BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

WESTERN ZONE BENCH, PUNE

IA NO. 301/2024

IN

APPEAL NO. 166/ 2024

IN THE MATTER OF -

APPLICANTS:-

MRS PRACHI AMIT MAHURKAR AND OTHERS

VERSUS

RESPONDENTS:- UNION OF INDIA, THROUGH ITS SECRETARY, MINISTRY OF ENVIRONMENT FOREST & CLIMATE CHANGE AND OTHERS

REJOINDER OF APPLICANTS TO THE REPLY FILED BY THE RESPONDENT NO:-04.

The appellants most respectfully submit as under: -

1. The Applicants filed the present Appeal being aggrieved by the Environmental Clearance (EC) dated **19.09.2024** issued by the Ministry of Environment, Forest and Climate Change (MoEF & CC) in Favor of M/s. Maharashtra State

Power Generation Company Limited (MAHAGENCO) for the construction of a 2x660 MW coal-based Supercritical Thermal Power Plant within the premises of the existing 2190 MW Koradi Power Plant, the impugned EC violates the Environment (Protection) Act, 1986, the EIA Notification, 2006, and the principles of sustainable development, precautionary principle, and intergenerational equity as recognized by the Hon'ble Supreme Court. The copy of the Environmental Clearance Order dated 19.09.2024 is marked and annexed as **ANNEXURE-1 IN APPEAL**.

2. That, the detailed facts and explanation for the 33 days delay is explained in the IA application and for preventing repetition the same are not mentioned in the present rejoinder.

3. That, the respondent no.4 in his supporting contentions replied on judgment of this Hon'ble Tribunal dated 14.03.2013 delivered in the case of ***Save Mon Region Federation & Anr. Vs. Union of India & ors. In M.A. No. 104 of 2012 (arising out of Appeal No. 39 of 2012)***. The learned counsel for the respondent no.4 urged that the date on which the environmental Clearance

was uploaded on the website of MoEF & CC would be treated to be the date on which the cause of action first arose i.e. 19.09.2024. the respondent no.4 further argued that the applicants ought to have filed the appeal by or before 18.10.2024 [within 30 days as per section 16 of NGT Act 2010].

4. The applicant respectfully submits that the applicants were communicated about the said Environmental Clearance dated 19-09-2024 through the Local Newspaper, "The Hitavada" on 24.09.2024. The Copy of the Newspaper dated **24.09.2024** is annexed as **ANNEXURE-18 in appeal**. The EC was never published in Local Office of the Gram Panchayat or the Municipal Corporation on 19-09-2024.

5. It is submitted that the publication of EC by MOEF on website on 19-09-2024 was also not oblivious to the applicants as the said website was not properly working for entire September 2024 and hence there was no question of downloading the EC order or getting communicated with the EC order. According to the applicants it was also mandatory for the respondents to publish the EC in Local

Office of the Gram Panchayat or the Municipal Corporation on 19-09-2024.

6. Even the affidavit made by the applicants is dated 19-10-2024 which is 30th day from the date of EC, which means that the applicants had no intentions to make the deliberate and wilful delay in filing this appeal. Although the appeal came to be filed on 21-10-2024 in NGT DELHI by registration no:-0701102022012024 the same could not be registered due to technical problem of the NIC site. The applicants were always vigilant and careful of their filing the appeal u/s 16 of NGT Act 2010. The applicants have also explained the "sufficient cause" in their delay application. Had the appeal been registered on 21-10-2024 then it would have been treated by NGT within 30 days of publication of the EC in Local Newspaper, i. e on 24-09-2024.

7. The applicants for their supporting contentions want to reply on the judgment of this Hon'ble Tribunal Principal Bench New Delhi dated 11.07.2013 delivered in case of ***M.s. Medha Patkar & others Vs. Ministry of Environment & Forest, Union of India & others in***

Appeal No. 1 of 2013 in paragraph no. 17, 20, 21 of the judgment states as under:- (ANNEXURE-H)

14. *The project proponent, upon the receipt of Environmental Clearance, should upload it permanently on its web site. In addition thereto, he project proponent should publish it in two local newspapers, having circulation, where the project is located and one of which being in vernacular language. In such publication, the project proponent should refer to the factum of Environmental Clearance along with the stipulated conditions and safeguards. The project proponent then also has to submit a copy of the EC to the heads of the Local Authorities, Panchayats and local bodies of the District. It will also give to the departments of the state, a copy of EC.*

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.***

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."

20. *On the first blush, the contention appears to have merits, but once examined on actual facts and correspondence placed by the parties on record, the contention needs to be rejected.* ***According to the applicant, the***

EC order dated 16 October, 2012 could not be downloaded for a considerable period and in fact, till January, 2013. *The applicant duly downloaded the same somewhere around 15 January, 2013 and filed the appeal on 30 January, 2013 within the prescribed period of 30 days, which is much less than the 90 days, the extended period of limitation. The applicant wishes to draw strength for the reason that on 5 December, 2012, it had written a letter to the Ministry under RTI Act demanding EC and other documents. To this letter, the Ministry responded that the file which was sent for digitization had not been retrieved and that after completion of the work, a copy would be provided. The letter written by the Ministry certainly supports the case of the appellant.* ***If the EC order dated 16 October, 2012 was on the website, all that was required of the Ministry was to inform the appellant that the order was***

available on their website and that even the executive summary of the EIA report was also available on the website and the appellant could download the same, but for reasons best known to it, a senior officer of the Ministry wrote that the document would be supplied to them in due course. *Thus, the documents (soft copy), admittedly were supplied/dispatched to the appellant after filing of the appeal i.e. vide letter dated 8 February, 2013.*

21. *We must also notice here that in the judgment in Save Mon Region Federation supra, the Tribunal had the occasion to deal with the question of the defective website of the Ministry where the orders or documents could not be downloaded for a considerable period. This position, in that case, has even been admitted by the MoEF and in the light of the letter dated 26 December, 2012 of the Ministry, it can safely be believed that the EC*

order dated 16 October, 2012 was not capable of being downloaded on 17 October, 2012, as claimed by the MoEF. Interestingly, the affidavit on behalf of the MoEF has been filed by the same officer who had authored the letter dated 26 October, 2012 and he chooses not to provide any explanation for the circumstances and causes of issuance of the said letter. Thus, we have to draw an inference, which shall be, on the one hand, in consonance with the normal rules of behaviour of human beings and on the other, with the correspondence that has been written by the Ministry of Environment and Forests in the normal course of its business.

23. *For the reasons afore-stated, we are of the considered view that the present appeal has been filed within the period of limitation and the objection raised by the respondent is without any merits. The preliminary objection raised by the respondent is hereby rejected and we direct the appeal to be listed on merits.*

8. Section 16 of National Green Tribunal Act, 2010 stated as under:-

> *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;*
>
> *(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;*
>
> *(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;*
>
> *(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;

(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;

(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;

(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;

(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)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;

(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, 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.

9. The appellants relies on the judgment passed by this Hon'ble Tribunal in case of Laxmi Chouhan Vs Union of India in Appeal No:-78/2018 decided on 24-05-2019. **[2010-SCC-ONLINE-NGT-116]** The copy of the judgment is enclosed as **ANNEXURE-CC** in IA application.

10. In ***Paryavana Sanrakshan Sangarsh Samiti Lippa Vs. Union of India and others, M.A. No. 23 of 2011 arising out of Appeal No. 17 of 2011*** *held as under:-* (ANNEXURE-I)

> **9:-** *According to Mr. Dutta, the facts of the cases referred to by Mr. Sharma, are distinctly different and the ratio of the decisions cited shall not apply to the facts and circumstances to the case in hand. Inviting our attention to Section 16 of the NGT Act, Mr Dutta submitted that any party aggrieved by an order or decision made, on or after*

commencement of the NGT Act, by the State Government or other Authority under Forest (Conservation) Act, 1980, may within a period of 30 days from the date on which the order or decision or direction or determination is communicated to him, prefer an appeal to the Tribunal. The impugned order in the present case, it is submitted, was passed under the Forest (Conservation) Act, on 14th June, 2011. The Memorandum of Appeal was filed on 12th September, 2011. Thus the same was presented on the 90th day of passing the order.

The proviso of Section 16 of the NGT Act reads as follows:

"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".

According to Mr. Dutta, the aforesaid proviso empowers the Tribunal to allow appeals to be filed within a further period not exceeding 60 days, provided the Tribunal is satisfied that the appellant was prevented by sufficient cause from filing the Appeal within the prescribed period of 30 days.

14. *The legislature under the provision of Section 16 of the NGT Act has conferred the power to condone delay up to 60 days after the period of limitation which is 30 days. This has been contemplated with the pious objective and in order to enable the Courts to do substantial justice to the parties by disposing of matters on merits. The expression "**sufficient cause**" used by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice. The Supreme Court in the case of Collector, Land Acquisition, Anantnag and Another Versus Mst. Katiji and Others (1987) 2*

Supreme Court Cases 107, laid down 6 guidelines to be kept in mind while dealing with limitation:-

" 1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay ? The doctrine must be applied in a rational commonsense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to

have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account for mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

18. *In the considered view of this Tribunal, the aforesaid mentioned appeal having been filed within 90 days from the date of impugned order, cannot be said to be time barred, only because the Memorandum of Appeal was not accompanied by a separate application for condonation of delay. The reasons assigned in the Memorandum of Appeal coupled with the reasons elaborated in the petition filed for*

condonation of delay latter, reveals that the delay in not presenting the appeal within 30days has been well explained and we are satisfied that for the reasons mentioned in the Memorandum of Appeal, the appellant was prevented by sufficient cause from filing the appeal within a period of 30 days. ***As a matter of fact, the appeal has been filed on the 90th day and under the proviso of Section 16 of the NGT Act, this Tribunal has the authority and jurisdiction to condone the delay.***

19. The application is accordingly allowed, the delay is condoned, with no order of cost.

11. The applicants are also relying on following judgments: -

i. Order passed by Hon'ble Supreme court delivered on 04.05.1961 in case of Ramlal, Motilal and Chhotelal versus Rewa Coalfield Ltd. Civil Appeal No. 276 of 1958{(1961) SCC Online SC 39} (ANNEXURE- J)

ii. State of Nagaland versus Lipok AO and Others, Criminal Appeal No. 484 of 2005, decided on 01.04.2005 {(2005) 3 SCC 752} (ANNEXURE-K)

iii. Vedabai Alias Vaijayanatabai versus Shantiram Baburao Patil & others, Civil Appeal No. 4494 of 2001, decided on 20.07.2001{(2001) 9 SCC 106} (ANNEXURE-L)

iv. N. Balakrishnan Versus M. Krishnamurthy, Civil Appeals Nos. 4575 of 1998 {(1998) 7 SCC 123}. (ANNEXURE-M)

12. It is humbly requested to this Hon'ble Tribunal to kindly consider the date of affidavit of the appeal. The date of Appeal Affidavit is **19.10.2024**. That this Hon'ble Tribunal may consider the "**date of affidavit**" which is notarized within 30 days of the EC and Newspaper Publication, which shows that there is no deliberate intention to cause the delay in filling the appeal.

13. It is submitted that the present appeal is anyways filed within 60 days of "permissible time" of delay as contemplated in section 16 of NGT ACT 2010. The delay caused is unintentional and bonafide delay, hence needs to be condoned in the interest of justice as the appellants have

shown the "sufficient cause" to condone the delay in filing the present appeal. Hence this application.

PLACE: -NAGPUR

DATE: - 19.02.2025

Advocate For the Applicants

Adv. Gayatri Sharma

OFFICE ADDRESS:- PLOT NO:-308, KRISHNA NAGAR, SEMINARY HILLS, IBM ROAD, GITTIKHADAN, NAGPUR; PHONE NO:- 9665037401, E-mail: gayatrisharma.advocate@gmail.com

23

BEFORE THE HONBLE NATIONAL GREEN TRIBUNAL, BENCH AT WESTERN ZONE PUNE

IA NO:-301/2024

IN

NGT APPEAL NO.:-166/2024

AFFIDAVIT IN SUPPORT

Petitioners:- Mrs Prachi Amit Mahurkar, Age:-49 Years, Occupation:-Private Service, Address:-4th Floor, Plot No:-211, Near Babhulkar Hospital, Shankar Nagar, Nagpur, Maharashtra-440010; Mobile No. :- 9823612468 And Others

VERSUS

Respondents:- Union Of India, Through Its Secretary, Ministry Of Environment Forest & Climate Change, Indira Paryavaran Bhawan, Jorbagh Road, New Delhi - 110 003 Email. Id:- Secy-Moef@Nic.In And Others

322

NOTARIAL REG
ENTRY NO 2989
DATE 19/02/2025

24

NOTARY ★ ARCHANA D. JAISWAL ★ Regn. No. 4753 ★ NAGPUR (M.S.) ★ GOVERNMENT OF INDIA

SOLEMN AFFIRMATION

I, Mrs Prachi Amit Mahurkar, Age:-49 Years, Occupation:- Private Service, R/O Nagpur, Maharashtra-440010; having status of Petitioner no. 1 in the present petition, takes oath and state on solemn affirmation that :-

I) I am duly conversant with the facts of the case and competent to file the present affidavit.

