BEFORE THE NATIONAL GREEN TRIBUNAL

(WESTERN ZONE) BENCH, PUNE

M.A. No. 151/2014 and
M.A.No. 154/2014
IN
APPEAL No. 28/2014 (WZ)

CORAM:

Hon'ble Mr. Justice V.R. Kingaonkar
(Judicial Member)
Hon'ble Dr. Ajay A. Deshpande
(Expert Member)

B E T W E E N:

Wireless Co-operative Housing Society,
Survey No. 167/2B-168/2B.
Aundh, Pune
Through : Authorized Members,
Sau Usha Thakur and Dr. Deobagkar,

....Applicant.

A N D

1. **Chaitrali Builders/Sumashilp (P) Ltd.,**
   The Chief Engineer,
   93/5, Erandwane,
   Pune-411 004.

2. **The Ministry of Environment and Forest.**
   Government of India,
   Through Principal Secretary,
   Paryavaran Bhavan, CGO Complex,
   Lodhi Road, New Delhi 110 510

3. **Maharashtra Pollution Control Board,**
   2nd Flood, Jog Centre, Mumbai-Pune Road,
   Wakdewadi, Pune

4. **Pune Municipal Corporation,**
   Through : The Commissioner, and
   Health Officer, (Health Department)

Aundh Kshetriya Karyalaya,
Pune Municipal Corporation

5. Government of Maharashtra,
Through : The Secretary,
Environment Department,
Room No.217, 2nd Floor,
Mantralaya Annexe,
Mumbai 400 032**.**

.....**Respondents**

Counsel for Appellant :

Mr. S.R. Bhonsle, Adv. a/w.
Mr. A.D. Bhonsle, Adv.

Counsel for Respondent No. 1 :

Mr. Asim Sarode, Adv. a/w.
Mrs. Alka Babladi, and
Mr. Vikas Sarode, Advs.

Counsel for Respondent No. 2 :

Dr. Mahashabde, Adv.
Ms. Shweta Busar, holding for
Mr. Ranjan Nehru, Adv.

Counsel for Respondent No.3 :

Mr.Saurabh Kulkarni, Adv. a/w.
Mrs. Supriya Dangare, Adv.

Counsel for Respondent No.5 :

Mr. R.B. Mahabal, Adv.

DATE : May 26th, 2015

J U D G M E N T

1. The original Appellant i.e. Wireless Co-operative Housing Society has filed an Appeal under Section 16 and Section 18 of National Green Tribunal Act, 2010, challenging the extension granted on 11-6-2014 by Respondent No.5 to the Environment Clearance originally

granted to project of Respondent No.1 by the MoEF i.e. Respondent No.2 on 7-12-2007. It is the stand of the original Appellant that he came to know about such extension of validity of Environmental Clearance, only through the Affidavit filed by MPCB in another Application No. 48/2014 on 17-7-2014. The main contention of the Appellant is that the Environmental Clearance dated 7-12-2007 was granted by MoEF subject to certain terms and conditions which are more specifically stated in the Communication dated 7-12-2007. This Environmental Clearance had certain specific conditions as well as general conditions and the Communication clearly records that the environmental clearance is accorded subject to the strict compliance of the specific and general conditions stipulated in the environmental clearance communication. The original Appellant, therefore, claims that the project proponent was expected to comply with all conditions faithfully at all times including construction of the project and operation of the project. The original Appellant further submits that this Environmental Clearance was valid for period of five (5) years from the date of grant of environmental clearance i.e. 7-12-2007. The State Environmental Impact Assessment Authority (SEIAA) thereafter considered the project for revalidation purpose in its 70th meeting and accordingly the EC validity was extended for further period of five (5) years vide the

impugned order. The original Appellant raised several contentions including non compliance of the EC conditions by the project proponent, non-application of mind by the authority by not considering the compliance and also, whether any changes of modifications have been made by the project proponent. It is the stand of the original Appellant that the MPCB has issued Show Cause Notice as well as refused the consent and similarly, violation of noise norms were also observed by MPCB. In any case, the Application filed by the original Appellant against the project proponent was under consideration of the Tribunal in the form of Application No.48/2014. Based on such various grounds, the Appellant has challenged the impugned order, whereby the validity of the original EC was extended by way of this Appeal.

