

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA**

O.A. No. 04/2017/EZ

PAWAN KUMAR SOMANI

VS

STATE OF WEST BENGAL & ORS

CORAM: Hon'ble Mr. Justice (Dr.) P. Jyothimani, Judicial Member
Hon'ble Prof. (Dr.) P. C. Mishra, Expert Member

PRESENT: **Applicants** : Mr. Sukhendu Sekhar Roy, Sr. Advocate
Ms. Payal Chakraborty, Advocate
Mr. Rudrajit Sarkar, Advocate
Respondents No. 1-4 : Mr. Bikas Kargupta, Advocate
Respondent No. 8 : Mr. Sibojyoti Chakraborti, Advocate
Respondent No. 10 : Mr. Debashish Kundu, Sr. Advocate
Mr. Abhishek Halder, Advocate
Mr. Debasish Das, Advocate

Date & Remarks	O R D E R (O R A L)
Item No. 1 5 th January, 2017.	<p style="text-align: center;"><u>Per Justice (Dr.) P. Jyothimani, J.M.:</u></p> <p>We have heard Mr. S.S.Roy, learned Sr. Counsel for the applicant at length.</p> <p>Mr. Bikas Kargupta, Ld. Govt. counsel takes notices on behalf of respondents No. 1 to 4. Mr. Sibojyoti Chakraborty, Ld. Advocate takes notices on behalf of State PCB, 8th respondents while Mr. Debashish Kundu, Ld. Sr. Counsel puts in appearance on behalf of the 10th respondent, the project proponent.</p> <p>After hearing the submissions of the Ld. counsel for the parties, we are of view that the application as such</p>

is not maintainable before this Tribunal on the point of limitation.

The applicant has prayed for issuance of a direction upon the respondents to first quantify the area of wet land/marshy land/low lying land/water bodies situated within the 314 acres of land lying and situated in the area more fully described in the State Government order dated 13.9.2006 vide Memo NO. 2675-GE(M)/5M-03/06 and the measurement and quantification of land be done by applying the scientific test of Remote Sensing Satellite Imagery map etc.

It is seen that the Govt. of West Bengal in the proceeding dated 13.9.2006 has released 314 acres of land and getting raiyatari settlement thereof on free hold basis under section 14Z of the West Bengal Land Reforms Act, 1955 and said 314 acres of land which has been released for setting up industrial and commercial purpose to the Hindusthan Motors stood transferred to the 10th respondents in course of time.

The 10th respondent proposed to set up integrated IT Township and Auto-ancillary Park. EC was also obtained from the competent authority viz. SIEAA for said the purpose on 1.4.2015. It is stated therein that total water body measuring 30 acres shall be created within the entire project area as per the condition laid down by the Fisheries Department, Govt. of West Bengal vide Memo dated 10.12.2008, 30.1.2009 as well

as order dated 13.9.2006 issued by the Deptt. of Land & Land Reforms. Govt. of West Bengal. The EC also stipulates that water bodies to be created in phase 1 is 3.99 acres. The proponent should not change the land characteristics without prior concurrence of the Fisheries Department and Deptt. of Land & Land Reforms.

These are the two causes of action which are the reasons for the applicant to approach before this Tribunal praying for the reliefs in this application.

When the land has been de-categorised and allotted to Hindusthan Motors even in 2006 and EC was also obtained on 1.4.2015 by the 10th respondent for the project, the application having been filed in January 2017, is certainly beyond the period of limitation prescribed under the NGT Act, 2010.

N.G.T. Act is a specialised Act only for the purpose of dealing with environment cases by specialised courts with Expert Members sitting together with the Judicial Members.

Sec. 14 of the Act which deals with jurisdiction of the Tribunal clearly stipulates in sub-sec (3) that “no application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute **first arose.**”

Under Sec. 15 also in sub-sec (3) it is provided that

“no application for grant of any compensation or relief or restitution of property or environment under this section shall be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief **first arose.**”

Similarly, under section 16 which provides for filing appeal it is stipulated that any appeal against the order or decision of the Board etc. may be filed within a period of thirty days from the date on which the order or decision or direction or determination is communicated to him.

