

BEFORE THE NATIONAL GREEN TRIBUNAL (SZ), CHENNAI

I.A.No. 27 of 2024 (SZ)

in

Appeal No. 21 of 2024 (SZ)

A.Thiyagaraj,
S/o, K. Arogasamay,
4/231, Nagarkalaindi Pirivu,
Dasanaicken palayam Post,
Malaipalayam Village, Sulur Taluk,
Coimbatore Disrtict – 642 202
PH: 98650 30794

...Applicant/ Appellant

Vs.

The Tamil Nadu Pollution Control Board
Rep by its Chairman, Corporate Office,
No. 76, Mount Salai, Guindy,
Chennai - 600 032 & Others

...Respondents/ Respondents

INDEX

S.A. SAYED SHUHAIBB

No. 116, 1st Floor, Angappa Naicken Street,

Chennai – 600 001

Counsel for 3rd Respondent

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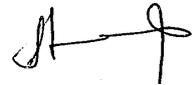
...Respondents/ Respondents

INDEX TO TYPED SET

SN	DATE	DESCRIPTION OF DOCUMENTS	PAGE NO
1	17.03.2024	Counter Statement filed by the 3 rd Respondent in I.A.No. 27 of 2024 in Appeal No. 21 of 2024	1 – 9
2	---	Annexure – I – Case Status of W.P.No. 21345 of 2023 filed by the Applicant before Hon'ble High Court	10 – 11
3	29.11.2023	Annexure – II – Case Status of W.M.P.No. 33911 of 2023 filed by the Applicant before Hon'ble High Court	12
4	12.12.2023	Annexure – III – Filing Details of Appeal No. 21 of 2024 on the file of this Hon'ble Tribunal	13

It is certified that the documents contained in the above typed set is the true copies of the original.

Dated at Chennai on this the 17th day of March, 2024



Counsel for 3rd Respondent

BEFORE THE NATIONAL GREEN TRIBUNAL (SZ), CHENNAI**I.A.No. 27 of 2024 (SZ)****in****Appeal No. 21 of 2024 (SZ)**

A.Thiyagaraj,
S/o, K. Arogasamay,
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Dasanaicken palayam Post,
Malaipalayam Village, Sulur Taluk,
Coimbatore District – 642 202
PH: 98650 30794

...Applicant/ Appellant

Vs.

1. The Tamil Nadu Pollution Control Board
Rep by its Chairman, Corporate Office,
No. 76, Mount Salai, Guindy,
Chennai - 600 032, Cont: 044 – 22353076
Email: chairman@tnpcb.gov.in;

2. The District Environmental Engineer Coimbatore –South,
Tamil Nadu Pollution Control Board,
Plot No. E-55A, Kuruchi, SIDCO Industrial Estate,
Pollachi Main Road, Coimbatore – 641 021
Mob: 8056042211
Email: deecbs@tnpcb.gov.in;

3. M/s. Duinkop Enterprises Private Limited – Unit - II.,
Rep. by its Managing Director,
No. 88/1, Palldam Pollachi Main Road,
Kattampatti Village, Kinathukadavu Taluk,
Coimbatore District – 642 202
Mob: 9843040349; Email: jay@duinkop.co.in

...Respondents/ Respondents

COUNTER STATEMENT FILED BY THE 3RD RESPONDENT

1. It is submitted that the 3rd Respondent vehemently denies each and every allegation made in the interlocutory application filed by the Applicant and the Applicant is put to strict proof of the same. Non-denial of any averments hereunder would not amount to admission and the 3rd Respondent reserve their rights to deny the same if the need arises.

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2. It is submitted that the Applicant filed the above interlocutory application to condone the delay of 59 days in filing the appeal as against the order dated 30.08.2023 passed by the Hon'ble Appellate Authority of TNPCB, Chennai.

