

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL**WESTERN ZONE BENCH AT PUNE****I. A. NO. 26 OF 2020****IN****APPEAL NO. 18 OF 2020****IN THE MATTER OF:**

ABHIJIT PRABHUDESAI

... APPELLANT

VERSUS

THE GOA STATE POLLUTION CONTROL BOARD & ORS.

...RESPONDENTS

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THROUGH

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PLACE:- DELHI/PUNE

DATE:- 14.08.2021

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL**WESTERN ZONE BENCH AT PUNE****I.A. NO. 26 OF 2020****IN****APPEAL NO. 18 OF 2020****IN THE MATTER OF:**

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REJOINDER TO REPLY OF RESPONDENT NO. 2 FILED VIA I.A. NO. 26/2020**IN APPEAL NO. 18/2020**

1. The above statutory Appeal 18 of 2020(WZ) was filed under Section 16 of the National Green Tribunal Act, 2010 against the judgment and final order dated 15.10.2019, communicated on 24.10.2019 by the President of the Ld. Administrative Tribunal, Goa in Appeal 4/2018/WATER titled, *Abhijit Prabhudesai v. Goa State Pollution Control Board & Anr*, whereby the Ld. Administrative Tribunal, has disposed of the said appeal without giving any consideration to the various grounds raised by the Appellant.
2. That the Appellant filed Pollution Appeal No.4/2018/WATER under Section 28 of the of the Water (Prevention and Control of Pollution) Act, 1974, before the President of the Ld. Administrative Tribunal, Goa challenging the legality of the amendment to the Consent to Operate dated 18.07.2018 granted by the Goa State Pollution Control Board ('GSPCB') to M/s Mormugao Port Trust, the Respondent No. 2.
3. That the Pollution Appeal No.4/2018/WATER was filed especially to highlight the fact that the impugned amendment No. 5/2556/6-PCB/Tech/8700 to the Consent to Operate dated 18.07.2018 has been granted by the Respondent No.1 in

absence of a prior Environment Clearance under the EIA Notification, 2006 for such expansion. This exacerbates an existing illegality in so far as the project has neither undergone assessment nor has it received Environment Clearance for cargo handling of any quantum whatsoever.

4. That the Environment Impact Assessment Notification, 2006 requires all Port related activities to obtain prior Environment Clearance ('EC'). The Respondent No. 2 had earlier applied for an EC, but such has not been granted for the construction and use of the berth 9, nor for the handling of polluting and dirty minerals, ores and cargoes such as coking coal/coke, wood chips, etc (which have been permitted under the impugned Consent).
5. That however, the Ld. Administrative Tribunal, Goa dismissed the Appeal No.4/2018/WATER on 15.10.2019, and such order was communicated to the Appellant on 24.10.2019, as is patently evident on the last page of Certified Copy of Final Order of the Ld. Administrative Tribunal, which is already annexed to the Appeal as **ANNEXURE A-1**.
6. That such Certified Copy clearly and unequivocally states that a Copy of the impugned order was "applied for on 15.10.2019" and that such Copy of the impugned order was "delivered on 24.10.2019".
7. Therefore, it is submitted that the date of communication as per Section 16 of the National Green Tribunal Act, 2010, which categorically provides that an Appeal must be filed within thirty days from the **date of communication of the order** (emphasis supplied), would be considered as 24.10.2019.
8. That the Appellant applied for the copy of the impugned order in *bona fide* on the same day of the Appeal No.4/2018/WATER being dismissed, thus clearly indicating that all due diligence was followed by the Appellant, and the impugned order could only be challenged once the Appellant had access to the full order, which was only possible after its delivery on 24.10.2019.

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9. That in this regard, the Appellant relies on the judgment passed by this Hon'ble Tribunal in the matter of ***Padmabati Mohapatra v. Union of India, (2013)***

SCC OnLine NGT 98 that:-

*"8. Corollary to such discussion would be the issue as to when the limitation would start running or the date from which such period of limitation is to be reckoned. All these questions need not detain us any longer as they squarely stand answered by a Five-Member Bench of this Tribunal in the case of Save Mon Region Federation v. Union of India [2013 (1) All India NGT Reporter Page 1]. Following the principles stated therein, **it is clear that communication of order is initiated by transmitting the order into the public domain by means which are accessible to the public at large without hindrance. That will be the date from which the period of limitation shall be reckoned as contemplated under Section 16 of the NGT Act.***
(emphasis supplied)

10. Furthermore, the Appellant has filed an Application for Condonation of Delay before this Hon'ble Tribunal, wherein a detailed account of the causes of delay in filing the present Appeal have been elaborated upon. That for the sake of brevity, such are not being repeated in entirety.

