BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

WESTERN ZONE BENCH AT PUNE

I.A. No. 25 OF 2020

IN

APPEAL NO. 17 OF 2020

IN THE MATTER OF:

ABHIJIT PRABHUDESAI ... APPELLANT

VERSUS

THE GOA STATE POLLUTION CONTROL BOARD & ORS. ...RESPONDENTS

INDEX

THROUGH

RITWICK DUTTA **RAHUL CHOUDHARY**

COUNSEL FOR THE APPELLANT

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NEW DELHI-110048

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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. 25 OF 2020

IN

APPEAL NO. 17 OF 2020

IN THE MATTER OF:

ABHIJIT PRABHUDESAI ...APPELLANT

VERSUS

THE GOA STATE POLLUTION CONTROL BOARD & ORS. ...RESPONDENTS

REJOINDER TO REPLY OF RESPONDENT NO. 2 FILED VIA I.A. NO. 25/2020 IN APPEAL NO. 17/2020

1. The above statutory Appeal 17 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 5/2018/AIR 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. 5/2018/AIR under Section 28 of the of the Air (Prevention and Control of Pollution) Act, 1981, 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. 5/2018/AIR 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. 5/2018/AIR 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 being annexed to the present Rejoinder 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.5/2018/AIR 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.

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.

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. 25/2020 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 LaxmanAroskar 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. Balu Gangaram More, 2019 (7) SCALE 551*** it has been held by the Hon'ble Supreme Court that the words "sufficient cause" should be given a liberal construction, and has accordingly ordered as follows:

> *"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. 25/2020 filed by Respondent No. 2 M/s Mormugao Port Trust in the present Appeal No. 17/2020/WZ.

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

Abhijit Desai
APPELLANT

THROUGH

RITWICK DUTTA **RAHUL CHOUDHARY** **MAITREYA GHORPADE**

COUNSEL FOR THE APPELLANT

N-71, Lower Ground Floor,

Greater Kailash-I, New Delhi - 110048

Email:litigation.life@gmail.com

Ph: 93124 07881

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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NOTARY RAMKRISHNA G. BALE Reg. No.: 212 STATE OF GOA MARGAO-GOA EXPIRY DATE: 28-01-2025 STATE OF GOA GOVT. OF GOA (INDIA)

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

WESTERN ZONE BENCH AT PUNE

I.A. NO. 25 OF 2020

IN

APPEAL NO. 17 OF 2020

IN THE MATTER OF:

ABHIJIT PRABHUDESAI ...APPELLANT

VERSUS

THE GOA STATE POLLUTION CONTROL BOARD & ORS. ...RESPONDENTS

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 Desai

DEPONENT

NOTARY RAMKRISHNA G. BALE STATE OF GOA Reg. No. 212 GOVT. OF GOA (INDIA)

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 Desai

DEPONENT

(P.T.O)

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NOTARY
RAMKRISHNA G. BALE
Reg. No. 212
STATE OF GOA
MARGAO-GOA
EXPIRY DATE:
23-01-2025
NOTARIAL NOTARIAL
GOVT. OF GOA (INDIA)

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

13/08/2021

RAMKRISHNA G. BALE
NOTARY
STATE OF GOA (INDIA)
REG. No. 4021/2021
DATE: 13th August, 2021

NOTARIAL NOTARIAL

NOTARY
RAMKRISHNA G. BALE
Reg. No. 212
STATE OF GOA
MARGAO-GOA
EXPIRY DATE:
23-01-2025
NOTARIAL NOTARIAL
GOVT. OF GOA (INDIA)

Annexure A-1

REGISTRAR
ADMINISTRATIVE TRIBUNAL
PANAJI-GOA

Before the President of the Administrative Tribunal, Goa, the Appellate Authority constituted under section 31 of the Air (Prevention and Control of Pollution) Act, 1981 (Central Act 14 of 1981)

Appeal No

Presented on 13-08-2018

Memorandum of Appeal

Rajandekar

Registrar
Administrative Tribunal
Deputy Registrar Appellate Tribunal

Registered Post No. Dated: 14/8/18

Pollution ... Appeal/Revision/ 5/18/Air

Misc. Appln./No. ..../2018 (Stay/...)

Shri Abhijit Prabhudesai

House No 479, Curtorim,

Salcete, South Goa District, Goa – 403709 ..... Appellant

V/s

1. **The Goa State Pollution Control Board,**

   Through its Member Secretary,

   Dempo Towers, 1st Floor, Patto Plaza,

   Panaji, North Goa District, Goa - 403001 ..... Respondent

2. M/s Mormugao Port Trust (MPT)
   Headland Sada Vasco-da-Gama,
   Mormugao, Goa.

The appeal of Shri Abhijit Prabhu...

Certified photo copies of entire roznama and copy of Judgment/Order dtd. 15/10/2019, in the above matter.

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REGISTRAR ADMINISTRATIVE TRIBUNAL PANAJI-GOA

ADMINISTRATIVE TRIBUNAL OF GOA
AT PANAJI
ROZNAMA

R/1

Appeal / Application No. Pollution Appeal No. 5/18/ADT

Appellant / Applicant Shri Abhijit Prabhudesai

V/s.

Respondent / Opponent Goa State Pollution Control Board & Anr.

Date on which the Appeal or Application or Miscellaneous matter comes before the Tribunal in any proceedings		Page No.	Date on which the Appeal or Application is adjourned
1	2		3
13.08.18	Presented Appeal memo and its accompaniments. By Order, HC		
14.08.18	Notices issued to Resp(s) r/o.. By Order, HC		23.08.18 10.30 a.m.
23.08.18	Case called out. Appellant present in person. Ld. Adv. J. Godinho present on behalf of Respondent No. 1 and undertakes to file wakalatnama on next date of hearing. Ld. Adv. Y.V. Nadkarni files wakalatnama on behalf of Respondent No. 2. matter adjourned for say, if any, / argument.		20.09.18 at 10.30 a.m.
20.9.18	Case called out. Appellant present in person files Additional Affidavit alongwith annexures. Ld. Adv J. Godinho files wakalatnama on behalf of Respondent No. 1. Ld. Adv. Y.V. Nadkarni present for Respondent No. 2 files reply. Matter adjourned for Affidavit in additional reply if any to the affidavit filed by the Appellant.		10.10.18 at 10.30 a.m