OBJECTIONS AS TO THE PERIOD OF LIMITATION IN FILING APPEAL

3. It is submitted that Applicant had filed the Appeals before the Hon'ble Appellate Authority of TNPCB, Chennai against the Respondents, challenging the consents issued to the 3rd Respondent under the Air and Water Acts respectively. The said Appeals were dismissed by the Appellate Authority, vide order dated 30.08.2023. The orders were dictated in the open court in the presence of the respective parties and Counsels.
4. It is submitted that the said order dated 30.08.2023 was communicated to all the parties on 13.09.2023 by the Registry. In terms of **Sec. 16 of the NGT Act, if the person aggrieved by the order, should prefer an appeal within 30 days from the date on which the order or decision is communicated to him.** Further, as per the Proviso to the above provision, **the Tribunal may, if it is satisfied that the Appellant was prevented by sufficient cause from filing the appeal within in the said period, allow it to be filed under the Section within a further period not exceeding sixty days.**
5. It is submitted that in the present case, the Applicant himself admitted in paragraph 2 of his application that the impugned order dated 30.08.2023 was received by him on 13.09.2023 and therefore, the date for filing appeal should be reckoned from that date.
6. It is submitted that as per Sec. 16 of the NGT Act, the appeal has to be preferred within 30 days from the date of communication. As per the above mandate, the appeal has to be preferred on or before 12.10.2023. However, the appeal had not been filed on or before the said date.
7. Further, the Hon'ble Tribunal may allow the appellant to file the appeal beyond the said period of 30 days but not exceeding 60 days, if sufficient reasons for prevention has to be shown to the satisfaction of the Tribunal. The said period of 60 days was

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commenced on 13.10.2023 and was expired on 11.12.2023. However, the present appeal is filed on 12.12.2023, i.e., 61st day. The chronology is as follows:-

Impugned Order communicated on	13.09.2023
30 days for filing appeal from the date of communication was expired on	12.10.2023
Condonable period of 60 days commenced on	13.10.2023
<p>Condonable period expired on</p> <p>From 13.10.2023 (Number of days in months)</p> <p>October, 2023 – 19 days</p> <p>November, 2023 – 30 days</p> <p>December, 2023 – 11 days</p> <p>(60th day is on 11.11.2023)</p> <p>-----</p> <p>Total - 60 days</p>	11.12.2023
Appeal filed on 12.12.2023 (As per the NGT Website)	12.12.2023, i.e., on 61 st day

8. From the above chronology, it is limpid that the appeal has been filed beyond the period of 90 days (30 + 60 days), i.e., on the 91st day. The Hon'ble Principal Bench of the NGT, New Delhi in its order dated 14.03.2013 in the case of **Save Mon Region Federation & Another Vs. Union of India & another** in M.A.No. 104 of 2012 had dealt with a similar issue and had also interpreted the terms, 'communication'; 'sufficient cause' and the date of reckoning limitation as mentioned in Sec. 16 of the Act.
9. It is submitted that the Hon'ble Tribunal in the said case has held that 'communication' contemplates complete knowledge of the ingredients and grounds required under law for enabling the person to challenge the order and such communication is complete when the order is received by him in one form or the other to enable him to

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appropriately challenge the correctness of the order passed. The relevant portion is extracted below:-

17. The expression 'is communicated to him', thus, would invite strict construction. It is expected that the order which a person intends to challenge is communicated to him, if not in personam than in rem by placing it in the public domain. 'Communication' would, thus, contemplate complete knowledge of the ingredients and grounds required under law for enabling that person to challenge the order. 'Intimation' must not be understood to be communication. 'Communication' is an expression of definite connotation and meaning and it requires the authority passing the order to put the same in the public domain by using proper means of communication. Such Communication will be complete when the order is received by him in one form or the other to enable him to appropriately challenge the correctness of the order passed.

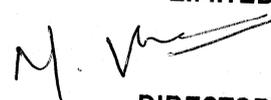
10. It is submitted that the Hon'ble Principal Bench has also further held that the limitation as prescribed under Sec. 16 of the NGT Act shall commence from the date the order is communicated. The relevant portion is extracted hereunder:-

19. The limitation as prescribed under Section 16 of the NGT Act, shall commence from the date the order is communicated.....

If the said findings and interpretation applies to the present facts of the case, period of 90 days expired on 11.11.2023. However, the appeal is filed on 12.12.2023, i.e., on the 91st day. Therefore, the appeal is barred by limitation and the interlocutory application deserves to be dismissed.

OBJECTIONS AS TO NON-SHOWING OF SUFFICIENT CAUSE

11. It is submitted that the Applicant has to show sufficient cause preventing him from filing the appeal in the statutory period. In the present application, the reasons shown by the applicant is that he sought legal advice and placed the order to his Counsel, which took time to receive response and after receiving response in November, 2023, the petitioner instructed to file appeal and due to communication gap in contacting the

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counsel in respect of this appeal, the delay occurred, are all false and concocted one, which are made in order to mislead this Hon'ble Tribunal.

