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Date- 5-2-2025

Pune Maharashtra

Submissions in support of Application for Condonation of Delay
IA No.1 of 2025 in Appeal 168 of 2024

1. The appellant herein is a proprietary concern and managed by Mr. M.R. Kapoor who is 67 years old. The appeal 168 of 2024 has been filed against the closure order dated 18-10-2024 and has been filed in this Hon'ble Tribunal on 20-12-2024 after a delay of 33 days over and above the period of 30 days permitted under section 16 of the National Green Tribunal Act, 2010 ('Act').

2. The reasons for the delay have been enumerated in para 3 and para 4 of the application for condonation of delay being I.A. No. 1 of 2025 filed along with the appeal. Para 3 and 4 are reproduced herein below:

“3. That after receiving the impugned order on 19-10-2020, the applicant immediately discussed internally with his family members and decided to seek an opinion from their counsel in Delhi and they were advised to adopt appropriate legal recourse against the impugned order the Hon'ble Tribunal. The applicant team thereafter collected the relevant information and documents required for the legal steps, as advised by their counsel. The matter involved details relating to purchase of the premises for the industry unit in the year 2020 and the process relating to permission from the Collector's

office for a change in the usage of the concerned premises. As such the applicants' team had to search various files including old records of the applicant, to collect the required information. In addition, the applicant had submitted an application before the respondent No. 3 for grant of consent to operate ('CTO') through the online mode and deposited the requisite fee for the same. Also, the appellant approached the Forest Department out of abundant caution for permission/no objection for operating their industry unit at the premises mentioned in the impugned closure order. The appellant were thus hopeful of a positive outcome and were awaiting the permission from respondent No.3 and the Forest Department. Further, the applicants also approached the respondent No. 1 for reconsideration of their case by their letter application dated 18-12-2024. However, the applicant has not received any response from

respondent No. 1. The applicant did not want to rush to the Hon'ble Tribunal without exhausting their remedy before respondent No. 1. However, the respondent No. 1 have not given any reply to the applicant. It is precisely due to these reasons that the applicant could not approach this Hon'ble Tribunal with in the stipulated period of 30 days.

4. The delay is bonafide and unintentional and has occurred for reasons beyond the control of the applicants'."

3. Before proceeding to the written submissions', it is apposite to point out that the appellant served the Notice upon the respondents' through email, WhatsApp (as available) and through Dasti service and the details thereof are attached with their affidavit of service dated 22-1-2025 filed on 23-1-2025 before this Hon'ble Tribunal. Tracking/delivery status reports' are attached as **Annexure -1** herein.

4. As far as the delay of 33 days is concerned, it is respectfully submitted that the delay is bonafide and unintentional. There is no negligence, or deliberate inaction on the part of the appellant and owing to his advanced age, steps have been taken by him to file the appeal as soon as physically feasible and possible after collecting requisite information and documents from their records and after taking legal advice and assistance of their counsel in Delhi.

5. In this regard, the appellant craves to refer to the judgement of the Hon'ble Supreme Court in the matter of Sridevi Datla Versus Union of India and Others, dated 2-3-2021, being Civil Appeal No. 3136 of 2020 and reported in LL 2021 SC 127. The appeal was preferred against an order dated 31-7-2020 passed by the Hon'ble National Green Tribunal ('NGT'), whereby the NGT inter alia, dismissed an application for condonation of delay filed by the appellant since the appeal was filed after the period of 90 days on 13-11-2017. According to the appellant 12-11-2017 was a Sunday and as such, the appeal was filed on the next available working day, as per the provisions' of the General Clause Act. The reason for the delay was inter alia, stated to be voluminous records requiring technical expertise including, expert legal advice and assistance.

6. The Hon'ble Supreme Court inter alia, condoned the delay and permitted the parties to argue their appeal on merits. While deliberating on the interpretation of 'sufficient cause', the Hon'ble Supreme Courts' attention was invited to Para 16 of Improvement Trust Versus Ujagar Singh reported in 2010 (6) SCC 786, wherein it was observed inter alia, that there could be no straight jacket formula with regard to 'sufficient cause'. The Hon'ble Court inter alai, also relied upon para 14 of G. Ramegowda Versus Land Acquisition Officer reported in 1988 (2) SCC 142, wherein Venkatachaliah J, opined in favour of a liberal construction, if there was no gross negligence, deliberate inaction, or lack of bonafides. Also, the Hon'ble Courts' attention was invited to Para 24 of Maniben Devraj Shah Versus Municipal Corporation of Brihan Mumbai, reported in 2012 (5) SCC 157 wherein, the Court inter alai, opined in favour of condonation of delay if there was no negligence, or lack of bonafides'. Based on these judgements, the Hon'ble Supreme Court inter alai, came to the conclusion that the NGTs' decision regarding there being no 'sufficient cause' and consequential dismissal of condonation of delay application was erroneous. The Hon'ble Supreme Court condoned the delay and permitted the parties to appear and argue the appeal on merits, (Para 29 at internal page 14 of the judgement). A copy of the judgement is annexed as **Annexure-2**.