Of course, the Tribunal has power, if it is satisfied that the applicant/appellant was prevented by sufficient cause from filing the application or appeal, may condone the delay upto sixty days. Beyond the period of condonation limit as provided in the Act, the Tribunal itself has no power to condone further delay even if it is satisfied with the reasons shown for the failure of the applicant to approach the Tribunal within time.

This view has been taken by the Principal Bench of the Tribunal in the case of ***Forward Foundation, A Charitable Trust and Ors –vs- State of Karnataka and Ors***, 2015 ALL (1) NGT Reporter (2) (Delhi) 8 wherein the expression “cause of action” has been explained in detail and it was held that Sec. 5 of the Limitation Act

would have no application in cases before the Tribunal. The NGT Act being a special Act, Limitation Act cannot override the special provision of limitation provided in the NGT Act. The relevant portion of the order is quoted below :-

“24. The expression 'cause of action' as normally understood in civil jurisprudence has to be examined with some distinction, while construing it in relation to the provisions of the NGT Act. Such 'cause of action' should essentially have nexus with the matters relating to environment. It should raise a substantial question of environment relating to the implementation of the statutes specified in Schedule I of the NGT Act. A 'cause of action' might arise during the chain of events, in establishment of a project but would not be construed as a 'cause of action' under the provisions of the Section 14 of the NGT Act, 2010 unless it has a direct nexus to environment or it gives rise to a substantial environmental dispute. For example, acquisition of land simplicitor or issuance of notification under the provisions of the land acquisition laws, would not be an event that would trigger the period of limitation under the provisions of the NGT Act, 'being cause of action first arose'. A dispute giving rise to a 'cause of action' must essentially be an environmental dispute and should relate to either one or more of the Acts stated in Schedule I to the NGT Act, 2010. If such dispute leading to 'cause of action' is alien to the question of environment or does not raise substantial question relating of environment, it would be incapable

of triggering prescribed period of limitation under the NGT Act, 2010. [Ref: Liverpool and London S.P. and I Asson. Ltd. v. M.V. Sea Success I and Anr., (2004) 9 SCC 512, J. Mehta v. Union of India, 2013 ALL (I) NGT REPORTER (2) Delhi, 106, Kehar Singh v. State of Haryana, 2013 ALL (I) NGT REPORTER (DELHI) 556, Goa Foundation v. Union of India, 2013 ALL (I) NGT REPORTER DELHI 234].

24.1 Furthermore, the 'cause of action' has to be complete. For a dispute to culminate into a cause of action, actionable under Section 14 of the NGT Act, 2010, it has to be a 'composite cause of action' meaning that, it must combine all the ingredients spelled out under Section 14(1) and (2) of the NGT Act, 2010. It must satisfy all the legal requirements i.e. there must be a dispute. There should be a substantial question relating to environment or enforcement of any legal right relating to environment and such question should arise out of the implementation of the enactments specified in Schedule I. Action before the Tribunal must be taken within the prescribed period of limitation triggering from the date when all such ingredients are satisfied along with other legal requirements. Accrual of 'cause of action' as aforesaid would have to be considered as to when it first arose.

25. In contradistinction to 'cause of action first arose', there could be 'continuing cause of action', 'recurring cause of action' or 'successive cause of action'. These diverse connotations with reference to cause of action are not synonymous. They certainly have a distinct and different meaning in law, 'Cause of action first arose' would refer to a definite point of time when requisite

ingredients constituting that 'cause of action' were complete, providing applicant right to invoke the jurisdiction of the Court or the Tribunal. The 'Right to Sue' or 'right to take action' would be subsequent to an accrual of such right. The concept of continuing wrong which would be the foundation of continuous cause of action has been accepted by the Hon'ble Supreme Court in the case of Bal Krishna Savalram Pujari & Ors. v. Sh. Dayaneshwar Maharaj Sansthan & Ors., AIR 1959 SC 798."

This decision of the Principal Bench has become final.

In view of the facts and circumstances stated above and keeping in view the legal position, we are not inclined to accept the submission of the Ld. Sr. Counsel for the applicant that the application is maintainable. Accordingly, we are unable to interfere with this matter and the application is liable to be dismissed on the ground of limitation alone.

