

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

**M.A. No. 79/2012
in
Appeal No. 29/2012**

In the matter of

Padmabati Mohapatra,
W/o Sri Ras Bihari Mohapatra,
Plot No.2D/303, Sector 11,
Abhinab Bidanasi Project Area,
P.O. Abhinab Bidanasi, P.S. Markat Nagar,
Cuttack-753014

.....Appellant

Versus

1. Union of India,
Ministry of Environment and Forests,
Represented by its Director,
Paryavaran Bhawan, CGO Complex, Lodhi Road,
New Delhi-110003.
2. The Secretary,
Ministry of Power,
Shram Shakti Bhawan, Rafi Marg,
New Delhi-110001.
3. The Secretary (Environment),
Environment Department, Govt. of Odisha,
Odisha Secretariat Bldg., Sachivalaya Marg,
Bhubaneswar-751001.
4. The Chairman,
Odisha State Pollution Control Board,
A-118, Nilakantha Nagar, Unit VIII,
Bhubaneswar-751012.
5. The Chairman,
Central Pollution Control Board,
CBD-cum-Office Complex,
East Arjun Nagar,
New Delhi-110032.
6. The Chief Conservator of Forests,
Regional Office (EZ),
Ministry of Environment and Forests,
A/3, Chandrasekharapur,
Bhubaneswar-751023.

7. The Commissioner-cum-Secretary,
Govt. of Odisha,
Department of Energy, Odisha Secretariat,
Sachivalaya Marg,
Bhubaneswar-751001.
8. The Secretary, Govt. of Odisha,
Department of Housing and Urban Development,
Odisha Secretariat,
Sachivalaya Marg,
Bhubaneswar-751001.
9. The Collector-cum-District Magistrate,
Cuttack-753002
10. Odisha Industrial Infrastructure Development Corporation,
IDCO Tower, Janpath, सत्यमेव जयते
Bhubaneswar-751022.
11. The Chairman & Managing Director,
Tata Power Company Ltd.,
Bombay House, 24, Homymodi Street,
Mumbai-400001.

Counsel for Appellant:

Mr. R.B. Mohapatra, Advocate

Counsel for Respondents:

Ms. Neelam Rathor, Advocate for Respondent No.1
Mr. Priyabrata Sahu, Advocate for Respondent No.3
Mr. Satyabrata Panda, Advocate for Respondent No.4
Mr. S. Mishra, Advocate for Respondent No.10
Mr. Ravindra Srivastava, Sr. Advocate along with
Mr. Sarthan Nayak, Advocate for Respondent No.11

ORDER/JUDGMENT

PRESENT:

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)
Hon'ble Mr. Justice U.D. Salvi (Judicial Member)
Hon'ble Dr. D.K. Agrawal (Expert Member)
Hon'ble Mr. P.S. Rao (Expert Member)
Hon'ble Mr. Ranjan Chatterjee (Expert Member)

Dated: 8th August, 2013

JUSTICE SWATANTER KUMAR (CHAIRPERSON):

1. This is an application filed by the applicant-appellant under Section 5 of the Limitation Act, 1963 read with Section 14(3) and 16 of the National Green Tribunal Act, 2010 (for short 'the NGT Act') for condonation of delay in filing the present appeal. The applicant claims to be an 'aggrieved person' within the meaning of the NGT Act and challenges the grant of Environment Clearance (for short 'the EC') by the Ministry of Environment & Forests (for short 'the MoEF') in terms of its order dated 15th February, 2011 to establish and operate a coal-based thermal power plant of the capacity of 1000 megawatt at Village Naraj-Marthapur in District Cuttack, State of Orissa.

2. The Government of Orissa issued a notification on 20th June, 2003, to include the revenue Village of Naraj-Marthapur, Nuagaon, Mundali and Talagada under the Naraj-Marthapur-Mundali Gram Panchayat of Cuttack, Sadar Tahasil under the Cuttack Development Authority area for the purposes of its urbanization. The Government also issued a notification under Section 4 of the Land Acquisition Act, 1894 for establishment of an industrial area in the general public interest in these villages. However, in the notification it was not mentioned that the land would be required for setting up of the said thermal power plant. The Government of Orissa signed a Memorandum of Understanding with M/s. Tata Power Company Ltd. on 26th September, 2006 to set up the said

thermal power plant with an estimated expenditure of Rs.4,348 crores with a time schedule of 42 months.