11. However, the Appellant has submitted that owing to a fractured hand injuries sustained on 17.11.2019, and injuries sustained in a severe car accident dated 5.01.2020, the Appellant was unable to file the present Appeal within 30 day period as prescribed by Section 16.

12. The Appellant has provided detailed accounts of causes of delay, and has adduced documentary evidence including various newspaper clippings and medical certificates describing injuries sustained to the Appellant, in support of the Application for condonation of delay.

13. That despite such serious injuries and severe accidents, the Appellant managed to ensure that the present Appeal was filed on 20.01.2020, thus being within the 90 day limitation period as under Section 16 of the NGT Act, 2010.

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14. That Section 16 of the NGT Act, 2010 accordingly reads:

16. Any person aggrieved by –

...

(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

...

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.

(emphasis supplied)

15. Therefore, the submissions of the Respondent No. 2 made vide Reply dated 17.11.2020, are untenable in law.

16. Furthermore, Respondent No. 2 has attempted to mislead this Hon'ble Tribunal by stating, as in I.A. No. 26/2020 filed by Respondent No.2 in the present Appeal, wherein Respondent No. 2 themselves state that "*the said Order was ready for delivery on 23/10/2019*" as on **Para 6, Pg 76**.

17. However, the Respondent No. 2 failed to mention the very next line of the impugned order, which clearly states that "*Copy delivered on 24.10.2019*".

18. Respondent No. 2 has also attempted to mislead this Hon'ble Tribunal by stating that the date of communication ought to be considered as on 15.10.2019 or 23.10.2019.

19. The Appellant has already submitted that the copy of the order was communicated on 24.10.2019 and the present Appeal was filed on 20.01.2020. Thus, the delay is exactly of 58 days as has been stated by the Appellant, and any counter claims made by the Respondent No. 2 are liable to be rejected.

20. That there are substantive issues which need to be adjudicated in the accompanying Appeal by conducting a 'merit review' as per the Judgment dated 29th March, 2019 in the case titled ***Hanuman Laxman Aroskar vs. Union of India***, reported in **2019 SCC Online 441**.

21. Therefore in such premise, the delay so occasioned in filing the appeal needs to be condoned by taking a liberal view. It is well settled that for purpose of condonation of delay the Limitation is to be construed liberally so as to do substantial justice to the parties. It is also well settled that if the refusal to condone the delay results in grave miscarriage of justice, it would be a ground to condone the delay itself.

22. That in this regard, the Appellant relies on the dictum of **Collector, Land Acquisition Anantnag vs. Mst. Katiji**, reported in **1987(2) SCC 107** where the Hon'ble Supreme Court has stated as follows:-

*"3. The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. **The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts 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. And such a liberal approach is adopted on principle as it is realized that:-*

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

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal.."

(emphasis supplied)

23. That in a recent judgment ***Bhivchandra Shankar More v. BaluGangaram***

More, 2019 (7) SCALE 551 it has been held by the Hon'ble Supreme Court:

"6.....Placing reliance upon B. MadhuriGoud v. B. Damodar Reddy (2012) 12 SCC 693, it was submitted that consistent view taken by the Supreme Court is that the words "sufficient cause" should be liberally construed and the District Court rightly condoned the delay in filing the appeal."

.....

15. It is a fairly well settled law that "sufficient cause" should be given liberal construction so as to advance sustainable justice when there is no inaction, no negligence nor want of bonafide could be imputable to the appellant. After referring to various judgments, in B. Madhuri, this Court held as under:-

"6. The expression "sufficient cause" used in Section 5 of the Limitation Act, 1963 and other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which serves the ends of justice. No hard-and-fast rule has been or can be laid down for deciding the applications for condonation of delay but over the years courts have repeatedly observed that a liberal approach needs to be adopted in such matters so that substantive rights of the parties are not defeated only on the ground of delay."

