

BEFORE THE NATIONAL GREEN TRIBUNAL SOUTHERN ZONE BENCH AT  
CHENNAI

ORIGINAL APPLICATION No. 108 of 2024 (SZ)

IN THE MATTER OF

Bhagat Singh A and 9 Ors.

... Applicants

Versus

Union of India and 3 Ors.

... Respondents

**PRELIMINARY COUNTER AFFIDAVIT FILED ON BEHALF OF 4<sup>TH</sup>**  
**RESPONDENT**

**DATE: 20.08.2024**



**M/S PRASAD VIJAYAKUMAR (Ms. No. 1254/1999)**

**VIGNESH SEKAR (Ms. No. 3281/2018)**

**PRANAV. R (Ms. No. 3700/2023)**

**No. 52 Law Chambers, High Court Buildings**

**Chennai- 600 104**

**9003271435**

**COUNSEL FOR RESPONDENT No. 4**

BEFORE THE NATIONAL GREEN TRIBUNAL SOUTHERN ZONE BENCH AT  
CHENNAI

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Date: 20.08.2024

Counsel for Respondent No.4

BEFORE THE NATIONAL GREEN TRIBUNAL (SOUTH ZONE) AT CHENNAI

Original Application No. 108 of 2024 (SZ)

IN THE MATTER OF

1. Bhagat Singh A.  
Son of Arunachalam,  
2,3<sup>rd</sup> Street, Ulaganathapuram,  
Ennore, Tiruvallur, Tamil Nadu- 600 057
2. Karunakaran. M,  
S/o Manikkam,  
33, Kattukuppam, Porkaliyamman Street,  
Kattivakkam, Tiruvallur, Tamil Nadu- 600 057
3. Mathi Pachaiyappan  
S/o Manikkam  
15, 3<sup>rd</sup> Street, Sathiyavani Muthu Nagar, Ennore,  
Kattivakkam, Tiruvallur, Tamil Nadu – 600 057
4. Suyambulingam. S  
S/o Sivalingam  
No.3, 1<sup>st</sup> Block V.O.C. Nagar,  
Kattivakkam, Tamil Nadu – 600 057
5. Dhamodharan  
S/o Kanniyappan  
No.5/10, Sasthri Nagar 2<sup>nd</sup> Street,  
Ennore, Kattivakkam, Tamil Nadu – 600 057
6. Jeyachandran,  
S/o Durairaj,  
97, Kaveri Nagar,  
Kattivakkam, Tiruvallur, Tamil Nadu- 600 057
7. Damodharan Kasi,  
S/o Kasi  
14/4, 2<sup>nd</sup> Street, Anna Nagar,  
Ennore, Kattivakkam, Tamil Nadu- 600 057

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8. Riyazudden Hamarudeen  
S/o Hamarudeen  
21/16, 1<sup>st</sup> Street, Thiruvallurvar Nagar,  
Ennore, Kattivakkam, Tamil Nadu – 600 057

9. K. Parthsarathy  
S/o. Kathavarayan  
31, Chinnamman Koil Street,  
Thazankuppam, Kattivakkam, Tamil Nadu- 600 057

10. C. Muthukrishnan  
S/o Chinnamariyappan  
C130, Rajivgandhi Nagar,  
Ennore, Kattivakkam, Tamil Nadu- 600 057

.... Applicants

Vs.

1. Union of India  
Rep. by its Secretary to Government  
Ministry of Environment & Forests & Climate Change  
Indra Paryavaran Bhavan, Jor Bagh, New Delhi

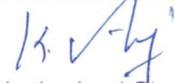
2. The Tamil Nadu Coastal Zone Management Authority  
Rep by irs Member Secretary  
No.1, Jeenis Road, Panagal Building,  
Ground Floor, Saidapet, Chennai – 600 015

3. The Tamil Nadu Pollution Control Board,  
Rep by its Member Secretary,  
No. 76, Mount Salai, Guindy, Chennai

4. M/s Coromandel International Limited,  
Rep by its Managing Director,  
1,2<sup>nd</sup> St, Satyavanimuthu, Thiruvalluvar Nagar,  
Ennore, Tamil Nadu – 600 057

.... Respondents

For Coromandel International Limited

  
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**PRELIMINARY COUNTER AFFIDAVIT FILED ON BEHALF OF  
RESPONDENT NO. 4**

I, Arulraj K, S/o Mr. P. Kanakaraj, Aged about 50 years, do hereby solemnly and sincerely affirm and make oath and state as follows:

1. It is respectfully submitted that I am the Sr. AVP & Head - Legal of the 4<sup>th</sup> Respondent herein and as such I am well acquainted with the facts of the case and duly authorised to swear to this Affidavit.
2. It is respectfully submitted that I have gone through the Original Application and I deny the allegations made therein except those that are specifically admitted hereunder.
3. I submit that this Counter Affidavit is being filed by this Respondent restricted to the issue of Limitation and the 4<sup>th</sup> Respondent reserves its right and craves leave to file an Additional Counter affidavit on the merits if necessary and/or if directed so by this Hon'ble Tribunal.