3. The applicant claims to be owner in respect of plot no. 928 and 929 under Khata No.327/9 of an area of 0.190 acres and 0.0330 acres in Mouza Talagada under Cuttack Sadar Tahasil. The acquisition was assailed by the applicant by filing a writ petition being Writ Petition No. 6327/2009 before the High Court of Orissa challenging the notification under Section 4 of the Land Acquisition Act as well as raising the issue with regard to adverse impacts of establishment of coal based thermal power plant on environment and otherwise. According to the applicant, this plant was bound to result in environmental pollution, pollution of the rivers because of discharge of mercury and it would adversely affect the ecology of the District Cuttack and its various parts. The Member Secretary of the State Pollution Control Board had issued an advertisement on 26th March, 2009 in the newspaper fixing the date and venue of public hearing in regard to the project on 29th May, 2009 at the Red Cross Conference Hall, Collectorate, Cuttack at 11.00 a.m. The applicant along with one social activist, Mr. Prafulla Kumar Samantaray, had filed objection before the Member Secretary. Not only this, according to the applicant, the Principal Chief Conservator of Forest (Wildlife) and the Chief Wildlife Warden, Orissa had also raised objection in respect of approval of the site specific Wildlife Conservation Plan of M/s. Tata Power Company Ltd. These facts were also noticed in the EIA report. The Pollution Control Board also granted consent in terms of Section 25 of The Water

(Prevention & Control of Pollution) Act, 1974 and Section 21 of The Air (Prevention & Control of Pollution) Act, 1981 vide its memorandum dated 26th March, 2010 in favour of the company to establish the coal based thermal power plant. It is the allegation of the applicant that both the above-mentioned impugned orders had been passed during the pendency of the said order dated 29th May, 2009 passed by the High Court of Orissa in CM No. 5927/2009 in Writ Petition No. 6327/2009 and the said writ petition is stated to be pending before that High Court, even as of today. As such the applicant has substantive interest and is an aggrieved person in relation to the orders impugned in the present appeal, i.e. the order of consent granted by State Pollution Control Board dated 26th March, 2010 and EC dated 15th February, 2011.

5. During the course of hearing of the aforementioned writ petition, the counsel appearing for the respondents informed the applicant on 4th April, 2012, that the acquisition proceedings had already been completed and also the fact that the EC had been granted by the MoEF vide its order dated 15th February, 2011. This is how the applicant avers that he came to know about the factum of grant of EC and he filed the present appeal before the Tribunal on 28th May, 2011. He, thus, prays for condonation of 23 days delay in filing the present appeal.

While opposing the application for condonation of delay on behalf of the respondent-company, it is stated that they had put the EC order on their website on 1st March, 2011 and had published the EC order in the Indian Express on 21st February, 2011 and the

Odisha Bhaskar on 20th February, 2011. Thus, according to it the limitation, at best, could start from 20th February, 2011 and the present appeal having been filed on 28th May, 2011 is even beyond the period of 90 days as prescribed under Section 16 of the NGT Act. Thus, as per its submission this Tribunal has no jurisdiction to condone the delay and, in any case, no case has been made out by the applicant for condonation of delay. The application, therefore, is liable to be dismissed.

6. On behalf of the MoEF, it is contended that they had put the EC order on its website on 23rd February, 2011. Once the matter was put up on the website it was expected of the applicant to be aware of the said fact and the order, in any case, would be deemed to have been communicated to the applicant on that date. Thus, the appeal at best, could be filed by 22nd March, 2011 and/or within 60 days thereafter but the present appeal having been filed on 28th May, 2011 is beyond 90 days and the delay in filing the appeal cannot and should not be condoned by this Tribunal.