16. Observing that the rules of limitation are not meant to destroy the rights of the parties, in N. Balakrishnan v. M. Krishnamurthy (1998) 7 SCC 123, this Court held as under:-

"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....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."

(emphasis supplied)

24. It is humbly submitted before this Hon'ble Tribunal that the present Appeal be heard on the substantive issues involved, and that the Application for condonation of delay be allowed.

25. That the present Appeal concerns matters of substantial merit and *prima facie* violation of the Environment Impact Assessment Notification, 2006. That the present Appeal has been filed within the period of condonation as provided in Section 16 of the National Green Tribunal Act, 2010, as above mentioned.

26. Accordingly, it is therefore humbly prayed that this Hon'ble Tribunal may be pleased to dismiss the present I.A. No. 26/2020 filed by Respondent No. 2 M/s Mormugao Port Trust in the present Appeal No. 18/2020/WZ.

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Pass any such Order deemed fit by this Hon'ble Tribunal in the facts and circumstances of the case.

Abhijit Desai
APPELLANT

THROUGH

Abhijit Desai

RITWICK DUTTA RAHUL CHOUDHARY MAITREYA GHORPADE

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VERIFICATION

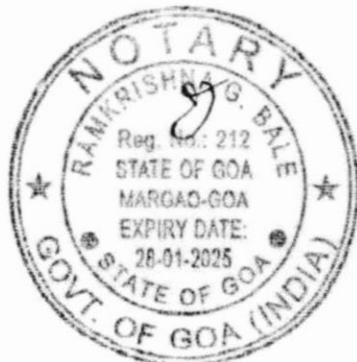
I, Abhijit Prabhudesai, r/o House No. 479, Curtorim, Salcete, South Goa District - 403709 do hereby solemnly affirm and state as under:

1. That I am the Appellant in the above titled Appeal and I am conversant with the facts and the circumstances of the case and competent to swear this affidavit.
2. That that the contents of the present Application are true to my knowledge and/ or based on information, and/or the contents are based on the legal submission and/or inferences of facts, which I believe to be true.

Date: *13th August 2021*

Place: *Margao, Goa*

Abhijit Desai
APPELLANT



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AFFIDAVIT

I, Abhijit Prabhudesai, r/o House No. 479, Curtorim, Salcete, South Goa District - 403709 do hereby solemnly affirm and state as under:

1. That I am the Appellant in the above titled Appeal and am conversant with the facts and circumstances described in the present case and as such, I am competent to swear this affidavit.
2. That the contents of the accompanying Application are true and correct and nothing material has been concealed therefrom.

Abhijit Prabhudesai

DEPONENT



Abhijit Prabhudesai

VERIFICATION

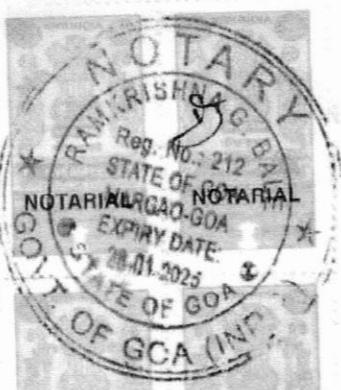
Verified on this 13th of August, 2021 that the contents of the above mentioned affidavit are true and correct and nothing material has been concealed therefrom.

Abhijit Prabhudesai

DEPONENT

(P.T.O)

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Solemnly affirmed before me by
Shri/Smt. Abhijit Prabhudesai

Who is identified before me by
Shri/Smt. _____

Who is personally known to me
on this 13th day of Aug. 2021

[Signature] 13/08/2021

RAMKRISHNA G. BALE
NOTARY
STATE OF GOA (INDIA)
REG. No. 4020/2021

DATE: 13th August 2021

IN THE MATTER OF

ABHIT PRABHUNDESAI

THE GOA STATE POLLUTION CONTROL BOARD

AFFIDAVIT

I, Abhijit Prabhudesai, do hereby solemnly affirm and state as follows:
That I am the Applicant in the above mentioned case and I have
with me the said and counterfoiled described in the original and
such, I am competent to swear the affidavit.
That the contents of the above stated affidavit are true and correct
and nothing material has been concealed therefrom.

DEPONENT

VERIFICATION

Verified on this _____ day of _____ 2021 in the presence of me and
mentioned officials, who have read and understood the contents of the
conceded therefrom.

DEPONENT