

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

.....

APPEAL NO. 33 OF 2013

In the matter of:

Sudiep Shrivastava

.....Appellant

Versus

- 1 Union of India
Through the Secretary
Ministry of Environment & Forests
Paryavaran Bhawan, CGO Complex,
Lodhi Road, New Delhi – 110 003
- 2 State of Chhattisgarh
Through the Chief Secretary
Government of Chhattisgarh
Raipur
- 3 Chhattisgarh Environment Conservation Board
Through Member Secretary
1, Tilak Nagar, Shiv Mandir Chowk,
Main Road, Avanti Vihar, Raipur
- 4 M/s Rajasthan Rajya Vidyut Utpadan Nigam Ltd.
Vidyut Bhawan, Jyoti Nagar,
Janpath, Jaipur – 302 005
- 5 Kente Basan Coilleries Co. Ltd.
C/o M/s Rajasthan Rajya Vidyut Utpadan Nigam Ltd.
Vidyut Bhawan, Jyoti Nagar,
Janpath, Jaipur – 302 005

.....Respondents

Counsel for Appellant:

Mr. Raj Panjwani, Sr. Advocate with Mr. Rahul Choudhary and
Ms. Richa Relhan, Advocates

Counsel for Respondents:

Ms. P.B. Singh, Advocate, Standing Counsel MoEF & CC for Respondent No. 1

Mr. Atul Jha, Advocate for Respondent No. 2

Ms. Yogmaya Agnihotri, Advocate for Respondent No. 3

Mr. Kunal Verma, Advocate for Respondent No. 4

Mr. Arjun Khere, Advocate for Respondent No. 5

JUDGMENT

PRESENT:

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)

Hon'ble Mr. Justice M.S. Nambiar (Judicial Member)

Hon'ble Dr. D.K. Agrawal (Expert Member)

Hon'ble Prof. A.R. Yousuf (Expert Member)

Dated: September 25, 2014

1. Whether the judgment is allowed to be published on the net?
2. Whether the judgment is allowed to be published in the NGT Reporter?

JUSTICE SWATANTER KUMAR, (CHAIRPERSON)

The Ministry of Environment and Forest (for short 'the MoEF'), Government of India vide their letter dated 21st December, 2011 accorded Environmental Clearance for Parsa East and Kanta Basan Opencast Coal mine project of 10 MTPA production capacity along with a Pit Head Coal Washery (10 MTPA ROM) to M/s Rajasthan Rajya Vidyut Utpadan Nigam Limited involving a total project area of 2711.034 hectare under the Environmental Impact Assessment Notification, 2006 (for short 'EIA Notification, 2006') subject to the specific conditions stated in that Order.

2. The appellant, who claims to be a social activist and an advocate based at Bilaspur and Chhattisgarh and who has been actively involved in raising environmental and social issues, particularly, in relation to the State of Chhattisgarh, has challenged the legality and correctness of the Order dated 21st December, 2011 according Environmental Clearance to Respondent No. 4. The challenge to the said Order *inter alia* is on the ground that the impugned Order was not available on the website of the MoEF and thus, there is violation of the EIA Notification, 2006. It is alleged that the information about 135 MW Thermal Power Plant has been concealed and impact of the same has not been assessed before granting the Clearance. The said concealment is of information regarding elephant movement in the area as well as existence of other flora and fauna in the area being widely affected by the impugned Order. It is also stated that the land use data has been incorrectly stated and is misleading, water source requirement for the project has not been correctly assessed, impacts of supporting and necessary infrastructure relating to transport etc. has not been taken into consideration, Mining Plan which clearly states that drilling and blasting will take place for extraction of coal and its impact has not been assessed and lastly, that the public hearing process as contemplated under law has been vitiated for various irregularities, including non-provision of Hindi translation of documents. Grounds of challenge raised by the appellant have

been specifically refuted by the Learned Counsel appearing for the various Respondents, including the Project Proponent.

3. The appeal against the Order dated 21st December, 2011 has been instituted in the Registry of this Tribunal on 19th March, 2013. According to the Respondent, the present appeal is barred by time, having been filed much beyond the period of 90 days and that this Tribunal has no jurisdiction to entertain the appeal and/or condone the delay beyond the said period of 90 days, in terms of Section 16 of the National Green Tribunal Act, 2010 (for short 'the NGT Act'). Thus, they pray for rejection of the appeal on this short ground, which was taken up as a preliminary objection and which has been argued by the Learned Counsel appearing for the different parties as such.

