

**BEFORE THE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE) BENCH, PUNE
MISC. APPLICATION No. 607 OF 2013
IN
APPEAL NO.77 OF 2013**

CORAM:

**Hon'ble Shri Justice V.R. Kingaonkar
(Judicial Member)**

**Hon'ble Dr. Ajay A. Deshpande
(Expert Member)**

B E T W E E N:

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- 19. Shri. Anant Dadu Kamble**
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- 20. Shri. Mohan Vishwanath Talekar**
S/o Shri. Vishwanath Abaji Talekar
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- 21. Smt. Rabudevi Bahadursingh Vishwakarma**
W/o Late Shri. Bahadursingh T. Vishwakarma
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22. Shri. Surendra Harinath Yadav

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23. Shri. Uthman Krishanan Panicker

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24. Shri. Rajendra S. Lohar

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26. Shri. Bhagwan Ramchandra Sabat

No.7, Mohammadali Chawl,
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.....Applicants

A N D

1. ARIHANT REALTORS

101, Nilkanth Nagar,
BPS Cross Road,
Opp. Bank of India.
Mulund (w),
Mumbai-400 080.

2. Member Secretary,

State Level Impact Assessment Authority,
217, 2nd Floor, Ministry of Environment,
Mantralaya Mumbai-400 032.

3. Member Secretary,

State Level Expert Appraisal Committee
217, 2nd Floor, Ministry of Environment,
Mantralaya Annexe, Mumbai-400 032.

4. Ms. Valsa Nair Singh,

Secretary Environment,
Govt. of Maharashtra
217, 2nd Floor, Mantralaya Annexe,
Mumbai-400 032.

5. The State of Maharashtra

Through Its Environment Department,
Mantralaya, Mumbai-400 032.

6. Slum Rehabilitation Authority,

5th Floor, Griha Nirman Bhavan,
Bandra (East)
Mumbai-400 051.

7. Pandit (SRA) Co-operative Housing Society

Shashtri Nagar, Bal Rajeshwar Road
Mulund (w)
Mumbai-400 080.

8. Union of India

Through its Secretary,
MoEF,
New Delhi.

.....Respondents

Counsel for Applicants

Mr. Tushar Kochale,

Counsel for Respondent(s):

Mr. P.B.Mahabal, for Respondent No.1.

Mr.D.M.Gupte, with Ms, Supriya Dangre, for Respondent
Nos 2 to 5

Mr. Abhay Parab, for Respondent No.7.

Date: 13th January, 2014

J U D G M E N T

1. This is an Application filed by the Appellants for condonation of delay in filing of the Appeal under Section 16 of the National Green Tribunal Act, 2010. They submit

that they have acted vigilantly and the Appeal is preferred within the timeframe, though there is delay of 7days caused due to certain justifiable grounds, and as such, they seek condonation of delay. The Appellants are hereafter referred to as “Applicants”. They filed Appeal No.77 of 2013, being aggrieved by the order of Environment Clearance (EC) dated 20th February, 2013, passed by the State Environment Impact Assessment Authority (SEIAA). The SEIAA, granted EC to the Respondent No.1 (M/s Arihant Realtors) for construction project of the Respondent No.7, Pandit (SRA) Co-operative Housing Society Ltd.

2. Briefly stated, the background facts of the case are that there was proposal of “Pandit (SRA) CHS Ltd”, Residential cum Commercial Project, under the Slum Rehabilitation Authority’s Development Scheme. The housing project was to be undertaken on plot bearing CTS No.4/6(pt), 4/7(pt), 7,7/1 to 3, 9(pt), 9/1 to 4, 10(pt) of village Mulund (w) Mumbai. The total plot area is 7159.40 sq mtr(FSI: 19573.59 M.Sq. + Non FSI: 19868.5 M.Sq). It is not, however, necessary to give all the details of the Project. It would suffice to state that the Project was duly considered by the SEIAA, in accordance with the MoEF Notification dated 14th September, 2006, on basis of Application, conditional EC was granted on 20-2-2013, submitted by the Project Proponent i.e. the Respondent No.1. The Applicants objected to the proposed Project on