7. The appellant therefore humbly prays that the delay of 33 days in the filing of appeal 168 of 2024 be condoned by this Hon'ble Court.

8. Also, it is humbly submitted that in case the online hearing is disrupted/disconnected owing to unstable internet connection, the application for condonation of delay filed by the applicant may kindly be decided as per these written submissions, since the applicant/appellant is gravely affected by the erroneous decision of respondent No. 1 for closure of their industry unit without issuing any show cause notice or without providing any hearing to the applicant before passing the one sided order. Further, the respondent No.1 has neither responded, or replied to their representation application dated 18-12-2024 Annexure A-6 at page 82-83 of the appeal. Further, the impugned closure order dated 18-10-2024 has been passed without verifying the factual position as to installation of pollution control systems on the site as reflected by the photographs Annexure A-4 at page 74-76 of the appeal. The applicants' unit is being discriminated and treated differently inasmuch as, the applicants' immediate neighbour is a 'red' category industry unit as compared to the applicant being an 'orange' category unit and yet, the neighbour industry unit is being permitted to continue its' industrial activity and has been granted consent to operate ('CTO'). The applicants' application for CTO was pending with the respondent on the date of the impugned order. Yet, the order for closure has been assed against them. The applicants' application for a No Objection Certificate is pending with the Forest department and their eligibility is going to be decided by the Monitoring Committee. This application too, was pending on the date of passing of the impugned order. Yet, the respondent No. 1 passed the impugned order of closure against their industry unit. The process of inspection and closure against the applicant has inter alia, been initiated in view of a Complaint made by Maharashtra State Human Right Commission. The applicant has not been provided with the details or copy of this complaint. The entire process is therefore vindictive and one sided.

9. The applicants' electricity connection has been disconnected on 17-12-2024 as per the directions' issued under the impugned order. This has gravely prejudiced the applicant as it is unable to complete the pending work orders' received from their clients', thereby exposing them to claims for damages and compensation besides loss of reputation and goodwill and also the risk of losing their clients' to its' competitors'. The applicants' employees' have been left jobless due to the passing of the impugned order. The applicant is also facing financial hardship due to interest obligations' payable to their bank.

10. The applicant humbly prays for restoration of their electricity connection and three months' time to complete their pending work order obligations' under the contracts entered with their clients' as per details enumerated in Annexure -2, page 124-127 of their application for Directions, being I.A. No. 2 of 2025.



S. Bhartari

Date 5-2-2025

Counsel for the Applicant



Booked At	Booked On	Destination Pincode	Tariff	Article Type	Delivery Location	Delivery Co
Mira Road S O	20/01/2025 10:25:36	400604	17.70	Inland Speed Post	Wagle I.E.S.O	21/01/2025 1

Event Details For : EM960308368IN

Current Status : Item Delivered(Addressee)

Date	Time	Office	Event
21/01/2025	15:54:54	Wagle I.E.S.O	Item Delivered(Addressee)
21/01/2025	09:41:56	Wagle I.E.S.O	Out for Delivery
21/01/2025	08:52:49	Wagle I.E.S.O	Item Received
21/01/2025	08:42:38	Wagle I.E.S.O	Item Received
21/01/2025	06:46:54	Kalyan RMS LZU	Item Dispatched
21/01/2025	04:34:14	THANE NSH	Item Dispatched
21/01/2025	03:05:23	THANE NSH	Item Bagged
21/01/2025	02:21:31	THANE NSH	Item Received
21/01/2025	01:18:25	Mumbai NSH	Item Dispatched
20/01/2025	23:18:57	Mumbai NSH	Item Bagged
20/01/2025	21:48:06	Mumbai NSH	Item Received
20/01/2025	20:02:48	Mumbai A Zone	Item Dispatched
20/01/2025	19:59:09	Mumbai A Zone	Item Received
20/01/2025	16:47:03	Mira Road S.O	Item Bagged
20/01/2025	10:25:36	Mira Road S.O	Item Booked

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ANNEXURE-1

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Booked At	Booked On	Destination Pincode	Tariff	Article Type	Delivery Location
Mira Road S O	20/01/2025 10:25:14	400604	17.70	Inland Speed Post	Wagle I E S O

Event Details For : EM960308371IN

Current Status : Item Delivered(Addressee)