4. In light of the above, it is not necessary for us to notice the factual matrix of the case in any greater detail. Suffice it to note that the project of Respondent No. 4 was category 'A' project, for which the Environment Clearance was sought. The Terms of Reference (for short 'TOR') were issued by the MoEF vide letter dated 18th March, 2008. After conducting the public hearing on 16th January, 2009, the Expert Appraisal Committee met on several dates and vide its meeting held on 22-23rd September, 2009, recommended the project for grant of Environmental Clearance. The Environmental Clearance was finally accorded on 21st December, 2011. According to the Project Proponent (herein Respondent No. 4), on 3rd January, 2012, copy of the

Environmental Clearance was made available to the Offices of the Gram Panchayat of village Salhi, Parsa and Ghatbarra and Zila Panchayat Adhikari, Sarguja and Tehsildar, Udaipur. It is also the stand of the Project Proponent that from 5th January, 2012 to 5th February, 2012, the Environmental Clearance was displayed on the Notice Board of the Office of Tehsildar, Sarguja, as well as on the Notice Board of the respective Gram Panchayats afore-stated. It is further averred by the Project Proponent that Environmental Clearance was displayed on the notice board of the District Trade and Commerce Centre, Sarguja, State of Chhattisgarh from 9th January, 2012 to 25th February, 2012. The Project Proponent also got it published in two local daily newspapers, namely, Ambikavarni and Nayiduniya stating that it had received the Environmental Clearance. According to Respondent No. 4, on 2nd February, 2012, he uploaded the copy of the entire Environmental Clearance, including all its conditions on the website in accordance with the provisions of EIA Notification, 2006. On 27th July, 2012, Respondent No. 4 wrote a letter to MoEF, seeking permission for an interim washery of 2 MTPA, which itself was later uploaded on the website of Respondent No. 4 and on the website of the MoEF on 30th July, 2012. The factum of uploading of letter dated 27th July, 2012 by Respondent No. 4 and by MoEF on 30th July, 2012 is not disputed by the Appellant. While relying upon these facts, it is contended on behalf of the Project Proponent that the appeal is hopelessly barred by time. Not even

an application seeking condonation of delay has been filed, which obviously means that there is no reason to show any cause, much less a sufficient cause for condonation of delay. It is contended that once the appeal is not accompanied by an application for condonation of delay, as contemplated under proviso to Section 16 of the NGT Act, the same has to be dismissed on that ground itself. It is also contended that the appellant is an environmental activist and is a lawyer for years and is, therefore, fully aware and conscious of the law and the operation of websites, accessibility to public notices etc. The Project Proponent claims to have complied with all the requirements of law and that there is communication of the order of Environmental Clearance as contemplated in law, as it had been put in the public domain. According to the Project Proponent, the limitation has to be reckoned from February, 2012 when they had completely performed all their obligations under the law and communicated the order granting Environmental Clearance to all concerned by putting it in the public domain by all expected ways under the requirements of the EIA Notification, 2006. According to the Project Proponent, in terms of Section 16 of the NGT Act, the appeal had to be filed positively by 25th of March, 2012 and along with an application for condonation of delay, showing sufficient cause for condonation of further period of 60 days i.e. up till 24th May, 2012. After 24th May, 2012, i.e. after the expiry of total period of 90 days, this Tribunal has no jurisdiction to entertain the appeal and/or condone the delay.

5. The MoEF had also taken a stand before the Tribunal that the present appeal is hopelessly barred by time. According to the Learned Counsel appearing for the MoEF, it had put the Order according Environmental Clearance to the Project Proponent for the Coal Mining category, as per normal practice, on its website in the last week of December, 2011. Thus, the appeal could have been filed within 30 days from that date or at best within the further period of 60 days thereafter and not beyond that. They too have vehemently stressed that the Tribunal has no jurisdiction to condone the delay beyond the period of 90 days in terms of Section 16 of the NGT Act. At this stage, we may notice that there was some ambiguity as to actually when and under what category the Environmental Clearance accorded to the Project Proponent was put on the website of the MoEF. Vide our Order dated 20th August, 2014, we had directed the MoEF to clarify this aspect. The Order dated 20th August, 2014 reads as under:

“Arguments on the question of limitation as preliminary objection are heard and concluded. Reserved for Judgment.