various grounds. The Applicants claim to be the members of “Pandit (SRA) Co-operative Housing Society, where redevelopment is proposed to be carried out. They allege that the Project Proponent commenced the Project activities even before the EC was granted. One of them by name Shri. Vinod Padiyar, issued a Notice dated 11th February, 2013, under Section 19(b) of the Environment (Protection) Act, 1986, for filing of a criminal complaint of which a copy was given to the Director (Environment). He received reply from the Deputy Director, Dr. B.N.Patil, vide communication dated 10th April, 2013 that the Project Proponent was called upon to send a copy of the EC. The development project is sought to be illegally carried out on the plot, which is declared as ‘Slum Area’ under the provisions of Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 and the project property is declared as slum on private land under Section 4(1) of the Maharashtra Slum Areas (I.C.R) Act, 1971. The Project Proponent completed the construction work of Wings ‘B’ ‘C’ ‘D’ Buildings, as per LOI, without obtaining prior EC and committed various lapses. The Applicants have given elaborate account of illegality and lapses committed by the Project Proponent in the Memorandum of their Appeal.

3. By filing reply affidavit, Respondent No.1 (Project Proponent- Arihant Realtors), resisted the Appeal on various grounds. Amongst those grounds, one of the ground put

forth by the Project Proponent, is that the Appeal is barred by limitation. The Project Proponent (Respondent No.1), pointed out that the EC was granted on 20th February, 2013 and its knowledge was immediately gained by the Appellants/Applicants, because that was put on the website of the Environment department. It is further contended that the Respondent No.1, issued advertisement in the local Newspapers, as per the procedure laid down in the MoEF Notification dated 14th September, 2006, on 30th and 31st May, 2013. According to the Respondent No.1, since the Appeal is filed in July, 2013, it is beyond the prescribed period of limitation, and as such, is liable to be dismissed on that ground itself. The Respondent No.1, urged to decide the issue of limitation as a preliminary issue and dismiss the Appeal, since it is barred by limitation. The Respondent No.1, submitted that the Appeal cannot be entertained, because this Tribunal has no power to entertain the same, beyond the period of Ninety (90) days, because even after including expansion period of sixty (60) days, the outer limit will end on 21st May, 2013.

4. Above detailed reply affidavit was filed by the Respondent No.1 on 16th September, 2013. In the meanwhile, present Misc Application No.607 of 2013, was filed by the Applicants for condonation of delay.

5. According to the Applicants, after the Notice dated 11th February, 2013, issued for prosecution under Section

19(b) of the Environment (Protection) Act, they had received reply from the Director, Environment Department that the copy of EC was called for from the Project Proponent and as such, they laboured under impression that till that date the EC was not granted. They had no knowledge of the EC till 1st April, 2013, in view of the communication issued by the Director, Environment Department, Maharashtra. They submitted that on 22nd April, 2013, their premises were demolished by the Competent Authority under police protection. They filed a complaint dated 22nd April, 2013, with the office of Deputy Collector (ER) Mumbai, alleging that the premises were illegally demolished. They visited the office of SRA on 30th April, 2013. They were provided with copy of the EC letter dated 20th February, 2013, during such visit and were told that further details were available on the website of the Environment Department. Thus, for the first time, they came to know about the grant of impugned EC on 30th April, 2013. They approached the Counsel in Mumbai for filing of the Appeal without any delay. The Counsel prepared a draft of the Appeal and sent it to the National Green Tribunal (PB) New Delhi on 20th May, 2013. The Registry of the NGT, informed that the Memorandum of Appeal was required to be filed, in accordance with the format as per the National Green Tribunal (Practices and Procedure) Rules, 2011. Thereafter, the Applicants approached the Counsel in Delhi and

arranged for filing appeal in the proper format. They have come out with a case that there is no intentional delay. They further submitted that they are likely to suffer if the delay is not condoned and that they were kept in dark about the grant of EC. Consequently, they urged for condonation of marginal delay of seven (7) days in filing of the Appeal.

