

BEFORE THE NATIONAL GREEN TRIBUNAL

SOUTHERN ZONE, CHENNAI

**M.A Nos. 7 of 2017 (SZ)
In un-numbered Appeal Diary No.20 of 2017
And
M.A.No.8 of 2017
In un-numbered Appeal Diary No.22 of 2017**

Applicant(s)

Respondent(s)

1.Souhardha Charitable Club
Rep. by its Treasurer Mr.Prasanth
Malayattoor, Ernakulam Dist

1. The State Environment Impact Assessment
Authority, rep. by it Chairman,
Thiruvananthapuram,Kerala

2. Rajendran, Malayattoor

2. The State Expert Appraisal Committee
Rep. by its Chairman,
Thiruvananthapuram,Kerala

(Both MAs)

3. The District Collector, Kakkanadu
Ernakulam

4. Geologist, Kakkanadu, Ernakulam
(both M.As)

5. Manoj Antony (M.A.No.7/2017)

5. Ashique Ali (M.A.No.8/2017)

Legal Practitioners for Applicant(s)

Legal Practitioners for Respondents

M/s. K. Abdul Jawad
Grady Jose. A
Prasanth Kumar M.K

Mrs. Vidhya Lakshmi for R1 & R2
Mrs. Suvitha A.S. for R3 & R4
M/s. M.A. Abdul Hakhim &
Kamalesh Kannan for R5 in
M.A.No.8 of 2017

| Note of the Registry | Orders of the Tribunal |
|----------------------|-----------------------------------------------------------------------------------------------------------------------------------|
| | Date: 4.7.2017 These Miscellaneous Applications are to condone the delay of 15 days in filing appeals against the order of |

the 1st respondent – the State Environment Impact Assessment Authority (SEIAA) dated 1.6.2016 granting Environmental Clearance (EC) to the 5th respondent for the quarry project in Survey Nos.97/1(p), 97/2(p) and 97/4(p) at Malayattoor Village, Aluva Taluk, Ernakulam District.

2. The reason assigned for condoning the delay is that the EC was unable to be traced by the appellants in the website and it was not in the public domain and not properly published. However, the appellants were able to obtain copy of the EC under the Right to Information Act stated to have been received by them on 24.11.2016 and according to the appellants the period of limitation starts from 24.11.2016. The appeal papers have been filed before this Tribunal on 9.1.2017.

3. The proposed appellant is a Charitable Club stated to have been formed in the year 2013 for the welfare of the general public and registered under the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955. Even though the affidavit filed in support of the applications state that the 5th respondent's

illegal, unscientific and unauthorised mining operation creates cosmic impact on the environment, apart from creation of noise pollution, in the Miscellaneous Application, as we are concerned about the reason in filing of the appeals beyond the period of limitation, we do not think it proper to refer the same.

4. According to the appellant, after the copy of EC was received on 24.11.2016 the appeals ought to have been filed on 24.12.2016. The inability was due to the reason of want of funds in filing of the appeals.

5. The 5th respondent/project proponent, while denying the reason assigned by the appellants for condoning the delay as not correct, has stated that knowledge of the date of issuance of EC cannot be taken for calculating the delay. The EC was granted on 1.6.2016 and therefore as per Section 16 of the National Green Tribunal Act, 2010 (NGT Act) the appeals ought to have been filed on 30.6.2016 and in any event the condonable limit of another 30 days has expired on 30.6.2016. However, the appeal was filed on 15.1.2017.

6. It is stated that the writ petition filed on behalf of the

applicant is pending in the High Court of Kerala in W.P.(C).No.34210 of 2016. It is further stated that the applicant has purposefully avoided another quarry working within a radius of 100 M.

7. The 5th respondent/project proponent in M.A.No.8 of 2017 while stating that the delay as stated is incorrect, submits that the EC was granted on 1.6.2016 after the 52nd meeting of the 1st respondent held on 29.4.2016. The EC was handed over by the 1st respondent on 7.7.2016 and immediately thereafter the 5th respondent has taken steps, as required under Clause 10 of the EIA Notification, 2006 to communicate the same to public. It is stated that the 5th respondent put on the notice board on the site the details of EC granted on 15.7.2016. It is also stated that the 5th respondent has uploaded a copy of EC in its website on 30.7.2016. Further, the 5th respondent has also served a copy of EC to the local authority viz., Malayattoor – Neeleeswaram Grama Panchayat on 27.7.2016 and it was acknowledged by the 1st respondent on the same date. That apart, the 5th respondent has prominently advertised the information about the grant of EC in two newspapers

viz., Malayala Manorama and Deccan Chronicle on 13.8.2016 and 1.9.2016 respectively. Further, the copy of the EC was available with the 1st respondent and therefore the 5th respondent has complied with all the requirements of the EIA Notification, 2006. The EC was available in the public domain even on 30.7.2016 and the filing of the appeal in January, 2017 is beyond the period of condonable limit.