There is also another aspect of the matter. Some other persons, under the name and style of Society for Direct Initiative for Social and Health Action filed a writ petition before the Hon'ble Calcutta High Court in WP No. 7666(w) of 2016 and the Hon'ble first Bench of the High court disposed the application by order dated 23.12.2016 and held that portions of the land which is the subject matter in this case before the Tribunal, are not water bodies and that environmental clearance has

been granted to the project proponent i.e. 10th respondent in this case, subject to various conditions. The judgement of the Calcutta High Court is quoted below in full :-

“Tapabrata Chakraborty J. :

Society for Direct Initiative for Social & Health Action and Paribesh Academy have approached this Court through the instant public interest litigation challenging, inter alia, the illegal attempt on the part of the private respondent no.11 to fill up substantial portions of a large wetland area located in the Hindustan Motors area in Uttarpara Municipality and Kanaipur Gram Panchayat.

Records reveal that an interim order was passed on 6th May, 2016 directing the State respondents and also the High Power Committee constituted by the State to keep vigil whether the water bodies are closed without adhering to the procedure. The Court also directed the parties to exchange their affidavits. Pursuant to such direction affidavits have also been exchanged by the parties.

Mr. Jishnu Chowdhury, learned advocate appearing for the petitioners submits that the petitioners are concerned with environmental protection and they are aggrieved on account of the illegal attempts on the part of the respondent no.1 to fill up water bodies. Such illegalities were noted by the Assistant Director of Fisheries and he filed a substantive report before the Director of Fisheries on 15th April, 2008 categorically stating that water areas in ward Nos.22 and 24 within the jurisdiction of Uttarpara- Kotrung Municipality are being attempted to be filled up by the respondent no.11 with fly ash. The said officer also lodged a complaint on 7th July,2008 before the respondent no.9 against a representative of the respondent no.11 for violation of Section 17A of the West Bengal Inland Fisheries Act, 1994. Upon consideration of a further complaint lodged against the respondent no.11, the Chief Law Officer of the West Bengal Pollution Control Board by a memorandum dated 29th June, 2009 reiterated that the respondent no.11 should not start any construction or fill up any water body without prior permission of the appropriate authority. In the backdrop of the said facts a Forum for Human Legal & Economical Rights, Bansdronei & Ors. approached this

Court was earlier through a writ petition being W.P No.606 (W) of 2011 and upon being satisfied that there was an attempt on the part of the respondents to illegally fill up various water bodies, this Court by an order dated 3rd February, 2012 directed the State to constitute a High Power Committee (hereinafter referred to as HPC) to examine the specific grievances as well as to formulate a policy so that there may not be any occasion for future grievances. Pursuant to such direction the HPC was constituted and upon conducting inspections HPC recommended various steps to be taken by the State Government for protecting the water bodies within the State of West Bengal and the government was also directed to form a timeframe for implementation of its recommendations. Notwithstanding such recommendation of remedial measures, the wetlands and water bodies already filled up were not restored. In the midst thereof, the petitioners' came to learn that a State Level Expert Appraisal Committee (hereinafter referred to as SEAC) by an order dated 21st March, 2015 had allowed the respondent no.11 to resume its construction by filling up the water bodies within its Integrated IT Township & Auto Ancillary Park (hereinafter referred to as the said project) and that the State Level Environment Impact Assessment Authority (hereinafter referred to as SEIAA) by its order dated 25th March, 2015 had granted clearance to the said respondent no.1 to resume its construction work. Aggrieved by such directives the petitioner submitted representations ventilating their grievances but the same were not attended to.

He further submits that both SEAC and SEIAA casually ignored the recommendations made by HPC and allowed the respondent no.11 to resume its constructional work . The clearance has been granted without defining the location of or the area covered by Phase I of the said project. Had the members of the SEAC and SEIAA applied their minds properly to the exact location of the project site seeking clearance then the site would have been defined clearly in the minutes. The recommendation and the clearance granted are absolutely discrepant which create avenues for the respondent no.11 to fill up water bodies indiscriminately.