2. The original Appellant filed M.A.No. 151/2014 wherein it would submit that though the re-validation of EC was issued on 11-6-2014, he could get the knowledge of such extension only on 17-7-2014 through the Affidavit filed by MPCB, whereas the present Appeal was filed on 2-9-2014. The original Appellant submits that such communication of extension of validity was not posted on the environment department/SEIAA website nor it was published in any of the newspaper. Therefore, it is the contention of the original Appellant that considering the date of knowledge as 17-7-2014, there is a delay of 18

days caused in filing of the present Appeal. It is submitted that time was required to conduct the requisite procedural meetings amongst the Members of Appellant- Society and to take suitable legal advice for filing of Appeal. So the original Appellant has prayed for condonation of delay for 18 days in filing the present Appeal.

3. Respondent No.1-Project Proponent filed the Misc. Application No. 154/2014 and pointed out that in the present Appeal, the Appellant is trying to challenge the extension of the EC. The original EC is issued on 7-12-2007. Under Section 16 of National Green Tribunal Act, any Appeal can be filed within 30 days and maximum period of condonation of delay, cannot go beyond further 60 days. Considering the original date of EC, the present Appeal has not been filed in the stipulated time period and is therefore, barred by limitation. Further, the Respondent No.1 has filed Appeal before the Appellate-authority constituted under provisions of Water (Prevention and Control of Pollution) Act, 1974 against refusal of grant consent to operate and original Appellant was then given liberty to join the proceedings and therefore, the Respondent No.1 has prayed that the Appeal may be dismissed as not maintainable and barred by limitation.

4. Considering this limited compass of the dispute involved in this matter, the following points are necessary to be determined for deciding the preliminary issue :

1) Whether the extension of environmental clearance can be challenged before the Tribunal under provisions of Section 16 of the National Green Tribunal Act ?

2) Whether the condonation of delay as prayed by the original-Appellant can be considered and granted ?

Point Nos.1 & 2 :

5. Before entering into the thickets of points raised above, it will be necessary to revisit the relevant provisions of the National Green Tribunal Act, as well as the EIA Notification, 2006 for clarity. Section 16 of the NGT Act, is related to the Appellate jurisdiction of the Tribunal. The relevant provision for Appeal against the EC is reproduced below :

16. ***Tribunal to have appellate jurisdiction:-***

(a) - - - - -

(b) - - - - -

(c) - - - - -

(d) - - - - -

(e) - - - - -

(f) - - - - -

(g) - - - - -

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

(i) - - - -

(j) - - - -

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

6. The EIA Notification, 2006 has special provision related to the validity of the Environmental Clearance. The relevant clause is as under :

> ***9. Validity of Environmental Clearance (EC)****. The "Validity of Environmental Clearance" is meant the period from which a prior environmental clearance is granted by the regulatory authority, or may be presumed by the applicant to have been granted under sub-paragraph (iv) of Paragraph 7 above, to the start of production operations by the project or activity, or completion of all construction operations in case of construction projects (item 8 of the Schedule), to which the application for prior environmental clearance refers. The prior environmental clearance granted for a period or activity shall be valid for a period of ten years in the case of River Valley projects (Item l(c) of the Schedule), project life as estimated by Expert Appraisal Committee or State Level Expert Appraisal Committee subject to a maximum of thirty years for mining projects and five years to the case of all other project and activities. However, in the case of Area Development projects and Townships (Item 8(b), the validity period shall be limited only to such activities as may be the responsibility of the applicant as a developer. This period of validity may be extended by the regulatory authority concerned by a maximum period of five years provided an application is made to the regulatory authority by the appellant within the validity period, together with an updated Form 1, and Supplementary Form 1-A, for construction projects or activities (Item 8 of the Schedule). In this regard the regulatory authority may also consult the Expert Appraisal Committee or State Level Expert Appraisal Committee as the case may be.*