II) That the contents in this rejoinder are drafted by my counsel on my instruction are true to the best of my personal knowledge and belief.

III) The contents are drafted by my counsel on the basis of documents supplied by me and were explained to me in vernacular, which I have understood. Hence verified and signed on 19th Day of February, 2025 at Nagpur.

Deponent

SEAL OF NOTARY ARCHANA D. JAISWAL Regd.No. 4753 NAGPUR, (M.S.) GOVT. OF INDIA

I know and identify the deponent

Adv. Gayatri Sharma

Be Sworn Solemnly Affirmed by Prachi A. Mahurkar

Who is personally Known to me / identified by Adv G. Sharma before me on this 19th day of Feb 2025 at Nagpur

19/02/2025

ARCHANA D. JAISWAL
NOTARY (Regn. No. 4753)
KHARE TOWN, DHARAMPETH
NAGPUR-440010

Office Address:-Plot No:-308, Krishna Nagar, Seminary Hills, Gittikhadan, Nagpur; Phone No:- 9665037401, E-mail: gayatrisharma.advocate@gmail.com

25

ANNEXURE -H

2013 SCC OnLine NGT 63

National Green Tribunal Principal Bench New Delhi

(BEFORE SWATANTER KUMAR, CHAIRPERSON AND U.D. SALVI, J.M. AND D.K. AGRAWAL, E.M., G.K. PANDEY, E.M. AND A.R. YOUSUF, E.M.)

In the matter of:

1. Ms. Medha Patkar, D/o Mr. Vasant Khanolkar, Narmada Ashish, Navalpura, Off Kasrawat Road, Badwani-4515512 Madhya Pradesh
2. Ms. Aradhana Bhargav, W/o Shri Premnarayan, Purana Chapakhana Road, Chhindwara-480001, Madhya Pradesh
3. Mr. Sajje Chandrawanshi, S/o Kishorchand, Village Chousara, Tal. Chhindwara, Distt. Chhindwara-480001, Madhya Pradesh
4. Mr. Bramu Kavreti S/o Sumerchand, Village Chousara, Tal. Chhindwara, Distt. Chhindwara-480001, Madhya Pradesh
5. Abhay Lal S/o Ram Charan, Village Chousara, Tal. Chhindwara, Distt. Chhindwara-480001, Madhya Pradesh
6. Ms. Seela M. Mahapatra, D/o Sailabala Mahapatra, D-52, IInd Floor, Sector 10, Vasundhara, Ghaziabad-201012, Uttar Pradesh ... Appellants;

Versus

1. Ministry of Environment & Forests, Union of India, through Secretary, Paryavaran Bhavan, C.G.O. Complex, Lodhi Road, New Delhi-110003
2. The Chairman, Madhya Pradesh State Pollution Control Board, Paryavaran Parisar, E-5, Arera Colony, Bhopal-462016
3. The State of Madhya Pradesh through the Chief Secretary, Vallabh Bhawan, Bhopal-402003
4. Adani Pench Power Ltd., 10th Floor, Sambhav Building, Judges Bungalow Road, Bodakdeo, Ahmedabad-380015
5. The Chief Conservator of Forests, Ministry of Environment and Forests, Regional Office (WZ), E-5, Kendriya Paryavaran Bhawan, E-5, Arera Colony, Link Road-3, Ravishankar Nagar, Bhopal-462016
6. M.P. Power Management Company Ltd., through Chairman, Shakti Bhawan, Vidyut Nagar, Rampur, Jabalpur-482008 ... Respondents.

Appeal No. 1 of 2013
Decided on July 11, 2013

Counsel for Appellants:

Mr. Sanjay Parikh, Mr. Abhimanu Shrestha

Ms. Bushra Parveen and Ms. Sridevi Pannikar, Advocates.

Counsel for Respondents:

Ms. Neelam Rathore along with Ms. Syed Amber, Advocates for Respondent No. 1.

Mr. Rajul Shrivastav, Advocate for Respondent No. 2

Mr. Achi Agnihotri, Advocate for Ms. Vibha Datta Makhija, Advocate for Respondent

No. 3.

Mr. Dhruv Metha, Sr. Advocate along with Mr. Neil Hildreth, Mr. Sushanth Murthy, Ms. Pratibha Sridhar, Advocates for Respondent No. 4

Mr. Dhruv Mehta, Sr. Advocate along with Mr. Neil Hildreth, Advocate for Respondent No. 5

Mr. Vivek K. Tankha, Sr. Advocate along with Mr. Sumeer Sodhi, Advocate for Respondent No. 6

ORDER/JUDGMENT

SWATANTER KUMAR, CHAIRPERSON:— The appellants claim to be well known social activists engaged in issues of environmental protection, unjust displacement and rehabilitation and resettlement of displaced communities along with broader issues in development planning for nearly 30 years. They also claim to be persons eligible within the meaning of Section 18(2)(e) of the National Green Tribunal Act, 2010 (for short the "NGT Act") and have preferred the present appeal under Section 16 read with Sections 14, 15(b), (c) and 18(1) and (2) of the NGT Act challenging the legality and correctness of the communication bearing No. J-13012/30/2010-IA-II(T) dated 16th October, 2012, issued by the Govt. of India, Ministry of Environment and Forests (MoEF), granting Environmental Clearance (EC) to Adani Pench Power Ltd., Respondent No. 4, for 2 × 660 MW imported coal based thermal power plant at villages Dhanora, Chausara, Dogawani Pipariya, Hiwarkhedi and Thawriteka in Chaura and Chhindwara Taluka in Distt. Chhindwara, State of Madhya Pradesh.

2. It is the pleaded case of the appellants that the environmental clearance has been granted to the Respondent No. 4 in violation of the EIA notification of 2006 in an arbitrary manner and it being contrary to law, is otherwise illegal.

3. The appellants have specifically pleaded that though the environmental clearance for the proposed project has been granted vide communication dated 16th October, 2012, yet the project proponent has been continuously violating the provisions of 2006 notification, the Environment (Protection) Act, 1986 as well as other relevant Acts, as enumerated in the schedule to the NGT Act. The MoEF is stated to have completely failed to take into consideration the objections, concerns and issues which were abuzz during the public hearing regarding the proposed project while granting environmental clearance. In fact, the public hearing was not conducted in accordance with law and major issues like impact on forest and river due to the proposed project, compensation to the farmers whose land has been acquired, commitment for employment given during land acquisition not kept, persons losing land to be identified and given employment, electricity for local people at concessional rates, educated youth of villages to be given employment, right-of-way for villagers whose land is adjacent to boundary wall of the plant, development of school and hospital for villagers, impact on Pench Tiger Reserve, impact on Tiger Corridor between Kanha Tiger Reserve and Balaghat Forests and formation of local committees involving local people to resolve local issues were thereby not addressed. Another important aspect on the basis of which the environmental clearance was challenged was that in the summary EIA and the minutes of the meeting on MoEF website, it is apparent that the application and the draft EIA report is based on the assumption that indigenous coal would be made available from nearby coal mines for the project. However, during consideration before the EAC for grant of EC, the project proponent stated that they had decided to switch to imported coal from South Africa due to non-availability of domestic coal. This was a major departure from the representation made in Form I and the draft EIA report. The project proponent's sudden shift from local indigenous coal to imported coal should have been made available at the time of public hearing and should have been dealt with by specific conditions in the EC. Furthermore, MoEF had imposed a specific condition in the EC that "sulphur and ash contents in the coal to be used in the project

27

shall not exceed 0.5% and 29% respectively at any given time. In case of variation of coal quality at any point of time, fresh reference shall be made to the Ministry for suitable amendments to environmental clearance condition, wherever necessary". There was admittedly a change in the contents of the coal proposed to be used and it was an important issue which required study by MoEF with reference to the grant of environmental clearance. The appellants also challenge the condition in regard to rights of the SC and ST population in the area, proper Resettlement and Rehabilitation (R & R) plan, which was to be completed within a time bound manner and before commissioning of the project. The appellants find fault on all these counts in the grant of environmental clearance by MoEF.

4. The learned counsel appearing for the respondent, at the very threshold raised the question of limitation even before refuting the above contention of the appellants. The contention on behalf of the respondent is that the environmental clearance was granted and communicated on 16th/17th October, 2012 while the present appeal has been filed on 30th January, 2013. There is a delay of 16 days even beyond the period of 90 days prescribed under Section 16 of the NGT Act and as such the Tribunal does not have even the jurisdiction to condone the delay in filing the appeal. More so, there is no sufficient cause shown by the appellants for condoning the delay in any case in filing the present appeal.

5. However, this contention is refuted on behalf of the appellants stating that they had come to know and could download the environmental clearance in the second week of January, 2013 and immediately thereafter and without any loss of time, they filed an appeal on 30th January, 2013 in the Registry of the Tribunal. Thus, there is no delay in filing the appeal and the same has been filed within the prescribed period of limitation of 30 days. In the alternative, it is contended that there is sufficient cause for condoning the delay beyond 30 days as the appeal, in any case, has been filed much prior to the outer prescribed period of 90 days. Thus, the delay should be condoned and the appeal be heard on merits.

6. From the above rival contentions, it is clear that the Tribunal has to answer the question of limitation as a preliminary issue. Thus, the judgment was reserved in the present case upon hearing the arguments only on the question of limitation in the first instance.

7. Now let us refer to the factual averments of the respective parties on the issue of limitation. According to the project proponent, the environmental clearance was granted on 16st October, 2012. Its intimation was printed in the newspapers on 28st October, 2012 while the appeal has been filed on 30st January, 2013. Thus the appeal is barred by 16 days. The appeal at best could be filed by 15st January, 2013 i.e. within 90 days from the date of grant of environmental clearance in terms of the proviso to Section 16 of the NGT Act. The appellants failed to comply with the rigours of Section 16 of the NGT Act and thus, the appeal is liable to be dismissed as being barred by limitation.

8. According to MoEF, the environmental clearance was granted on 16st October, 2012, which was uploaded on the website of the Ministry on 17st October, 2012. Thus, the same could be downloaded immediately thereafter. The MoEF had filed its reply on 9st April, 2013 and in paragraph 21 of its reply, it was specifically stated. In furtherance to a specific order of the Tribunal, MoEF had filed another affidavit on 2nd May, 2013 and in paragraph 2.2 of the said affidavit, it was stated that the environmental clearance was uploaded on the Ministry's website on 17st October, 2012 and could be downloaded instantly in the normal functioning of the National Informatics Centre of the Ministry of Communication and Information Technology. That being so, it is contended that limitation should be counted from 17st October, 2012 and the appeal at best could be filed by 16st January, 2013 (within 90 days) from the

28

date of communication. However, the appeal having been filed on 30st January, 2013 is barred by 14 days and the Tribunal has no jurisdiction to condone the delay of an appeal filed beyond the period of 90 days in terms of proviso to Section 16 of the NGT Act. According to the appellants also, there is no dispute to the fact that the environmental clearance was granted on 16st October, 2012. However, the appellants dispute the fact that the Ministry had uploaded the environmental clearance dated 16st October, 2012 on 17st October, 2012 and it was downloadable thereof. It is further stated that the conditions of EC and EIA Notification 2006 have been violated by the project proponent with impunity and a number of complaints were made by the appellants through the State and the Central authorities, but no action was taken. Therefore, because of the continuing violation, the cause of action is a continuing one and there is no delay in filing the present appeal. The project proponent has not complied with his obligation of publishing the EC in the newspaper, communicating the same to the local government administration and making it available to the affected villagers. In the light of the project proponent having violated the specific terms in this regard, even the period of limitation will not start. It is also stated that neither the project proponent nor MPPCB has uploaded the copy of the EC on their website.

9. It is the specific case of the appellant that the appellant was unable to download the environmental clearance and other relevant documents. Therefore, in exercise of its rights under the Right to Information Act, 2005 the appellant wrote a letter dated 5st December, 2012 demanding the documents. The said letter reads as under:

"Kindly provide the following documents related to the Adani Pench Thermal Power Project in Chhindwara District of Madhya Pradesh:

1. Project plan, environment management plan, EIA report required for EC submitted by the project authority to the Ministry of Environment and Forest.
2. All correspondence between Project Proponent, Govt of MP and MoEF and any other concerned agencies.
3. Copy of clearances-Forest as well as environment granted by the Ministry for the project.
5. Details of visit made by MoEF and report from that visit to the project site.

Name of the applicant: Seela M. Mahapatra
Address: 6/6, Jangpura 'B', Mathura Road, New Delhi-110014
Phone Number-011-24374535, 09212587159"

10. This letter was responded to by the CPIO & Dy. Director, MoEF, Govt. of India, vide his letter dated 26st December, 2012. The reply reads as under:

"....the project file could be retrieved only a week back and as the information sought by you is voluminous, it is informed that the file is being sent for digitization and a soft copy of the project file could be furnished once it is over, which is expected soon."