**ORIGINAL APPLICATION FILED IS BEYOND LIMITATION**

4. It is respectfully submitted that the present Application is filed under Section 14 of the National Green Tribunal Act, 2010 (hereinafter referred as "NGT Act") on 23.03.2024 praying for the following reliefs :-
  - a) To quash the clearances issued by the 1<sup>st</sup> and 3<sup>rd</sup> Respondent dated 16.12.1993, 20.12.1995, 03.09.2007 and 21.07.2023 as they were issued in violation of the CRZ Notification, 1991 and CRZ Notification, 2011.

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- b) Direct Respondents 1,2 and 3 to demolish the 4<sup>th</sup> Respondent industry in so far as the expansions effected post 19.02.1991 in violation of the CRZ Notification, 1991 and CRZ Notification,2011.
- c) Direct Respondents 1,2 and 3 to impose penalty and prosecute the 4<sup>th</sup> Respondent industry under the provisions of the Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1981.
5. It is respectfully submitted that the present Application is barred by Limitation. Section 14 of NGT Act is as follows:-

*"14. Tribunal to settle disputes.*

*(1)The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I.*

*(2)The Tribunal shall hear the disputes arising from the questions referred to in subsection (1) and settle such disputes and pass order thereon.*

*(3)No application for adjudication of dispute under this section shall be entertained by the Tribunal **unless it is made within a period of six months from the date on which the cause of action for such dispute first arose:***

*Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days."*

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It is submitted that the environmental clearances were issued on 16.12.1993, 20.12.1995 and 03.09.2007. The time limit prescribed under Section 14 of the NGT Act is six months from the date on which the cause of action for such dispute **first arose** and the tribunal is vested with a power to condone a delay **not exceeding** sixty days if it is satisfied that the Applicant was prevented by sufficient cause. It is submitted that the Applicants have filed the present Original Application on 23.03.2024 with undue delay from when the cause of Action first arose (i.e. on 16.12.1993, 20.12.1995 and 03.09.2007 date of issuance of Environmental Clearance) and hence the present application is barred by Limitation. The Hon'ble National Green Tribunal in *Ms. Geeta Bhadrassen Vadhai v. Ministry of Environment and Forest and Ors.*, ( MA 118/2014 in *Application No. 63 of 2014*) held as follows:-

8. So far as challenge to the EC is concerned, in our opinion, it is bygone issue, inasmuch as EC was issued on 30th September, 2005, whereas the Application is filed on 27th May, 2014. At any rate, whether it is treated as an Appeal or Application under Section 14, read with Section 18 of the NGT Act, the Application is hopelessly barred by limitation. In case of 'Aradhana Bhargava & Anr Vs MoEF Application No.11 of 2013), Bhopal Bench of NGT, observed that :

"23. From the very reading, it would be quite clear that the Tribunal has jurisdiction over all civil cases only where a substantial question relating to the environment including enforcement of any legal right related to environment is involved and also the said substantial question should also arise out of the implementation and is included in one of the seven enactments specified under the Schedule-I. Even, if the applicant is able to satisfy the above requisites, the Tribunal can adjudicate the disputes only if it is made

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within a period of six months from the date on which the cause of action in such dispute first arose and the Tribunal for sufficient cause can condone the delay for a period not exceeding 60 days in making the application.

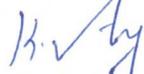
24. Under Section 15 of the Act, an application for relief and compensation to the victims of pollution and other environmental damage under the enactments specified in Schedule-I, or for restitution of the property damage or for restitution of environment for such area or areas, the application could be filed within a period of five years from the date of which the cause of action for such compensation or reliefs first arose. Also, if sufficient cause was shown, the Tribunal is empowered to condone the delay for a period not exceeding 60 days. Significant it is to note that the expression "cause of action for such dispute first arose" is employed. By employing the above expression, the legislative intent indicating that the period of limitation would commence only from the date on which the first event constituting the dispute arose, is explicit. This is not only an indication but also the caution that the later dates on which subsequent events arose should not be taken into account for computing the period of limitation.

28. Trait law it is that the special law of limitation, in any given enactment, will always exclude the general law of limitation. The NGT Act, 2010, a special enactment specifically provides period of limitation under Section 14(2) and 15(3), as stated supra. The Principal Bench, NGT has already held in *Jesurethinam & Ors Vs. Ministry of Environment, Union of India & Ors*, reported in 2012 (2) FLT 811 NGT that, when a specific provision for limitation is provided under the special statute, the general provisions of the Limitation

Act, 1963 are inapplicable. Hence, the Tribunal is afraid whether the theory of continuing cause of action can be made applicable to the present factual position of the case for which the specific period of limitation is available under the NGT Act, 2010.