The Ministry of Environment and Forests is directed to file within two days from today the following details:

- 1) When was the Environmental Clearance (EC) dated 21st December, 2011 put on the website and whether it was downloadable?
- 2) When was the category of coal mining created by the Ministry and put on its website?

These queries should be answered within the time given as we have already reserved the judgment. The Affidavit filed on behalf of MoEF lacks these particulars which are of great importance for determining the issue of limitation raised between the parties.

The NIC is directed to provide these information's, if the Ministry desire, within the time granted. Copy of the order be put up on the Internet immediately.”

In furtherance to the above order, affidavit dated 26th August, 2014 was filed on behalf of the MoEF which reads as under:

“I, Dr. T. Chandini, Scientist ‘F’ in the Ministry of Environment, Forest and Climate Change, Indira Paryavaran Bhawan, Jorbagh Road, Aliganj, New Delhi, do hereby solemnly affirm and declare as under:

1. That I am duly authorized by the respondent no. 1 to swear this additional affidavit and am conversant with the facts and circumstances of the instant matter and am thereby competent to depose as under.
2. That the deponent uploaded the Environment Clearance (EC) dated 21-12-2011 given to the project proponent in respect of Parsa East and Kanta Basan Opencase Mine (10 MTPA) and Coal Washery (10 MTPA) of M/s Rajasthan Rajya Vidyut Utpadan Nigam Ltd. vide letter no. J-11015/03/2008-IA.II (M) on the website of the answering respondent during the last week of December 2011 itself in the Coal Mining category as per the normal practice. It is submitted that the categories of Mining Projects and Coal Mining were existing during 2011, at the time the grant of the said EC.
3. That, before and in the year 2011 and till the half of the year 2012, the programmer relating to environmental clearances of the Ministry website of the answering respondent was undergoing a change by the National Informatics Centre. As a result, the data uploaded was either not visible or were displayed in the Mining Sector Category and was shifted in the Category of Coal Mining on 01.03.2013. The programme errors in this regard have been rectified by the National Informatics Centre.”

From the above affidavit which had been filed as a clarificatory affidavit to the earlier affidavit of MoEF, it is clear

that the Order granting Environmental Clearance to the Project Proponent was put on the website of MoEF in the last week of December, 2011. This Order, as per normal practice, was displayed in the Coal Mining category. Thereafter, there has been some problems in the programmer relating to Environmental Clearance on the website of MoEF. As a result of which the order was either not displayed or was displayed in general category i.e. Mining Sector category. This error was corrected after the National Informatics Centre rectified the programme on 1st January, 2013 when the same was again shown in the Coal Mining category. It is contended that taken from any date, the appeal against the order dated 21st December, 2011 is barred by time. Grant of Environmental Clearance by MoEF had been placed on the website in December, 2011 and was downloadable. As such, the limitation would get triggered from that period. Thus, the appeal needs to be dismissed on the ground of limitation itself.

6. The Learned Counsel appearing for the appellant has contended that all of the stakeholders, including the MoEF and Project Proponent have not completed their obligations in terms of the EIA Notification, 2006, and therefore, the limitation would not start to run from the dates alleged by these Respondents. It is the contention of the appellant that they only came to know of the grant of Environment Clearance to the project of Respondent No. 4 when on 19th February, 2013 the Counsel appearing for the MoEF provided the copy of the Environmental Clearance order to

the appellant during the course of hearing of another appeal (Appeal No. 73 of 2012) between the same parties. Appeal No. 73 of 2012 is relating to challenge to the grant of Forest Clearance to the same Project Proponent in the same project. Thus, the appeal could be filed within 30 days from 19th February, 2013. The present appeal was filed on 19th March, 2013 i.e. within the prescribed period of limitation and therefore, the question of filing an application of condonation of delay along with the appeal does not even arise. It is also the submission of the appellant that the limitation would start running only when the communication to the appellant is complete in terms of the EIA Notification of 2006, i.e. when the copy of the order dated 21st December, 2011 was furnished to the appellant and at no point of time prior thereto. In these circumstances, according to the appellant, the present appeal is not barred by time and the objection taken by the respective Respondents before the Tribunal is liable to be rejected.