11. In face of the above indisputable position that the appellant was not able to get a copy of the EC till the second week of January, 2013 and after downloading at that time, the appellant filed the appeal on 30st January, 2013 within the period of limitation. Thus, the question of condoning the delay and/or showing sufficient cause would not arise in the facts of the present case. The provisions of Section 16 of the NGT Act relate to prescription of limitation for filing of an appeal. Any person aggrieved has the right to file appeal under this provision. However, such an appeal should be filed within 30 days from the date on which the issue is communicated to him. The Tribunal, however, is vested with the power of entertaining an appeal beyond the period of 30 days but within a further period of 60 days from such communication. In other words, the Tribunal is competent to condone the delay if an appeal is filed

29

within 90 days from the date of the communication but loses its jurisdiction thereafter. As far as what is communication and how the period of limitation prescribed under Section 16 of the NGT Act is to be determined and with reference to what Acts, we need not dwell upon the issue as it already finds answers in some details in a recent judgment of the Tribunal in the case of *Save Mon Region Federation* v. *UOI* (MA No. 104/2012) decided on 14st March, 2013, 2013(1) All India NGT Reporter Page 1. The Tribunal held as under:

> "13. The legislature, in its wisdom, has used the expression 'communicated to him' under Section 16 of the NGT Act in contradistinction to 'serving', 'receiving', 'delivery' or 'passing' of the order. Normally, these are the expressions which are used in the provisions relating to limitation. Generally, limitation is to be reckoned from the date which is relatable to these expressions. For instance, the period of limitation may commence from the date the order is received by or served upon an individual, as presented in the relevant provisions. The expression 'communication' is neither synonymous nor even equivalent in law to the above mentioned expressions. The above-mentioned expressions require merely a unilateral act, that is, dispatch of the order, receipt of the order or service of the order upon an individual. But the act of communication cannot be completed unilaterally. It does require the element of participation by two persons, one who initiates communication and the other to whom the communication is addressed and who receives the same, i.e. the intended receiver.
>
> At this stage, we may examine what is the legal meaning and connotation of the expression 'communication'. "Communication" is initiated by transforming a thought into words, act and expression. It is then converted into a message which is transmitted to the receiver. The receiver understands the message. It may or may not evoke a response. There may be cases where only the sender and the receiver alone are not of significance but even the channel of communication may have some importance. *The Black's Law Dictionary*, 9st Edition, explains 'communication' as:
>
> > "1. The expression or exchange of information by speech, writing, gestures, or conduct; the process of bringing an idea to another's perception.
> >
> > 2. The information so expressed or exchanged."
> >
> > *The Law Lexicon*, 3rd Edition, defines 'communication' as: "A statement made in writing or by word of mouth by one person to another; the transfer of information by speech and by acts, signs and appearances."
>
> 14. *Wharton's Law Lexicon*, 15st Edition, explains the terms 'communicate', 'communicated', 'communication' as well as 'communication to the public' as under:
>
> > "**Communicate**, means that sufficient knowledge of the basic facts constituting the "grounds" should be imparted effectively and fully to the detenu in writing in a language which he understands, *Lallubhai Jogibhai Patel* v. *Union of India*, (1981) 2 SCC 427 (733) : AIR 1981 SC 728 : (1981) 2 SCR 352.
> >
> > It is a strong word. It requires that sufficient knowledge of the basic facts constituting the grounds should be imparted effectively and fully to the detenu in writing in a language which he understands, so as to enable him to make a purposeful and effective representation. *Kubic Darusz* v. *Union of India*, (1990) 1 SCC 568 : AIR 1990 SC 605 (609)
> >
> > XXXX XXXX XXXX XXXX
> >
> > **Communicated,** a posted acceptance takes effect when it is communicated to the offeror; communicated is defined as delivered at his address, *Halsbury's Laws of England*, Vol 9, para 281, p. 160.
> >
> > XXXX XXXX XXXX XXXX

30

Communication, means that the electrical impulse or signal transmitted by a telephone call was in itself a communication and any intentional interception of that signal in the course of its transmission through a public telecommunication system was subject to the provisions, *Morgans* v. *D.P.P. [HL(E)]*, (2000) 2 WLR 386. [Interception of Communication Act, 1985, s. 1(1)(UK)]

A communication did not take place until the subscriber's telephone was answered at the destination and the calling parties communicated with each other. In other words, the digits dialled were a means to an end in the making of a communication, *Morgans* v. *DPP (DC)*, (1999) 1 WLR 981.

Means information imparted by one person to another, A *Dictionary of Law*, William C. Anderson, 1889, p. 213. In Indian Parliament Communications are exchanged between the President and either House of Parliament and between both the Houses of Parliament. The President may send a message to either House of Parliament with respect to a Bill pending before it or otherwise and a House which receives such message shall consider any matter required by the message with all convenient dispatch, Constitution of India, Art. 86(2).

Communication, in respect of order of dismissal would mean that the same is served upon the delinquent officer, *State of Punjab* v. *Amar Nath Harika*, AIR 1966 SC 1313.

XXXX XXXX XXXX XXXX

Communication to the public, for the purposes of this clause, communication through satellite or cable or any other means of simultaneous communication to more than one household or place of residence including residential rooms of any hotel or hostel shall be deemed to be communication to the public. [Copyright Act, 197 (14 of 1957), S. 2(ff)]

Means making any work available for being seen or heard or otherwise enjoyed by the pubic directly or by any mean display or diffusion other than by issuing copies of such work regardless of whether any member of the public actually secs, hears or otherwise enjoys the work so made available [Copyright Act, 1957, s. 2(ff)]"

15. *The Oxfords Dictionary of English*, 3rd Edition, also defines the words 'communication' as under:

"**communication-1.** The imparting or exchange of information by speaking, writing or using some other medium *: television is an effective means of communication [at the moment I am in communication with London*; a letter or message containing information or news;; the successful conveying or sharing of ideas and feelings: *there was a lack of* ***communication between*** *Pamela and her parents*. social contact: *she gave him some hope of some return, or at least of their future communication*.

2. (communications) means of sending or receiving information, such as telephone lines or computers: *satellite communications [as modifier] a communications network*. [treated as sing.] the field of study concerned with the transmission of information.

3. (communications) means of travelling or of transporting goods, such as roads or railways: *a city providing excellent road and rail communications*. ...."

16. Upon analysis of the above, it is clear that 'communication' is made by one and received by another. It requires sufficient knowledge of the basic facts constituting the communication. The action of communicating is precisely sharing of knowledge by one with another of the thing communicated. Communication, particularly to the public, has to be by methods of mass communication, like satellite, website, newspapers etc. 'Communicated' is a strong word. It requires that sufficient

31

knowledge of basic facts constituting the grounds of the order should be imparted fully and effectively to the person.

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.

18. Law gives a right to 'any person' who is 'aggrieved' by an order to prefer an appeal. The term 'any person' has to be widely construed. It is to include all legal entities so as to enable them to prefer an appeal, even if such an entity does not have any direct or indirect interest in a given project. The expression 'aggrieved', again, has to be construed liberally. The framers of law intended to give the right to any person aggrieved, to prefer an appeal without any limitation as regards his locus or interest. The grievance of a person against the Environmental Clearance may be general and not necessarily person specific. This provision of Section 16 requires communication of the order to such person(s). The expression 'him' takes within its ambit 'any person' who is aggrieved by an order. Therefore, the expression 'communication' accordingly has to receive a more generic and at the same time, definite meaning. The nature of the communication has to be such that it reaches the public at large, as that appears to be the legislative intent. A person is expected to and can, only act when the order is put in public domain. He is expected to download the same from the website of the concerned Ministry/Department and if he so requires thereafter, make an application for receiving specific information. However, the content of the order is required to be communicated by the MoEF as well as by the Project Proponent.

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

32

reckoning the period of limitation."

12. From the above dictum, it is clear that a communication would mean putting it in public domain and completing the acts as are contemplated in the EIA Notification of 2006, read with conditions of the EC and the provisions of the Act. In terms of the scheme of the notification and law, there are three stakeholders in the process of grant of environmental clearance:

(a) Project Proponent

(b) Ministry of Environment and Forests and

(c) Other agencies which are required to fulfill their obligations to make the communication complete in terms of the provisions of the Act and the notification concerned.

13. The MoEF shall discharge its onus and complete its acts to ensure communication of the environmental clearance so as to trigger the period of limitation. The MoEF upon granting of the environmental clearance must upload the same on its website within seven days of such order, which would remain uploaded for at least 90 days, as well as put it on its notice board of the Principal as well as the Regional Office for a period of at least 30 days. It should be accessible to the public at large without impediments (*Refer Save Mon Region Federation* v. *UOI*).

14. The project proponent, upon receipt of the environmental clearance, should upload it permanently on its website. In addition thereto, the project proponent should publish it in two local newspapers having circulation where the project is located and one of which being in vernacular language. In such publication, the project proponent should refer to the factum of environmental clearance along with the stipulated conditions and safeguards. The project proponent then also has to submit a copy of the EC to the heads of the local authorities, panchayats and local bodies of the district. It will also give to the departments of the State a copy of the environmental clearance.

15. Then the Government agencies and local bodies are expected to display the order of environmental clearance for a period of 30 days on its website or publish on notice board, as the case may be. This is the function allocated to the Government departments and the local bodies under the provisions of the notification of 2006. Complete performance of its obligations imposed on it by the order of environmental clearance would constitute a communication to an aggrieved person under the Act. In other words, if one set of the above events is completed by any of the stakeholders, the limitation period shall trigger. If they happen on different times and after interval, the one earliest in point of time shall reckon the period of limitation. 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. 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

33

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 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.

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 fulfilment 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 16st 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 28st 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 28st 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.

19. Now, we must deal with the plea taken up by the MoEF. According to them, the environmental clearance was granted on 16st October, 2012 and was uploaded on the website of the Ministry on 17st October, 2012. Resultantly, the appeal is barred by 16 days, it having been filed on 30st January, 2013. Their contention is that the Tribunal cannot even condone the delay beyond the period of 90 days in terms of Section 16 of the NGT Act.

20. On the first blush, the contention appears to have merits, but once examined on actual facts and correspondence placed by the parties on record, the contention needs to be rejected. According to the applicant, the EC order dated 16st October, 2012 could not be downloaded for a considerable period and in fact, till January, 2013. The applicant duly downloaded the same somewhere around 15st January, 2013 and filed the appeal on 30st January, 2013 within the prescribed period of 30 days, which is much less than the 90 days, the extended period of limitation. The applicant wishes to draw strength for the reason that on 5st December, 2012, it had written a letter to the Ministry under RTI Act demanding EC and other documents. To this letter, the Ministry responded that the file which was sent for digitization had not been retrieved and that after completion of the work, a copy would be provided. The letter written by the Ministry certainly supports the case of the appellant. If the EC order dated 16st October, 2012 was on the website, all that was required of the Ministry was to inform the appellant that the order was available on their website and that even the executive summary of the EIA report was also available on the website and the appellant could download the same, but for reasons best known to it, a senior officer of the Ministry wrote that the document would be supplied to them in due course. Thus, the documents (soft copy), admittedly were supplied/dispatched to the appellant after filing of the appeal i.e. vide letter dated 8st February, 2013.

21. We must also notice here that in the judgment in *Save Mon Region Federation* supra, the Tribunal had the occasion to deal with the question of the defective website of the Ministry where the orders or documents could not be downloaded for a considerable period. This position, in that case, has even been admitted by the MoEF and in the light of the letter dated 26st December, 2012 of the Ministry, it can safely be believed that the EC order dated 16st October, 2012 was not capable of being downloaded on 17st October, 2012, as claimed by the MoEF. Interestingly, the affidavit on behalf of the MoEF has been filed by the same officer who had authored the letter dated 26st October, 2012 and he chooses not to provide any explanation for the circumstances and causes of issuance of the said letter. Thus, we have to draw an inference, which shall be, on the one hand, in consonance with the normal rules of behaviour of human beings and on the other, with the correspondence that has been written by the Ministry of Environment and Forests in the normal course of its business.

22. As MoEF and SEIAA are the most important stakeholders in the EIA process, we

35

direct MoEF/SEIAA that the EC granted should be uploaded as early as possible, not later than 7 days from the date of such grant and the website to be maintained properly. This may be brought to the notice of all SEIAAs for compliance by the MoEF. Besides, in order to avoid communication gap, MoEF is also directed to mention as one of the conditions in the EC letter that the EC granted be widely published in accordance with the provisions of EIA notification, 2006 by all the stake holders.

23. For the reasons afore-stated, we are of the considered view that the present appeal has been filed within the period of limitation and the objection raised by the respondent is without any merits. The preliminary objection raised by the respondent is hereby rejected and we direct the appeal to be listed on merits.

