

BEFORE THE NATIONAL GREEN TRIBUNAL (SZ), CHENNAI

Review Application Nos. 1, 2, 4 & 5 of 2024

in

I.A.Nos. 25, 27, 28 & 29 of 2024 (SZ)

in

Appeal No. 20, 21, 23 & 24 of 2024 (SZ)

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

...Applicant/Applicant/ Appellant

Vs.

1. The Tamil Nadu Pollution Control Board
Rep by its Chairman, Corporate Office,
No. 76, Mount Salai, Guindy,
Chennai - 600 032
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
3. M/s. Duinkop Enterprises Private Limited – Unit - I.,
Rep. by its Managing Director,
No. 58/1, Palldam Pollachi Main Road,
Kattampatti Village, Kinathukadavu Taluk,
Coimbatore District – 642 202 ...Respondents/ Respondents/Respondents

COMMON COUNTER STATEMENT FILED BY THE 3RD RESPONDENT

1. It is submitted that the 3rd Respondent vehemently denies each and every allegation of the review applications 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 necessity arises. The Petitioner has suppressed various material facts in order to mislead this Hon'ble Tribunal.

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2. It is submitted that the Applicant had originally challenged the 4 nos. of consent orders all dated 19.11.2021 in the Appeal nos. 45, 46, 47 & 48 of 2022 before the Learned Appellate Authority, Chennai and the same were dismissed on merits. The said consents were already expired on 31.03.2023. Whereas, in the Appeals preferred before this Hon'ble Tribunal, the Applicant in order to mislead this Hon'ble Tribunal challenged the different consent orders all dated 24.01.2023, which were never put to challenge by the Applicant till date. The Applicant in order to deceive this Hon'ble Tribunal, suppressed these vital facts and filed the above appeals. Therefore, this Hon'ble Tribunal may dismiss the above appeals along with the applications for suppression of material facts and imposed costs on the applicant for misleading.
3. It is submitted that the Applicant filed the above review applications to review the judgment dated 19.03.2024 passed in the above interlocutory applications which were filed to condone the delay in filing the Appeals.
4. It is submitted that the Applicant had preferred the condone delay applications to condone the delay of 59 days in filing the Appeals. This Hon'ble Tribunal after hearing all the parties had rightly dismissed the applications, vide order dated 19.03.2024. It is pertinent to be noted that the said condone delay applications were dismissed by this Hon'ble Tribunal on two grounds, i.e., *(i). That the appeals were filed beyond the prescribed period under Sec. 16 of the NGT Act;* and *(ii). That the reason given for condoning the delay cannot be construed as a sufficient cause.*
5. It is submitted that thereafter, the applicant filed the review applications for reviewing the order dated 19.03.2024 and the same were allowed without any notice to the 3rd Respondent. Hence, the 3rd Respondent filed writ petitions in W.P.Nos. 3986 and 3989 of 2025 before the Hon'ble High Court of Madras challenging the aforesaid order. The Hon'ble High Court, vide its order dated 25.02.2025 allowed the said writ petitions and set-aside the order dated 29.07.2024 and remanded back the matters to this Hon'ble Tribunal for fresh adjudication after affording an opportunity to the parties.
6. It is submitted that the Applicant filed the above review applications to review the order, only on the ground of limitation and not on any other grounds. In fact, it is apparent

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from the above review applications that the Applicant did not seek for any review in his application about the dismissal of his condone delay applications on the ground of absence of sufficient cause. Therefore, the dismissal of condone delay applications, vide order dated 19.03.2024 on the ground of absence of sufficient cause, was not challenged by the Applicant till date and it attained finality.

7. It is submitted that Applicant had filed Appeals before the Learned Appellate Authority of TNPCB, Chennai challenging the consents issued to the 3rd Respondent under the Air and Water Acts respectively. The said Appeals were dismissed by the Appellate Authority on merits, vide order dated 30.08.2023. The orders were dictated in the open court in the presence of the respective parties and Counsels.
8. It is submitted that the said order dated 30.08.2023 was communicated to all the parties on 13.09.2023 by the Registry and this fact was not in dispute to the parties herein. It is further submitted that 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.**
9. It is submitted that the Applicant in his Review Applications admitted the dates and therefore, as per the admitted dates, the Appeals were filed on the 91st day from the date of communication of the order. However, the Applicant in his above review applications has intentionally misled this Hon'ble Tribunal, by erroneously quoted Sec. 12(1) of the Limitation Act, 1963 which excludes the day from which the limitation period has to be reckoned.
10. It is submitted that it is a settled law that the Limitation Act is inapplicable to the proceedings before NGT, when the NGT Act is itself clearly provides special period of limitation, which excludes the operation of the general law of limitation. Further, in terms of Sec. 33 of the NGT Act, the provisions of all other laws shall stand overridden and therefore, the applicability of the Limitation would not arise.