- 12. It is submitted that the application for condonation has not been drafted with careful concern and was in a haphazard manner harbouring the notion that this Hon'ble Tribunal will condone the delay mechanically. The application does not convey seriousness and shows a lackadaisical propensity.
- 13. It is submitted that the applicant himself stated that he instructed to file appeal during November, 2023 itself, however, the appeal is filed only during December, 2023. Further, the applicant misrepresented before this Hon'ble Tribunal that there was a communication gap in contacting the Counsel. It is submitted that this Applicant had earlier filed a W.P.No. 21345 of 2023 before the Hon'ble High Court of Madras and the said writ petition was listed for several hearings and the applicant had appeared in the following dates, i.e., between the date of the impugned order and the date of filing of the Appeal before the Hon'ble High Court:-

31.08.2023
08.09.2023
11.09.2023
27.09.2023
21.11.2023
27.11.2023
04.12.2023

Therefore, when the applicant was regularly appearing in the said writ petition before the Hon'ble High Court on the said dates, the applicant cannot be said that there was a communication gap in contacting the counsel and to give instruction. Further, the very same applicant had also filed a miscellaneous petition in WMP No. 33911 of 2023 before the Hon'ble High Court of Madras on 29.11.2023 and conducted the cases. Therefore, nothing prevented the applicant in filing the appeal before this Hon'ble Tribunal in the statutory period. Therefore, the reasons assigned by the

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applicant are all false and concocted one and was made in order to mislead this Hon'ble Tribunal for obtaining a favourable order.

14. It is submitted that as per Sec. 16 of the NGT Act, the words, '*prevented by sufficient cause*' has not been shown by the applicant in his application. Further, from the averments of the application itself clearly shows that the applicant has not been prevented by any sufficient cause and the delay occurred is due to deliberate inaction and negligence on the part of the applicant. Therefore, the applicant is liable to be dismissed with costs.
15. It is submitted that in the case cited supra, the Hon'ble Principal Bench held that even after sufficient cause has been shown, a party is not entitled to the condonation of delay in question as a matter of right. The proof of sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the Courts/ Tribunals and this aspect naturally introduces the consideration of all relevant facts and it is at this stage, the diligence of the party or its bonafides may fall for consideration. The relevant portion is extracted below:-

33. It may be noticed that even after sufficient cause has been shown, a party is not entitled to the condonation of delay in question as a matter of right. The proof of sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the Courts/Tribunals. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage that diligence of the party or its bonafides may fall for consideration.

15. It is submitted that though as held by Courts that in considering the reasons for condonation of delay, the Courts have to be liberal and in practical manner. On parallel, the other aspects have to be looked into. In the present case, the delay occurred is due to deliberate inaction and negligence on the part of the applicant. Due to the said deliberate inaction in filing the appeal, the right accrued to the other party cannot be taken away by the Court merely on an application which lacks bonafides and does not disclose any sufficient case for condonation of delay. If the present application is allowed, it will cause great injustice to the 3rd Respondent.

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16. It is submitted that in the Landmark Judgment reported in AIR 2014 SC 746 in the case of **Basawaraj & Another Vs. Special Land Acquisition Officer**, the Hon'ble Supreme Court has held that the applicant has to explain the court as to what was the sufficient cause which prevented him to approach the court within limitation. In case, there was no sufficient cause to prevent a litigant to approach the court on time and condoning the delay without any justification putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamount to showing utter disregard to the legislature. The relevant portion is extracted below:

*“5. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the “sufficient cause” which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bonafide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this court in regard to the condonation of delay. **In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamount to showing utter disregard to the legislature”***

The said precedent was recently followed by the Hon'ble Supreme Court of India in the case of **Ajay Dabre Vs Pyare Ram** reported in 2023 SCC Online SC 92.

17. It is submitted that recently, the Hon'ble National Company Law Appellate Tribunal, Chennai in its order dated 01.11.2023 in the case of **Anish Lawrence & Another Vs. Renahan Vamakesan** has dealt with a similar case, wherein, the reasons assigned for condonation of delay by the applicant therein is that he has to obtain legal opinion and to approach the Counsel in Chennai for filing appeal. The said

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reasons are very similar to the reason assigned in the present application. The Hon'ble NCLAT after considering the said reason, held that the same is not a sufficient cause and is not acceptable and dismissed the condonation application.