24. There shall, however, be no order as to costs.

———

T.C.
L.C. Applicants
(Adv. Gayatri Sharma)

36 ANNEXURE - I

NATIONAL GREEN TRIBUNAL,
NEW DELHI

...

M.A. No. 23 OF 2011

ARISING OUT OF APPEAL NO. 17 OF 2011

Paryavana Sanrakshan Sangarsh Samiti Lippa ... Appellant

Versus

Union of India & Ors. ... Respondent(s)

Date: 15th December, 2011

ORDER

The Appellant seeks to assail the order dated 14th June, 2011 issued by Ministry of Environment and Forests, granting final approval for diversion of 17.6857 ha of forest land in favour of M/s. Himachal Pradesh Power Corporation Ltd., (HPPCL) for construction of 130 MW Integrated Kashang stage II and III Hydroelectric Project in this appeal, filed under Section 18 (1) read with Section 14, 15 & 16 of the National Green Tribunal Act, 2010 (hereinafter referred to as NGT Act).

2. Under Section-16 of the NGT Act, an appeal against an order granting forest clearance, is to be filed within 30 days. The proviso of the said section stipulates that if the Tribunal is satisfied that the appellant was prevented by sufficient cause from filing the appeal

37

within the said period, allow it to be filed within a further period not exceeding 60 days.

3. The appellant presented the Memorandum of Appeal in the office of NGT on 12th December, 2011. The same was registered as Appeal No.17 of 2011, subject to objection on limitation and notices were issued.

4. After receiving notice, Respondents No. 2 & 3 entered appearance through Mr. Naresh Kumar Sharma. Ms. Neelam Rathore appeared on behalf of Respondent No.1, Union of India. In course of hearing on the question of limitation, Mr. Ritwick Dutta prayed to allow him to file a detailed petition for condonation of delay. The said prayer having been allowed an application for condonation of delay was filed on 12th October, 2011 and was registered as M.A. No. 23 of 2011. A reply to the said application was filed by Respondent No.3. On behalf of Respondent No.1, however, no objection was filed.

5. In course of hearing Mr. Dutta Learned Counsel appearing for the appellant, humbly submitted that Rule 8(1) of the NGT Rules prescribes a form of Memorandum of Appeal and, in the said form there is provision to explain the period of limitation. Drawing our attention to the Memorandum of Appeal, Mr. Dutta submitted that the reasons for presenting the Appeal late has been vividly and sufficiently explained in the Memorandum.

6. Mr. Sharma, Learned Counsel appearing for Respondent No. 2 & 3 responded the stand taken by the Appellant, by filing a reply to the application for condonation of delay. It is urged that the appeal having been filed after 30 days the Memorandum of Appeal should have accompanied by an application for condonation of delay. The delay also having not been properly explained, may not be condoned. Mr. Sharma, further forcefully submitted that the Tribunal should not extend the period of limitation prescribed that under a Statute and the appeal filed after lapse of the period prescribed, that too without a petition for condonation of delay, deserves to be rejected at the threshold.

7. In support of his submissions, Mr. Sharma relied upon the decision of the Supreme Court in the case of **Chhattisgarh State Electricity Board V/s Central Electricity Regulatory Commission and Others (2010) Supreme Court Cases - 23.** In the said decision, the Supreme Court observed as follows:-

> ***27. " It is thus evident that the Electricity Act is a special legislation within the meaning of Section 29(2) of the Limitation Act, which lays down that where any special or local law prescribes for any suit, appeal or application a period of limitation different from the one prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and provisions contained in Sections 4 to 24 (inclusive) shall apply for the***

purpose of determining any period of limitation prescribed for any suit, appeal or application unless they are not expressly excluded by the special or local law:

8. Mr. Sharma further relied upon the observations made by the Hon'ble Supreme Court in the case of **Singh Enterprises V/s Commissioner of Central Excise and others (2008) 3 Supreme Court Cases 70.** Wherein it was observed as follows:

"The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only up to 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act".

9. According to Mr. Dutta, the facts of the cases referred to by Mr. Sharma, are distinctly different and the ratio of the decisions cited shall not apply to the facts and circumstances to the case in hand. Inviting our attention to Section 16 of the NGT Act, Mr Dutta submitted that any party aggrieved by an order or decision made, on or after commencement of the NGT Act, by the State Government or other Authority under Forest (Conservation) Act, 1980, may within a period of 30 days from the date on which the order or decision or direction or determination is communicated to him, prefer an appeal to the Tribunal. The impugned order in the present case, it is submitted,

was passed under the Forest (Conservation) Act, on 14th June, 2011. The Memorandum of Appeal was filed on 12th September, 2011. Thus the same was presented on the 90th day of passing the order.

The proviso of Section 16 of the NGT Act reads as follows:

"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".

According to Mr. Dutta, the aforesaid proviso empowers the Tribunal to allow appeals to be filed within a further period not exceeding 60 days, provided the Tribunal is satisfied that the appellant was prevented by sufficient cause from filing the Appeal within the prescribed period of 30 days.

10. Repudiating the said submissions Mr. Sharma, Learned Counsel for Respondent No. 3 & 4 contended that admittedly the Appeal was not filed within the prescribed period i.e. 30 (thirty) days, thus it was barred by time. The Memorandum of Appeal in this case was also not accompanied with a petition for condonaton of delay, thus the belated application filed for condonation should not be accepted and the Appeal should be dismissed, on the ground of limitation.

41

Mr. Dutta reiterated his stand and submitted that no separate application is needed to be filed under the NGT Act as there is a provision in the Format, prescribed under the Rules, to explain the delay in the Memorandum of Appeal itself. Mr. Dutta, further submitted that only by way of abundance and caution, the appellant had filed an application for condonation of delay further elucidating the cause shown in the Memorandum of Appeal, in order to satisfy the Tribunal, that there were cogent grounds and sufficient reasons for not filing the appeal within 30 days. Mr. Dutta further forcefully submitted that the appellant was diligently prosecuting the *lis* and no deliberate laches whatsoever can be attributed. That apart the appeal having been presented within 90 days and this Tribunal being empowered under the NGT Act to accept the appeal filed within a period of 60 days from the date of expiry of time, in other words, within a period of 90 days from the date of the order sought to be impugned the delay should be condoned and the Appeal should be heard.

11. The submission of the Learned Counsel for the parties have been considered. It is true that, Section 16 of the Act, requires that the period of limitation should be 30 days from the date on which the order or decision is communicated. However, according to the said Section the outer limit for filing of such appeal is 90 days provided the Tribunal is satisfied that the Appellant was prevented by sufficient cause from filing the appeal in time.

12. It appears that the form prescribed under the NGT Act & Rules has a column to explain limitation. In the Memorandum of Appeal under the heading of Limitation it is averred as follows:

> ***" 1. That as per order dated 12th May, 2011 of the Hon'ble Supreme Court in Vimal Bhai Vs Union of India SLP No. 12065/2009, delay occurring in filing of an Appeal/Application under the National Green Tribunal Act, 2010, till 60 days after 30th May, 2011 has been condoned.***
>
> ***2. That Appellant organization is based in Lippa village of Kinnaur District of Himachal Pradesh. The village is interior of the Himachal Pradesh and its difficult to access other parts of the country. It takes almost two to three days to reach Delhi from the village and cost of travelling is also very high. During the monsoon season, because of landslide it is even more difficult and expensive to travel in that area of Himachal Pradesh.***

Paragraph iv, v, vi, vii and viii of the Memorandum of Appeal also set out the reasons as to why the appellant could not file the appeal within the period of 30 days from the date of the order granting forest clearance.

13. In the application filed for condonation of delay the appellant has vividly explained the reasons already averred in the Memorandum

43

of Appeal. In our view, the reasons assigned are sufficient and the delay caused has been properly explained.

14. The legislature under the provision of Section 16 of the NGT Act has conferred the power to condone delay up to 60 days after the period of limitation which is 30 days. This has been contemplated with the pious objective and in order to enable the Courts to do substantial justice to the parties by disposing of matters on merits. The expression "sufficient cause" used by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice. The Supreme Court in the case of **Collector, Land Acquisition, Anantnag and Another Versus Mst. Katiji and Others (1987) 2 Supreme Court Cases 107,** laid down 6 guidelines to be kept in mind while dealing with limitation:-

> " ***1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.***
>
> ***2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.***
>
> ***3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The***

doctrine must be applied in a rational commonsense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account for mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

15. In the case of **Ram Nath Sao Versus Gobardhan Sao and others (2002) 3 SCC 195,** the Supreme Court while dealing with the word "sufficient cause" observed that a liberal construction has to be given so as to advance substantial justice when no negligence or in action or want of *bona fide* is imputable to a party.

16. There cannot be a straight jacket formula for accepting or rejecting explanation furnished for the delay caused in taking steps. A

45

cumulative reading of all the decisions referred to *Supra* leads to an irresistible conclusion that the approach of the Tribunal so far as question of limitation is concerned, should not be hyper technical.

17. The submission of Mr. Sharma that the President of the Appellant Samiti was present in the Ministry when the order was passed, is not very much material, as no document is produced before us to reveal that the copy of the impugned order was served upon him, nor there is any material to reveal on what context he went to the MoEF.

18. In the considered view of this Tribunal, the aforesaid mentioned appeal having been filed within 90 days from the date of impugned order, cannot be said to be time barred, only because the Memorandum of Appeal was not accompanied by a separate application for condonation of delay. The reasons assigned in the Memorandum of Appeal coupled with the reasons elaborated in the petition filed for condonation of delay latter, reveals that the delay in not presenting the appeal within 30days has been well explained and we are satisfied that for the reasons mentioned in the Memorandum of Appeal, the appellant was prevented by sufficient cause from filing the appeal within a period of 30 days. As a matter of fact, the appeal has been filed on the 90th day and under the proviso of Section 16 of the NGT Act, this Tribunal has the authority and jurisdiction to condone the delay.

19. The application is accordingly allowed, the delay is condoned, with no order of cost.

List the appeal for hearing on merits.

(DR. G.K. PANDEY)
Expert Member

(JUSTICE A.S. NAIDU)
Judicial Member

Durga Malhotra
15th December, 2011

T.C.
(C.F. Applicant
(Adv. G.K. Sharma.)

47

ANNEXURE - J

1961 SCC OnLine SC 39 : (1962) 2 SCR 762 : (1961) 2 SCJ 556 : AIR 1962 SC 361

In the Supreme Court of India

(BEFORE P.B. GAJENDRAGADKAR AND K.N. WANCHOO, JJ.)

RAMLAL, MOTILAL AND CHHOTELAL ... Appellants;

Versus

REWA COALFIELDS LTD. ... Respondent.

Civil Appeal No. 276 of 1958*, decided on May 4, 1961

Advocates who appeared in this case:

S.N. Andley, Rameshwar Nath and P.L. Vohra, Advocates of Rajinder Narain and Co., for the Appellants;

D.N. Pathak, R. Mahalingier and B.C. Misra, Advocates, for the Respondent.

The Judgment of the Court was delivered by

P.B. GAJENDRAGADKAR, J.— The short question which falls to be considered in this appeal relates to the construction of Section 5 of the Indian Limitation Act 9 of 1908. It arises in this way. The respondent Rewa Coalfields Limited is a registered company whose coal-mines are situated at Burhar and Umaria. Its registered office is at Calcutta. The appellant is a firm, Chaurasia Limestone Company, Satna, Vindhya Pradesh, by name and the three brothers Ramlal, Motilal and Chhotelal are its partners. The appellant prepares and deals in limestone at Maihar and Satna and for the use in their lime-kilns it purchased coal from the respondent's coal-mines at Umaria by means of permits issued to it by Coal Commissioner, Calcutta. According to respondent's case the appellant purchased from it 3,307 tons of coal at the rate of Rs 14-9-0 per ton between January 1952, and March 1953. The price for this coal was Rs 48,158-4-0. Since the appellant did not pay the price due from it the respondent filed the present suit in the Court of the District Judge, Umaria, and claimed a decree for Rs 52,514-14-0 including interest accrued due on the amount until the date of the suit.

2. A substantial part of the respondent's claim was disputed by the appellant. It was urged by the appellant in its written statement that the amount claimed by the respondent had been arbitrarily calculated and that for a substantial part of the coal purchased by the appellant from the respondent due price had been paid. The appellant pleaded that for some time past it had stopped purchasing coal from the respondent and it was obtaining its supplies from Messrs Sood Brothers, Calcutta, to whom payments for the coal supply had been

48

duly made. The appellant admitted its liability to pay Rs 7496-11-0 and it expressed its readiness and willingness to pay the said amount.