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11. It is submitted that the Hon'ble Supreme Court of India in the landmark case of ***Chhattisgarh State Electricity Board Vs Central Electricity Regulatory Commission & Others*** reported in **CDJ 2010 343** after discussing various decisions of its Court, held that the Limitation Act cannot be invoked for entertaining an appeal filed against an order or decision passed under the Act, which provides special period of limitation. The relevant portion is extracted below:-

“As pointed out earlier, the language used in Sections 35, 35- B, 35-EE, 35-G and 35-H makes the position clear that an appeal and reference to the High Court should be made within 180 days only from the date of communication of the decision or order. In other words, the language used in other provisions makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning the delay only up to 30 days after expiry of 60 days which is the preliminary limitation period for preferring an appeal. In the absence of any clause condoning the delay by showing sufficient cause after the prescribed period, there is complete exclusion of Section 5 of the Limitation Act. The High Court was, therefore, justified in holding that there was no power to condone the delay after expiry of the prescribed period of 180 days.”

In view of the above discussion, we hold that Section 5 of the Limitation Act cannot be invoked by this Court for entertaining an appeal filed against the decision or order of the Tribunal beyond the period of 120 days specified in Section 125 of the Electricity Act and its proviso. Any interpretation of Section 125 of the Electricity Act which may attract applicability of Section 5 of the Limitation Act read with Section 29(2) thereof will defeat the object of the legislation, namely, to provide special limitation for filing an appeal against the decision or order of the Tribunal and proviso to Section 125 will become nugatory.

12. It is submitted that the Hon'ble Apex Court in the aforesaid judgment had also interpreted the term '*date of communication of decision or order*' and held that once the factum of pronouncement of order by the Tribunal is made known to the parties or the order is pronounced after being shown in the cause list with the title of the case and the name of the counsel, the same shall be deemed to have been communicated

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to the parties and the limitation starts from the date on which the order was communicated to him or the date on which it was pronounced or published.

13. It is submitted that the Five Members (5) of the Principal Bench of NGT, New Delhi, in the case of ***Save Mon Region Federation & Another Vs. Union of India & another*** in M.A.No. 104 of 2012 reported in ***CDJ 2013 NGT 017***, 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'. 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 appropriately challenge the correctness of the order passed. Further, the Hon'ble Tribunal had also held that the limitation as prescribed under Sec. 16 of the NGT Act shall commence from the date the order is communicated. The said judgment is holding the field as on today. 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.....

14. It is submitted that **Sec. 16 of the NGT Act clearly stipulates that the time limit for filing the appeal is 30 days from the date of communication**. As per the above mandate, the Applicant ought to have preferred the appeal on or before 12.10.2023. However, the appeals were not filed on or before the said date. Further, the Hon'ble Tribunal may allow the party to file the appeal beyond the said period of 30 days but not exceeding 60 days, if the Tribunal is satisfied that he was prevented by sufficient cause. The said period of 60 days was commenced on 13.10.2023 and was expired on 11.12.2023. However, the Appeals were filed on 12.12.2023, i.e., 61st day. The chronology is as follows:-

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Order communicated by the Registry 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
Condonable period expired on From 13.10.2023 (Number of days in months) October, 2023 – 19 days November, 2023 – 30 days December, 2023 – 11 days (60th day is on 11.11.2023) Total - 60 days	11.12.2023
Appeal filed on 12.12.2023	12.12.2023, i.e., on 61 st day

15. It is submitted as per Sec. 16 of the NGT Act, delay condonable beyond the period of 30 days, is subject to the showing of sufficient cause. In the condone delay applications, the reasons shown by the Applicant was 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 Applicant instructed to file appeal and due to communication gap in contacting the counsel in respect of his appeal, the delay occurred, are all false and concocted one, in order to misled the Learned Tribunal.
16. It is submitted that the Applicant did not state as what prevented him from filing the appeal for the entire prescribed period of 90 days, when he was actively contesting the case before this Hon'ble Court against the 3rd Respondent. This Hon'ble Tribunal had earlier, vide order dated 19.03.2024 rightly dismissed the condone delay applications on the ground of not showing the sufficient cause and the same was not interfered with till date.
17. It is submitted that the Applicant himself has stated in his application that he instructed to file appeal during November, 2023 however, the appeal is filed only during

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December, 2023. Further, the Applicant misrepresented before this Hon'ble Tribunal that there was a communication gap in contacting the Counsel and the same were made in order to mislead this Hon'ble Tribunal.