Date	Time	Office	Event
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21/01/2025	08:52:49	Wagle I E S O	Item Received
21/01/2025	08:42:38	Wagle I E S O	Item Received
21/01/2025	06:46:54	Kalyan RMS L2U	Item Dispatched
21/01/2025	04:34:14	THANE NSH	Item Dispatched
21/01/2025	03:05:23	THANE NSH	Item Bagged
21/01/2025	02:21:31	THANE NSH	Item Received
21/01/2025	01:18:25	Mumbai NSH	Item Dispatched
20/01/2025	23:18:57	Mumbai NSH	Item Bagged
20/01/2025	21:48:06	Mumbai NSH	Item Received
20/01/2025	20:02:48	Mumbai A Zone	Item Dispatched
20/01/2025	19:59:09	Mumbai A Zone	Item Received
20/01/2025	16:47:03	Mira Road S O	Item Bagged
20/01/2025	10:25:14	Mira Road S O	Item Booked

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* indicates a required field.

* Consignment Number

EM960308411IN

Track More

Booked At	Booked On	Destination Pincode	Tariff	Article Type	Delivery Location	Delivery Co
Mira Road S O	20/01/2025 10:25:36	400022	17 70	Inland Speed Post	Sion SO	21/01/2025 1

Event Details For : EM960308411IN Current Status : Item Delivered(Addressee)

Date	Time	Office	Event
21/01/2025	15:12:02	Sion SO	Item Delivered(Addressee)
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21/01/2025	07:38:58	Sion SO	Item Received
21/01/2025	04:53:19	Mumbai S Zone TMO	Item Dispatched
21/01/2025	04:13:48	Mumbai S Zone TMO	Item Received
21/01/2025	02:56:58	Mumbai NSH	Item Dispatched
21/01/2025	01:43:11	Mumbai NSH	Item Bagged
20/01/2025	21:48:06	Mumbai NSH	Item Received
20/01/2025	20:02:48	Mumbai A Zone	Item Dispatched
20/01/2025	19:59:09	Mumbai A Zone	Item Received
20/01/2025	16:47:03	Mira Road S O	Item Bagged
20/01/2025	10:25:36	Mira Road S O	Item Booked

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indicates a required item.

Track More

EM960308425IN

* Consignment Number

Booked At	Booked On	Destination Pincode	Tariff	Article Type	Delivery Location	Delivery Co
Mira Road S O	20/01/2025 10:25:36	401404	17.70	Inland Speed Post	Palghar H O	21/01/2025 1
Event Details For : EM960308425IN						
Date	Time	Office	Event			
21/01/2025	17:21:44	Palghar H O	Item Delivered(Addressee)			
21/01/2025	12:39:55	Palghar H O	Out for Delivery			
21/01/2025	11:31:45	Palghar H O	Item Received			
21/01/2025	04:51:34	Mumbai A Zone	Item Dispatched			
21/01/2025	04:29:41	Mumbai A Zone	Item Received			
21/01/2025	02:45:54	Mumbai NSH	Item Dispatched			
21/01/2025	01:44:52	Mumbai NSH	Item Bagged			
20/01/2025	21:48:06	Mumbai NSH	Item Received			
20/01/2025	20:02:48	Mumbai A Zone	Item Dispatched			
20/01/2025	19:59:09	Mumbai A Zone	Item Received			
20/01/2025	16:47:03	Mira Road S.O	Item Bagged			
20/01/2025	10:25:36	Mira Road S.O	Item Booked			

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Booked At	Booked On	Destination Pincode	Tariff	Article Type	Delivery Location	Delivery Ct
Mira Road S O	20/01/2025 10:25:36	401305	17.70	Inland Speed Post	Virar East S O	23/01/2025

Event Details For : EM960308439IN

Current Status : Item Delivered(Addressee)

Date	Time	Office	Event
23/01/2025	15:51:22	Virar S O	Item Delivered(Addressee)
23/01/2025	11:01:50	Virar S O	Out for Delivery
23/01/2025	10:34:58	Virar S O	Item Received
23/01/2025	04:58:24	Mumbai A Zone	Item Dispatched
23/01/2025	04:46:09	Mumbai A Zone	Item Received
23/01/2025	01:49:20	Mumbai NSH	Item Dispatched
23/01/2025	00:57:53	Mumbai NSH	Item Bagged
22/01/2025	23:07:12	Mumbai NSH	Item Received
21/01/2025	04:51:34	Mumbai A Zone	Item Dispatched
21/01/2025	04:29:53	Mumbai A Zone	Item Received
21/01/2025	01:59:39	Mumbai NSH	Item Dispatched
21/01/2025	01:46:56	Mumbai NSH	Item Bagged
20/01/2025	21:48:06	Mumbai NSH	Item Received
20/01/2025	20:02:48	Mumbai A Zone	Item Dispatched
20/01/2025	19:59:09	Mumbai A Zone	Item Received
20/01/2025	16:47:03	Mira Road S O	Item Bagged
20/01/2025	10:25:36	Mira Road S O	Item Booked

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ANNEXURE-2

REPORTABLE

IN THE SUPREME COURT OF INDIA
(CIVIL APPELLATE JURISDICTION)

12

CIVIL APPEAL NO. 3136 OF 2020

SRIDEVI DATLA

...APPELLANT (S)

VERSUS

UNION OF INDIA AND ORS.

