published though it is mandatory that the entire EC order is required to be published. He further states that immediately after coming to know of the grant of EC, he searched the website of Ministry of Environment, Forests and Climate Change (MoEF&CC) on 17.05.2015 and found the EC uploaded on the website. However the EC was uploaded under the head "Proposals received on or after 14.07.2014" though for the project in question, the Terms of Reference (ToR) was issued on 30.04.2013, and thus it is uploaded under the wrong heading in the Ministry's website. However, even assuming that the factum of EC published in

newspaper dated 16.05.2015 is taken as the date of communication, the appeal filed on 13.08.2015, falls within the period of 90 days for which this Tribunal is empowered to condone the delay under Section 16 of the National Green Tribunal Act, 2010 (NGT Act,2010). The relevant provisions of Section 16 of the NGT Act, 2010 are reproduced below:

16. Tribunal to have appellate jurisdiction. –Any person aggrieved by,-

XXX XXX XXX

h. an order made, on or after the commencement of the National Green Tribunal Act, 2010, granting environmental clearance in the area in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986;

i. an order made, on or after the commencement of the National Green Tribunal Act, 2010, refusing to grant environmental clearance for carrying out any activity or operation or process under the Environment (Protection) Act, 1986;

XXX XXX XXX

may, within a period of thirty days from the date on which the order or decision or direction or determination is communicated to him, prefer an appeal to the Tribunal:

Provided that the Tribunal may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed under this section within a further period not exceeding sixty days.”

The applicant further pleads that after going through the EC, he has to gather lot of information from various sources for filing the appeal which was a time consuming process and it was also required to translate a number of documents into English from the vernacular language. Moreover, some more time was consumed to locate a suitable lawyer in Chennai who could represent the case before this Tribunal. Even if the date of newspaper publication on 16.05.2015 is taken into account as the date of communication, and the limitation period starts from 16.05.2015, the total period from communication to filing the appeal comes

to 88 days which amounts to a delay of 58 days beyond the prescribed period of 30 days but within the total period of 90 days for which this Tribunal is competent to take into consideration. The delay is neither wilful nor wanton but because of the above stated *bonafide* reasons.

2) The 1st respondent, MoEF&CC filed their reply to the application stating that it is a fact that based on the recommendations of the Expert Appraisal Committee (Industry) in the discussions held in the 34th meeting from 17th - 19th February, 2015, the EC was granted to the 4th respondent on 12.05.2015. The 4th respondent, project proponent in his reply submitted that the EC order dated 12.05.2015 was kept on the website of the MoEF&CC on 12.05.2015 itself and therefore the limitation period starts from 12.05.2015. Therefore, the 90 (30+60) days period expires on 10.08.2015 whereas the appeal was filed on 13.08.2015 with a delay of 92 days. Thus, it is filed beyond the grace period of 60 days and is liable to be rejected *in limine*. A copy of the screenshot dated 13.05.2015 of the MoEF&CC website indicating the grant of EC dated 12.05.2015 was also enclosed a copy of which was duly served to the appellant during the course of hearing on which he has not raised any objection.

3) In the rejoinder filed by the appellant, it is reiterated that the newspaper publication dated 16.05.2015 regarding the grant of EC on 12.05.2015, does not amount to communication as only the factum was published though the rule says that the entire EC is to be made available to the public to satisfy the provisions of law and then only it is deemed to have been communicated. However, even if it is construed as the date of communication, it amounts to 58 days delay in filing the appeal which was filed on 13.08.2015 and this Tribunal has the power to condone the delay up to 60 days beyond the allowable period of 30 days. Thus, the appeal is filed below 90 days and since there is a sufficient cause for filing the appeal with

delay, the Hon'ble Tribunal being vested with the jurisdiction and powers and also taking into account of the facts and circumstances, can condone the delay.