18. It is submitted that the Applicant purposely in order to misled this Hon'ble Tribunal by stating that the appeals were filed on 11.12.2023. However, as per the NGT Website, the applicant filed the appeals only on 12.12.2023. It is further submitted that the Applicant can very well approach this Hon'ble Tribunal within the statutory period of 30 days, as all the appeals and applications before this Hon'ble Tribunal have to be filed through e-filing mode only. However, the Applicant did not do so.
19. It is submitted that in filing the present application, the conduct, behaviour and attitude of the applications relating to inaction, negligence and bonafides are relevant factors to be taken into consideration while deciding tis application. The reasons assigned in the application are concocted and fanciful and shall not be entertained. Therefore, the application is liable to be rejected.
20. It is submitted that it is vehemently denied that no prejudice is caused to the Respondents if the delay is condoned and the appeal is taken up for adjudication on merits and the balance of convenience if in favour of the applicant. The Applicant not even stated a single valid reason in his application for filing the appeal belatedly. Infact, the applicant has almost waited for 91 days and filed the appeal, despite the fact that the applicant has conducting the cases regularly before the Hon'ble High Court of Madras. Therefore, serious prejudice will be caused to this 3rd Respondent, if this application is allowed.
21. It is submitted that this 3rd Respondent reserves its right to answer the appeal on merits in the event so comes. This counter is filed and limited only for the purpose of condonation of delay. The present application has been filed with a malafide intention to deceive this Hon'ble Tribunal by stating untrue facts in order to gain the unfair sympathy and to dishonestly bring this application within the ambit of the Hon'ble Tribunal jurisdiction. Therefore, the present application is liable to be rejected with costs.

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For the foregoing reasons, it is prayed that this Hon'ble Tribunal may be pleased to dismiss the petition in I.A.No. 27 of 2024 filed for condonation of delay in filing Appeal no. 21 of 2024 with costs and thus render justice.

Dated at Chennai on this the 17th day of March, 2024



Counsel for 3rd Respondent

**DUINKOP ENTERPRISES PRIVATE
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**DIRECTOR
3rd Respondent**

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Select Highcourt

Select Bench

Party NameCase NumberFiling NumberAdvocate NameFIR NumberActCase Type

Back

Case Details

Filing Number	WP /81803/2023	Filing Date	26-06-2023
Registration Number	WP /21345/2023	Registration Date	17-07-2023
CNR Number	HCMA01-113934-2023		

Case Status

First Hearing Date	
Decision Date	19th December 2023
Case Status	CASE DISPOSED
Nature of Disposal	Contested--ALLOWED
Coram	Honourable Mr Justice P. VELMURUGAN
Bench Type	Single Bench
Judicial Branch	WRITSECTION
State	TAMIL NADU
District	Coimbatore

Petitioner and Advocate

1) A.THIYAGARAJ
Advocate- R.PRABAKAR,S.SELVI, P.MARUDHUPANDIYAN,S.SELVI

Respondent and Advocate

1) THE COMMISSIONER OF LAND ADMINISTRATION
Advocate- MR. P.GURUNATHAN, AGP. FOR RR1 TO 6 & 7,M/S. S.A.SAYED SHUHAIBB FOR R8,R9 DT 28/07/2023,RR1 TO 7- BATTI NOT FILED. ,AS COURT ORDERED 11/09/2023,PVT. NOTICE PERMITTED, PROOF FILED ,VIDE USR. 37356 DT. 21/11/2023,RR2 TO 6, 8 & 9 - ACK. FILED ,RR1 & 7 - POSTAL RECEIPT FILED 1123
2) THE DISTRICT COLLECTOR,
3) THE DISTRICT REVENUE OFFICER,
4) THE AUTHORISED OFFICER (LAND REFORMS)
5) THE TAHSILDAR,
6) THE SUB REGISTRAR,
7) THE DISTRICT ENVIRONMENTAL ENGINEER
8) D.VIJAYA KUMAR,
9) M/S.REMMY SUBSTRATES INDIA (P) LTD.,

Acts

Under Act(s)	Under Section(s)
OTHERS	1

Category Details

Category	Land Acquisition (96)
Sub Category	Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Amendment Act (XXX of 1989) (9)

Sub Matters

Case Number : WMP/20745/2023
Case Number : WMP/20747/2023
Case Number : WMP/20746/2023