3. On these pleadings the learned trial Judge framed seven issues. It appears that on the date when the respondent led its evidence and the appellant's turn to lead its evidence arrived an application for adjournment was made on its behalf to produce additional evidence which was granted on condition that the appellant should pay to the respondent Rs 200 as costs. On the subsequent date of hearing, however, the appellant did not appear nor did it pay costs to the respondent as ordered. That is why the trial court proceeded ex parte against the appellant. On the issues framed trial court made findings in favour of the respondent in the light of the evidence adduced by the respondent and an ex parte decree was passed against the appellant to the tune of Rs 52,535-7-0 with proportionate costs. The appellant was also ordered to pay interest at 6% per annum from October 6, 1953, which was the date of the suit until the date of payment. This decree was passed on November 9, 1954.

4. Against this decree the appellant preferred an appeal in the Court of the Judicial Commissioner, Vindhya Pradesh, Rewa, on February 17, 1955 (Appeal No. 16 of 1955). The main contention raised by the appellant in this appeal was that the ex parte decree should be set aside and the case remanded to the trial court with the direction that the appellant should be allowed to lead its evidence and the case disposed of in accordance with law in the light of the said evidence. On February 19, 1955, the appellant filed an application under Section 5 of the Limitation Act and prayed that one day's delay committed by it in filing the appeal should be condoned because Ramlal, one of the partners of the appellant's firm, who was in charge of the litigation, fell ill on February 16, 1955, which was the last date for filing the appeal. This application was supported by an affidavit and a medical certificate showing that Ramlal was ill on February 16, 1955. The learned Judicial Commissioner, who heard this application, appears to have accepted the appellant's case that Ramlal was ill on February 16 and that if only one day's delay had to be explained satisfactorily by the appellant his illness would constitute sufficient explanation; but it was urged before him by the respondent that the appellant had not shown that its partners were diligent during the major portion of the period of limitation allowed for appeal, and since they put off the filing of the appeal till the last date of the period of limitation the illness of Ramlal cannot be said to be sufficient cause for condoning the delay though it was only one day's delay. On the other hand, the appellant urged that it had a right to file the appeal on the last day and so the delay of one day which it was required to explain by sufficient reason had been satisfactorily explained. The learned Judicial Commissioner, however,

49

accepted the plea raised by the respondent and in substance refused to excuse delay on the ground that the appellant's partner had showed lack of diligence and negligence during the whole of the period of limitation allowed for the appeal. It is on this ground that the application for condonation of delay was rejected and the appeal was dismissed on August 6, 1955.

5. The appellant then applied to the Judicial Commissioner for a certificate and urged that on the question of construction of Section 5 of the Limitation Act there was a conflict of judicial opinion and so the point decided by the Judicial Commissioner was one of general importance. This argument was accepted by the Judicial Commissioner and so a certificate of fitness has been issued by him under Article 133 of the Constitution. It is with this certificate that the appellant has come to this Court, and the only point which has been urged on its behalf is that the Judicial Commissioner was in error in holding that in determining the question as to whether sufficient cause had been shown within the meaning of Section 5 of the Limitation Act it was necessary for the appellant to explain his conduct during the whole of the period prescribed for the appeal.

6. Section 5 of the Limitation Act provides for extension of period in certain cases. It lays down, inter alia, that any appeal may be admitted after the period of limitation prescribed therefor when the appellant satisfies the court that he had sufficient cause for not preferring the appeal within such period. This section raises two questions for consideration. First is, what is sufficient cause; and the second, what is the meaning of the clause "within such period"? With the first question we are not concerned in the present appeal. It is the second question which has been decided by the Judicial Commissioner against the appellant. He has held that "within such period" in substance means during the period prescribed for making the appeal. In other words, according to him, when an appellant prefers an appeal beyond the period of limitation prescribed he must show that he acted diligently and that there was some reason which prevented him from preferring the appeal during the period of limitation prescribed. If the Judicial Commissioner had held that "within such period" means "the period of the delay between the last day for filing the appeal and the date on which the appeal was actually filed" he would undoubtedly have come to the conclusion that the illness of Ramlal on February 16 was a sufficient cause. That clearly appears to be the effect of his judgment. That is why it is unnecessary for us to consider what is "a sufficient cause" in the present appeal. It has been urged before us by Mr Andley, for the appellant, that the construction placed by the Judicial Commissioner on the words "within such period" is erroneous.

7. In construing Section 5 it is relevant to bear in mind two

50

important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree-holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decree-holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree-holder by lapse of time should not be light-heartedly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the court to condone delay and admit the appeal. This discretion has been deliberately conferred on the court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice. As has been observed by the Madras High Court in *Krishna* v. *Chathappan*[1] "Section 5 gives the court a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words 'sufficient cause' receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fide is imputable to the appellant."

8. Now, what do the words "within such period" denote? It is possible that the expression "within such period" may sometimes mean during such period. But the question is : Does the context in which the expression occurs in Section 5 justify the said interpretation? If the Limitation Act or any other appropriate statute prescribes different periods of limitation either for appeals or applications to which Section 5 applies that normally means that liberty is given to the party intending to make the appeal or to file an application to act within the period prescribed in that behalf. It would not be reasonable to require a party to take the necessary action on the very first day after the cause of action accrues. In view of the period of limitation prescribed the party would be entitled to take its time and to file the appeal on any day during the said period; and so prima facie it appears unreasonable that when delay has been made by the party in filing the appeal it should be called upon to explain its conduct during the whole of the period of limitation prescribed. In our opinion, it would be immaterial and even irrelevant to invoke general considerations of diligence of parties in construing the words of Section 5. The context seems to suggest that "within such period" means within the period which ends with the last day of limitation prescribed. In other words, in all cases falling under Section 5 what the party has to show is why he did not file an appeal on the last day of limitation prescribed. That may inevitably mean that the party will have to show sufficient cause not only for not filing the appeal on the last day but to explain the delay made

51

thereafter day by day. In other words, in showing sufficient cause for condoning the delay the party may be called upon to explain for the whole of the delay covered by the period between the last day prescribed for filing the appeal and the day on which the appeal is filed. To hold that the expression "within such period" means during such period would, in our opinion, be repugnant in the context. We would accordingly hold that the learned Judicial Commissioner was in error in taking the view that the failure of the appellant to account for its non-diligence during the whole of the period of limitation prescribed for the appeal necessarily disqualified it from praying for the condonation of delay, even though the delay in question was only for one day; and that too was caused by the party's illness.

9. This question has been considered by some of the High Courts and their decisions show a conflict on the point. In *Karalicharan Sarma* v. *Apurbakrishna Bajpeyi*[2] it appeared that the papers for appeal were handed over by the appellant to his advocate in the morning of the last day for filing the appeal. Through pressure of urgent work the advocate did not look into the papers till the evening of that day when he found that that was the last day. The appeal was filed the next day. According to the majority decision of the Calcutta High Court, in the circumstances just indicated there was sufficient cause to grant the appellant an extension of a day under Section 5 of the Limitation Act because it was held that it was enough if the appellant satisfied the court that for sufficient cause he was prevented from filing the appeal on the last day and his action during the whole of the period need not be explained. This decision is in favour of the appellant and is in accord with the view which we are inclined to take.

10. On the other hand, in *Kedarnath* v. *Zumberlal*[3] the Judicial Commissioner at Nagpur has expressed the view that an appellant who wilfully leaves the preparation and presentation of his appeal to the last day of the period of limitation prescribed therefor is guilty of negligence and is not entitled to an extension of time if some unexpected or unforeseen contingency prevents him from filing the appeal within time. According to this decision, though the period covered between the last day of filing and the day of actual filing may be satisfactorily explained that would not be enough to condone delay because the appellant would nevertheless have to show why he waited until the last day. In coming to this conclusion the Judicial Commissioner has relied substantially on what he regarded as general considerations. "This habit of leaving things to the last moment", says the learned Judge, "has its origin in laxity and negligence; and, in my opinion, having regard to the increasing pressure of business in the law Courts and the many facilities now available for the punctual filing of suits, appeals and applications therein, it is high time that litigants and their legal

52

advisers were made to realise the dangers of the procrastination which defers the presentation of a suit, appeal or application to the last day of the limitation prescribed therefor". There can be no difference of opinion on the point that litigants should act with due diligence and care; but we are disposed to think that such general consideration can have very little relevance in construing the provisions of Section 5. The decision of the Judicial Commissioner shows that he based his conclusion more on this a priori consideration and did not address himself as he should have to the construction of the section itself. Apparently this view has been consistently followed in Nagpur.

11. In *Jahar Mal* v. *G.M. Pritchard*[4] the Patna High Court has adopted the same line. Dawson-Miller, C.J., brushed aside the claim of the appellant for condonation of delay on the ground that "one is not entitled to put things off to the last moment and hope that nothing will occur which will prevent them from being in time. There is always the chapter of accidents to be considered, and it seems to me that one ought to consider that some accident or other may happen which will delay them in carrying out that part of their duties for which the court prescribes a time-limit, and if they choose to rely upon everything going absolutely smoothly and wait till the last moment, I think they have only themselves to blame if they should find that something has, happened which was unexpected, but which ought to be reckoned with, and are not entitled in such circumstances to the indulgence of the court". These observations are subject to the same comment that we have made about the *Nagpur decision*[3].

12. It is, however, necessary to emphasise 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 a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the court by Section 5. If sufficient cause is not proved nothing further has to be done; the application for condoning delay has to be dismissed on that ground alone. If sufficient cause is shown then the court has to enquire whether in its discretion it should condone the delay. 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 bona fides may fall for consideration; but the scope of the enquiry while exercising the discretionary power after sufficient cause is shown would naturally be limited only to such facts as the court may regard as relevant. It cannot justify an enquiry as to why the party was sitting idle during all the time available to it. In this connection we may point out that considerations of bona fides or due diligence are always material and relevant when the court is dealing with applications made under Section 14 of the Limitation Act. In dealing with such

53

applications the court is called upon to consider the effect of the combined provisions of Sections 5 and 14. Therefore, in our opinion, considerations which have been expressly made material and relevant by the provisions of Section 14 cannot to the same extent and in the same manner be invoked in dealing with applications which fall to be decided only under Section 5 without reference to Section 14. In the present case there is no difficulty in holding that the discretion should be exercised in favour of the appellant because apart from the general criticism made against the appellant's lack of diligence during the period of limitation no other fact had been adduced against it. Indeed, as we have already pointed out, the learned Judicial Commissioner rejected the appellant's application for condonation of delay only on the ground that it was appellant's duty to file the appeal as soon as possible within the period prescribed, and that, in our opinion, is not a valid ground.

13. It now remains to refer to two Privy Council decisions to which our attention was drawn. In *Ram Narain Joshi* v. *Parmeswar Narain Mahta*[5] the Privy Council was dealing with a case where on August 9, 1895 the High Court had made an order that the appeal in question should be transferred to the High Court under Section 25 of the Code of Civil Procedure and heard along with another appeal already pending there. In making this order the High Court had given liberty to the respondent to make his objections, if any, to the said transfer. On September 16, 1895 a petition was filed on behalf of the appellant objecting to the said transfer; and the question arose whether sufficient cause had been shown for the delay made by the party between August 9, 1895 to September 16, 1895. The decree under appeal had been passed on June 25, 1894 and the appeal against the said decree had been presented to the District Judge on September 3, 1894. It would thus be seen that the question which arose was very different from the question with which we are concerned; and it is in regard to the delay made between August 9, 1895 to September 16, 1895 that the Privy Council approved of the view taken by the High Court that the said delay had not been satisfactorily explained. We do not see how this decision can assist us in interpreting the provisions of Section 5.

14. The next case on which reliance has been placed by the respondent is *Brij Inder Singh* v. *Kanshi Ram*[6]. The principal point decided in that case had reference to Section 14 read with Section 5 of the Limitation Act, 1908; and the question which it raised was whether the time occupied by an application in good faith for review, although made upon a mistaken view of the law, should be deemed as added to the period allowed for presenting an appeal. As we have already pointed out, when the question of limitation has to be considered in the light of the combined operation of Sections 14 and 5 of the Limitation

54

Act the conditions expressly imposed by Section 14 have to be satisfied. It would, however, be unreasonable to suggest that the said conditions must to the same extent and in the same manner be taken into account in dealing with applications falling under Section 5 of the Limitation Act.

15. It appears that the provisions of Section 5 in the present Limitation Act are substantially the same as those in Section 5(*b*) and Section 5, para 2, of the Limitation Acts of 1871 and 1877 respectively. Section 5-A which was added to the Limitation Act of 1877 by the amending Act 6 of 1892 dealt with the topic covered by the explanation to Section 5 in the present Act. The explanation provides, inter alia, that the fact that the appellant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period of limitation may be sufficient cause within the meaning of Section 5. The effect of the explanation is that if the party who has applied for extension of period shows that the delay was due to any of the facts mentioned in the explanation that would be treated as sufficient cause, and after it is treated as sufficient cause the question may then arise whether discretion should be exercised in favour of the party or not. In the cases to which the explanation applies it may be easy for the court to decide that the discretion should be exercised in favour of the party and delay should be condoned. Even so, the matter is still one of discretion. Under Section 5-A of the Act of 1877, however, if the corresponding facts had been proved under the said section there appears to have been no discretion left in the court because the said section provided, inter alia, that whenever it was shown to the satisfaction of the court that an appeal was presented after an expiration of the period of the limitation prescribed owing to the appellant having been misled by any order, practice or judgment of the High Court of the presidency, province or district, such appeal or application, if otherwise in accordance with law, shall, for all purposes be deemed to have been presented within the period of limitation prescribed therefor. That, however, is a distinction which is not relevant in the present appeal.