6. We have heard Learned Counsel for the contesting parties. We have perused the material placed on record. The fact that the SEIAA, issued a letter dated 20th February, 2013, granting the EC for the development project is conspicuous. The real question is whether the concerned stakeholders were given due information regarding grant of the EC? If so, when the communication was made to them. The next question is as to whether the Applicants have made out a case to show sufficient cause for the purpose of condonation of delay, as required under Section 5 of the Limitation Act, read with proviso appended to Section 16 of the National Green Tribunal Act, 2010?

7. Before we proceed to consider merits of the rival contentions, it would be appropriate to reproduce some of the conditions stated in the EC, which the Project Proponent was required to comply with.

“(v) “Consent for Establishment” shall be obtained from Maharashtra Pollution Control Board under Air and Water Act and a copy shall be submitted to the Environment

department before start of any construction work at the site.

(xlix) The project manager shall advertise at least in two local newspapers widely circulated in the region around the project, one of which shall be in the Marathi language of the local concerned within seven days of issue of this letter, informing that the project has been accorded environmental clearance and copies of clearance letter are available with the Maharashtra Pollution Control Board and may also be seen at Website at <http://envis.maharashtra.govt.in>

(li) A copy of the clearance letter shall be sent by proponent to the concerned Municipal Corporation and the local NGO, if any, from whom suggestions/representations, if any, were received while processing the proposal. The clearance letter shall also be put on the website of the Company by the proponent.

The condition No. (lii) is as follows:

(lii) The proponent shall upload the status of compliance of the stipulated EC conditions, including results of monitored data on their website and shall update the same periodically. It shall simultaneously be sent to the Regional Office of MoEF, the respective Zonal Office of CPCB and the SPCB. The criteria pollutant levels namely; SPM, RSPM, SO₂, NO_x (ambient levels as well as stack emissions) or critical sector parameters, indicated for the project shall be monitored and displayed at a convenient location near

the main gate of the company in the public domain.

8. Thus, it will be explicit that the Project Proponent was under obligation to comply with aforesaid conditions. The Project Proponent himself has come out with a case that the Newspaper publication was made on 30th and 31st May, 2013. So, according to the Project Proponent, the knowledge could be imputed to the stakeholders, in respect of impugned EC, on 30th or least 31st May, 2013. Here, it may be noted that the Applicants presented the Appeal before the National Green Tribunal (PB), New Delhi, for the first time on 7th June, 2013. The Appeal bears stamp of NGT (PB) New Delhi bearing DY No.192 of 2013, dated 7th June, 2013, though it does not bear the signature of Receiving Officer. If we accept the fact that the presentation of Appeal was, in fact, made on 7th June, 2013, then it will have to be said that the Appeal was filed within period of ninety (90) days from date of communication of the EC.

9. What appears from the record is that the preliminary scrutiny of the Appeal was made by the Office of NGT (PB) New Delhi, on 19th July, 2013, and thereafter, it was placed before the Principal Bench for admission on 22nd July, 2013. It appears that since First Order of the Assistant shows that scrutiny of the Appeal was made on 19th July, 2013, the objection has been raised by the Project Proponent, that the Appeal is barred by limitation. As a

matter of fact, the Order dated 19th July, 2013, only shows that preliminary scrutiny of the Appeal was made on 19th July, 2013. We do not, however, think it proper to outrightly dislodge the office endorsement of the NGT (PB) New Delhi, which shows that entry was made vide DY No.192 of 2013, dated 7th June, 2013. In this context, it is pertinent to note that the Applicants have categorically stated on affirmation in the affidavit (paragraph 7) as shown below:

“7. That thereafter the Appellants approached the Counsel in Delhi, who arranged Appeal in the proper form and filed the same before the Hon’ble Tribunal on 6th June, 2013”