DISCUSSION & CONCLUSION

4) The Tribunal paid its anxious considerations on the submissions made and made a scrutiny of all the materials made available. It is a fact that the factum of grant of EC was published in the newspapers on 16.05.2015 and immediately thereafter, the applicant has searched the website of MoEF&CC on 17.05.2015 and laid hands on the EC. He started gathering information for filing the appeal for which a maximum period of 30 days is prescribed from the date of communication. But, he filed the appeal on 13.08.2015 which is 58 days beyond the provision of 30 days, even if 16.05.2015 is reckoned as the date on which the EC is deemed to have been communicated to the applicant. But, it is not disputed that the EC has already been displayed on the MoEF&CC website on the date of granting of the EC itself, i.e., on 12.05.2015 and therefore, 12.05.2015 should be reckoned as the date of communication and then it becomes 92 days which is well beyond the grace period of 90 days (30+60=90 days).

5) The applicant's claim that the EC was uploaded under the head "Proposals received on or after 14.07.2014" though for the project in question, the ToR is issued on 30.04.2013 and thus it is uploaded under the wrong heading in the Ministry's website does not have much force. Display on the website is an undisputed fact. The clerical error of grouping it under "Proposals received on or after 14.07.2014" rather than "Proposals received before 14.07.2014" shall not be an excuse to the appellant to file the appeal with delay. Date of display on the website is the point to be considered here. The appellant himself agrees that he

could notice the EC on the website when he searched it on 17.05.2015. Therefore, listing it under wrong caption does not have any relevance here.

6) The Principal Bench of this Tribunal in the case of *Save Mon Region Federation & another v. Union of India & Others*. (M.A.No.104 of 2012) decided on 14th March, 2013 reported in the 2013(1) All India NGT Reporter Page 1, discussed in length over the connotations of 'communication' and held as under:

“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 afore-indicated. 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.

40. Once we examine the provision of Section 16 of the NGT Act 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.”

7) The Principal Bench in *Ms. Medha Patkar and others v. Ministry of Environment and Forests and others*, in Appeal No. 1 of 2013 dated 11th July 2013, also held that:

“15. XXX 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.

16. XXXX To conclude that it is only when all the stakeholders had completed in entirety their respective obligations under the respective provisions, read with the notification of 2006, then alone the period of limitation shall begin to run, would be an interpretation which will frustrate the very object of the Act and would also cause serious prejudice to all concerned. XXXX Discharge of one set of obligations in its entirety by any stakeholder would trigger the period of limitation which then would not stop running and equally cannot be frustrated by mere non-compliance of its obligation to communicate or place the order in public domain by another stakeholder. The purpose of providing a limitation is not only to fix the time within which a party must approach the Tribunal but it is also intended to bring finality to the orders passed on one hand and preventing endless litigation on the other. Thus both these purposes can be achieved by a proper interpretation of these provisions. A communication will be complete once the order granting environmental clearance is placed in public domain by all the modes referred to by all or any of the stakeholders. The legislature in its wisdom has, under the provisions of the Act or in the notification of 2006, not provided any other indicator or language that could be the precept for the Tribunal to take any other view.

18. Another factor that would support such a view is that a person who wishes to invoke jurisdiction of the Tribunal or a court has to be vigilant and of his rights. An applicant cannot let the time go by without taking appropriate steps. Being vigilant and to his rights and alive and conscious to the remedy provided (under the law) are the twin basis for claiming a relief under limitation. Vigilantibus non dormantibus jura subvenient.”

8) It was further held by the Principal Bench of this Tribunal in *Sudiep Shrivastava v. Union of India and others* in Appeal No.33 of 2013 decided on 25 September, 2014 as under:

“7. XXXX 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 & Others. 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 vested 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.”

9) In the light of the above discussions, the Tribunal is of the considered view that the appeal is filed in excess of 90 (30+60) days and hence, the Miscellaneous Application to condone delay is devoid of any merits and is liable to be dismissed.

10) Accordingly, the Miscellaneous Application is dismissed. However, there is no order as to costs.

(Justice M. Chockalingam)

Judicial Member

(Shri. P. S. Rao)
Expert Member

Chennai.
06th January, 2016.