7. In order to determine whether the application is or is not barred by time, the primary factors that require determination are as to when the order was 'communicated' to the person; and if he, has shown sufficient cause for condoning the delay in filing the appeal within the 60 days period after the expiry of the prescribed period of limitation of 30 days.

8. Corollary to such discussion would be the issue as to when the limitation would start running or the date from which such

period of limitation is to be reckoned. All these questions need not detain us any longer as they squarely stand answered by a Five-Member Bench of this Tribunal in the case of *Save Mon Region Federation & Anr. v. Union of India and Ors.* [2013(1) All India NGT Reporter Page 1]. Following the principles stated therein, it is clear that communication of order is initiated by transmitting the order into the public domain by means which are accessible to the public at large without hindrance. That will be the date from which the period of limitation shall be reckoned as contemplated under Section 16 of the NGT Act. Various stakeholders are expected to comply with different sets of obligations post the passing of an order of EC in accordance with the provisions of the Environment (Protection) Rules, 1986 and the Environmental Clearance Regulations/Notification of 2006. It is only when the stakeholders, particularly the MoEF and the project proponent have discharged their obligations completely in all respects that the period of limitation shall commence. If different stakeholders at different intervals have completely discharged their obligations including putting the order of EC in the public domain at different times, then the earliest of them would be the relevant date.

9. In terms of law stated by the Tribunal in *Save Mon Region Federation & Anr. v. Union of India and Ors.* supra, MoEF was expected to upload on its website the order of EC within seven days from the date of passing of that order. Such uploaded order should be instantly accessible and downloadable by any person free of any impediment. Further, it was required to put the order in public

domain by placing it on its notice board in its premises including the premises of its regional offices. Such notice board was also required to be available to the public at large, without any hindrance.

10. In the present case, it has been stated on behalf of the MoEF that the EC order was passed on 15th February, 2011 and was put up on its website on 23rd February, 2011. It is not stated whether the said order was put on the notice board in its office/regional offices. As such the MoEF has not completely discharged its obligation in accordance with law in a way that would trigger the period of limitation from a particular date.

11. The project proponent claims that it had put the order of EC on its website on 1st March, 2011 and that it had further published the intimation of EC order in the Indian Express and the Odisha Bhaskar on 21st February, 2011 and 20th February, 2011 respectively. On this premise, it is submitted that the period of limitation shall commence running from 20th/21st February, 2011 and thus the appeal is barred being beyond 90 days, and therefore, the delay cannot be condoned by the Tribunal.

12. At this stage, we may first notice what are the obligations of a project proponent under the relevant provisions of law. In a more recent judgment of the Tribunal in the case of *Medha Patkar and Ors. v. Ministry of Environment and Forests and Ors.* (Appeal No.1 of 2013), decided on 11th July, 2013, a Bench of the Tribunal held as under:

“12. From the above dictum, it is clear that a communication would mean putting it in public domain and completing the acts as are contemplated in the EIA Notification of 2006, read with conditions of the EC and the provisions of the Act. In terms of the scheme of the notification and law, there are three stakeholders in the process of grant of environmental clearance :

- (a) Project Proponent
- (b) Ministry of Environment and Forests, and
- (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.

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 v. 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 display 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.”

13. In light of the above, let us now consider whether the stakeholder has fulfilled completely and entirely its obligations as required under law (Environmental Clearance Regulations/Notification of 2006, and the judgment of the Tribunal in *Save Mon Region Federation* case supra).

14. We have perused the publication of order of EC effected by the applicant in the two newspapers. The law requires the project proponent not only to give intimation in regard to factum of passing an order of EC but also to publish the stipulated conditions and safeguards stated in such order. This admittedly has not been done by the project proponent. The project proponent admittedly did not give copies of the EC to the heads of the local authorities, panchayats and municipal bodies of the district to display on their respective notice boards and thus, could not ensure that it reaches the common man of the area where the project is proposed to be established. These are the apparent breaches of its obligations committed by the project proponent. The project proponent merely put the EC order on its website on 1st March, 2011. Firstly, there is no justification for placing it on the website after a lapse of more than 2 weeks, and secondly, the period of limitation cannot run from 1st March, 2011 as other co-related obligations had not been discharged by the project proponent even on that date.