16. In the result the appeal is allowed, the delay of one day made in filing the appeal is condoned, and the case sent back to the court of the Judicial Commissioner for disposal on the merits in accordance with law. In the circumstances of this case the appellant should pay the respondent the costs of this court. Costs incurred by the parties in the court of the Judicial Commissioner so far will be costs in the appeal before him.

———

* Appeal from the Judgment and Decree dated 6th August, 1955, of the Judicial

55

Commissioner's Court, at Rewa, V.P. in First Civil Appeal No. 16 of 1955.

[1] (1890) ILR 13 Mad 269

[2] (1931) ILR 58 Cal 549

[3] AIR 1916 Nag 39

[4] AIR 1919 Pat 503

[5] (1902-03) 30 IA 20

[6] (1916-17) 44 IA 218

T.C.
C.F. Applicants
(Adv. Gr. K. Sharma)

354 Rem

56 ANNEXURE - K

(2005) 3 Supreme Court Cases 752 : 2005 Supreme Court Cases (Cri) 906 : 2005 SCC OnLine SC 649

(BEFORE DR ARIJIT PASAYAT AND S.H. KAPADIA, JJ.)

STATE OF NAGALAND . . Appellant;

Versus

LIPOK AO AND OTHERS . . Respondents.

Criminal Appeal No. 484 of 2005[‡], decided on April 1, 2005

A. **Limitation Act, 1963 — S. 5 — Court's discretion under, to condone delay — Exercise of — Precondition for — "Sufficient cause" for condonation of delay — Existence of — Necessity of — Length of delay — Relevance of — Held, proof by sufficient cause is a condition precedent for exercise of the extraordinary discretion vested in the court — What counts is not the length of the delay but the sufficiency of the cause and shortness of the delay is one of the circumstances to be taken into account in using the discretion — What constitutes sufficient cause cannot be laid down by hard-and-fast rules — Case-law discussed — Words and phrases — "Sufficient cause"**

B. **Limitation Act, 1963 — S. 5 — Delay of State in filing appeal — Condonation of — "Sufficient cause" for — Requirement of existence of — Approach of court and necessary considerations while dealing with such a case — Held, expression sufficient cause should be considered with pragmatism in a justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay — Having regard to considerable delay of procedural red tape in the decision-making process of the Govt., certain amount of latitude is permissible — The State is an impersonal machinery working through its officers or servants — Hence, it cannot be put on the same footing as an individual — Public interest suffers if appeals by the State are lost because of such default — Court to decide the matters on merits unless the case is hopelessly without merit — State should constitute legal cells to examine whether cases involve legal principles for decision by court or require adjustment at governmental level — Officer concerned should be made personally responsible for the delay in filing the appeal — On facts, delay of 57 days in filing the application for grant of leave made in terms of S. 378(3) CrPC, held, deserved condonation — Criminal Procedure Code, 1973, S. 378(3)**

An application for grant of leave to appeal was made in terms of Section 378(3) CrPC, 1973. As there was delay in making the said application, an application for condonation of delay was filed. The impugned judgment was pronounced on 18-12-2002. The copy of the order was received by the department concerned on 15-1-2003. Without wasting any time on the same date the relevant documents and

57

papers were put up for necessary action before the Deputy Inspector General of Police (Headquarters). On the next day, the said Deputy Inspector General considered the matter and forwarded the file for consideration to the Deputy Inspector General of Police (M&P). Unfortunately the whole file along with note-sheet was found missing from the office and could not be traced in spite of best efforts made by the department. Finally it was traced on 15-3-2003 and the file was put up for necessary action by the

Additional Director General of Police (Headquarters). The said officer opined that an appeal was to be filed on 26-3-2003, and finally the appeal was filed after appointing a Special Public Prosecutor. When it was noticed that no appeal had been filed, the Secretary to the Department of Law and Justice of the State Govt. concerned got in touch with the Additional Advocate General of the High Court concerned regarding the filing of the appeal and in fact the appeal was filed on 14-5-2003. In the application for condonation of delay it was clearly noted that when directions were given to reconstruct the file, the missing file suddenly appeared in the office of the Director General of Police.

Thus, on the basis of the said facts, it was submitted in support of the application for condonation of delay that the authorities were acting bona fide. Various decisions of the Supreme Court were pressed into service to seek condonation of delay. The High Court, however, refused to condone the delay of 57 days on the ground that it was the duty of the litigant to file an appeal before the expiry of the limitation period. Merely because the Additional Advocate General did not file an appeal in spite of the instructions issued to him, that did not constitute sufficient cause and further the fact that the records were purportedly missing was not a valid ground. It held that merely asking the Additional Advocate General to file an appeal was not sufficient and the department should have pursued the matter and should have made enquiries as to whether the appeal had in fact, been filed or not.

Allowing the appeal and setting aside the impugned order of the High Court, the Supreme Court

Held :

Proof by sufficient cause is a condition precedent for exercise of the extraordinary discretion vested in the court. What counts is not the length of the delay but the sufficiency of the cause and shortness of the delay is one of the circumstances to be taken into account in using the discretion. What constitutes sufficient cause cannot be laid down by hard-and-fast rules.

(Paras 8 and 9)

N. Balakrishnan v. *M. Krishnamurthy*, (1998) 7 SCC 123 : AIR 1998 SC 3222; *New India Insurance Co. Ltd.* v. *Shanti Misra*, (1975) 2 SCC 840; *Brij Indar Singh* v.

58

Kanshi Ram, ILR (1918) 45 Cal 94 : AIR 1917 PC 156; *Shakuntala Devi Jain* v. *Kuntal Kumari*, (1969) 1 SCR 1006 : AIR 1969 SC 575; *Concord of India Insurance Co. Ltd.* v. *Nirmala Devi*, (1979) 4 SCC 365 : 1979 SCC (Cri) 996; *Lala Mata Din* v. *A. Narayanan*, (1969) 2 SCC 770; *State of Kerala* v. *E.K. Kuriyipe*, 1981 Supp SCC 72; *Milavi Devi* v. *Dina Nath*, (1982) 3 SCC 366; *O.P. Kathpalia* v. *Lakhmir Singh*, (1984) 4 SCC 66; *Collector, Land Acquisition* v. *Katiji*, (1987) 2 SCC 107; *Prabha* v. *Ram Parkash Kalra*, 1987 Supp SCC 339; *G. Ramegowda* v. *Spl. Land Acquisition Officer*, (1988) 2 SCC 142, *relied on*

The government decisions are taken by officers/agencies proverbially at a slow pace and encumbered process of pushing the files from table to table and keeping it on the table for considerable time causing delay — intentional or otherwise — is a routine. Considerable delay of procedural red tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in a justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the governmental conditions would be cognizant to and requires adoption of

pragmatic approach in justice-oriented process. The court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-à-vis private litigant could be laid to prove strict standards of sufficient cause. The Government at appropriate level should constitute legal cells to examine the cases whether any legal principles are involved for decision by the courts or whether cases require adjustment and should authorise the officers to take a decision or give appropriate permission for settlement. In the event of decision to file appeal, needed prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while the State is an impersonal machinery working through its officers or servants.

(Para 15)

State of Haryana v. *Chandra Mani*, (1996) 3 SCC 132; *Special Tehsildar, Land Acquisition* v. *K.V. Ayisumma*, (1996) 10 SCC 634, *relied on*

Considering the legal principles, the inevitable conclusion is that the delay of 57 days deserved condonation. Therefore, the order of the High Court refusing to

59

condone the delay is set aside.

(Para 17)

C. **Practice and Procedure — Procedural technicalities — Approach of court — Held, when substantial justice and technical approach are pitted against each other the former has to be preferred — Limitation Act, 1963, S. 5**

(Para 7)

D. **Criminal Procedure Code, 1973 — S. 378(3) — Application for grant of leave to appeal — Rejection of, by High Court, due to delay of 57 days in filing the same — Condoning the delay but keeping in view the long passage of time and the points involved, Supreme Court directing grant of leave to appeal instead of requiring the High Court to consider the application made in respect thereof on merits — Constitution of India — Art. 136 — Relief**

(Paras 17 and 18)

W-M/TZ/31640/CR

Advocates who appeared in this case:

U. Hazarika, Satya Mitra and Ms Sumita Hazarika, Advocates, for the Appellant;

Prabir Chowdhury, Advocate, for the Respondents.

Chronological list of cases cited ***on page(s)***

1. (1998) 7 SCC 123 : AIR 1998 SC 3222, *N. Balakrishnan* v. *M. Krishnamurthy* — 757*b*
2. (1996) 10 SCC 634, *Special Tehsildar, Land Acquisition* v. *K.V. Ayisumma* — 760*f-g*
3. (1996) 3 SCC 132, *State of Haryana* v. *Chandra Mani* — 760*f-g*
4. (1988) 2 SCC 142, *G. Ramegowda* v. *Spl. Land Acquisition Officer* — 759*c-d*
5. (1987) 2 SCC 107, *Collector, Land Acquisition* v. *Katiji* — 758*c*
6. 1987 Supp SCC 339, *Prabha* v. *Ram Parkash Kalra* — 759*b-c*

60

7. (1984) 4 SCC 66, *O.P. Kathpalia* v. *Lakhmir Singh* 758*b-c*

8. (1982) 3 SCC 366, *Milavi Devi* v. *Dina Nath* 758*a*

9. 1981 Supp SCC 72, *State of Kerala* v. *E.K. Kuriyipe* 758*a*

10. (1979) 4 SCC 365 : 1979 SCC (Cri) 996, *Concord of India Insurance Co. Ltd.* v. *Nirmala Devi* 757*e-f*

11. (1975) 2 SCC 840, *New India Insurance Co. Ltd.* v. *Shanti Misra* 757*d*

12. (1969) 2 SCC 770, *Lala Mata Din* v. *A. Narayanan* 757*f*

13. (1969) 1 SCR 1006 : AIR 1969 SC 575, *Shakuntala Devi Jain* v. *Kuntal Kumari* 757*e*

14. ILR (1918) 45 Cal 94 : AIR 1917 PC 156, *Brij Indar Singh* v. *Kanshi Ram* 757*d-e*

The Judgment of the Court was delivered by

DR ARIJIT PASAYAT, J.— Leave granted.

2. The State of Nagaland questions correctness of the judgment rendered by a learned Single Judge of the Gauhati High Court, Kohima Bench refusing to condone the delay by rejecting the application filed under Section 5 of the Limitation Act, 1963 (in short "the Limitation Act") and consequentially rejecting the application for grant of leave to appeal. Before we deal with the legality of the order refusing to condone the delay in making the application for grant of leave, a brief reference to the factual background would suffice:

Application for grant of leave was made in terms of Section 378(3) of the Code of Criminal Procedure, 1973 (in short "the Code"). A judgment of acquittal was passed by learned Additional Deputy Commissioner (Judicial), Dimapur, Nagaland. The judgment was pronounced on 18-12

61

-2002. As there was delay in making the application for grant of leave in terms of Section 378(3) of the Code, application for condonation of delay was filed. As is revealed from the application for condonation, copy of the order was received by the department concerned on 15-1-2003; without wasting any time on the same date the relevant documents and papers were put up for necessary action before the Deputy Inspector General of Police (Headquarters), Nagaland. On the next day, the said Deputy Inspector General considered the matter and forwarded the file for consideration to the Deputy Inspector General of Police (M&P), Nagaland. Unfortunately the whole file along with note-sheet was found missing from the office and could not be traced in spite of best efforts made by the department. Finally it was traced on 15-3-2003 and the file was put up for necessary action by the Additional Director General of Police (Headquarters), Nagaland. The said officer opined that an appeal was to be filed on 26-3-2003, and finally the appeal was filed after appointing a Special Public Prosecutor. When it was noticed that no appeal had been filed, the Secretary to the Department of Law and Justice, Government of Nagaland got in touch with the Additional Advocate General, Gauhati High Court regarding the filing of the appeal and in fact the appeal was filed on 14-5-2003. It is of relevance to note that in the application for condonation of delay it was clearly noted that when directions were given to reconstruct the file, the missing file suddenly appeared in the office of the Director General of Police, Nagaland.