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		Page No.	
10.10.18	Case called out. Ld. Adv. Ms. Sreeja Chakraborty files vakalatnama on behalf of Appellant. Ld. Adv. Y. V. Nadkarni present for Resp. no. 2 files reply to the additional affidavit dtd. 18/9/2018 of the appellant. Ld. Adv. J. Godinho present for Resp. no. 1 seeks time to file reply. Time granted as last and final opportunity. Matter adjourned for say/reply of Resp. no. 1	25/10/18 at 10:30 a.m.	
25/10/18	Case called out. Ld. Adv. Ms. Sreeja Chakraborty present for Appellant. Ld. Adv. J. Godinho present for Resp. no. 1. Ld. Adv. Y. V. Nadkarni present for Resp. no. 2. Ld. Adv. for Resp. no. 1 seeks time to file reply. Time granted as last and final opportunity. Matter adjourned for say, reply/argument.	9/11/18 at 10:30 a.m.	
9/11/18	Case called out. Appellant present in person. Ld. Adv. J. present for Respondent no. 1. Ld. Adv. N. Noronha holding for Ld. Adv. Y.V. Nadkarni for Respondent no. 2. Ld. Adv. for Respondent no. 1 undertakes to file reply during the course of day and further undertakes to furnish copy said reply to Appellant and other Respondent. Matter adjourned for argument.	28/11/18 at 10:30 a.m.	
12/11/18	Ld. Adv. for Resp. no. 1 filed Affidavit by post		

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ADMINISTRATIVE TRIBUNAL PANAJI-GOA

ADMINISTRATIVE TRIBUNAL OF GOA
AT PANAJI
ROZNAMA

8/3

Date on which the Appeal or Application or Miscellaneous matters comes before the Tribunal for any proceedings	Appeal / Application No. / Appellant / Applicant / Respondent / Opponent	Page No.	Date on which the Appeal or Application is adjourned
1	2		3
	Appeal/Application No. PO14/AP/5/18/Air Appellant/Applicant: Shri Abhijit Prazudesai V/s. Respondent/Opponent: The Goa State Co-op Bank Ltd.		
28/11/18	case called out. Ld. Adv. Ms. Sreeja Chakraborty present for Appellant. Respondent No. 1 absent. Ld. Adv. Y. V. Nadkarni present for Resp. No. 2. Ld. Adv. for Appellant submits that she does not wish to file any rejoinder. Matter adjourned for arguments.		14/12/18. at 10:30 a.m.
	Ld. Adv. J. Godinho subsequently appeared on behalf of Resp. No. 1 and noted the next date of hearing.		
14/12/18	case called out. Ld. Adv. Ms. Sreeja Chakraborty present for Appellant. Ld. Adv. J. Godinho present for Resp. No. 1. Ld. Adv. S. Kamat holding for Ld. Adv. Y. V. Nadkarni present for Resp. No. 2. As the connected matters PO14/MP/9/18 and 10/18 are adjourned the present matter is also adjourned on same date. Fixed for argument on merits.		10/1/19 at 10:30 a.m.
10/1/19	case called out. Ld. Adv. Ms. Sreeja Chakraborty present for Appellant. Ld. Adv. J. Godinho present for Resp. No. 1. Ld. Adv. Y. V. Nadkarni present for Resp. No. 2		

1	2	Page No.	3
	matter adjourned for argument.		22/1/19 at 10:30 a.m.
22/1/19	case called out. Ld. Adv. Ms. Sreeja Chaorabarty present for Appellant. Ld. Adv. J. Godinho present for Resp. No. 1. Ld. Adv. Y. V. Nadkarni present for Resp. No. 2. matter adjourned for argument on merits.		4/2/19 at 10:30 a.m.
4/2/19	case called out Ld. Adv. Ms. Sreeja Chaorabarty present for Appellant. Ld. Adv. J. Godinho present for Resp. No. 1. Ld. Adv. Y. V. Nadkarni present for Resp. No. 2. matter adjourned for argument on merits.		20/2/19 at 10:30 a.m.
20/2/19	case called out. Ld. Adv. Ms. Sreeja Chakraborty present for Appellant. Ld. Adv. J. Godinho present for Resp. No. 1. Ld. Adv. S. Kamat present for Resp. No. 2. As argumentss in pelly/AP/2/18 is in progress other matters are adjourned on same date.		12/3/19 at 10:30 a.m
12/3/19	case called out. Ld. Adv. Ms. Sreeja Chakraborty present for Appellant. Resp. No. 1 absent. Ld. Adv. S. Kamat present for Resp. No. 2. As argument in pelly/AP/2/18 is in progress other matters are adjourned on same date.		26/3/19 at 10:30 a.m.

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ADMINISTRATIVE TRIBUNAL OF GOA
AT PANAJI
ROZNAMA

ADMINISTRATIVE TRIBUNAL PANAJI-GOA

Date on which the Appeal or Application Miscellaneous matter comes before the Tribunal for any proceedings	Appeal / Application No. / Appellant / Applicant / Respondent / Opponent	Page No.	Date on which the Appeal or Application is adjourned
1	2		3
26/3/19	Case called out. Ld. Adv. Ms. Sreeja Chakraborty present for Appellant. Ld. Adv. V. Gaonkar holding for Ld. Adv. J. Godinho present for Resp. No. 1. Ld. undertakes to file letter of authority during course of day. Ld. Adv. A. Naik present for Resp. No. 2. As the PB/14/AP/2/18/water out 3/18/AP are adjourned this matter is also adjourned to the said applied.		25/4/19 at 10:30 a.m.
25/4/19	Case called out. Ld. Adv. Ms. Sreeja Chakraborty present for Appellant. Ld. Adv. J. Godinho present Resp. No. 1. Ld. Adv. A. Kamat holding for Ld. Adv. Y. V. Nadkarni present for Resp. No. 2. Ld. Adv. for Appellant seeks time for argument. Time granted matter adjourned for argument.		14/6/19 at 10:30 a.m.
14/6/19	Case called out. Ld. Adv. Ms. Sreeja Chakraborty present for Appellant files written argument. Ld. Adv. J. Godinho present for Resp. No. 1. Ld. Adv. Y. V. Nadkarni present for Resp. No. 2. Copy of written argument if any to be furnish to Ld. Adv. for Appellant and Resp. No. 1 10 days prior to next date of hearing. Matter		