10. We may mention that the above categorical statement made in the Application for condonation of delay, has not been traversed by the Project Proponent. Needless to say, it will have to be accepted that the Appeal was, in fact, filed on 7th June, 2013, in the office of the NGT (PB) at New Delhi. According to the Applicants, for the first time on 30th April, 2013, they received information that the EC was issued on 20th February, 2013. The Project Proponent has not pointed out as to when the EC was put in public domain by the State Environment Department. The Project Proponent has not given any sufficient explanation as to why there was no immediate action taken for publication of Notices in the Newspapers. It appears that the Newspaper publication was made in English daily Newspaper of 30th

May, 2013 and in Marathi (vernacular) Newspaper of 31st May, 2013.

11. We have perused the affidavit filed on behalf of the Respondent Nos.2 to 5, by Shri.A.M.Pimparkar. His affidavit shows that he is the Scientist-I, working in Environment Department (GoM). His affidavit shows that the EC letter was placed on the website of the Ministry w.e.f. 13th March, 2013. The affidavit further shows that SEIAA, placed the EC on the website on 13th March, 2013, along with concerned Agenda recommendations of the SEAC and the SEIAA respectively. He explained that the communication dated 1st April, 2013, was issued in response to the Notice-cum-letter of Applicant- Shri.Vinod Padiyar, in order to fulfil the legal requirements.

12. Even though it be accepted that the EC letter was put on the website of Environment Ministry on 13th March, 2013, as stated in the additional affidavit of Shri. A.M.Pimparkar, then also the Appeal filed on 7th June, 2013, is within period of ninety (90) days, from the 1st day of communication. For, assuming that the limitation triggered on 13th March, 2013, then also the Applicants are entitled to explain the delay, which has occurred beyond permissible period of thirty (30) days. There is no dispute about the fact that the demolition process had commenced on 2nd April, 2013. Obviously, the Applicants had reason to make serious inquires thereafter. We cannot lightly brush

aside the version of the Applicants that they were under impression that due to communication received by them from the Director (Environment) vide letter No.142 of 2013, in response to the Notice dated 11th February, 2013, issued by Applicant Shri. Vinod Padiyar, under Section 19(b) of the Environment (Protection) Act, 1986, there was a reason to believe that the EC was not granted till 1st April, 2013. The Director (Environment) could have plainly informed Applicant Vinod Padiyar that the EC was issued and therefore the Notice under Section 19(b) could not be acted upon. That was not done.

13. In case of “Seva Mon Region Federatin Vs Union of India” (MA No.104 of 2012, arising out of Appeal No.39 of 2012) 2013(1) All (1) NGT PB (1) (1), the Hon’ble Principal Bench of this Tribunal consisting of Hon’ble Chairperson and other four (4) Hon’ble Members, has observed that:

The Project Pronent had measerably failed to comply with the statutory obligation placed upon him in terms of regulation 10(i) (a). He only published an intimation stating that the Environmental Clearance, has been granted. The company never published the environmental conditions and safeguards in the two newspapers, as required under the said Regulation. In fact, there is no compliance of Regulation 19 (i) (a) as well as proper compliance of Condition 13, of the Environmental Clearance order dated 19th April, 2012, by the Project Proponent. It was further expected of the Project Proponent to provide copies of the Environmental Clearance to the Heads of the local bodies, Panchayats, Municipal Bodies, in addition to providing the same to the relevant officers of the Government, who in turn were expected to publicly display the same for a period of 30 days. From the

record available before us, it cannot be stated that this Regulation was complied with. (Para 57)

The MoEF claims to have put the order of Environmental Clearance on the website on 22nd May, 2012, thus, 30 days would expire on 21st June, 2012. If we accept this contention, then the appeal would be barred 26 days. We have already recorded that the website of the MoEF, was not accessible as late as 5th June, 2012 and, therefore, we would believe the version given by the applicant that he could download the order from the Minister's website only on 8th June, 2012 and, therefore, the appeal is barred only by 8 days, which is well within the jurisdiction of the Tribunal to condone being within 60 days, in excess of the prescribed period of 30 days. Even if for the sake of arguments we accept the case of the MoEF, then also the appeal would be barred by 26 days which again falls well under the prescribed period of 60 days, and such delay is condonable by the Tribunal. (Para 60)