3. In support of the application for condonation of delay, it was submitted that the aspects highlighted clearly indicated that the authorities were acting bona fide and various decisions of this Court were pressed into service to seek condonation of delay. The High Court, however, refused to condone the delay of 57 days on the ground that it is the duty of the litigant to file an appeal before the expiry of the limitation period. Merely because the

Additional Advocate General did not file an appeal in spite of the instructions issued to him, that did not constitute sufficient cause and further the fact that the records were purportedly missing was not a valid ground. It was noted that merely asking the Additional Advocate General to file an appeal was not sufficient and the department should have pursued the matter and should have made enquiries as to whether the appeal had in fact, been filed or not. Accordingly the application for condonation of delay in filing the appeal was rejected and consequentially the application for grant of leave was rejected.

62

4. Learned counsel appearing for the appellant State submitted that the approach of the High Court is not correct and in fact it is contrary to the position of law indicated by this Court in various cases. In the application for condonation of delay the various factors which were responsible for the delayed filing were highlighted. There was no denial or dispute regarding the correctness of the assertions and, therefore, the refusal to condone the delay in filing application is not proper. It has to be noted that police officials were involved in the crime. The background facts involved also assume importance. As the police officers attached to a Minister had allegedly killed two persons, therefore, the mischief played by some persons interested to help the accused colleagues could not have been lost sight of. There is no appearance on behalf of the respondent in spite of the service of notice.

5. As noted above, a brief reference to the factual aspect is necessary. The background facts of the prosecution version are as follows:

On 29-5-1999 the five accused-respondents comprised the escort party of a State Cabinet Minister. The case of the accused-respondents was that at 5.30 p.m. on 29-5-1999, the occupants of a Maruti Zen crossed the cavalcade of the Minister and shouted at them. The personal security officer attached to the Minister saw one of the occupants of the car holding a small firearm. After dropping the Minister, the escort vehicle while proceeding to another place saw the Maruti Zen and its occupants, who on seeing the police party tried to escape. Meanwhile one of the occupants of the car opened the rear glass and opened fire from his firearm. On hearing gunfire, the police party also opened fire but the Maruti Zen escaped and disappeared. Subsequently, the car was discovered with one of its three occupants who was found to be already dead and the other two had sustained bullet injuries. Of the two survivors one died subsequently in hospital and another had to have his arm amputated.

6. The said shoot-out incident was investigated by the police and a case under Sections 302/307/326/34 of the Penal Code, 1860 (in short "IPC") was registered against the accused-respondents.

7. The trial court noted that the ballistic report established that the bullets were fired from the guns of the accused-respondents. A finding was also recorded that the respondents exceeded their power of opening fire, and this constituted misfeasance, but absence of the post-mortem report was held to have vitally affected the prosecution case. It was also held that the accused persons had fired with AK-47 and M-22 rifles in self-defence. Therefore,

63

benefit of doubt was given to them. A pragmatic approach has to be adopted and when substantial justice and technical approach are pitted against each other the former has to be preferred.

8. The proof by sufficient cause is a condition precedent for exercise of the extraordinary restriction (*sic* discretion) vested in the court. What counts is not the length of the delay but the sufficiency of the cause and shortness of the delay is one of the circumstances to be taken into account in using the discretion. In *N. Balakrishnan* v. *M. Krishnamurthy*[1] it was held by this Court that Section 5 is to be construed liberally so as to do substantial justice to the parties. The provision contemplates that the court has to go in the position of the person concerned and to find out if the delay can be said to have resulted from the cause which he had adduced and whether the cause can be recorded in the peculiar circumstances of the case as sufficient. Although no special indulgence can be shown to the Government which, in similar circumstances, is not shown to an individual suitor, one cannot but take a practical view of the working of the Government without being unduly indulgent to the slow motion of its wheels.

9. What constitutes sufficient cause cannot be laid down by hard-and-fast rules. In *New India Insurance Co. Ltd.* v. *Shanti Misra*[2] this Court held that discretion given by Section 5 should not be defined or crystallised so as to convert a discretionary matter into a rigid rule of law. The expression "sufficient cause" should receive a liberal construction. In *Brij Indar Singh* v. *Kanshi Ram*[3] it was observed that true guide for a court to exercise the discretion under Section 5 is whether the appellant acted with reasonable diligence in prosecuting the appeal. In *Shakuntala Devi Jain* v. *Kuntal Kumari*[4] a Bench of three Judges had held that unless want of bona fides of such inaction or negligence as would deprive a party of the protection of Section 5 is proved, the application must not be thrown out or any delay cannot be refused to be condoned.

10. In *Concord of India Insurance Co. Ltd.* v. *Nirmala Devi*[5] which is a case of negligence of the counsel which misled a litigant into delayed pursuit of his remedy, the default in delay was condoned. In *Lala Mata Din* v. *A. Narayanan*[6] this Court had held that there is no general proposition that mistake of counsel by itself is always sufficient cause for condonation of delay. It is always a question whether the mistake was bona fide or was merely a device to cover an ulterior purpose. In that case it was held that the mistake committed by the counsel was bona fide and it was not tainted by any mala fide motive.

64

11. In *State of Kerala* v. *E.K. Kuriyipe*[7] it was held that whether or not there is sufficient cause for condonation of delay is a question of fact dependent upon the facts and circumstances of the particular case. In *Milavi Devi* v. *Dina Nath*[8] it was held that the appellant had sufficient cause for not filing the appeal within the period of limitation. This Court under Article 136 can reassess the ground and in appropriate case set aside the order made by the High Court or the Tribunal and remit the matter for hearing on merits. It was accordingly allowed, delay was condoned and the case was remitted for decision on merits.

12. In *O.P. Kathpalia* v. *Lakhmir Singh*[9] a Bench of three Judges had held that if the refusal to condone the delay results in grave miscarriage of justice, it would be a ground to condone the delay. Delay was accordingly condoned. In *Collector, Land Acquisition* v. *Katiji*[10] a Bench of two Judges considered the question of limitation in an appeal filed by the State and held that Section 5 was enacted in order to enable the court to do substantial justice to the parties by disposing of matters on merits. The expression "sufficient cause" is adequately elastic to enable the court to apply the law in a meaningful manner which subserves the ends of justice — that being the life purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. This Court reiterated that the expression "every day's delay must be explained" does not mean that a pedantic approach should be made. The doctrine must be applied in a rational, common-sense, pragmatic manner. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk. Judiciary is not respected on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so. Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal.

65

The fact that it was the State which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a stepmotherly treatment when the State is the applicant. The delay was accordingly condoned.

13. Experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file-pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. The State which represents collective cause of the community, does not deserve a litigant-non-grata status. The courts, therefore, have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression of sufficient cause. Merit is preferred to scuttle a decision on merits in turning down the case on technicalities of delay in presenting the appeal. Delay as accordingly condoned, the order was set aside and the matter was remitted to the High Court for disposal on merits after affording opportunity of hearing to the parties. In *Prabha* v. *Ram Parkash Kalra*[11] this Court had held that the court should not adopt an injustice-oriented approach in rejecting the application for condonation of delay. The appeal was allowed, the delay was condoned and the matter was remitted for expeditious disposal in accordance with law.

14. In *G. Ramegowda* v. *Spl. Land Acquisition Officer*[12] it was held that no general principle saving the party from all mistakes of its counsel could be laid. The expression "sufficient cause" must receive a liberal construction so as to advance substantial justice and generally delays in preferring the appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of delay. In litigations to which Government is a party, there is yet another aspect which, perhaps, cannot be ignored. If appeals brought by Government are lost for such defaults, no person is individually affected, but what, in the ultimate analysis, suffers is public interest. The decisions of Government are collective and institutional decisions and do not share the characteristics of decisions of private individuals.

66

The law of limitation is, no doubt, the same for a private citizen as for governmental authorities. Government, like any other litigant must take responsibility for the acts, omissions of its officers. But a somewhat different complexion is imparted to the matter where Government makes out a case where public interest was shown to have suffered owing to acts of fraud or bad faith on the part of its officers or agents and where the officers were clearly at cross-purposes with it. It was, therefore, held that in assessing what constitutes sufficient cause for purposes of Section 5, it might, perhaps, be somewhat unrealistic to exclude from the considerations that go into the judicial verdict, these factors which are peculiar to and characteristic of the functioning of the Government. Government decisions are proverbially slow encumbered, as they are, by a considerable degree of procedural red tape in the process of their making. A certain amount of latitude is, therefore, not impermissible. It is rightly said that those who bear responsibility of Government must have "a little play at the joints". Due recognition of these limitations on governmental functioning — of course, within reasonable

limits — is necessary if the judicial approach is not to be rendered unrealistic. It would, perhaps, be unfair and unrealistic to put Government and private parties on the same footing in all respects in such matters. Implicit in the very nature of governmental functioning is procedural delay incidental to the decision-making process. The delay of over one year was accordingly condoned.

15. It is axiomatic that decisions are taken by officers/agencies proverbially at a slow pace and encumbered process of pushing the files from table to table and keeping it on the table for considerable time causing delay — intentional or otherwise — is a routine. Considerable delay of procedural red tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in a justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice-oriented process. The court should decide the matters on merits unless

67

the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-à-vis private litigant could be laid to prove strict standards of sufficient cause. The Government at appropriate level should constitute legal cells to examine the cases whether any legal principles are involved for decision by the courts or whether cases require adjustment and should authorise the officers to take a decision or give appropriate permission for settlement. In the event of decision to file appeal, needed prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while the State is an impersonal machinery working through its officers or servants.

16. The above position was highlighted in *State of Haryana* v. *Chandra Mani*[13] and *Special Tehsildar, Land Acquisition* v. *K.V. Ayisumma*[14]. It was noted that adoption of strict standard of proof sometimes fails to protract (*sic*) public justice, and it would result in public mischief by skilful management of delay in the process of filing an appeal.

17. When the factual background is considered in the light of legal principles as noted above, the inevitable conclusion is that the delay of 57 days deserved condonation. Therefore, the order of the High Court refusing to condone the delay is set aside.

18. In normal course, we would have required the High Court to consider the application praying for grant of leave on merits. But keeping in view the long passage of time and the points involved, we deem it proper to direct grant of leave to appeal. The appeal shall be registered and disposed of on merits. It shall not be construed that we have expressed any merits on the appeal to be adjudicated by the High Court.

19. Appeal is allowed.

———

† Arising out of SLP (Crl.) No. 4612 of 2003. From the Judgment and Order dated 7-7-2003 of the Gauhati High Court at Assam in Crl. MC No. 1(K) of 2003

68

[1] (1998) 7 SCC 123 : AIR 1998 SC 3222

[2] (1975) 2 SCC 840

[3] ILR (1918) 45 Cal 94 : AIR 1917 PC 156

[4] (1969) 1 SCR 1006 : AIR 1969 SC 575

[5] (1979) 4 SCC 365 : 1979 SCC (Cri) 996

[6] (1969) 2 SCC 770

[7] 1981 Supp SCC 72

[8] (1982) 3 SCC 366

[9] (1984) 4 SCC 66

[10] (1987) 2 SCC 107

[11] 1987 Supp SCC 339

[12] (1988) 2 SCC 142

[13] (1996) 3 SCC 132

[14] (1996) 10 SCC 634

T.C.
C.A. Applicants
(Adv. G.K. Sharma)

69
ANNEXURE - L

(2001) 9 Supreme Court Cases 106 : (2002) 253 ITR 798 : (2002) 125 STC 375 : 2001 SCC OnLine SC 831

(BEFORE S.S.M. QUADRI AND S.N. PHUKAN, JJ.)

VEDABAI ALIAS VAIJAYANATABAI BABURAO PATIL . .
Appellant;

Versus

SHANTARAM BABURAO PATIL AND OTHERS . .
Respondents.

Civil Appeal No. 4494 of 2001†, decided on July 20, 2001

A. Limitation — Limitation Act, 1963 — S. 5 — Condonation of delay — Delay of a few days deserves liberal approach — Held, pragmatic attitude should be adopted by courts and a distinction made between cases in which delay is inordinate, thus giving rise to question of prejudice to the other side and requiring a more cautious approach, and a case where delay is of a few days only — Clarified, however, that no hard-and-fast rule can be laid down — Held, High Court erred in upholding order of District Judge dismissing appellant's application under S. 5 seeking condonation of seven days' delay in filing appeal due to illness

B. Limitation — Limitation Act, 1963 — S. 5 — "Sufficient cause" — Held, principle of advancing substantial justice is of prime importance when construing the expression — Interpretation of Statutes — Construction of words and phrases — "Sufficient cause" — Words and Phrases — "Sufficient cause"*

Allowing the appeal, the Supreme Court

Held :

In exercising discretion under Section 5 of the Limitation Act the courts should adopt a pragmatic approach. A distinction must be made between a case where the delay is inordinate and a case where the delay is of a few days. Whereas in the former case the consideration of prejudice to the other side will be a relevant factor so the case calls for a more cautious approach but in the latter case no such consideration may arise and such a case deserves a liberal approach. No hard-and-fast rule can be laid down in this regard. The court has to exercise the discretion on the facts of each case keeping in mind that in construing the expression "sufficient cause", the principle of advancing substantial justice is of prime importance.