....RESPONDENT(S)

JUDGEMENTS. RAVINDRA BHAT, J.

1. The appellant is aggrieved by an order of the National Green Tribunal (hereafter referred to as “the NGT”¹) and has, therefore, approached this Court under Section 22 of the NGT Act. The NGT rejected her appeal, preferred to it against the environmental clearance for construction of the Greenfield International Airport, Bhogapuram, Vishakapatnam, which had been sought for by the fifth respondent.

2. The facts are simple: the fifth respondent (hereafter called “the Project Applicant”) proposed the construction of a new Greenfield international airport. As was required by law and extant statutory notifications, it applied to the Ministry of Environment, Forests and Climate Change (hereinafter, the “MoEF”) to seek environmental clearance. The MoEF, after following the prescribed procedure, which included ascertaining the views and objections of the concerned parties, the general

¹Dated 31.07.2020

public etc, indicated its approval by an order dated 14.08.2017. In terms of Section 19 of the NGT Act, the approval was posted on the website of the MoEF on 14.08.2017. Concededly, the Project Applicant published the approval in an English daily on 13.09.2017.

3. The appellant preferred her appeal to the NGT on 13.11.2017. Along with the appeal, she preferred an application for condonation of delay in approaching the NGT, given the stipulation of Section 19 that the appeal had to be preferred within 30 days from the date of communication of the order impugned. She explained that since the clearance and related documents were voluminous and the matter required some technical expertise, requiring the papers to be forwarded to experts and lawyers in Delhi, and the *inter se* communication delay, the NGT needed to condone the delay, in the interests of justice. After considering the submissions made by the appellant as well as the Project Applicant, which opposed the application for condonation of delay, the NGT, by its impugned order, rejected the appellant's application and consequently the appeal as well.

4. The appellant's arguments before this Court are mainly twofold: that the requirement of Section 16 is to "*communicate the order to the concerned parties as well as the public and that a meaningful interpretation should be given to the provision*". It was emphasised in this context that communication means not merely the publication on the Central Government's website, but also dissemination of the news or the decision to the affected parties. Learned senior counsel for the appellant – Ms. Anitha Shenoy, in this context, relied upon the terms contained in the environmental clearance/approval given by the MoEF, especially those which obliged the Project Applicant to intimate the decision in dailies having local circulation in the vernacular. She also relied upon the stipulations in the environmental clearance ("EC") which prescribed that the successful project applicant had to, in continuation to so publishing the decision or intimation in local newspapers, also ensure that the

decision was forwarded to local communities through the Panchayats etc. for dissemination.

5. It was pointed out that the object of these conditions should be construed as part of a larger scheme of the Act to communicate every decision. The appellant argued that if a contrary interpretation were to be accepted, the appeal given by the statute would be meaningless as most often, large projects which involve either displacement of people or which affect habitats and have the tendency to damage or at least cause significant adverse impact upon the environment would not be considered on its merits by the NGT since people and neighbourhoods cannot be presumed to have knowledge of deliberations in New Delhi.

6. It was also argued on behalf of the appellant that in the circumstances of the present case, at least the appeal could not be said to be time barred. It was argued that the date for reckoning (limitation) is from 14.08.2017, when the MoEF uploaded the decision on its website. The ninety-day period within which appeal was to be filed, expired on 12.11.2017, which was a Sunday. It was submitted that under Section 10 of the General Clauses Act, if any period prescribed ends on a Sunday or a day on which the Court or the Tribunal does not function, the next day should be considered as the *terminus quo* in point of time. Consequently, it was submitted that the appeal should be considered as within time and should have been entertained on merits.

7. Lastly, it was argued that the NGT's opinion that sufficient cause was not shown while seeking condonation of delay is erroneous. Learned counsel highlighted that any proposal as well as clearances where voluminous documentation is involved, or if any individual or entity is aggrieved, or adversely affected, the only remedy provided is by way of an appeal. To substantiate the grounds of appeal, it would be essential that in many instances, expert advice is obtained based on which the grounds of appeal can be prepared and urged. If the issue were to be considered in this perspective, the explanation provided by the appellant in her application seeking condonation of delay could not be considered unreasonable and in fact amounts to

sufficient cause. Learned counsel relied upon a previous order of the NGT in *Smt. Padmabati Mohapatra v. Union of India*². Reliance was also placed on the judgment of the Nagpur High Court, reported as *Rambir Narhargir Gosai v. Prabhakar Bhaskar Gadhaway*.³