7. We had raised certain queries with the State environment department and detailed Affidavit was filed by the environment department on 7-10-2014. It is contended that the SEIAA Maharashtra has powers to extend the period of validity of EC by following the procedure as stipulated in Clause (9) of the EIA Regulations. It is further contended that the Appellate jurisdiction of the Tribunal can be attracted under Section 16(h) of the NGT Act, however, the original EC was granted on 7-12-2007, which is prior to the commencement of NGT Act. The impugned order is only for the extension of validity period and there is no new project, addition, expansion, modernisation or change of project mix which requires, separate or new Environmental Clearance. The impugned order is only the extension letter and all the terms and conditions of the original EC remains the same and therefore, it is the contention of the environment department that the extension of EC cannot be presumed or treated as grant of any fresh/new EC which would attract provisions of Section 16(h) and therefore, the impugned order is not appealable under the NGT Act.

8. Further, the environmental clearance even after the grant of extension is very much the same as the old EC granted on 7-12-2007 and therefore, the Environment Department has prayed for dismissal of Appeal. The MoEF filed an Affidavit in the main Appeal on 23-2-2015 and it is

contended that the EC was granted in 2007 and therefore, cannot be appealed before the NGT. However, this affidavit does not offer any comments or submissions as relates to extension of EC.

9. The learned Advocate for the original Appellant argued extensively and argued that the extension of the EC, though may be related to the original EC granted in 2007, but such extension is an independent evaluation and appraisal process which is clear from the wordings of the Clause 9 of the EIA Notification. His contention is that the validity of the environmental clearance is originally fixed for a certain time frame. The EC, itself, is having all pervasive authority for the regulatory agency to control and regulate the project activity including construction and operation of the project as more specifically laid in terms and conditions of the EC documents. In other words, it is his contention that though grant of EC is one time process but the EC has a continuous effect throughout the project life. His further contention is that as per the provisions of Clause 9 of the EIA Regulations, the authority may extend the validity, if the Appellant applies to the authority within the valid period together with an updated form-2 and supplementary form-1A for construction project or activity. He also contended that as per the proviso, the authority may also consult Expert Appraisal Committee or State Level Expert Appraisal

Committee, as the case may be. He contended that the word "may" will have a double prong interpretation. In the instant case, as the decision making process of the authority may decide to either grant or refuse such extension. Further, the authority is expected to consult the SEAC in such cases. He submits that in the present case, the authority i.e. SEIAA had not applied its mind as can be seen from the minutes of the meeting. He contended that the authority is not aware about the present status of the project, present compliance of the original EC, any legal action taken against the project proponent for violation of environmental norms, whether any changes or modifications are done by the project proponent, compliance report of the EC by the competent officer etc. In absence of such information, the authority thought it prudent to approve the extension by just noting that as the project proponent applied for extension of validity in time, the validity be extended for period of five (5) years. In other words, it is the contention of the Appellant that the authority has neither verified the present status of the project including changes/modification, if any, nor it has ensured and verified that the conditions stipulated in the earlier EC have been complied with. His another contention was as per the clause-9 in the absence of such compliance reports and non-availability of information about the present

status, the SEIAA should have referred the matter to the State Expert Appraisal Committee (SEAC) which has the benefit of having environmental experts for consideration of such proposal for extension. He, therefore, contended that in absence of such environmental appraisal and assessment, based on precautionary principle which is basic principle of the EIA Notification, the authority has mechanically considered such extension on the only ground that the project proponent had applied within the specified time, which is also incidentally not recorded in minutes.

10. Without going into the merits of these allegations, the only aspect which cannot be disputed is that the precautionary principle is underlying theme of the EIA Notification. There cannot be any duality of opinion about the same. We enquired about any guidelines or Office Memorandum issued for consideration of such extension of validity proposals. The learned counsel informed that till the time, such proposal was approved, there were no specific guidelines or otherwise and the SEIAA was required to deal with such proposals on their own, as per clause-9 of the Notification. The only question which we can really cull out is whether the extension of validity of environmental clearance is :-

(a) a part and parcel of the original EC process, or

(b) is a separate activity though linked to earlier EC, or

(c) An independent activity than the original EC.