7. Before we dwell upon the discussion on merits or otherwise of the respective contentions raised by the Learned Counsel appearing for the parties, we must notice that all the Learned Counsel appearing for the respective parties commonly conceded that this Tribunal has no jurisdiction to condone the delay in filing of an appeal, which is instituted beyond the period of 90 days as prescribed under Section 16 of the NGT Act. 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 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. For the purpose of computation of limitation, the provisions of Section 16 are to be read in conjunction with Para 10 of the EIA Notification, 2006. The expression 'communicated to him' has to be construed in light of the obligations specified in Para 10 of the EIA Notification, 2006. There is no provision in the NGT Act which explains how and when the order would be treated as communicated to 'any aggrieved person'. Para 10 places different obligations upon each of the stakeholders i.e. the Project Proponent as well as MoEF/SEIAA. The intent of Para 10 of the EIA Notification, 2006 is to place the order granting Environmental Clearance in the public domain. The Para contemplates that order granting Environmental Clearance should be easily accessible and known to public at large as any person who feels aggrieved has a right to prefer appeal under Section 16 of the NGT Act, irrespective of the fact whether he has suffered any personal injury or not.

This aspect has come up for consideration of this Tribunal in various cases where it has taken the view that if any one set of obligations is discharged by a stakeholder and where different stakeholders have complied with their respective obligations, the one earlier in point of time shall trigger the limitation in terms of Section 16 of the NGT Act. At this stage, we may refer to the judgment of the Tribunal in the case of *Save Mon Region Federation & Anr. v. UOI & Ors.* 2013 ALL (I) NGT PB 1 and *Ms.*

(DELHI) 285 where the Tribunal 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.”

In fact, to this preposition of law, there is hardly any dispute raised by the Learned Counsel appearing for the parties. In fact, what has to be seen is whether any of the stake holders in the present case has complied with the requirements of Para 10 of the

EIA Notification, 2006 and when will be that point of time, from where the period of limitation would run.

10. At the first instance, we may deal with the discharge of obligations by the Project Proponent in terms of Para 10 of the EIA Notification, 2006 and the principle stated in the judgments of the Tribunal. It needs to be clarified at this juncture itself that the judgments of the Tribunal in the case of *Save Mon Region Federation & Anr. v. UOI & Ors.* 2013 ALL (I) NGT PB 1 and *Ms. Medha Patkar & Ors. v. MoEF & Ors.* 2013 ALL (I) NGT REPORTER (DELHI) 285, were pronounced on 14.03.2013 and 28.11.2013 respectively. The Environmental Clearance in the present case and its compliance was admittedly completed in the year 2011-12. Thus, compliance to the judgments of the Tribunal cannot be *stricto sensu* applied to the present case in so far as any further safeguards specifically spelled out in Para 10 to the Notification of 2006 are concerned.

11. According to the Project Proponent, immediately upon receipt of Environmental Clearance order dated 21st December, 2011, they had made the same available to the Gram Panchayat of the Village, to the Zila Panchayat and offices of Tehsildar, Udaipur on 3rd January, 2012. This order was displayed on the Notice Board of the Tehsildar office from 5th January, 2012 to 5th February, 2012. The Environmental Clearance was displayed on the Notice Board of the District Panchayat of the concerned villages. It was also displayed on the Notice Board of District

Trade and Commerce Centre. The Project Proponent had also uploaded the order in accordance with the requirements of the EIA Notification, 2006 and Clause 13 of the Environmental Clearance order and uploaded it on its website which could be downloaded on and after 2nd February, 2012. All these acts have been completed by the Project Proponent during the period of 5th January, 2012 to 25th February, 2012. Furthermore, on 10th January, 2012, the Project Proponent had published the fact of having received the Environmental Clearance in the two local daily newspapers i.e. Ambikavarni and Nayiduniya, which have circulation in the areas in question. In terms of Para 10 of the EIA Notification, 2006, the Project Proponent is required to make public the Environmental Clearance granted for their project along with environmental conditions and safeguards at their cost, prominently, in two local newspaper of the district and also to display the same on their website permanently. Copies of the Environmental Clearance is to be submitted by the Project Proponent to the heads of local bodies and Panchayats, in addition to the relevant offices of the Government, who, in turn, have to display the same within 30 days from the date of its receipt. The Project Proponent claims that it had complied with the above obligations and for the requisite period. The copies of these documents have been placed on the record of the Tribunal by the Project Proponent.