8. On behalf of the Union of India, the ASG, Mr. K.M. Natraj argued that the impugned order does not require to be disturbed. He pointed out that the impugned order had noticed that the appellant made no complaint that the MoEF had put up the decision to grant environmental clearance on its website on 14.08.2017 or that having uploaded the decision it could not be viewed publicly in an uninterrupted manner. He further submitted that the finding that the first date when the decision was communicated by the MoEF on its website is determinative for the purpose of reckoning limitation rather than any other later point in time. It was further emphasised on behalf of the UOI that the need to publish environmental clearances under the Environment Impact Notification 2006, framed under the Environment Protection Act, 1986 is now known to all. The proposal of the Project Applicant clearly fell within the sweep of the Environment Impact Notification in Item No.7(a) to the Schedule (to the notification).

9. It was submitted on behalf of the UOI that in terms of the Environment Impact Assessment Notification, 2006, the clearance had to be published within seven days from the date of uploading. The publication of Environment Clearance dated 14.08.2017 was done on 21.08.2017. Thus, the appellant's plea that she came to know of the environmental clearance on 24.08.2017 is baseless. The learned ASG relied upon a decision of the NGT in *Save Mon Region Federation v. Union of India*⁴ in this regard.

10. Learned ASG lastly argued that by virtue of Section 33 of the Act, the provisions of all other laws stand overridden and consequently, the question of

²2013 SCC OnLine NGT 2177

³AIR 1955 Nag 300

⁴2013 SCC OnLine NGT 2511

extending the period of limitation by reference to Section 5 of the Limitation Act would not arise. He further urged that the period of limitation prescribed is actually 30 days for the filing of an appeal, and that further period of 60 days is only by way of acceptance of application for condonation of delay. Thus, no appeal is maintainable after the expiry of 90 days. It is pointed out that in the present case, the 90 day period in fact ended a day prior to the filing of the appeal; it was, therefore, clearly time-barred.

11. Mr. Mukul Rohatgi, learned senior counsel appearing for the Project Applicant supported the submissions of the Union and argued that the concerned Project Applicant, i.e. M/s Bhogapuram International Airport Corporation Ltd., has been conceived in public interest and in replacement of the existing Vishakhapatnam Airport which is primarily a defence airport. Learned counsel relied upon the decision of this Court in *H. Dohil Construction Company Private Limited v. Nahar Exports Limited*⁵ to the effect that any aggrieved litigant should be vigilant in the exercise of his rights and that he cannot claim the exercise of discretion for condoning any delay as a matter of right. Reliance was also placed upon the decision in *BRS Steels Private Limited v. State of Rajasthan*⁶. In this regard, it was submitted that the appeal before this Court which purports to be under Section 22 of the Act is confined to the grounds specified under Section 100 of the CPC, which is only if the Court is satisfied that the case involves a substantial question of law.

12. Lastly, it was submitted by learned senior counsel that the NGT Act correctly surmised in the circumstances of the case that the appellant had adopted a casual approach and did not believe the contents of the application for condonation of delay. Learned counsel in this context argued that the appellant is an interested person in the sense that her lands had been notified for acquisition and was therefore not uninformed or incapable of receiving appropriate legal advice.

⁵(2015) 1SCC 680

⁶(2012) 6 SCC 782

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Analysis and Findings

13. The relevant provision of the Act, i.e. Section 16⁷ reads as follows:
"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 (6 of 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 (6 of 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 (6 of 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 (36 of 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 (69 of 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 (14 of 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 (29 of 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 in-

⁷Of the NGT Act

dustries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986 (29 of 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 (29 of 1986);

(ii) 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 (18 of 2003),

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."

14. Environmental disputes are complicated and entail expertise in diverse fields (such as ecology, chemistry, biology, economics, administration, management, law etc.) for their determination in an effective and speedy fashion, that is not possible within the regular judicial and administrative set up in India. In other words, environmental disputes relating to forests, biodiversity, air and water are complicated in nature; resolving and expeditiously disposing of these cases is not possible without a separate special court. Environmental courts or tribunals have been a long-standing demand for other reasons too. For effective prevention and control of environmental protection, there was an urgent need for a separate environmental court or tribunal to adjudicate without much delay. India is a party to the United Nations Conference on the Human Environment (known as the Stockholm Conference), 1972 where it made commitments relating to safeguarding of natural resources and developing international law, and to provide compensation to victims of pollution and other environmental degradation. India is also a signatory to the Rio Declaration adopted at

the United Nations Conference on Environment and Development at Rio de Janeiro in 1992. The Rio Declaration states that participating states must make suitable environmental legislation regarding effective access to the people, to judicial and administrative proceedings, including remedies. The Law Commission's 186th report recommended that the Union government should establish and constitute separate Environmental Courts in each state, to deal with complex, specialised issues concerning the environment. It was in this background that Parliament enacted the NGT Act. The Act amends various other enactments and adds provisions to them, for appeal before the NGT. These are incorporated in Section 33-B of The Water (Prevention and Control of Pollution) Act, 1974; Section 13-A of The Water (Prevention and Control of Pollution) Cess Act, 1977; Section 2-A of The Forest (Conservation) Act, 1980; Section 31-B of The Air (Prevention and Control of Pollution) Act, 1981; Section 5-A in the Environment (Protection) Act, 1986 and Section 52-A in the Biological Diversity Act, 2002.