8. It is further stated that in W.P.(C).No.34210 of 2016 filed by the applicant before the High Court of Kerala there was clear admission of grant of EC to the 5th respondent. The said writ petition was filed before the High Court on 24.10.2016 with several prayers, including declaration that the quarries conducted by the 5th respondent are illegal and the High Court has admitted the writ petition and not granted any interim order and it is in those circumstances the applicant has chosen to file the present application with condone delay petition and therefore the application is liable to be rejected.

9. The learned counsel appearing for the applicant would vehemently contend that when the basic issue

regarding illegal mining which relates to the issue of environment and the Tribunal is constituted for that purpose, the delay should be taken only as a technical ground and the same should not stand in the way of granting substantial environmental justice. It is also the submission of the learned counsel that the applicant being a third party to the EC, cannot be expected to look into the website of the 5th respondent at every time and it was only after the applicant came to know about the issuance of EC, they have applied to the 1st respondent immediately and the copy of EC was received on 24.11.2016 and the appeal came to be filed on 9.1.2017 and therefore according to the learned counsel the question of delay must be considered on the point of a third party application and therefore a liberal interpretation must be given.

10. Per contra, it is the contention of the learned counsel appearing for the 5th respondent in both these applications that it is not the knowledge of EC but it is the EC being kept in public domain and that is the starting point of limitation under Section 16 of the National Green Tribunal Act, 2010 subject to the condition that 30 days

from the date of order communicated and another 60 days time is given for the purpose of condoning the delay and beyond the period of 60 days, the Tribunal itself has no power to condone delay. The learned counsel has also referred to the established decisions of this Tribunal that keeping up of the EC in public domain is the triggering point of limitation and the limitation starts from that day onwards. Based on the said legal dictum laid down, the applications are beyond the condonable limit prescribed under the NGT Act and the Tribunal itself has no jurisdiction to condone the delay.

11. After hearing the learned counsel appearing on both sides and considering the factual issues involved in this case, there are certain dates which are relevant in both the cases. The 1st respondent has granted EC in favour of the 5th respondent for quarrying operation on 1.6.2016. It is the specific case of the 5th respondent that the EC was uploaded in its website on 30.7.2016 and that has not been denied by the applicant. But the applicant has stated in the rejoinder that the private website has not been produced as proof and that itself is not sufficient

compliance of Clause 10 of the EIA Notification, 2006.

12. The filing of the writ petition, as stated by the 5th respondent, is also not denied by the applicant. Clause 10 of the EIA Notification, 2006 which speaks about the post EC monitoring, explains the compliances to be made by various stakeholders, including the project proponent, local authority and also the obligation of the project proponent to submit a copy of the EC to the local bodies, Panchayats and municipal bodies so as to display the same for 30 days from the date of receipt. Clause 10 of the EIA Notification, 2006 reads as follows:

10. Post Environmental Clearance Monitoring:

(i)(a) In respect of Category 'A' projects, it shall be mandatory for the project proponent to make public the environmental clearance granted for their project along with the environmental conditions and safeguards at their cost by prominently advertising it at least in two local newspapers of the district or State where the project is located and in addition, this shall also be displayed in the project proponent's website permanently.

(b) In respect of Category 'B' projects, irrespective of its clearance by MoEF / SEIAA, the project proponent shall prominently advertise in the newspapers indicating that the project has been accorded environment clearance and the details of MoEF website where it is displayed.

(c) The Ministry of Environment and Forests and the State / Union Territory Level Environmental Impact Assessment Authorities (SEIAAs), as the case may be, shall also place the environmental clearance in the public domain on Government portal.

(d) The copies of the environmental clearance shall be

submitted by the project proponents to the Heads of local bodies, Panchayats and Municipal Bodies in addition to the relevant offices of the Government who in turn has to display the same for 30 days from the date of receipt.

(ii) It shall be mandatory for the project management to submit half-yearly compliance reports in respect of the stipulated prior environmental clearance terms and conditions in hard and soft copies to the regulatory authority concerned, on 1st June and 1st December of each calendar year.

(iii) All such compliance reports submitted by the project management shall be public documents. Copies of the same shall be given to any person on application to the concerned regulatory authority. The latest such compliance report shall also be displayed on the web site of the concerned regulatory authority.'

13. It is a fact that the 5th respondent has advertised in two newspapers on 13.8.2016 and 1.9.2016 in Malayala Manorama and Deccan Chronicle which is not denied. The 5th respondent has specifically stated that he has also put the EC in the website on 30.7.2016.

14. On the factual matrix, admittedly the applicant had been approaching the High court against the quarrying operations of the 5th respondent and in such circumstances we cannot conclude that applicant was not aware of the EC granted to the 5th respondent in these cases on 1.6.2016 .

15. Law is well settled that if the obligation of any one

of the stakeholders in keeping the EC in its website available in public domain, the limitation starts from the date of first of such website information being made available to the public.