He further contends that the respondent no.11, in connivance with the State authorities, are attempting to fill up the water bodies in a most illegal and malafide manner and unless such attempt is arrested through issuance of necessary

direction by this Court, the people of the locality would suffer severe environmental hazards.

Drawing the attention of this Court to the reports of SEAC and SEIAA, the learned Government Pleader appearing for the State respondents submits that upon due consideration of all the records and upon conducting inspection permission has been granted to the respondent no.11 by the competent authority to commence work pertaining to Phase-I of the proposed project subject to prior compliance of the conditions laid down by the Irrigation and Waterways Directorate. Upon considering such recommendation of SEAC, the proposal was approved by SEIAA for environmental clearance with the additional condition that the project proponent will plant at least 250 recommended trees in the plantation area.

He further submits that the SEAC is a body constituted of experts in different fields of environment and that SEIAA takes its decision based on the recommendation of SEAC. It would be explicit from the report of SEAC that the quantum of water bodies permitted to be filled up measures 3.84 acres and the quantum of water bodies to be created in Phase-I in lieu thereof shall be 3.99 acres and that as such the allegation to the effect that the respondent no.11 is attempting to fill up all the existing water bodies is unfounded.

He further contends that Hindustan Motors Limited (hereinafter referred to as HML) was in possession of about 314 acres of land and as the financial condition of HML was stressed, a scheme was formulated and a decision was taken to sell 314 acres of land with a condition that within the said area, 30 acres of water bodies would have to be created. On the basis of such condition the said 314 acres of land was purchased by the respondent no.11 and only Phase-I of the said project out of the other proposed phases has been approved with the conditions as stipulated by SEAC and SEIAA. While granting clearance to the other phases in future it would be ensured that in total 30 acres of water bodies is created.

Mr. Kapur, learned senior advocate appearing for the respondent no.11 submits that on the face of the petition it is not clear whether it has been filed by any registered association having competence and that the petitioners are trying to stall the project by levelling unfounded allegations. Drawing the attention of this Court to the documents annexed to be affidavit-in-opposition, he submits that out of total 314

acres of land the respondent no.3 would be creating 30 acres of water bodies and that by a memorandum dated 10th December, 2008, the Assistant Secretary to the Government of West Bengal Fisheries Department has already accorded 'no objection for development of the project area by way of filling up and/or reshaping the existing recorded water bodies.

Placing reliance upon a memorandum dated 1st April, 2015 issued by SEIAA, Mr. Kapur submits that environmental clearance for the proposed Phase-I of the project has been granted subject to the conditions as detailed in the said memorandum and as such the allegation that the respondent no.11 has been granted a free hand to fill up any existing water bodies as per it's whims is absolutely unfounded.

He further submits that the building plan for Phase-I of the said project has been sanctioned by KMDA and the classification of the land pertaining to the said project has also been changed by the competent authority in exercise of the powers conferred under Section 4C of the West Bengal Land Reforms Act, 1955 and as such there exists no embargo towards commencement of the work under Phase-I.

Heard the learned advocates appearing for the respective parties and considered the materials on record. The undisputed facts are that the government accorded approval for sale of 314 acres of land to the respondent no.11 with a condition that within the said area, 30 acres of water bodies would have to be created. On the basis of such approval the respondent no.11 purchased the said 314 acres of land from HML by execution of registered conveyances. Thereafter the respondent no.11 approached the Fisheries Department seeking necessary permission for commencement of work under the said project. By a memorandum dated 10th December, 2008, the Assistant Secretary to the Government of West Bengal, Fisheries Department accorded 'no objection for development of the project area by way of filling up and/or reshaping the existing recorded water bodies subject to the condition that water area measuring 30 acres will have to be created. The irrigation and Waterways Department granted 'no objection, as would be explicit from the letter dated 5th August, 2010 issued by the Secretary to the Government of West Bengal Irrigation and Waterways Department. Thereafter the KMDA authorities also sanctioned the building plan for Phase-I, as would be explicit from the letter dated 30th November, 2010. Classification of the land pertaining to the

said project was also effected by the competent authority. Subsequent thereto, considering the recommendations of SEAC, provisional environmental clearance was granted by SEIAA, as would be explicit from the memorandum dated 1st April, 2015.