11. Considering the provisions of Clause-9 of the Notification, the two (2) words i.e. 'extension' and 'validity' are very relevant for amplification of understanding in this context. The 'extension' has been defined in Oxford dictionary :

"A part i.e. added to something to enlarge or prolong it, an additional period of time given to someone to hold office or fulfil an obligation".

The word 'validity' is defined in Oxford dictionary as : the office or fulfil an obligation given to someone to

"the quality of the logical and factual sound".

12. The conjoint reading of the phrase "extension of validity" based on the simple construction would reveal that such extension will be necessarily a separate activity though linked with earlier EC and therefore, we are of the opinion that the extension of validity is a separate activity and process under the provision of EIA Notification 2006 though it is linked with the earlier EC. This would also be cleared from the provisions of the EIA notification itself wherein such validity has been prescribed for the environmental clearance granted under the Notification. The Legislature has thought it prudent and necessary to adopt the "precautionary approach" by not granting perpetual validity for the EC but to restrict such validity

period by keeping a "proviso" for extension of the same, in order to ensure that the environmental compliance are made by the project proponent. It is clear from the language of the Notification that certain changes/modifications are expected over certain time and therefore, the clause 9 of NGT Act gives a liberty to the project proponent to file updated information. The legislature has also kept a provision which we think is essentially based on precautionary principal to refer the matter to SEAC by the SEIAA in such cases. However, at the same time as discussed above, though extension of validity is a separate activity/process, it is obviously linked with earlier EC. We are of the opinion that such extension of validity can be challenged before the Tribunal but at the same time it will not be proper and appropriate to open up a window of opportunity and litigation which will directly or indirectly challenge the original EC. The challenge to such "extension of validity" needs to be restricted only to such process wherein extension is considered and granted, nothing more and nothing less. This is necessary to protect the project proponent from the delayed litigations when certain investments have been made by the project proponent and substantial development might have been done. At the same time, as explained above, the environmental clearance itself is all pervasive document which imposes specific and general conditions during

execution and operation the project, which project proponent is expected to adhere to, in the entire life cycle of the project.

13. The Hon'ble Principle Bench of National Green Tribunal has also dealt on such aspect in "*Appeal No.1/2013 Ms. Medha Patkar Vrs. MoEF and others*", as under :

> *16. The Tribunal must adopt a pragmatic and practical approach that would also be in consonance with the provisions of the Act providing limitation. Firstly, the limitation would never begin to run and no act would determine when such limitation would stop running as any one of the stakeholders may not satisfy or comply with all its obligations prescribed under the Act. To conclude that it is only when all the stakeholders had completed in entirety their respective obligations under the respective provisions, read with the notification of 2006, then alone the period of limitation shall begin to run, would be an interpretation which will frustrate the very object of the Act and would also cause serious prejudice to all concerned. Firstly, this completely frustrates the purpose of prescription of limitation. Secondly, a project proponent who has obtained environmental clearance and thereafter spent crores of rupees on establishment and operation of the project, would be exposed to uncertainty, danger of unnecessary litigation and even the possibility of jeopardizing the interest of his project after years have lapsed. This cannot be the intent of law. The framers of law have enacted the provisions of limitation with a clear intention of specifying the period within which an aggrieved person can invoke the jurisdiction of this Tribunal. It is a settled rule of law that once the law provides for limitation, then it must operate meaningfully and with its rigour. Equally true is that once the period of limitation starts running, then it does not stop. An applicant may be entitled to condonation or exclusion of period of limitation. Discharge of one set of obligations in its entirety by any stakeholder would trigger the period of limitation which then would not stop running and equally cannot be frustrated by mere noncompliance of its obligation to communicate or place the order in public domain by another stakeholder. The purpose of providing a limitation is not only to fix the time within which a party must approach the Tribunal but it is also intended to bring finality to the orders passed on one hand and preventing endless litigation on the other. Thus both these purposes can be achieved by a proper interpretation of these provisions. A communication will be complete once the order granting environmental clearance is placed in public domain by all the modes referred to by all or any of the stakeholders.*

The legislature in its wisdom has, under the provisions of the Act or in the notification of 2006, not provided any other indicator or language that could be the precept for the Tribunal to take any other view.