2	Page No. 3
adjourned for written arguments if any of Respondent / oral argument.	23/7/19 at 1030 a.m.
23/7/19 case called out. Ld. Adv. Ms. Sreeja Chakraborty present for Appellant. Ld. Adv. J. Godinho present for Resp. No. 1. Ld. Adv. Y. V. Nadkarni present for Resp. No. 2 files written argument. Argument heard. Matter adjourned for clarification if any / Judgment.	27/8/19 at 1030 a.m.
27/8/19 case called out. Ld. Adv. Ms. Sreeja Chakraborty present for Appellant. Ld. Adv. J. Godinho present for Resp. No. 1. Ld. Adv. Y. V. Nadkarni present for Respondent No. 2. As the connected matter petition No. 2/18/water is adjourned the present matter is also adjourned on same date.	13/9/19 at 1030 a.m.
13/9/19 case called out. Appellant present in person. Ld. Adv. J. Godinho present for Resp. No. 1. Resp. No. 2 absent. As the connected matter petn/No/2/18/water is adjourned the present matter is also adjourned on same date.	24/9/19 at 1030 a.m.
24/9/19 Case called out. Adv. Ms. Sreeja Chakraborty present for Appellant. Adv. Shri S. Kamat holding	

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REGISTRAR
ADMINISTRATIVE TRIBUNAL
PANAJI-GOA

ADMINISTRATIVE TRIBUNAL OF GOA
AT PANAJI
ROZNAMA

8/7

Date on which the Appeal or Application or Miscellaneous matter comes before the Tribunal for any proceedings	Appeal / Application No. / Appellant / Applicant / Respondent / Opponent	Page No.	Date on which the Appeal or Application is adjourned
1	2		3
	Poll/Appl 5/18/Air Abhijit prabhudesai V/s. The Goa state poll. control Board, for Adv. Shri Y. V. Nadkarni present for Respondent no 2. Respondent no 1 absent. clarification sought. matter adj. for judg.		15/10/19 at 10.30 a.m.
15/10/19	case called out. Ld. Adv. Ms. Sreeja chacrabarty present for Appellant. Ld. Adv. V. Gaunekar holding for Ld. Adv. J. Godinho present for Resp. No. 1. Ld Adv. Y. V. Nadkarni present for Resp No. 2. Judgment pronounced. Appeal is dismissed proceedings closed.		

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REGISTRAR
ADMINISTRATIVE TRIBUNAL
PANAJI-GOA

ADMINISTRATIVE TRIBUNAL, GOA

PANAJI - GOA

1

POLLUTION APPEAL NO. 5/2018/AIR

Shri Abhijit Prabhudesai,
House no. 479, Curtorim,
Salcete, South Goa District,
Goa. 403 709 .... Appellant

Vs

1. The Goa State Pollution Control Board,
   Through its Member Secretary,
   Dempo Towers, 1st Floor, Patto Plaza,
   Panaji, North Goa District, Goa – 403001
2. M/s Mormugao Port Trust(MPT),
   Headland Sada, Vasco-da-gama,
   Mormugao, Goa. ..... Respondents

JUDGMENT

2019 October 15

The Appellant has challenged the Amendment no. 5/2556/6-PCB/Tech/8700 dated 18.7.2018 to the Consent to Operate at Berth no. 9 of Mormugao Port granted by the Respondent no. 1 to the Respondent no. 2.

1. **Brief facts as narrated by the Appellant are as under:**

The Appellant states that the Environment Impact Assessment Notification, 1994 and Environment Impact Assessment Notification, 2006 both require all port related activities to obtain prior Environmental Clearance. The application dated 10.4.2018 submitted by M/s Mormugao Port Trust to the Respondent no. 1 shows that Environmental Clearances

....2/-

Govt. Ptg. Press, Panaji-Goa—1910/5,000—8/2017.

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REGISTRAR
ADMINISTRATIVE TRIBUNAL
PANAJI-GOA

ADMINISTRATIVE TRIBUNAL, GOA
PANAJI - GOA

have neither been submitted 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.

The Appellant states that Respondent no. 1 has issued to the Respondent no. 2 and its agents numerous show cause notices for violations while handling coal at the Port, causing pollution and violating terms and conditions of the consents in the past. The Respondent no. 1 has even initiated criminal proceedings against an agent of MPT handling coal at MPT in the recent past.

The Appellant submits that handling of the coal and coke by the Applicant includes transportation of the cargoes from the Mormugao Port to distant places outside the State using rail and road transportation. These rail and road routes pass across the width of the State of Goa causing widespread air and water pollution in these thickly populate areas. The coal handling, storage and transportation is close to numerous air and water resources, including the Vasco Bay, Zuari River, Arabian Sea, coral reefs at Grande Islands and also to the air and various water bodies along the road and rail routes. Further, the coal dust carried across large distances settles on the ground and objects, only to be washed by monsoons into the water bodies, thus causing grave water pollution.

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The Appellant submits that the coal is first transported by ships and then transferred from the ships to the berths, where it is handled, stored and transported. All of these processes are carried out within the Vasco Bay without measures to stop the pollution of the air and the waters of the bay by the fugitive coal dust and spills. The Appellant submits that large amounts of coal residues and coal dust are washed with the rain and by the sprinklers into the Vasco Bay without any treatment. The coal washings irrefutably carry heavy metals and other toxic components of the coal directly into sea, with severe pollution and impact on the health of the fish, the marine life and humans, who consume the sea food.

The Appellant submits that he had met the Member Secretary of the Respondent no. 1 prior to the 133rd meeting of the Respondent no. 1 and had raised before him all the issues raised herein, but none have been considered during the meeting. The Appellant had pointed out during the meeting with the Member Secretary that it had become abundantly clear during the public hearings held by the Respondent no. 1 during April-May 2017 for Environmental Clearances for coal handling at the MPT that the entire population of Goa was strongly against the handling of coal and wood chips at MPT. However, the Respondent no. 1 has failed to take any cognizance of the objections and the issues raised during the said public hearings while considering the application for grant of consent for increase in coal handling.