12. The Learned Counsel appearing for the appellant has raised two objections in regard to compliance and discharge of its obligations by the Project Proponent in terms of the requirements of Para 10 of the EIA Notification, 2006. Firstly, the order granting Environmental Clearance did not specifically mention 'Parsa East' and it was not visible on the website of the Project Proponent till March, 2013 as per the archiving software. Secondly, complete order dated 21st December, 2011 was not published in the newspapers in its entirety and as per the requirements of the EIA Notification, 2006.

13. Though there is no dispute before the Tribunal as to proper display of the Environmental Clearance order dated 21st December, 2011 on the Notice Board of the required Panchayat/Authorities for the requisite period. However, it is contended that the Notices displayed on these Notice Boards were in English instead of the local language and thus, there is non-compliance of the requirements of law. This contention is without substance in as much as no specific details thereof have been stated in the appeal. A vague averment cannot form the basis of interference in the passing of such an order, particularly, when there is clear admission on the part of the appellant that the notices were displayed on the Notice Board as afore-stated.

14. It is not the displaying of order on its website by the Project Proponent which is the subject matter of dispute before the Tribunal, even in terms of the objections taken by the appellant in

that behalf. We may notice here that the Project proponent which is a Government Company of the State of Rajasthan has placed on record screenshot of its website as annexure R4/2 at page 84 of the paper book. This depicts various aspects of this company, including reference to the Environmental Clearance and the capsule story of the company, while referring to the new power reforms of this company. This document does not refer to the project at Parsa East. Firstly, this document is a very general document and this site was corrected, modified and made more specific by the Project Proponent vide the screen shot placed at Page 152 of the paper book, where the project, both at Parsa East and Kanta Basin Open Cast Coal Mine project are referred and it is also stated that more information was available on the site. The modification had been carried out in November, 2012 while the screen shot was captured between 23rd March, 2013 and 7th April, 2013 respectively.

15. The other limb of this objection is that the order dated 21st December, 2011 was not visible on the website till March 2013. In support of this contention, reference is made to the document placed on record in relation to the information provided through the archiving software.

16. On behalf of the Project Proponent, it is submitted that the Environmental Clearance had been duly uploaded on the website on 2nd February, 2012 and was downloadable thereafter. In support thereof screen shots have been placed on record.

Denying the contention that the order was not visible on the website, it is further submitted that the website “wayback machine” clearly disclaims that the calendar view maps the number of times <http://www.rvunl.com> was crawled by the wayback machine and not the number of times the site was actually updated. In the alternative, it is also submitted that the allegation is false since the very same alleged archiving software shows the Environmental Clearance to be available on 10th March, 2012 as per the screen shots placed on record from the “wayback machine”, along with the home page of the Project Proponent’s website. Even on the website of the Project Proponent, if one was to click on ‘EC Clearance New’, the document referred by the appellant, then the entire Environmental Clearance would appear on the website on which Parsa East, Kanta Basan, Salhi, Hariharpur, Ghatbara, Parogiya, all villages relating to the project in question, are seen in the Environment Clearance dated 21st December, 2011. The screenshots of both these documents, part of which has been relied upon by the appellant, is placed on record at pages 234-235 of the paper book. This also shows that during the period of 7th April, 2008 to 26th December, 2013, the site was captured 97 times. These documents also show that the Environment Clearance dated 21st December, 2011 has been displayed completely on the website of the Project Proponent.

17. Now, we revert to the allegation that the Environment Clearance dated 21st December, 2011 had not been published in

the local newspapers in its entirety. According to the Project Proponent, Environment Clearance order dated 21st November, 2012, had been duly published in the local newspaper as per the requirement of the EIA Notification, 2006. This was not only a *simplicitor* publication of intimation, but it was also publicly notified through publication in the newspaper, that the project related to Parsa East and Kanta Basan open-cast Coal Mining project has received the Environment Clearance. It further stated that the copy of the Environment Clearance is available in the mining office and Regional Officer, Environment Protection and could also be seen at the website <http://envfor.nic.in> of Ministry of Environment and Forests. In other words, there were clear notices to the public at large that the Environment Clearance had been granted to the project in question and the complete and comprehensive order was available on the website as well as in the office of the concerned authority. The allegation that the newspapers in which the order was published do not have wide circulation and the size of the advertisement was small, are again contentions without merit. It may be noticed at this stage that in terms of Para 10 of EIA Notification of 2006 in case of category 'A' project, the Environmental Clearance conditions and safeguards should be promptly advertised at least in two local newspapers of the district or State where the project is located and it shall also be displayed on the Project Proponent's website permanently. Paragraph 10 does not contemplate what should be the size of the