30. A person who wishes to invoke the jurisdiction of the Tribunal or Court has to be vigilant and conscious of his rights and should not let the time to go by not taking appropriate steps. It is true that the provisions of law of limitation has to be construed liberally but the same cannot be applied to the present facts of the case for the reasons stated above. It is true that the Tribunal must adopt a practical approach which is in consonance with the provisions of the Act providing limitation. In the instant case, the period of limitation has begun to run long back. The period of limitation once commences operating, it does not stop but continues to operate with its rigour. An interpretation accepting the continuing cause of action would frustrate the very object of the Act and the purpose of prescription of limitation. In the instant case, it is contended by the respondent project proponent that nearly 600 crores have been spent and more than 50% of the work is over, hence, the project proponent who obtained the environmental clearance in the year 1986 and has completed not less than 50% of the work by spending hundreds crores of rupees would be thrown to jeopardising his project at the long lapse of years. Needless to say, if it is allowed, it would be against the very intent of the law. Even it may be true that the applicants are aggrieved persons and it may even be true that there was violations of provisions of law but action should have been initiated within the prescribed period of limitation. In view of all the above, it can be well stated that the contentions put forth by the Learned Counsel for the applicants that the application was within time have to be rejected."

For Coromandel International Limited

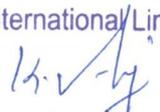
  
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6. It is respectfully submitted that the Applicant has stated that the present application is within limitation since the cause of action is recurring in nature and continues till the violation is stopped. It is respectfully submitted that the cause of action is not a recurring cause of action. The word recurring cause of action is explained in *Forward Foundation v. State of Karnataka*, 2015 SCC Online NGT 5., wherein the Hon'ble Tribunal defined it as something happening again and again and not that which occurs only once. In the present case, the grant of Environmental clearance on 16.12.1993, 20.12.1995 and 03.09.2007 is a singular event where the cause of action is complete and the limitation to challenge the validity also begins. The Hon'ble National Green Tribunal in *Aradhana Bhargav v. Ministry of Environment and Forest and Ors.*, 2013 SCC Online NGT 84 held as follows:-

*31. In the instant case, the applicants have asked for declaration in respect of environmental clearance dated 21.04.1986, communication dated 30.11.2005 and also a declaration on the strength that there was no environmental clearance and declaration that the activities of Pench Diversion Project could not commence without prior environmental clearance under EIA Notification 2006 and all other reliefs were only consequential. Thus, without going into the legality or otherwise, by environmental approval dated 21.04.1986, communication dated 30.11.2005, the question in respect of their declaration referred to above cannot be investigated or considered or a decision arrived at. Thus, the cause of action, as could be seen from the averments in the applications was directly relatable to the existence of the letters dated 21.04.1986, environmental clearance and letter dated 30.11.2005. **In the considered opinion of the Tribunal, the concept of continuing cause of action cannot be made applicable to the present factual position that too when there***

is a specific bar against the entertaining the application, if it is not within a period of limitation prescribed under Section 14(1) and 15(3) of NGT Act. At no stretch of imagination, neither the environmental approval dated 21.04.1986 nor the subsequent communicated dated 30.11.2005 can be assailed after long lapse of years. The words "first arose" in Section 14(1) and 15(3) which are indicators of the unambiguous legislative intent. While the expressed provisions of the statute of provision under Section 14(1) and 15(3) of the NGT Act is so clear, the concept of continuing cause of action as put forth by the applicants has no application. The statutory prescription of the special period of limitation under the said provisions would not only stand indicative but also exclude the said concept of continuing cause of action. If the theory of continuing cause of action is to be accepted, the words "first arose" in the above provisions will lose its import and significance. Having sought for a declaration that environmental approval dated 21.04.1986 and also the communication dated 30.11.2005 were invalid, now the applicants cannot be permitted to say that the environmental clearance dated 21.04.1986 was put an end by the subsequent communication in the year 2001 and thus, there was no environmental approval existed, cannot be countenanced. So long as the applicants have sought for a declaration as stated above, no doubt, the application is barred by time. As stated above, the applicants who are living nearby and whose lands have also been taken for the purpose of the project in question cannot now be permitted to say, after long lapse of a decade, that they came to know, that too the existence of their right only in November, 2012. A person who wishes to invoke the jurisdiction of the Tribunal or Court has to be vigilant and conscious of his rights and should not let the time to go by

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**VIGNESH SEKAR (Ms. No. 3281/2018)**

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**9003271435**

**COUNSEL FOR RESPONDENT No. 4**