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The Appellant submits that the Member Secretary was informed by the Appellant about the fact that the "Report of the Working Group for Port Sector for the Twelfth Five Year Plan(2012-2017)" clearly directs MPT to stop handling of hazardous and dirty cargoes at MPT and to move them away from the city of Vasco for obvious reasons of health and safety. The Member Secretary had requested the Appellant for a copy of the report, which was duly emailed to him on 10.6.2018.

The Appellant submits that Government of Goa has commissioned IIT/B, Mumbai to carry out source apportionment studies of the ongoing pollution and the results of these studies should have been awaited before any Consent was granted for the increase of handling coal and other dirty or hazardous cargoes at MPT.

2. **<u>The case of the Respondent no. 1 is as under:</u>**

The Respondent no. 1 submits that with regard to the application for amendment in Consent to Operate from M/s Mormugao Port Trust under the Water and Air Acts for handling all types of dry bulk, container and General cargo at Berth no. 9 the members of Board deliberated and decided to in principal grant Consent, however, the Board decided to seek clarification as regards to the type of cargo and the quantum to be handled based on which the Chairman could grant the consent. The Board was in receipt of letter bearing no. CE/WKS-404/2018/1980 dated

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6.7.2018 from the MPT submitting the breakup of Cargo proposed to be handled at Berth No. 9. The Board has also granted to the unit a Renewal of Consent to operate vide order bearing no. 5/2556/04-PCB/CI-4013 dated 5.4.2018. Subsequently, amendment was issued bearing no. 5/2556/6-PCB/Tech/8700 dated 18.7.2018. In order to verify the status of compliance with the consent conditions by the unit a detailed site inspection has been conducted by the Technical Advisory Committee of the Board on 20.9.2018.

The Respondent no. 1 submits that the Board has proposed the implementation of the following measures for control of Air and Water Pollution.

Measures to control air pollution

- *The unit shall install sprinklers and mist cannon system on board near cargo transfer points to ensure dust control.*

Measures to control water pollution.

- *The unit shall put tarpaulin in between the ship and barge to prevent spillage in the sea.*

The Respondent no. 1, on discussion and deliberation, was of the opinion that for improving air quality effective approach would be identification of emission sources and assessment of extent of contribution of these sources on Ambient Environment.

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The Respondent no. 1, therefore, proposed to carry out the Source Apportionment Study in Vasco da Gama in order to ascertain the quantitative contribution of activities in the Port area more specifically the coal handling on the ambient air quality in Vasco City. Accordingly the study is being carried out by Centre for Environmental Science and Engineering, Institute of Technology, Bombay.

The Respondent no. 1 also carries out Ambient Air Quality Monitoring also in other cities in Goa where no Industrial Activities are prevalent and the Values of the Particulate Matter in these cities is in the similar range as that of the Vasco City. The Respondent no. 1 submits that to ascertain the contribution of various sources including handling of coal and coke at berth no. 5A and 6A and Berth no. 7 on the Air Quality in the Vasco City, the Source Apportionment study is proposed and under progress. The Respondent no. 1 submits that the IIT Mumbai has submitted an interim report dated March 2018 of the said study.

The Respondent no. 1 submits that transportation of cargo from Mormugao Port to distant places outside the State is done by ship and this transportation is done in fully mechanized and covered by tarpaulin sheets.

The Respondent no. 1 submits that as per the Environmental Impact Assessment Notification 2006, the Board only facilitates the

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conduct of Environmental Public hearing. The objections/suggestions received during such hearings are forwarded to the Regulating Authority for the purpose of grant of environmental clearances and the Respondent no. 1 has taken cognizance of the objections and issues raised during public hearing while considering the application for grant of consent to increase the coal handling. The Respondent no. 1 has granted consents to Respondent no. 2 unit after considering the ambient air quality in the city of Vasco.

The Respondent no. 1 states that since consent to operate for handling coal is not granted, the issue of transportation causing water pollution in marine environment at Vasco Bay, Zuari river and the sea routes does not arise.

3. **The case of the Respondent no. 2 is as under:**

The Respondent no. 2 submits that the impugned amendment dated 18.7.2018 amends the renewal of Consent to Operate dated 5.4.2018. The renewal of Consent to Operate dated 5.4.2018 was valid for the manufacture of Iron Ore handling of a quantity of 11.50 MT/annum and E-auctioned iron ore of a quantity as approved by the State Government.

The Respondent no. 2 submits that there is no challenge to the

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original renewal of Consent to Operate dated 5.4.2018 which is valid upto 11.11.2019 and as such, it is not open to the Appellant to challenge only the Amendment dated 18.7.2018.

The Respondent no. 2 submits that the impugned amendment dated 18.7.2018 amends the said renewal of Consent to Operate dated 5.4.2018 and is valid for the manufacture of Dry Bulk Cargo such as ores and minerals of all types including iron ore, limestone, gypsum, bauxite, manganese, fertilizer and fertilizer raw material, river sand, wood chips, etc. for a quantity of 11.00 MMT and Break Bulk Cargo such as granite, all types of finished steel products, containers, bentonite, bagged cement and fertilizers of a quantity of 0.5 MMT.

The Respondent no. 2 submits that the Appellant has not made out any grounds under the Air Act to challenge the said amendment dated 18.7.2018. The Respondent no. 2 submits that the contention of the Appellant as regards the applicability of the Environment Impact Assessment Notification of either 1994 and/or 2006 is highly misplaced.

The Respondent no. 2 submits that the Berth no. 9 at the Mormugao Port Trust was constructed between the years 1976 to 1978 and as such the Environment Impact Assessment Notifications of either 1994 and/or 2006 are irrelevant and inapplicable.

The Respondent no. 2 submits that the impugned amendment

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dated 18.7.2018 does not refer at all to handling of any coal or coke and as such, various averments made in the present appeal as regards coal and coke handling are irrelevant and not at all applicable.