17. In a changing society and for progress and growth of the nation, development is necessary. The path of development must not lead to destruction of environment. There has to be a balance struck between the two. In other words, development and environment must go hand in hand to achieve the basic Constitutional goal of public welfare. It is often said that we cannot have development at the cost of environment but the corollary to it is also true that we cannot only have environment and no development. Development and environment need to be seen in complementary and not in antagonistic terms. Inclusive development would not be possible without emphasis on environmental protection. If one reads Section 16 of the NGT Act in conjunction with the clauses of the notification of 2006, the obvious conclusion is that the period of limitation beyond 90 days is mandatorily non-condonable. The Tribunal appears to be vested with no jurisdiction to condone the delay beyond 90 days once the date on which the limitation has triggered is determined in accordance with the above principles. The provisions of Section 4 of the Land Acquisition Act, 1984 provide for different modes of publication of preliminary notification and also states that last of the dates of such publication and giving of such public notice would be the date upon which the period specified shall be computed. In contra to such legislative provisions, the provisions of the present Act are silent and do not intend to provide any advantage to the applicant on fulfillment of obligations by different stakeholders at different times. In such circumstances, the earliest in point of time would have to be considered as the relevant date for computation of limitation.

18. Another factor that would support such a view is that a person who wishes to invoke jurisdiction of the Tribunal or a court has to be vigilant and of his rights. An applicant cannot let the time go by without taking appropriate steps. Being vigilant and to his rights and alive and conscious to the remedy provided (under the law) are the twin basis for claiming a relief under limitation. Vigilantibus non dormantibus jura subvenient Now, we have to examine whether any of the stakeholders in the present case, has fully or completely discharged their obligations in terms of Section 16 of the NGT Act, read with Notification of 2006 and the Save Mon Region Federation judgment supra. As far as the project proponent is concerned, it has admittedly not discharged its obligations upon grant of environmental clearance on 16th October, 2012. It is pointed out that the project proponent, even till date, has not permanently put the said environmental clearance along with the environmental conditions and safeguards on its website. Neither did it publish the environmental clearance along with its conditions and safeguards; nor did it effect the publication in two newspapers having circulation in the area in which the project is located, one being in vernacular language. The project proponent only published intimation regarding grant of environmental clearance to it

in the newspapers on 28th October, 2012. There is nothing on record to show that the project proponent has provided a copy of the EC to the Government Departments, Panchayats, Municipality and/or local bodies in terms of clause 10 (i)(d) of the Notification of 2006 and those Departments have thereafter complied with the requirements of the notification. Thus in the case of the project proponent, it cannot be argued that limitation had started running against the applicant on 28th October, 2012 or any date prior thereto as it committed default of its statutory obligation and incomplete compliance cannot give rise to commencement of the period of limitation.

14. Under these circumstances, we cannot allow the Misc. Application No. 154/2014 filed by the project proponent and direct that the Appeal will be heard, only to the limited points related to propriety, correctness and absence of arbitrariness of the process and procedure adopted for extension of validity of original EC and the original EC cannot be directly or indirectly challenged or litigated at the present stage.

15. We also have gone through the Misc. Application No.151/2014 for condonation of delay filed by the original Appellant. It is an admitted fact that the extension of validity was not published in the newspaper and Appellant got the knowledge through MPCB Affidavit on 17-7-2014 and therefore, considering the reasons submitted by the original Appellant, the Tribunal is of the opinion that the delay of 18 days can be condoned under the powers conferred upon Tribunal under Section 16 of the National Green Tribunal Act and accordingly, delay is condoned by allowing M.A. No. 151/2014.

16. Accordingly, both the Misc. Applications are disposed of.

17. The main Appeal i.e. No.28/2014 be listed for the hearing on 13th July 2015.

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

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

Date : May 26th, 2015.
ajp