Linked Cases

Filing Number2	Case Number
WP/81803/2023 (main)	WP/21345/2023 (main) (Disposed)
WP/115658/2023	WP/26863/2023 (Disposed)
WMP/81806/2023	WMP/20745/2023 (Disposed)
WMP/81808/2023	WMP/20747/2023 (Disposed)
WMP/81807/2023	WMP/20746/2023 (Disposed)
WMP/152997/2023	WMP/33326/2023 (Disposed)

History of Case Hearing

Cause List Type	Judge	Business On Date	Hearing Date	Purpose of hearing
Regular List	Honourable Mr Justice S.M. SUBRAMANIAM		20-07-2023	FOR ADMISSION
	Honourable Mr Justice P. VELMURUGAN	06-02-2024		Disposed

	Honourable Mr Justice P. VELMURUGAN	<u>19-12-2023</u>		Disposed
Regular List	Honourable Mr Justice P. VELMURUGAN	<u>14-12-2023</u>	19-12-2023	~~~~~
Regular List	Honourable Mr Justice P. VELMURUGAN	<u>04-12-2023</u>	14-12-2023	~~~~~
Regular List	Honourable Mr Justice P. VELMURUGAN	<u>27-11-2023</u>	04-12-2023	FINAL HEARING CASES
Regular List	Honourable Mr Justice P. VELMURUGAN	<u>21-11-2023</u>	27-11-2023	=====
Regular List	Honourable Mr Justice S.M. SUBRAMANIAM	<u>27-09-2023</u>		~~~~~
Regular List	Honourable Mr Justice S.M. SUBRAMANIAM	<u>11-09-2023</u>		FINAL HEARING CASES (WP)
Regular List	Honourable Mr Justice S.M. SUBRAMANIAM	<u>08-09-2023</u>	11-09-2023	~~~~~
Regular List	Honourable Mr Justice S.M. SUBRAMANIAM	<u>31-08-2023</u>		Adjourned Cases
Regular List	Honourable Mr Justice S.M. SUBRAMANIAM	<u>29-08-2023</u>	31-08-2023	~~~~~

Select Highcourt

Select Bench

Party NameCase NumberFiling NumberAdvocate NameFIR NumberActCase Type

Back

Case Details

Filing Number	WMP /154821/2023	Filing Date	29-11-2023
Registration Number	WMP /33911/2023	Registration Date	01-12-2023
CNR Number	HCMA01-216689-2023		

Case Status

First Hearing Date	
Decision Date	14th December 2023
Case Status	CASE DISPOSED
Nature of Disposal	--WITHDRAWN DISMISSED
Coram	Honourable Mr Justice P. VELMURUGAN
Bench Type	Single Bench
Judicial Branch	WRITSECTION
State	TAMIL NADU
District	Coimbatore

Petitioner and Advocate

1) A.THİYAGARAJ
Advocate- R.PRABAKAR,P.MARUDHUPANDIYAN, S. SELVI,P.MARUDHUPANDIYAN

Respondent and Advocate

1) D.VIJAYAKUMAR
2) GOVERNMENT OF TAMILNADU
3) THE COMMISSIONER OF LAND ADMINISTRATION
4) THE DISTRICT COLLECTOR
5) THE DISTRICT REVE NUE OFFICER
6) THE AUTHORIZED OFFICER (LAND REFORMS) AND
7) THE TAHSILDAR

Acts

Under Act(s)	Under Section(s)
OTHERS	1

Main Matters

Case Number : WP/26863/2023

History of Case Hearing

Cause List Type	Judge	Business On Date	Hearing Date	Purpose of hearing
	Honourable Mr Justice P. VELMURUGAN	<u>14-12-2023</u>		Disposed
Regular List	Honourable Mr Justice P. VELMURUGAN	<u>04-12-2023</u>	14-12-2023	~~~~~

Case Details

Filing Number	330511836983/2023	Filing Date	12-12-2023
Party Name	A.THIYAGARAJ VS TAMIL NADU POLLUTION CONTROL BOARD		
Petitioner Advocate(s)	PRABAKAR R	Respondent Advocate(s)	
Act	ENVIRONMENT (PROTECTION) ACT, 1986		
Case Number	Appeal No. 21/2024	Registered On	14-02-2024
Last Listed		Next Hearing Date	
Case Status	PENDING		

All Parties

Petitioner	Respondent
A.THIYAGARAJ	TAMIL NADU POLLUTION CONTROL BOARD TAMIL NADU POLLUTION CONTROL BOARD M/S. DUINKOP ENTERPRISES PRIVATE LIMITED - UNIT II