The Respondent no. 2 submits that it has taken adequate measures and precautions to check and control any pollution in the Port area. The Respondent no. 2 submits that continuous Ambient Air Quality Monitoring Station (CAAQMS) is an equipment used to measure particulate matter such as PM10 and PM2.5 in air at ambient condition. CAAQMS is installed near Mormugao Port Institute(MPI). MPI is approximately 400 m and 300 m away from Berth Nos. 10 and 11 respectively. Similarly, MPI is approximately 800 m away from Mooring Dolphin 1, 2 and 3. CAAQMS analyses air sample automatically collected from air every hour and analyses automatically to find particulate matter PM10 and PM2.5. The results automatically derived are sent through internet to CPCB server. CAAQMS equipment is located at such location that it is in wind direction influenced through cargo storage and handling at Berth Nos. 9, 10 and 11. This signifies that CAAQMS results are outcome of pollution control measures taken by the Port. In addition, GSPCB has also installed an Ambient Air Quality Monitoring Station in Vasco city. This equipment is manually operated and reading is taken twice in a week and 104 readings in a year.

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4. Heard Ld. Advocate Ms. Sreeja Chakraborty for the Appellant, Ld. Advocate Shri J. Godinho for the Respondent no. 1 and Ld. Advocate Shri Y. V. Nadkarni for the Respondent no. 2.

5. Ld. Advocate for the Appellant contends that the Appellant is a permanent resident of C-1 Shamiana Co-op Housing Society, Comba, Margao which is merely 50 mts. from the railway track which is used to transport coal and other dusty cargo from the Mormugao Port. The Ld. Advocate submits that the Appellant's mother contracted lung cancer which was detected in November 2015 and she expired on 22.3.2017. The Ld. Advocate submits that one of the major reason for contracting lung cancer is due to long term exposure to coal dust and emissions from coal train engines. This very fact was raised by the Appellant during the Public hearing conducted on 28.4.2017, for expansion of Berth 8 and 9 at Mormugao Port Trust. The Ld. Advocate contends that the Appellant is directly affected and aggrieved by the grant of consent to Respondent no. 2 as he has suffered a personal loss owing to the long term exposure of coal pollution which led him to migrate to his current temporary residence. The Ld. Advocate submits that the Appellant raised the similar concern about the coal pollution in the Public hearing conducted during 28.4.2017 and the same is well documented in the minutes of the Public hearing procedure. The Ld. Advocate submits that the interpretation of 'Person

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Aggrieved' has been elaborately discussed and decided by the Ld. National Green Tribunal in case of **Janajagrithi Samithi & Ors. vs Karnataka State Pollution Control(2013 SCC OnLine NGT 32)** while dealing with squarely similar issues.

The Ld. Advocate submits that the Hon'ble Supreme Court in **Akhil Bharatiya Soshit Karamchari Sangh (Railway) v. Union of India & Others (AIR 1981 SC 298 at page 317)** emphasized on the point that broader interpretation is to be provided to 'person aggrieved' and held:

> *"Our current processual jurisprudence is not of individualistic Anglo-Indian mould. It is broad-based and people-oriented, and envisions access to justice through 'class actions', 'public interest litigation', and 'representative proceedings'. Indeed, little Indians in large numbers seeking remedies in courts through collective proceedings, instead of being driven to an expensive plurality of litigations, is an affirmation of participative justice in our democracy. We have no hesitation in holding that the narrow concepts of 'cause of action', 'person aggrieved' and individual litigation are becoming obsolescent in some jurisdictions."*

The Ld. Advocate submits that the Hon'ble Supreme Court had adopted the Public Trust Doctrine in the Indian Environmental Jurisprudence for the first time in **M. C. Mehta v. Kamal Nath [(1997) 1 SCC 388]** and thereafter, Hon'ble Supreme Court of India time and again,

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invoked the public trust doctrine for giving judicial protection to environment, ecology and natural resources. The Hon'ble Supreme Court recognized the importance of the public trust doctrine and applied the same in several cases for protecting natural resources which have been treated as public properties and are held by the Government as trustee of the people.

Ld. Advocate for the Appellant contends that the Respondent no. 1 has failed to consider whether any Consent to Establish has been granted in the past, which is a prerequisite for the consideration of the application for Consent to Operate. The Ld. Advocate contends that the impugned Consent Order is null and void in the absence of prior Environment Clearance and Consent to Establish.

The Ld. Advocate submits that the impugned consent allows Respondent no. 2 to handle dry bulk cargo such as Ores and minerals of all types. Ld. Advocate submits that 'minerals of all types' also include coal. Under the Part A of the First Schedule of the Mines and Minerals(Development and Regulation) Act, 1957 Coal is listed as hydro carbon/energy mineral.

The Ld. Advocate submits that in order to access the true Air quality both PM10 and Pm 2.5 data is required. The same can be observed from the IIT Mumbai's interim report where they are collecting

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24 hour sample for PM 10 and PM 2.5 data from the CAAQM for data sample consideration.

6. The Ld. Advocate for Respondent no. 1 submits that the Respondent no. 1 has granted consent to Respondent no. 2 after considering the ambient air quality in the city of Vasco and has also appointed IIT Mumbai to carry out a source study. The Ld. Advocate for Respondent no. 1 contends that since the Board has not granted Consent to Operate for handling coal, the issue of transportation causing water pollution in marine environment at Vasco Bay, Zuari river and the sea routes does not arise.

7. The Ld. Advocate for the Respondent no. 2 submits that the Appellant has no locus standi to prefer the present appeal under Section 31 of the Air Act, 1981, and the present appeal deserves to be dismissed in limine. Ld. Advocate submits that section 31 of the Air Act, 1981 stipulates that "Any person aggrieved by an Order made by the State Board under this Act may, within thirty days from the date on which the Order is communicated to him, prefer an appeal to such Authority as the State Government may think fit to constitute. As such, Section 31 of the Air Act, 1981 provides for an appeal only to any person aggrieved by an Order made by a State Board. The Ld. Advocate submits that the

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Appellant cannot be said to be a person aggrieved by the Impugned Amendment dated 18.7.2018 and neither has the Appellant, in the present appeal demonstrated how he is or could be said to be a person aggrieved such as to file the present appeal. The Ld. Advocate further submits that as may be seen from the memorandum of appeal, the Appellant is resident of House no. 479, Curtorim, Salcete, South Goa, which is situated atleast more than 50 kms from the Mormugao Port. As such, the Appellant cannot be considered as a person aggrieved to prefer the present appeal.