Not even a single instance of negligence, carelessness has been pointed out by the non-applicant before us. In any case, it would hardly lie in the mouth of Project Proponent and the MoEF to raise an objection of limitation as it has been established on record that both of them have failed to comply with their statutory obligations. They cannot be permitted to take advantage of their own wrong, particularly, the Project Proponent, who has committed defaults under Regulation 10(i)(a) as well as Regulation 10(i) (d) of the Environment Clearance Regulations, 2006 (Para 61)

We do hereby condone and direct the Appeal to be heard on merits. (Para 62)

14. In case of "Seva Mon Region Federatin Vs Union of India" (MA No.104 of 2012, arising out of Appeal No.39 of 2012) 2013(1) All (1) NGT PB (1) (1), the Hon'ble Principal Bench of this Tribunal consisting of Hon'ble Chairperson and other four (4) Hon'ble Members, has observed that:

The Project Proponent had miserably failed to comply with the statutory obligation placed upon him in terms of regulation 10(i) (a). He only published an intimation stating that the

Environmental Clearance, has been granted. The company never published the environmental conditions and safeguards in the two newspapers, as required under the said Regulation. In fact, there is no compliance of Regulation 19 (i) (a) as well as proper compliance of Condition 13, of the Environmental Clearance order dated 19th April, 2012, by the Project Proponent. It was further expected of the Project Proponent to provide copies of the Environmental Clearance to the Heads of the local bodies, Panchayats, Municipal Bodies, in addition to providing the same to the relevant officers of the Government, who in turn were expected to publicly display the same for a period of 30 days. From the record available before us, it cannot be stated that this Regulation was complied with. (Para 57)

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We do hereby condone and direct the Appeal to be heard on merits. (Para 62)

15. In “*Padmabati Mohapatra Vs Union of India* “ (MA No.79 of 2012 in Appeal No.29/2012), the Hon’ble Principal Bench of this Tribunal, headed by the Hon’ble Chairperson, has reiterated the legal position in paragraphs 20 and 21 thereof. We deem it proper to reproduce both the paragraphs as follows:

“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 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 according with law. They failed to put the EC order in the public domain and ensure that nay aggrieved person is able to access such order in accordance with the prescribed procedure and law. In fact, both the 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 list. The objection of limitation when renders a petition, barred by time, it takes away the right of one and protects the right of 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. “*

16. We have pointed out that the EC conditions are required to be complied with by the Project Proponent, so as

to make the EC legal and valid. The Applicants have placed on record the copies of the communications issued by the MPCB, which show that Show-cause Notices have been issued to the Project Proponent, as regards commencement of the construction, without obtaining prior Consent from the MPCB. It is, of course, not necessary to consider whether the Project Proponent gave adequate reply and such proceedings have been closed, or are still pending. It would be suffice to say that the Applicants have demonstrated that they were unable to get due information about the EC till the publication appeared in the Newspapers. Secondly, even though we assume that the limitation period triggered from the date of placement of the EC letter on the website of the Environment Ministry, then also further developments can be considered as 'sufficient cause' for condonation of the delay, which has occurred after initial period of thirty (30) days, in as much as, the Appeal filed on 7th June, 2013, is well within ninety (90) days period from that date, when the EC was put on the website of the Environment Ministry. Needless to say, the objection raised by the Project Proponent, is liable to be rejected. The Application, therefore, succeeds and will have to be allowed. We accept the explanation of the Applicant and deem it proper to condone the delay.

17. In the result, the Application is allowed. The delay is condoned. The Appeal is to be heard on merits.

....., **JM**
(Justice V. R. Kingaonkar)

....., **EM**
(Dr. Ajay.A. Deshpande)



NGT