18. It is submitted that the Applicant had earlier filed a W.P.No. 21345 of 2023 before this Hon'ble Court. The Counsel who appeared for the Applicant before the Ld. Appellate Authority and this Hon'ble Tribunal, and also in the said writ petition, were one and the same. The said writ petition was listed for several hearings and the Applicant through his Counsel had appeared in the said writ petition, in the following dates before the Hon'ble High Court, i.e., between the date of the order passed by the Appellate Authority and the date of filing of the Appeal before this Hon'ble Tribunal:-

31.08.2023	08.09.2023	11.09.2023	27.09.2023	21.11.2023
21.11.2023	04.12.2023			

Therefore, when the Applicant was regularly appearing before the Hon'ble High Court in the said writ petition on the said dates and was in contact with his Counsel, the Applicant cannot be said that there was a communication gap in contacting his Counsel and to give instruction. This conduct of the Applicant in misleading this Hon'ble Tribunal is in clear abuse of the process of the Court.

19. It is pertinent to note that on 29.11.2023, the very same Applicant had also filed a Miscellaneous Petition in WMP No. 33911 of 2023 before the Hon'ble High Court and the affidavit filed by the Applicant in support of the said WMP, was also sworn in Chennai. Therefore, the reasons assigned by the Applicant for condonation of delay are all false and concocted one and was made in order to mislead this Hon'ble Tribunal. The Applicant was not prevented by any cause and no sufficient reason has been given and the delay occurred is due to deliberate inaction and gross negligence on the part of the Applicant alone.
20. It is submitted that in the Landmark Judgment reported in **CDJ 2013 SC 718** 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

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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** and **Pathapati Subba Reddy (Died) by LRs Vs Special Deputy Collector (LA)** reported in **CDJ 2024 SCC 288**.

21. It is submitted that in the case **Save Mon Region Federation & Another Vs. Union of India** cited supra, the Hon'ble Principal Bench of NGT also 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:-

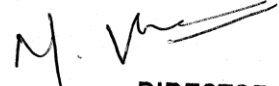
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33. It may be noticed that even after sufficient cause has been shown, a party is not entitled to the condonation of delay in question as a matter of right. The proof of sufficient cause is a condition precedent for the exercise of the discretionary 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”

22. 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 the 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.
23. It is submitted that in considering the application for condonation of delay, the conduct, behaviour and attitude of the applicants relating to inaction, negligence and bonafides are relevant factors to be taken into consideration while deciding the applications. However, the reasons assigned by the Applicant in his application are concocted and fanciful and should not have been entertained. The Applicant has not given even a single valid reason, as what was prevented him from approaching the Court, when he was actively contesting the cases before this Hon'ble Court.
24. 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.
25. It is submitted that the Hon'ble National Company Law Appellate Tribunal, Chennai (NCLAT) 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

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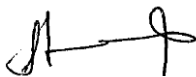

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assigned for condonation of delay by the applicant therein is that he has to obtain legal opinion and to approach the Counsel in Chennai for filing appeal. The said reasons are very similar to the reason assigned in the present application. The Hon'ble NCLAT after considering the said reason, held that the same is not a sufficient cause and is not acceptable and dismissed the condonation application.

26. 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 this application. The reasons assigned in the application are concocted and fanciful and shall not be entertained. Therefore, the application is liable to be rejected.
27. It is submitted that this 3rd Respondent reserves its right to answer the appeal on merits in the event so comes. The present counter statement is being filed and limited only for the purpose of the review applications. The Applicant filed the above applications 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.

For the foregoing reasons, it is prayed that this Hon'ble Tribunal may be pleased to dismiss the Review Application Nos. 1, 2, 4 & 5 of 2024 in I.A.Nos. 25, 27, 28 & 29 of 2024 (SZ) in Appeal No. 20, 21, 23 & 24 of 2024 (SZ) with costs and thus render justice.

Dated at Chennai on this the 07th day of June, 2026



Counsel for 3rd Respondent

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**DIRECTOR
3rd Respondent**

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TRIBUNAL (SZ), CHENNAI**

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**COMMON COUNTER
STATEMENT FILED BY THE 3RD
RESPONDENT**

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