In support of submissions, the Ld. Advocate has relied on the Judgment of the Hon'ble National Green Tribunal, Principal Bench in the case of **Rana Sengupta v/s Union of India(MANU/NGT/0032/2013)** and Judgment of the Hon'ble National Green Tribunal, Southern Zone at Chennai in the case of **Janajagrithi Samithi & Ors. v. Karnataka State Pollution Control Board and Anr. (2013 SCC OnLine NGT 32).**

8. I have carefully considered arguments and perused the records.

9. The point for determination is whether the Appellant is entitled for reliefs claimed.

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10. Section 31 of the Air(Prevention and Control of Pollution) Act, 1981 reads as under:

> "***Appeals*** – *(1) Any person aggrieved by an order made by the State Board under this Act may, within thirty days from the date on which the order is communicated to him, prefer an appeal to such authority as the State Government may think fit to constitute."*

The Rules 3 and 4 read as under:

> *"3. Appeal to be filed by aggrieved persons. – (1) Every appeal against an order passed by the State Board under section 21 of the Act shall be filed by the aggrieved person in Form 'A' if it relates to a matter covered by sub-sections (4) and (6) of section 21.*
>
> .....
>
> *4. Procedure to be followed by the appellate authority in dealing with and disposal of the appeal. – (1) The Appellate Authority shall, as soon as may be, after the appeal is filed before it, fix a date for hearing the appeal and give notice of the same to the appellant and the Member Secretary of the State Board in Form 'B'. While giving such intimation to the Member Secretary, a copy of the appeal together with enclosures received with it, shall also be sent to the Member Secretary, and he shall be called upon to send to the appellate authority all the relevant records connected with the matter."*

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The Form 'A' Rule 3(1) is as under:

Before the Appellate Authority constituted under section 31 of the Air (Prevention and Control of Pollution) Act, 1981 (Central Act 14 of 1981).

Memorandum of appeal of Shri .... Appellant

v/s

The Goa State Pollution Control Board ..... Respondent

The appeal of Shri ..... resident of ..... District ..... against the Order No. ..... dated ..... passed by the Goa State Pollution Control Board, showeth as follows:

(1) Under Section 21/22 of the Air (Prevention and Control of Pollution) Act, 1981 (Central Act of 1981):

- *The Appellant has been refused Consent.*
- *The Consent has been withdrawn by the State Board.*
- *The Consent has been granted subject to the conditions mentioned in the order passed by the Goa State Pollution Control Board in respect ..... of .... the ..... Company/Corporation/ Municipality/Notified Area Committee etc. noted below:*

  (a) name of the Plant/Company/Corporation/Municipality/ Notified Area Committee;

  (b) Place;

  (c) Name of the street; and

  (d) District.

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A copy of the consent order in question is attached hereto.

(2) The facts of the case are as under:-

(Here briefly mention the facts of the case.)

(3) The grounds on which the Appellant relies for the purpose of this appeal are as below:-

(Here mention the grounds on which the appeal is made.)

(4) In the light of what is stated above, the appellant respectfully (a) prayeth that the unreasonable conditions(s) imposed should be treated as annulled or it/they should be substituted for such other condition(s) as appears to be reasonable

or

(b) the unreasonable condition(s) ..... should be varied in the following manner (here mention the manner in which the condition(s) objected should be revised).

An amount of Rs. ..... as fee for this appeal has been paid vide receipt No. ..... dated ..... an authenticated copy of which is attached in proof of payment.

Signature of the Appellant

Name(in Block Letters):

Occupation:

Address:

Date:

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11. In the case of **Rana Sengupta vs Union of India and ors. (MANU/NGT/0032/2013)** the Hon'ble National Green Tribunal held:

> *"12. So far as locus-standi of the Appellant is concerned, it would be appropriate to examine what he has pleaded in the memorandum of appeal. He alleged that although he has no personal interest in the matter, yet because he is working for the welfare of the people, particularly for those whose concern might have otherwise remained unrepresented, he is aggrieved. Secondly, he states that he has been raising the issue of noncompliance of environmental norms by the Project Proponent and had filed earlier appeal no. 32/2011 with a view to stall installation of Ductile Iron Pipe Plant Project. He says that he is a public spirited citizen with working experience in steel and iron industry and has full knowledge of the impact of these industries on ecology, environment and human lives. These are the reasons given by him to demonstrate that he is competent to file the appeal.*
>
> *Section 16 of the NGT Act, 2010 provides appellate jurisdiction to the Tribunal. The opening words of Section 16 go to show that "any person aggrieved" by order made granting EC can prefer appeal under Section 16(h) of the NGT Act, 2010. The expression "person aggrieved by" imply some or other reason which might have aggravated the person to undertake the legal remedy. Such a person must demonstrate that he is directly or indirectly concerned with the adverse environmental impact which is likely to be caused due to granting of EC by the*

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competent authority. The Appellant, admittedly, resides at Babu Bagan, Dhakuria area of Kolkata. The main project and expansion area of the subsequent project is situated at Shyamraipur(District Paschim Medinipur). It is not the case of the Appellant that he has any property in the adjoining area of village Shyamraipur. It is not his case that he is personally adversely affected due to the installation of the expansion project in question. He vaguely states that he is a public spirited citizen with experience of working with steel and iron industries and has full knowledge of the impact of these industries on ecology, environment and human lives. He vaguely proclaims that he is working for the welfare of the people and particularly who have remained unrepresented.

13. We do not find any tangible material which would plausibly show that the Appellant has credentials as expert in the field of steel and iron industries and we are at a loss to know in what manner he is working for the welfare of unrepresented members of the public. It is not his case that he represents any NGO. His self-proclaimed status as "public spirited citizen" is of no much avail. There is absolutely no record to show that he participated in the public consultation process and raised any issue regarding the environment or socio-economic adverse impact on account of establishment of the proposed project. The only reason that he has unsuccessfully preferred Appeal No. 32/2011 against granting of earlier EC for production of Ductile Iron Pipe Plant is of no much significance and is irrelevant.