15. In *Jitendra Singh v. Ministry of Environment & Others*⁸ the narrow, but important question considered was whether a state could alienate publicly available resources like ponds. This court held that that such transfer or alienation was impermissible. In *Hanuman Laxman Aroskar v. Union of India*⁹ this court held that the NGT is under an obligation to consider issues as an expert body, and apply the principle of sustainable development, in adjudicating environmental issues, especially while considering the validity of grant of clearance to large projects under the Environment Protection Act. It was held that the NGT Act:

“provides for the constitution of a tribunal consisting both of judicial and expert members. The mix of judicial and technical members envisaged by the statute is for the reason that the Tribunal is called upon to consider questions which involve the application and assessment of science and its interface with the environment.”

⁸2019 SCC OnLine SC 1510

⁹(2019) 15 SCC 401

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16. The court noted that to be a member of the NGT, the individual had to possess specified academic qualifications, including a master's degree in science with a doctorate in engineering or technology, with prescribed experience in certain domains. To be an administrative member, the individual should possess fifteen years' administrative experience including experience of five years in dealing with environmental matters in the Central or State Government or in a reputed national or state level institution. The court proceeded to hold in *Hanuman Laxman Aroskar (supra)*, that the grant of environmental clearance to a greenfield airport in Goa did not receive proper merits review by the NGT.

17. Having regard to these decisions, and given the nature of jurisdiction which the NGT has been invested with, the substantial questions of law that arise in the present case, are whether the approach to the issue of limitation by the NGT was correct, and whether on a correct interpretation of law, the appeal under Section 16 was filed within the 90 days period, in the facts of this case.

Applicability of General Clauses Act

18. There can be no dispute that the period of limitation set out in a special law, which provides for remedies and appeals, has to be construed in its terms and without reference to the Limitation Act, if it contains specific provisions delineating the time or period within which applications or appeals can be preferred, and confines the consideration of applications for condoning the delay to a specific number of days. Undoubtedly, in such cases, the Limitation Act would be inapplicable.¹⁰ There are several previous judgments of this court holding that where periods of limitation are

¹⁰ That provision is as follows:

29. Savings.—

(1) Nothing in this Act shall affect Section 25 of the Indian Contract Act, 1872 (9 of 1872).

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law."

prescribed under special laws, appeals that exceed the period granted and are within the extended period of limitation in the special law, can be entertained at the discretion of the tribunal, or court concerned and the Limitation Act would not apply upon expiry of such extended period.¹¹ This court holds that there is merit in the contention of the Union that the provisions of the Limitation Act are inapplicable. This is, however, not dispositive of the issue; the next question is whether there is merit in the appellant's argument that the NGT should have considered the issue of whether the appeal was filed within the extended period prescribed under the proviso to Section 16, i.e. within sixty days after the expiration of the initial 30 day period, required in the main provision.

19. The appellant argues that since there is no indication to the contrary; the appeal is to be considered as having been filed within the extended period of 60 days, since the last (of the 60 days) was a Sunday (12.07.2020). The appellant relied on Section 10 of the General Clauses Act, for this purpose. The respondents, notably the Union, opposed this argument.

20. Section 10 of the General Clauses Act, 1897¹² stipulates that when the last date for doing something falls on a public holiday, the act "*shall be considered as done..*" if it "*is done or taken on the next day afterwards on which the Court or office is open*". This provision applies to all Central Acts enacted *after* the said Act was brought into force. The scope of this provision was considered by this Court in *H.H.*

¹¹*Kaushalya Rani v Gopal Singh* 1964 (4) SCR 982; *Collector of Excise & Customs v. Hongo India (P) Ltd.* (2009) 5 SCC 791; *Union of India v. Popular Construction Co.* (2001) 8 SCC 470; *Patel Bros. v. State of Assam* (2017) 2 SCC 350

¹²-10. **Computation of time.**— (1) Where, by any Central Act or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open:

Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877, applies.

(2) This section applies also to all Central Acts and Regulations made on or after the fourteenth day of January, 1887."