advertisement that is published in the newspaper by the Project Proponent. The copy of the newspapers where details of Environment Clearance and its availability on the website of the Project proponent was published, has been placed on record and they show that it was published prominently. Furthermore, it is not averred in the application by the appellant that if the two newspapers, namely Ambikavarni and Nayiduniya, are not widely circulated papers in the district or the State then which are the newspapers which have such wide circulations in the area where project is located. In absence of such specific averment, it cannot be held that the publication effected by the Project Proponent in the two local newspapers is not in compliance with the requirements of law. The expression 'prominently' has to be given its pragmatic and practical meaning in context with the scheme and purpose of the EIA Notification, 2006. The purpose and object of using such an expression is to ensure that the publication is effected in a manner that it should be easily noticeable and readable by the public at large. In common parlance, 'prominent' would be projecting for something or situated so as to catch the attention. In this context thus, it would be to make the publication of the Environmental Clearance order noticeable by all concerned so as to ensure that the public at large does not have to make special and concerted efforts to look for such information. From the documents placed on record, it is clear that the publication in the newspapers was made in the manner and print

that it was easily noticeable by the public at large. All this is further to be examined in the backdrop of the admitted position that the copy of the order granting Environmental Clearance had been placed on the notice board of the Panchayats, Tehsildar, State Administration offices and other local bodies for the duration of 30 days. This compliance is in accordance with the EIA Notification, 2006 and the full copy of the order dated 21st December, 2011 was available through the website as well as through the various modes as afore-referred.

18. According to MoEF, it had uploaded the order dated 21st December, 2011 on its website during the last week of December, 2011. This was done under the “Coal Mining Category” as per normal practice. To this affidavit of MoEF dated 26th August, 2014, there is no rebuttal. Another factor which substantiates the stand taken by the Project Proponent is the letter dated 27th July, 2012, which was duly uploaded on the website of the MoEF on 30th July, 2012 and which specifically referred grant of Environmental Clearance to the Project Proponent. The factum and existence of this letter stands admitted by the appellant. In Para 4 of the Affidavit dated 16th April, 2013 filed on behalf of the MoEF which again remains un-rebutted, it has been specifically averred that in the letter dated 27th July, 2012, the appellant had sought permission for an interim washery of 2 MTPA capacity which was received by MoEF on 30th July, 2012 and the same was prominently uploaded on the same date i.e. on 30th July, 2012 in

the “Coal Mining Category”. This fact has been admitted by the Project proponent. Para 2 of the letter dated 27th July, 2012 specifically refers to the order dated 21st December, 2011 and the details of the project. It is thus, evident that even the appellant does not dispute that the order dated 21st December, 2011 was on the website of the MoEF much prior to July, 2012.

19. In view of the above detailed discussion, it is clear that the Order dated 21st December, 2012 according Environmental Clearance to the Project Proponent was put in the public domain to ensure that public at large or any of its member can access or be informed of the said order by examining its hard copy or downloading the same from the website either of the Project Proponent or MoEF between December, 2011 to July, 2012. During this period, the Project Proponent as well as MoEF had also discharged their obligation in terms of EIA Notification, 2006.

20. This Tribunal has already settled the law as far as the expression ‘communication’ appearing in Section 16 is concerned, in the cases of *Save Mon Region Federation & Anr.* (supra) and *Ms. Medha Patkar & Ors.* (supra). The expression ‘communication’ would invite strict construction and it would mean complete knowledge of the ingredients and grounds under law, for enabling the aggrieved person to challenge the order. ‘Communication’ has to be understood in contradistinction to a mere intimation. ‘Communication’ is completed and limitation would start running when any of the modes specified in the Rules is completed by any

of the stakeholders. Completion by any of the stakeholders earlier in point of time would make the limitation run *in rem*, as it could be any aggrieved person who could challenge the order granting Environmental Clearance. So in the present case, the limitation would start running right from December, 2011 and even if the contention of the appellant is taken on its face value to be correct, then from July, 2012. The present appeal was instituted on 19th March, 2013, much beyond the period of 90 days from the date of 'communication' of the impugned order.