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Moreover, that appeal came to be dismissed and there is no finding of this Tribunal that the Appellant is to be treated as "an aggrieved person". Considering forgoing discussion, we have come to the conclusion that the Appellant has no locus-standi to prefer the present appeal. He cannot be treated as an aggrieved person and the appeal filed by him cannot be entertained. This answers the point no. 1."

In the case of **Janajagrithi Samithi & Ors. v. Karnataka State Pollution Control Board and anr.(2013 SCC OnLine NGT 32)** the National Green Tribunal held:

"20) Apart from the above, as could be seen from the report, some of the Appellants are having their landed properties such as agricultural lands, wells, etc., near to the plant in question and had complained that there would be large scale damages to the agricultural lands, surface water, wells in particular and the environment in general and the health of people and if the allegations were true, they were directly affected by the environmental pollution from the plant. The Appellants are interested persons in the environment and ecology of the area. Under these circumstances, they can be called, no doubt, as aggrieved persons since they apprehend danger to human lives and their properties. The Tribunal is of the view that the "person aggrieved" in environmental matters must be given a liberal

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construction and it needs to be flexible. The above view is also strengthened by the provisions of the Constitution of India in Articles 48A and 51A(g) which read thus:

"Article 48A. Protection and improvement of environment and safeguarding of forests and wild life: The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

Article 51A. Fundamental duties: It shall be the duty of every citizen of India –

(g) to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures.

In the case of **Gujarat Pollution Control Board vs Parmar Devusinh Shersinh and ors.(Special Civil application no. 11 of 1989)** the Hon'ble High Court of Gujarat held:

"2. The learned Counsel for the petitioner submits that the respondent has no locus standi to file the appeal before the Appellate Authority. It is a grievance of the respondent No. 1 before the Appellate Authority that the consent order passed by the petitioner in respect of the Respondent no. 2-industry will adversely affect the petitioner and other persons of the area and he has right of appeal. It is true that Respondent no. 1 was not a party to the consent order, but in case that order

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adversely affects the petitioner, certainly, the appeal is maintainable. He was not a party to the order impugned before the Appellate Authority and copy of the same was not required to be sent to him. But, merely because he was not a party or that the copy of the order was not sent to Respondent No. 1, is hardly any ground to disallow him from filing of the appeal. This is a matter of pollution control and all the affected persons can file an appeal under Section 28 of the Act, which is very specific and clear. Any person aggrieved by an order made by the Board under Section 25, Section 26 or Section 27, has a right of appeal. It is not the case of the petitioner that the order which has been challenged by Respondent no. 1 before the Appellate Authority does not fall under any of the provisions of Sections 25, 26, or 27 of the Act. The water and air pollution are really a serious problems in the country and it is not unknown that the Courts are taking these matters very seriously. Public interest litigations are being filed in the Court in many of the matter where there is endanger of water or air pollution by installation of industry. If this is the position then, I fail to see in case the Respondent no. 1 has gone to the Appellate Authority by filing an appeal, how he could have been deprived of his right of pollution free air and water.

3. A person who was not a party to the order has a right of appeal to the Appellate Authority though with the leave of the Appellate Authority, where the impugned order adversely affect him. This position of law is well

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settled. The petitioner, in case, is aggrieved of the order of the Board, an appeal is permissible with the leave of the Appellate Authority. Here the Appellate Authority has entertained the appeal and objection raised by the petitioner regarding its maintainability thereof has been turned down. In view of this legal position, the Petitioner has no case whatsoever."

In the case of **Shankar Oram vs Member Secretary, State Pollution Control Board and anr.(Appeal no. 11(A) of 2007)** the Hon'ble High Court of Orissa held:

"18. From the discussions made above and the judicial pronouncements cited above, it is clear that the case at hand stands on a better footing because under the Air Act, as we have indicated earlier, any person can file appeal against any order passed by the State Board if he is aggrieved by that order. So, the irresistible conclusion is that a person, who is affected by an order made by the State Board even if he is not a party, can file appeal under Section 31 of the Air Act because Section 31 can never be interpreted that it is only restricted to persons who obtained the consent vis-a-vis the Board, as argued by the Learned Counsel for the Respondent industry.

19. In our considered opinion, the intention of the statute is very clear and it allows any person aggrieved by an order made by the State Board to file an appeal within thirty days from the date on which the order is communicated to him. So, in case a member of general

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public ultimately who takes the burn of the air pollution wants to ventilate his grievance, in our considered opinion, should approach the Board drawing its attention to the deviation, if any, in the consent conditions as well as the standards of emission laid down by the Board in relation to each such consent. If the Board does not take any action on the same or the Board passes an order on the same by which the complainant is aggrieved, he can file an appeal under Section 31 of the Air Act.

20. But in the present case, the inspection report submitted by the Board pursuant to the direction of this Authority shows that the Respondent industry has complied with the consent conditions and meets the standard of emission laid down in the consent order.

21. In that view of the matter, we decline to grant the relief sought by the Appellant. But looking at the report of the Board we direct the Board to regularly and periodically monitor the Pollution Control Devices of the Industry. The appeal is disposed of."

In the case of **Ayaaubkhan Noorkhan Pathan vs State of Maharashtra and others[(2013) 4 SCC 465]** the Hon'ble Supreme Court held:

"9. It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the authority/court, that he falls within the

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category of aggrieved persons. Only a person who has suffered, or suffers from legal injury can challenge the act/action/order, etc. in a court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the Appellant that there has been a breach of statutory duty on the part of the authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to. The Court can, of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It is implicit in the exercise of such extraordinary jurisdiction that the relief prayed for must be one to enforce a legal right. In fact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that can be enforced must ordinarily be the right of the Appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same.

10. A "legal right", means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of law. The expression, "person aggrieved" does not include a person who suffers from a psychological or an imaginary

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injury; a person aggrieved must, therefore, necessarily be one whose right or interest has been adversely affected or jeopardised.

11. In Anand Sharadchandra Oka v. University of Mumbai, a similar view was taken by this Court, observing that, if a person claiming relief is not eligible as per requirement, then he cannot be said to be a person aggrieved regarding the election or the selection of other persons.