*Raja Harinder Singh v. S. Karnail Singh*¹³ by a four judge Bench, which explained the object of Section 10 and held as under:

“5. ... Where, therefore, a period is prescribed for the performance of an act in a court or office, and that period expires on a holiday, then according to the section the act should be considered to have been done within that period, if it is done on the next day on which the court or office is open. For that section to apply, therefore, all that is requisite is that there should be a period prescribed, and that period should expire on a holiday.”

21. Other decisions¹⁴ have followed the same reasoning. It is also noticeable that there is no indication in the NGT Act that Section 10 of the General Clauses Act cannot be applied. It is therefore, held that the provision applies *proprio vigore* to all appeals filed under the NGT Act.

Approach of the court in considering the application for condonation of delay

22. What constitutes “*sufficient cause*” in terms of Section 16 of the NGT Act? While it is unexceptionable for the Project Applicant to argue that the Limitation Act is *per se* inapplicable to proceedings under the NGT Act, given that the basic, and outer period of limitation for filing an appeal have been enacted, nevertheless, what constitutes *sufficient cause*, is left to the discretion of the tribunal. Here, the court discerns a surfeit of authority on what the term denotes, and the general approach of the court, in dealing with delay.

23. In *G. Ramegowda v. Land Acquisition Officer*¹⁵, speaking for this court, Venkatachaliah, J summarized the position in the following terms:

“14. *The contours of the area of discretion of the courts in the matter of condonation of delays in filing appeals are set out in a number of*

¹³1957 SCR 208.

¹⁴*Manohar Joshi v. Nitin Bhaurao Patil* (1996) 1 SCC 169; *Mohd. Ayub v. State of U.P.*, (2009) 17 SCC 70.

¹⁵(1988) 2 SCC 142

pronouncements of this Court. See *Ramlal v. Rewa Coalfields Ltd.* [AIR 1962 SC 361 : (1962) 2 SCR 762] , *Shakuntala Devi Jain v. Kuntal Kumari* [AIR 1969 SC 575 : (1969) 1 SCR 1006] , *Concord of India Insurance Co. Ltd. v. Nirmala Devi* [(1979) 4 SCC 365 : 1979 SCC (Cri) 996 : (1979) 3 SCR 694] , *Mata Din v. A. Narayanan* [(1969) 2 SCC 770 : (1970) 2 SCR 90] and *Collector (LA) v. Katiji* [(1987) 2 SCC 107 : 1989 SCC (Tax) 172] , etc. There is, it is true, no general principle saving the party from all mistakes of its counsel. If there is negligence, deliberate or gross inaction or lack of bona fides on the part of the party or its counsel there is no reason why the opposite side should be exposed to a time-barred appeal. Each case will have to be considered on the particularities of its own special facts. However, the expression 'sufficient cause' in Section 5 must receive a liberal construction so as to advance substantial justice and generally delays in preferring 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 the delay."

24. Much later, in *Esha Bhattacharjee v. Raghunathpur Nafar Academy*¹⁶ this court referred to a large number of previous judgments¹⁷ , and observed that adoption of a strict standard of proof sometimes fails to protect public justice and it may result in public mischief. Other decisions have highlighted that there cannot be a universal formula to judge whether sufficient cause has, or has not been shown and the exercise is necessarily fact specific; in *Improvement Trust v. Ujagar Singh*¹⁸ , the court held:

"16. While considering [an] application for condonation of delay no straitjacket formula is prescribed to come to the conclusion if sufficient and good grounds have been made out or not."

25. The court also emphasized that each case has to be balanced on the basis of its facts and the surrounding circumstances in which the parties act and behave.

¹⁶(2013) 12 SCC 649

¹⁷*State of Nagaland v. Lipok Ao* (2005) 3 SCC 752; *New India Insurance Co. Ltd. v. Shanti Misra* (1975) 2 SCC 840; *N. Balakrishnan v. M. Krishnamurthy* (1998) 7 SCC 123; *State of Haryana v. Chandra Mani* (1996) 3 SCC 132; and *Tehsildar (LA) v. K.V. Ayisumma* (1996) 10 SCC 634.

¹⁸(2010) 6 SCC 786

26. Yet another dimension to the issue was highlighted in *Maniben Devraj Shah v. Municipal Corpn. of Brihan Mumbai*¹⁹, where the court underlined a distinction between a case where the delay is inordinate, and a case where the delay is of few days and that in the former case the consideration of prejudice to the other side will be a relevant factor; in the latter case, no such consideration arises. After noticing that a liberal and justice-oriented approach needs to be taken, it was stated that the court, equally should be sensitive to the fact that “*the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost.*” The court then held that:

“24. What colour the expression ‘sufficient cause’ would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay.”