21. It will be appropriate for us to notice another aspect of the case i.e. the conduct and attitude of the appellant. The appellant is a practising lawyer and environmental activist. He has appeared in various cases before the Courts and the Tribunal raising environmental issues in various matters. Amongst others, the appellant had challenged the grant of Forest Clearance order dated 15th March, 2012 to the same project by filing Appeal No. 73 of 2012, which has been disposed of on 24th March, 2014 by this Tribunal. He is a person who is well conversant with the procedure that is followed for grant of such Environmental Clearances. It is difficult for us to believe that the appellant came to know of the order dated 21st December, 2011 only when he was given a copy thereof during the course of hearing of Appeal No. 73 of 2012, where he had challenged the Forest Clearance in relation to the same project. He is a person who is computer and internet literate. Viewed from any angle, the vigil with which he has

pursued his other remedies does not support the theory of unawareness or ignorance of the appellant of the Environmental Clearance order dated 21st December, 2011. The conduct of the appellant is against the very germane of human conduct, expected of such an environmentalist. He cannot claim concessions that may be available to a person in law if he was an illiterate, ignorant villager, living in remote areas and having no access to the modern technology.

22. In the case of *Ms. Medha Patkar & Ors. (supra)*, this Tribunal had clearly stated that a person who wishes to invoke the jurisdiction of a Tribunal or a Court has to be vigilant of his rights. The bar of limitation not only bars the institution of a petition before the Tribunal, but also results in the accrual of a definite legal right to the other side. Such right cannot be taken away on the mere asking or on the basis of vague averments. Being vigilant of his rights and alive and conscious to the remedy provided, are the twin basis for claiming a relief under the principles of limitation. In our considered view, the appellant has failed to establish that the present appeal has been instituted within the prescribed period of limitation initially or extended (i.e. within 90 days of the communication of the order). The appeal having been instituted much beyond the period of 90 days, this Tribunal has no jurisdiction to condone the delay in filing the appeal.

23. We find merit in the contentions raised on behalf of the Respondents that an appeal which is filed beyond the prescribed period of limitation has to be accompanied by an application for condonation of delay in terms of proviso to Section 16 of the NGT Act, and only thereafter the delay can be condoned by the Tribunal when sufficient cause of action is shown for filing the appeal beyond the prescribed period of limitation. In support of this contention, reliance has been placed on these three cases: *Ragho Singh v. Mohan Singh and Ors.* (2001) 9 SCC 717, *Dipak Chandra Ruhidas v. Chandan Kumar Sarkar*, (2003) 7 SCC 66 and *Sneh Gupta v. Devi Sarup and Ors.* (2009) 6 SCC 194. As is evident, the appeal has been filed beyond the prescribed period of limitation and is admittedly not accompanied by any application for condonation of delay. In the case of *Dipak Chandra Ruhidas* (Supra), the Supreme Court even dismissed the appeal by revoking the leave already granted, where the appeal was filed beyond the prescribed period of limitation and later on, it was pointed out that the appeal was not accompanied by an application for condonation of delay. The contention that delay would be admitted to have been condoned, as leave was granted, was not accepted by the Supreme Court. In the case of *Sneh Gupta (supra)*, the Supreme Court clearly observed that the Court had no jurisdiction to condone the delay in terms of Section 3 of Limitation Act, 1963, in absence of an application for condonation of delay.

In view of the above clear position of law, the present appeal is also liable to be rejected on this ground alone.

24. Resultantly, and for reasons afore-recorded, we accept the contentions raised on the behalf of the Respondents that the present appeal is barred by time and that this Tribunal has no jurisdiction to condone the delay and to entertain the appeal. Resultantly, the present appeal is dismissed as being barred by time.

Hon'ble Mr. Justice Swatanter Kumar
Chairperson

Hon'ble Mr. Justice M.S. Nambiar
Judicial Member

Hon'ble Dr. D.K. Agrawal
Expert Member

Hon'ble Prof. A.R. Yousuf
Expert Member

Dated: September 25, 2014