(Para 5)

State of W.B. v. *Administrator, Howrah Municipality*, (1972) 1 SCC 366; *Sandhya Rani Sarkar* v. *Sudha Rani Debi*, (1978) 2 SCC 116, *relied on*

Advocates who appeared in this case:

A.P. Mayee, Ms Rucha Mayee and S.V. Tambwekar, Advocates, for the Appellant;

S.U.K. Sagar, Sanjay V. Kharde and Naresh Kumar, Advocates, for the Respondents.

Chronological list of cases cited ***on page(s)***

1. (1978) 2 SCC 116, *Sandhya Rani Sarkar* v. *Sudha Rani Debi* 107*g-h*

2. (1972) 1 SCC 366, *State of W.B.* v. *Administrator, Howrah Municipality* 107*g-h*

ORDER

1. Leave is granted.

2. Heard learned counsel for the parties.

3. This appeal is directed against the order of the High Court of Bombay, Aurangabad Bench in Civil Revision Application No. 884 of 1999 dated 7-8-2000, declining to interfere with the order of the Additional District Judge, Amalner, dated 16-3-1998 dismissing Miscellaneous Civil Application No. 21 of 1997. The appellant made that application for condonation of delay of 7 days in filing the appeal against the order of the trial court in Special CS No. 5 of 1995 on the file of the Civil Judge, SD, Amalner.

4. A perusal of the order of the learned Additional District Judge shows that he found fault with the appellant on two grounds: (*i*) the judgment under appeal was delivered on 30-4-1997 but the application for certified copy was made on 5-6-1997, and (*ii*) in regard to the averment in the affidavit, filed in support of the application, her illness was given as a reason for the delay; it was pointed out that while she was still ill she filed the appeal. For those two reasons the application to condone the delay of seven days in filing the appeal was dismissed. It appears that the fact that during the period from 1-5-1997 to 1-6-1997 the court was in vacation, has escaped the attention of the learned Appellate Judge. To avert further delay in filing the appeal, as soon as

71

she felt a little better she filed the appeal. This depicts her anxiety to minimise the delay rather than falsity of her case or mala fides.

5. In exercising discretion under Section 5 of the Limitation Act the courts should adopt a pragmatic approach. A distinction must be made between a case where the delay is inordinate and a case where the delay is of a few days. Whereas in the former case the consideration of prejudice to the other side will be a relevant factor so the case calls for a more cautious approach but in the latter case, no such consideration may arise and such a case deserves a liberal approach. No hard-and-fast rule can be laid down in this regard. The court has to exercise the discretion on the facts of each case keeping in mind that in construing the expression "sufficient cause", the principle of advancing substantial justice is of prime importance. In our view in this case, the approach of the learned Additional District Judge is wholly erroneous and his order is unsustainable. It is evident that the discretion under Section 5 of the Limitation Act is exercised by the Additional District Judge in contravention of the law laid down by this Court, that the expression "sufficient cause" should receive liberal construction, in a catena of decisions (see *State of W.B.* v. *Administrator, Howrah Municipality*[1] and *Sandhya Rani Sarkar* v. *Sudha Rani Debi*[2]). The High Court in exercising its jurisdiction

under Section 115 CPC failed to correct the jurisdictional error of the appellate court.

6. For the aforementioned reasons, we set aside the impugned order of the High Court as also of the Additional District Judge, Amalner (the appellate court), condone the delay of seven days in filing the appeal, restore the appeal to the file of the Additional District Judge and direct the learned Additional District Judge, Amalner to decide the appeal on merits.

7. The appeal is accordingly allowed. No costs.

———

† From the Judgment and Order dated 7-8-2000 of the Bombay High Court in CRA No. 884 of 1999

[1] (1972) 1 SCC 366

[2] (1978) 2 SCC 116

72

T.C.
C.F. Applicants
(Adv. G.K. Sharma)

ANNEXURE — M

73

(1998) 7 Supreme Court Cases 123 : 1998 SCC OnLine SC 587

(BEFORE S. SAGHIR AHMAD AND K.T. THOMAS, JJ.)

N. BALAKRISHNAN . . Appellant;

Versus

M. KRISHNAMURTHY . . Respondent.

Civil Appeals Nos. 4575-76 of 1998[†], decided on September 3, 1998

A. **Limitation Act, 1963 — S. 5 — Condonation of delay — Discretion of court — How to exercise — Guidelines stated — Words "sufficient cause" should be construed liberally — Acceptability of explanation for the delay is the sole criterion, length of delay not relevant — In absence of anything showing mala fide or deliberate delay as a dilatory tactic, court should normally condone the delay — However, while doing so court should also keep in mind the consequent litigation expenses to be incurred by the opposite party and should compensate him accordingly — Where a court condones delay in positive exercise of discretion, superior court and more particularly the revisional court should not normally disturb the same — But where request for condonation of delay is refused, it would be open to the superior court to come to its own finding on the basis of explanation for the delay given by the party — Delay on**

Page: 124

the part of defendant-appellant of 883 days in approaching the court against dismissal of his application to set aside ex parte decree passed against him — Non-action on the part of his advocate explained as cause for the delay — Appellant also complaining about conduct of the advocate before Consumer Forum and getting Rs 50,000 as compensation — Appellant's explanation for the delay accepted and delay condoned by trial court — But in revision High Court setting aside the order of trial court on ground that appellant was negligent and was not careful enough to meet the advocate to verify the stage of the proceedings for a long time — Held, High Court in revision erred in interfering with the exercise of jurisdiction by trial court in condoning the delay when appellant's conduct did not as a whole warrant castigating him as an irresponsible litigant having regard to present busy and preoccupied life

B. **Limitation Act, 1963 — Object of fixing time-limit — Not meant to destroy rights — It is founded on public policy fixing a life span for the legal**

74

remedy for the general welfare

Held :

The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

(Paras 10 and 11)

Condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. In every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. The words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice.

(Paras 9, 13 and 12)

Shakuntala Devi Jain v. *Kuntal Kumari*, AIR 1969 SC 575 : (1969) 1 SCR 1006; *State of W.B.* v. *Administrator, Howrah Municipality*, (1972) 1 SCC 366 : AIR 1972 SC 749, *relied on*

Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on

75

wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

(Para 9)

However, while condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant, the court shall compensate the opposite party for his loss.

(Para 13)

In the present case the appellant's conduct does not on the whole warrant to castigate him as an irresponsible litigant. What he did in defending the suit was not very much far from what a litigant would broadly do. Of course, it may be said that he should have been more vigilant by visiting his advocate at short intervals to check up the progress of the litigation. But during these days when everybody is fully occupied with his own avocation of life an omission to adopt such extra vigilance need not be used as a ground to depict him as a litigant not aware of his responsibilities, and to visit him with drastic consequences.

(Para 8)

The explanation for the delay set up by the appellant was found satisfactory to the trial court in the exercise of its discretion and the High Court went wrong in upsetting the finding, more so when the High Court was exercising revisional jurisdiction. Nonetheless, the respondent must be compensated particularly because the appellant had secured a sum of Rs fifty thousand from the delinquent-advocate through the Consumer Disputes Redressal Forum. Therefore, the impugned order is set aside by restoring the order passed by the trial court but on a condition that the appellant shall pay a sum of rupees ten thousand to the respondent (or deposit it in the Supreme Court) within one month from the date of the present judgment.

(Para 14)

R-M/20218/C

Advocates who appeared in this case:

Krishnaswami, Advocate, for the Appellant;

Gaurav Jain and Ms Abha Jain, Advocates, for the Respondent.

Chronological list of cases cited ***on page(s)***

1. (1972) 1 SCC 366 : AIR 1972 SC 749, *State of*

76

W.B. v. *Administrator, Howrah Municipality* 128*c*

2. AIR 1969 SC 575 : (1969) 1 SCR 1006, *Shakuntala Devi Jain* v. *Kuntal Kumari* 128*c*

The Judgment of the Court was delivered by

K.T. THOMAS, J.— Leave granted.

2. Explanation for the apparently inordinate delay in moving an application was accepted by the trial court under Section 5 of the Limitation Act, 1963, but the High Court in revision reversed the finding and consequently dismissed the motion. That order of the High Court has given rise to these appeals.

3. Facts barely needed for these appeals are the following:

A suit for declaration of title and ancillary reliefs filed by the respondent was decreed ex parte on 28-10-1991. The appellant, who was the defendant in the suit, on coming to know of the decree, moved an application to set it aside. But the application was dismissed for default on 17-2-1993. The

appellant moved for having that order set aside only on 19-8-1995 for which a delay of 883 days was noted. The appellant also filed another application to condone the delay by offering an explanation which can be summarised thus:

> The appellant engaged an advocate (one Shri M.S. Rajith) for making the motion to set the ex parte decree aside but the advocate failed to inform him that the application was dismissed for default on 17-2-1993. When he got a summons from the execution side on 5-7-1995, he approached his advocate but he was told that perhaps execution proceedings would have been taken by the decree-holder since there was no stay against such execution proceedings. On the advice of the same advocate, he signed some papers including a vakalatnama for resisting the execution proceedings, besides making a payment of rupees two thousand towards advocate's fees and other incidental expenses. But the fact is that the said advocate did not do anything in the Court even thereafter. On 4-8-1995 the execution warrant was issued by the Court and he became suspicious of the conduct of his advocate and hence rushed to the Court from where he got the disquieting information that his application to set aside the ex

77

parte decree stood dismissed for default as early as 17-2-1993 and that nothing was done in the Court thereafter on his behalf. He also learned that his advocate had left the profession and joined as the Legal Assistant of M/s Maxworth Orcheads India Limited. Hence he filed the present application for having the order dated 17-2-1993 set aside.

4. The appellant did not stop with filing the aforesaid application. He also moved the District Consumer Disputes Redressal Forum, Madras North ventilating his grievance and claiming a compensation of rupees one lakh as against his erstwhile advocate. The said forum passed final order directing the said advocate to pay a compensation of Rs fifty thousand to the appellant besides a cost of Rs five hundred.

5. Though the trial court was pleased to accept the aforesaid explanation and condoned the delay, a Single Judge of the High Court of Madras who heard the revision, expressed the view that the delay of 883 days in filling the application has not been properly explained. Hence the revision was allowed and trial court order was set aside. An application for review was made, but that was dismissed. Hence these appeals.

6. The reasoning of the learned Single Judge of the High Court for reaching the above conclusion is that the affidavit filed by the appellant was silent as to why he did not meet his advocate for such a long period. According to the learned Single Judge:

> "If the appellant was careful enough to verify about the stage of the proceedings at any point of time and had he been misled by the counsel then only it could have been said that due to the conduct of the counsel the party should not be penalised."

7. Learned Single Judge then observed that when the party is utterly negligent, he cannot be permitted to blame the counsel. Learned Single Judge has further remarked that:

> "A perusal of the affidavit does not reveal any diligence on the part of the respondent in the conduct of the proceedings. When already the suit has been decreed ex parte, the respondent ought to have been more careful and diligent in prosecuting the matter further. The conduct of the respondent clearly reveals that at any point of time, he has not realised his responsibility as a litigant."

8. The appellant's conduct does not on the whole warrant to

78

castigate him as an irresponsible litigant. What he did in defending the suit was not very much far from what a litigant would broadly do. Of course, it may be said that he should have been more vigilant by visiting his advocate at short intervals to check up the progress of the litigation. But during these days when everybody is fully occupied with his own avocation of life an omission to adopt such extra vigilance need not be used as a ground to depict him as a litigant not aware of his responsibilities, and to visit him with drastic consequences.

9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

10. The reason for such a different stance is thus:

> The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each

remedy. Unending period for launching the remedy may lead to

unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim *interest reipublicae up sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide *Shakuntala Devi Jain* v. *Kuntal Kumari*[1] and *State of W.B.* v. *Administrator, Howrah Municipality*[2].

13. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant, the court shall compensate the opposite party for his loss.

14. In this case, explanation for the delay set up by the appellant was found satisfactory to the trial court in the exercise of its discretion and the High Court went wrong in upsetting the finding, more so when the High Court was exercising revisional jurisdiction. Nonetheless, the respondent must be compensated particularly because the appellant has secured a sum of Rs fifty thousand from the delinquent-advocate through the Consumer Disputes Redressal Forum. We, therefore, allow these appeals and set aside the impugned order by restoring the order passed by the trial court but on a condition that the appellant shall pay a sum of rupees ten thousand to the respondent (or deposit it in this Court) within one month from this date.

15. The appeals are disposed of accordingly.

———

† From the Judgment and Order dated 13-11-1997 and 26-2-1998 of the Madras High Court in C.R.P. No. 2694 of 1996 and R.A. No. 125 of 1997

80

[1] AIR 1969 SC 575 : (1969) 1 SCR 1006

[2] (1972) 1 SCC 366 : AIR 1972 SC 749

T.C.
C.E. Applicants
(Adv. Ch. K. Sharma)