27. It is evident that the term *sufficient cause* is relative, fact dependant, and has many hues, largely deriving colour from the facts of each case, and the behaviour of the litigant who seeks condonation of delay (in approaching the court). However, what can broadly be said to be universally accepted is that in principle, the applicant must display *bona fides*, should not have been negligent, and the delay occasioned should not be such that condoning it would seriously prejudice the other party.

28. Keeping these principles in mind, it is relevant to consider whether the NGT’s refusal to exercise discretion, in the facts and circumstances of this case, was erroneous. The court is conscious of the fact that exercise of discretion, *per se*, is a fact dependent one, and considerable latitude should be given to the court or tribunal of the first instance, in the performance of that task. Nevertheless, as decided, cases

¹⁹(2012) 5 SCC 157

and judgments have shown that the exercise of discretion does at times, call for appellate scrutiny by this court. This is one such. The appellant pleaded that since the documentation attendant to the clearance granted to the Project Applicant was voluminous, and expert as well as professional legal advice of the kind necessary to approach the NGT was not available in the State of Andhra Pradesh, the procuring of relevant documents, and correspondence with counsel in Delhi and drafting of the appeal entailed some delay.

29. This court is of the opinion that there is merit in the appellant's argument. The respondents, especially, the project applicant, had urged that the appellant is an interested party, and cannot be called a public-spirited citizen, because she had opposed acquisition of land for the airport and therefore, was able to access legal advice at the High Court stage. There is, in our opinion, nothing in the NGT Act which excludes parties *who would be directly affected by a project*, that has environmental repercussions, from accessing the tribunal (NGT). Likewise, characterizing the nature of legal advice that can be accessed for challenging land acquisition, as similar to a challenge to environmental clearance which involves application of mind to technical issues in a detailed manner, would be unfair and simplistic. Scientific or technical support – apart from expert professional legal advice is necessary, if the NGT were to be approached. In these circumstances, this court is of the opinion that given the mandate of the NGT Act, the exercise of discretion, as was done in this case, to reject the appeal by dismissing the application for condonation of delay, on the ground that no sufficient cause was shown, was erroneous and based on a narrow reading of the law. An appeal to the NGT in such matters is no ordinary matter; it has the potential of irrevocably changing the environment with the possibility of likely injury. Application of judicial mind by an independent tribunal in such cases, at the first appellate stage, is almost a necessity.

30. In view of the foregoing findings, this court is of the opinion that the impugned order of NGT has to be and is, therefore set aside. The delay in filing the appeal

before the NGT is hereby condoned; the parties shall now appear and proceed to argue the appeal on its merit, which shall then be disposed in accordance with law. The appeal is allowed. There shall be no order on costs.

.....J
[L. NAGESWARA RAO]

.....J
[S. RAVINDRA BHAT]

New Delhi,
March 02, 2021.

The Copy
Adv

EMAILS DATED 5-2-2025 TO THE RESPONDENTS

Written Submissions on behalf of Applicant M R Engineering Co Versus MPCB and Others in I.A. No. 1 of 2025 in Appeal No. 168 of 2024 before the Hon'ble National Green Tribunal West Zone Bench, Pune



newdelhi bhartari <newdelhi.bhartari@gmail.com>

11:30 PM (0 minutes ago)

to rothane, srothane2, mpcbmbai, sewasai, vasaivirarcorporation

1. Maharashtra Pollution Control Board
Through the Regional Officer
5th Floor, Office Complex Building
Near Mulund Check Naka
Thane- 400 604 Maharashtra
2. Maharashtra Pollution Control Board
Through the Sub-regional Officer
Thane II, Maharashtra - 415 605
3. Maharashtra Pollution Control Board
Through the Member Secretary
Kalpataru Point, 1st Floor
Opposite PVR Theatre
Sion (E), Mumbai- 400022
Maharashtra
4. Maharashtra State Electricity
Distribution Company Ltd.
Through the Executive Engineer
Vidyut Bhavan, Manor Road,
Juna Palghar, Palghar
Maharashtra - 401404
5. Vasai Virar City Municipal Corporation
Through the Executive Engineer
Kala Kutir Road, Dongarpada
Vartak Vard, Virar West, Virar
Water Supply, Palghar
Maharashtra - 401305

Dear Sirs,

1. We are attaching herewith written submissions dated 5-1-2025 along with the annexures' 1 and 2 for your kind record.

Thanking you,

Sincerely,

S. Bhartari
Counsel for the Applicant/ Appellant

Environment Law Advisers
Bhartari House
C-77 Neeti Bagh
New Delhi INDIA

Direct: 79825 65849

7 Attachments • Scanned by Gmail



newdelhi bhartari

11:34 PM (4
minutes ago)

to rothane, srothane2, mpcbmbai, sewasai, vasaivirarcorporation

Kindly read written submissions dated 5-2-2025 instead of 5-1-2025.

The copy
Adv