16. In the present case, the project proponent's website was stated to be on 30.7.2016 while the 1st respondent - SEIAA's website was on 29.8.2016 as it is seen in the proof filed before us. In these circumstances, it cannot be construed that the delay in filing the appeals was only 15 days when appeals were filed only on 9.1.2017. The delay is more than condonable limit in both these cases. Therefore, the contention raised by the learned counsel for the applicant as if the 5th respondent has not published EC, in our view, has no meaning. The website of SEIAA, proof of which has been filed before this Tribunal shows that the EC granted to the 5th respondent was available in its website on 29.8.2016 and therefore, the starting point of limitation is to be construed from the said date and while considering the same and looking into any angle, we are unable to come to a conclusion that the condonable limit is within the permissible limit of 60 days.

It cannot also be said the paper publication was not made.

17. Law is equally well settled that beyond the period of condonable limit prescribed under Section 16 of the NGT Act, the Tribunal has no jurisdiction to condone the delay.

18. It is relevant to extract Section 16 of the NGT Act which is as follows:

“16. Tribunal to have appellate jurisdiction.

Any person aggrieved by,-

- a) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under section 28 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);*
- b) an order passed, on or after the commencement of the National Green Tribunal Act, 2010, by the State Government under section 29 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);*
- c) directions issued, on or after the commencement of the National Green Tribunal Act, 2010, by a Board, under section 33A of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);*
- d) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under section 13 of the Water (Prevention and Control of Pollution) Cess Act, 1977 (36 of 1977);*
- e) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the State Government or other authority under section 2 of the Forest (Conservation) Act, 1980 (69 of 1980);*
- f) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the Appellate Authority under section 31 of the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981);*
- g) any direction issued, on or after the commencement of the National Green Tribunal Act, 2010, under section 5 of the Environment (Protection) Act, 1986 (29 of 1986);*
- 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 (29 of 1986);

- i) an order made, on or after the commencement of the National Green Tribunal Act, 2010, refusing to grant environmental clearance for carrying out any activity or operation or process under the Environment (Protection) Act, 1986 (29 of 1986);
- j) any determination of benefit sharing or order made, on or after the commencement of the National Green Tribunal Act, 2010, by the National Biodiversity Authority or a State Biodiversity Board under the provisions of the Biological Diversity Act, 2002 (18 of 2003),

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:

Provided that the Tribunal may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed under this section within a further period not exceeding sixty days' .

19. The established decision of the Tribunal in respect of the communication and the period of limitation has been dealt with by the Principal Bench of the Tribunal in SAVE MON REGION FEDERATION & ANOTHER V. UNION OF INDIA & OTHERS (M.A.No.104 of 2012 dated 14.3.2013) reported in 2013(1) All India NGT Reporter page 1) wherein the relevant portion relating to the above said aspect has been discussed as follows:

“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.

40. Once we examine the provision of Section 16 of the NGT Act in light of the above principle, it is clear that the provision is neither ambiguous nor indefinite. The expressions used by legislature are clear and convey the legislative intent. The communication of an order granting the Environmental Clearance has to be made by the MoEF as well as the Project Proponent in adherence to law. The communication would be complete when it is undisputedly put in the public domain by the recognised modes, in accordance with the said provision. The limitation of 30 days would commence from that date. If the appeal is presented beyond the period of 30 days, in that event, it becomes obligatory upon the applicant to show sufficient cause explaining the delay. The delay must be bonafide and not a result of negligence or intentional inaction or malafide and must not result in the abuse of process of law. Once these ingredients are satisfied the Tribunal shall adopt a balanced approach in light of the facts and circumstances of a given case.”

20. That was also the view of the Principal Bench in

MS. MEDHA PATKAR AND OTHER V. MINISTRY OF ENVIRONMENT AND FORESTS AND OTHER (Appeal No.1 of 2013 dated 117.2013) where also the ruling relating to communication has been dealt with as follows:

“15. XXX Communication shall be complete in law upon fulfilment of complete set of obligations by any of the stakeholders. Once the period of limitation is prescribed under the provisions of the Act, then it has to be enforced with all its rigour. Commencement of limitation and its reckoning cannot be frustrated by communication to any one of the stakeholders. Such an approach would be opposed to the basic principle of limitation.

16. XXXX 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. XXXX 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 non-compliance 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.

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.”

21. The above said rulings have been followed in many proceedings of this Tribunal, including the decision of the NGT, Southern Zone Bench in P.N ANOOP VS. UNION OF INDIA AND OTHERS (M.A.No.216 of 2015 dated 6.1.2016)

22. In view of the above said decision, and looking into any angle, the applications are devoid of merit and the same are dismissed. There shall be no order as to cost.

....., JM

(Justice Dr. P. Jyothimani)

.....EM

(Shri P.S. Rao)

NGT