12. In A. Subash Babu v. State of A.P., this Court held: (SCC pp. 628-29, para 25)

> *"25. .....The expression 'aggrieved person' denotes an elastic and an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which the contravention is alleged, the specific circumstances of the case, the nature and extent of the complainant's interest and the nature and the extent of the prejudice or injury suffered by the complainant."*

The Hon'ble National Green Tribunal in **Save Mon Region Federation vs Union of India and ors. (M.A. No. 104 of 2012 in appeal**

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no. 39 of 2012) has held that:

> *"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 Air(Prevention and Control of Pollution) Act, 1981 provides for prevention, control and abatement of air pollutions for the establishment. The Act was enacted as an integrated approach for tackling environmental problems relating to the pollution. The approach of this Tribunal should be to secure the object which statute seeks to achieve unless crucial omission or clear direction in the statute makes it unattainable. It is settled principle of interpretation that a statute must be construed to make it effective and workable. A statute or any provision therein must be so construed as to make it effective and operative in order to give meaningful life to the legislative enactment. The right to healthy environment is an integral part of right to life under Article 21 of the Constitution. This right should be without any limitation as regards to locus or interest of the person who approaches the Tribunal. In my considered opinion the issue whether any person, may or may not having personal/vested right in the subject matter, could be regarded as 'aggrieved person' and can approach the Tribunal against any consent

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granted by the Board has to be decided on basis of totality of facts and attending circumstances in each case. It is necessary to bear in mind that appellate jurisdiction of this Tribunal under the Act cannot be confused with the jurisdiction of the Hon'ble High Court in PIL Writ Petition.

12. The impugned order in the present appeal is directed against an Amendment dated 18.7.2018 granted by the GSPCB to the Consent to Operate the following at Berth No. 9 of the Mormugao Port.

Sr. No.	DESCRIPTION	QUALITY
1.	Dry bulk cargo such as ores and minerals of all types including iron ore, limestone, gypsum, bauxite, manganese, fertilizer and fertilizer raw material, river sand, wood chips, etc.	11.00 MMT
2.	Break bulk cargo such as granite, all types of finished steel products, containers, bentonite, bagged cement and fertilizers.	0.5 MMT
	Total	11.50 MMT

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The said Amendment dated 18.7.2018 amends the renewal of Consent to Operate dated 5.4.2018 which was valid for the manufacture of

(i) Iron Ore handling of a quantity of 11.50 MT/annum; and

(ii) E-auctioned iron ore of a quantity as approved by the State Government.

There is no challenge to the original renewal of Consent to Operate dated 5.4.2018 which is valid upto **11.11.2019**. The Appellant has selectively challenged only the amendment dated 18.7.2018 that too at this belated stage.

13. The Appellant contends that there is no Environmental clearance under the Environment Impact Assessment(EIA) Notification, 2006. This contention is misplaced.

Admittedly, the Berth no. 9 at Mormugao Port was constructed between the years 1976 to 1978 and as such the EIA Notification, 2006 has no application to the said Berth No. 9.

14. The impugned amendment dated 18.7.2018 does not refer to handling of any coal/coke at the Berth No. 9 and as such, various

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averments, submissions and documentation made and relied on by the Appellant in the present appeal as regards coal or coke handling, are irrelevant and not at all applicable.

15. The Appellant has not made out any grounds as to why the Amendment dated 18.7.2018 is contrary to the Air Act, 1981 and/or whether the said Amendment dated 18.7.2018 violates any provisions of the said Air Act, 1981. The Appellant has not placed anything on record to show any pollution at the said Berth No. 9 of the Mormugao Port beyond the permissible limits. The record reveals that the Respondent no.1, which is a Statutory Body under the Air Act, 1981, after taking into consideration the relevant facts, has issued the impugned Amendment dated 18.7.2018. Such an order of a Statutory Authority cannot be lightly interfered with on flimsy grounds raised by the Appellant.

16. The Appellant has placed reliance on the Report dated October 2011 of the working group for Port Sector for the 5-Year Plan, 2012-2017. This report is irrelevant as regards the impugned amendment dated 18.7.2018. The allegation of alleged pollution due to activities at Berth no. 9 is without any basis as it is not supported by any reliable scientific data. The Appellant has not produced any technical report to

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demonstrate that there is pollution caused on account of the activities at the Berth no. 9 and the ambient air readings are all not within the permissible limits.

The record reveals that the Board has granted consent after considering the ambient air quality in the city of Vasco and has also appointed IIT, Mumbai to carry out a source study. The Board has also relied on the Site Inspection Report dated 20.9.2018 of the Technical Advisory Committee (TAC) and also the Interim Report dated March, 2018 submitted by IIT, Mumbai. It bears mentioning that the Board has not granted Consent to Operate for handling coal at the said Berth no. 9.

17. The Ld. Advocate for Appellant submits that though the Board has not granted consent to operate for handling coal at berth no. 9, the Respondent no. 2 has to be permanently precluded from handling coal from Berth no. 9. No such relief can be granted as the powers of the Tribunal are limited while exercising appellate jurisdiction under Pollution Act and the area of jurisdiction is clearly defined.

18. This Tribunal has observed that alongwith pollution appeals filed with genuine concern for damage likely or already caused to the environment there are appeals filed with other motives or without much substance. This Tribunal is not free from such motivated and frivolous

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litigation. In most of the motivated appeals, the Appellant deliberately creates confusion by introducing irrelevant or minimally relevant facts and documents. More often than not, they appear attractive at first blush and only on deeper examination the irrelevance and hollowness of these contentions and documents come to light. The Tribunal cannot reject such pleas at first look and it takes quite some time before Tribunal can see through, discern and reach the truth. This results in abuse of time of the Tribunal.

19. It bears mentioning that the right to healthy environment is an integral part of the right to life under Article 21 of the Constitution. How can human being survive without a healthy environment? Therefore, before parting with the matter let me make it clear that dismissal of this appeal shall not absolve the board from regularly and periodically monitoring Air and Water pollution and implementing appropriate measures for control of Pollution, if so required.

20. Keeping in view totality of facts and attending circumstances, the indulgence of the Tribunal is not warranted.

ORDER

Appeal is dismissed.

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(RAJESH NARVEKAR)
PRESIDENT

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