15. Once there is no compliance of the statutory obligations, then neither the MoEF nor the project proponent can raise any objection with regard to the limitation successfully.

16. The applicant has put forward a version which is supported by an affidavit filed by him stating that he came to know about the passing of the impugned order only on 4th April, 2011 during a hearing in the Writ Petition filed by the applicant, being WP No. 6327/2009. Having come to know of the same on 4th April, 2011, he filed an appeal before the Tribunal on 28th May, 2011 and hence there is only a delay of 23 days in filing the appeal. This delay is neither intentional nor the applicant can be said to have slept over his right as he obtained a copy of the impugned order thereafter. Having obtained the orders, the appeal was prepared and filed before the Tribunal without any undue delay. According to the applicant, it took him some more time in collecting necessary papers including the objections etc. filed during the proceedings before the EAC and during the public hearing. There is nothing on record to factually controvert the averments of the applicant that he came to know of passing of the EC order during the proceedings pending before the High Court.

17. One cannot overlook another fact that if the averments made by the applicant in the appeal are found to be correct, then it would be a serious and substantial question relating to environment and the same would require a proper examination.

18. The major challenge of the applicant is to the EIA proceedings and the report. It is contended that the thermal plant of this magnitude is bound to pose environmental implications and would cause both water and air pollution problems. Even the notification under Section 4 of the Land Acquisition Act covers Reserve Forest and social forestry area without taking any approval from the Central Government and the State Government. The plant in question will be consuming 6 million tons of coal per annum. It will be generating 5238 tons of fly ash per day and 1310 tons of bottom ash per day. In addition to intense heat, this plant will be releasing 3380 tons of flue gases per hour which include 19.45% of carbon dioxide. All these obnoxious gases will add to the green house effect resulting in further increase in temperature and build up of heat with adverse impact on the flora and fauna of the area and on the precious wildlife habitat in the locality. It will affect the vegetation in the area resulting in drying up of water sources along with noise pollution and consequent biotic pressure which will put immense stress on both wildlife and its habitat in the neighbouring Chandka Wildlife Sanctuary and Nandankanan Wildlife Sanctuary. These are the dimensions of environmental impact as stated by the applicant, which may ultimately require due examination by this Tribunal.

19. According to the applicant, the proceedings have been held and orders were passed and given effect to without obtaining leave of the High Court of Orissa in violation of its stay order dated 29th May, 2009.

20. The applicant has been able to show sufficient cause for 23 days' delay in filing the present appeal. It is correct that the Tribunal will not have jurisdiction to condone the delay where the appeal is filed beyond the prescribed period of 30+60 days in terms of Section 16 of the NGT Act. In the present case, however there is no delay in excess of 90 days. In fact, both the respondents have failed to discharge their obligations in accordance with law. They failed to put the EC order in the public domain and ensure that any aggrieved person is able to access such order in accordance with the prescribed procedure and law. In fact, both MoEF and the project proponent are at fault and cannot be permitted to take advantage of their own wrong.

21. The respondents have failed to discharge their composite obligations comprehensively. Thus, in the present case, it is not possible in law to define a date when the order would actually or deemed to be communicated to the applicant. The communication of the order being incomplete in law, the limitation cannot be reckoned from any of the dates stated by any of the respondents. While construing the law of limitation, this Tribunal must take a pragmatic view balancing the rights of the parties to the *lis*. The objection of limitation when renders a petition barred by time, it takes away the right of one and protects the right of the other. One who raises an objection of limitation, onus lies on him to show that the requirements of law, triggering the period of limitation, have been satisfied.

22. For the reasons afore-stated, we find merit in the application under consideration. The delay of 23 days in filing the appeal is condoned. The application, thus, is allowed; however leaving the parties to bear their own costs.

Justice Swatanter Kumar
Chairperson

Justice U.D. Salvi
Judicial Member

D.K. Agrawal
Expert Member

P.S. Rao
Expert Member

Ranjan Chatterjee
Expert Member

New Delhi
August 8, 2013

NGT