The petitioners have placed reliance upon the report and the complaint filed on 15th April, 2008 and 4th July, 2008 respectively by the Assistant Director of Fisheries, Hooghly in support of the contention that the respondent no.11 was illegally attempting to fill up the water bodies .But the records reveal that subsequent to such report and complaint of the Assistant Director of Fisheries, Hooghly, the Assistant Secretary to the Fisheries Department by a memorandum dated 10th December, 2008 has categorically stated that *“the Government of West Bengal in the Fisheries Department hereby accords no objection for development of the project area comprising in the above noted Mouzas by way of filling up and/or reshaping the existing recorded water bodies subject to the condition that an water area measuring 30 Acres will have to be created as mentioned by the L & LRO Department in their aforesaid order”*

The petitioners’ allegation that clearance has been granted without defining the location of or the area covered by Phase I of the said project to facilitate the respondent no.11 to fill up water bodies indiscriminately needs to be discounted in view of the order dated 20th April, 2015 towards conversion and classification of the plots of land towards the said project, which details the khatian numbers and the plot numbers.

The apprehension expressed by the petitioners to the effect that the respondent no.11 would not be creating and maintaining 30 acres of water bodies within the total area of 314 acres is unfounded inasmuch as the environmental clearance has been granted subject to various conditions, as would be explicit from the memorandum dated 1st April, 2015. In respect of water body conservation the conditions stipulated are as follows :

- i. The water bodies within the project area shall be maintained in conformity with the conditions stipulated by the L & R Department and the Fisheries Depart. GOWB.
- ii. The total water body measuring 30 acres shall be created within the entire project area as per the conditions laid down by the Fisheries Department,

Govt. of West Bengal vide Memo No. 2463-Fish/C-III/2M-36/2008 dated 10.12.2008 and memo No. 214-Fish/C-III/2M-36/2008 dated 30.1.2009 as well as order dated 13.09.2016 of the Department of Land & Land Reforms, Govt. Of West Bengal.

- iii. As proposed water bodies to be created in Phase I is 3.99 acres (volume 25853.16 cum). The proponent should not change the land characteristics without prior concurrence of fisheries Department and Department of Land & Land Reforms,.
- iv. The water bodies should not be lined and no embankments should be cemented. The water bodies are to be kept in natural conditions without disturbing the ecological habitat.
- v. No water bodies to be filled up or reshaped without prior permission from the competent authority.

For the reasons discussed above, the reliefs as prayed for in the petition are not available to the petitioners.

Welfare of the people depends largely upon the proper functioning of the natural resource system wherein wetlands are among the foremost. No wetland and water body can be filled up, degraded, drained, converted or subjected to any kind of activity which is incompatible with ecological integrity of the wetlands. Keeping in mind such proposition, the competent authority has granted environmental clearance subject to various conditions as stipulated in the memorandum dated 1st April 2015. Thus, it would be an obligation on the part of the State authorities to monitor, to maintain surveillance and to ensure that the said project works is conducted by the respondent No.11 in strict consonance with the conditions subject to which the environmental clearance has been granted.

With the above observations and directions, the writ petition is disposed of.”

In view of the above, since the Hon’ble Calcutta High Court has already rendered a decision on merit stating that the land in question is not a water body or marshy land, certainly it is not open to this Tribunal to

taka a contrary stand. Judicial discipline requires that the decision of the Division Bench should be followed by the Tribunal in order to avoid contradictions and strengthen the faith of people in the judicial system.

In view of what has been discussed above, we are unable to grant any relief as prayed for. The application is not only barred by limitation but also from other angles on merit, it is not entertainable. However, if the applicant is so advised to intervene in the other pending application before this Tribunal, it is open to him to take appropriate step in the manner known to law.

Normally we would have imposed cost since the application is an abuse of process of law. But considering the fact that the matter is posted for admission and respondent's counsel have taken notice voluntarily, we are of the view that no cost should be imposed on the applicant.

Accordingly, the application stands dismissed.

There will be no order as to costs.

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Justice (Dr.) P. Jyothimani, JM
5.1.2017

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Prof. (Dr.) P. C. Mishra, EM
5.1.2017

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