

Item No. 14

Court No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Appeal No. 15/2023
(I.A. No. 672/2023 & I.A. No. 641/2023)

M/s. Focus Energy Limited

Appellant

Versus

SEIAA, Haryana & Ors.

Respondent(s)

Date of hearing: 16.05.2024

**CORAM: HON'BLE MR. JUSTICE PRAKASH SHRIVASTAVA, CHAIRPERSON
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER**

Appellant: Mr. Pradeep Aggarwal, Mr. Sumit Sinha, Ms. Anjali Rajput & Mr. Arjun Aggarwal, Advs. for Appellant
Respondent: Mr. Rahul Khurana, Adv. for R - 1 & 2
Mr. Mahesh Thakur & Mr. Ranvijay Singh Chandel, Advs. for R - 3

ORDER

1. This appeal has been filed challenging the order dated 01.05.2023 passed by respondent no. 1, SEIAA, Haryana under Section 16 of NGT Act, 2010. There is delay of 57 days in filing this appeal therefore I.A. No. 641/2023 has been filed by the appellant seeking condonation of delay.
2. Submission of Learned Counsel for the appellant is that the order dated 01.05.2023 was served upon the appellant by post on 10.05.2023. Thereafter, the appellant vide letter dated 18.05.2023 addressed to the Respondent no. 3 had raised the issue that Respondent No. 1 had not followed the due procedure and had in substance prayed for review of the order. Thereafter the appellant had submitted the reminder letter dated 26.06.2023 to the respondent no. 3 and when no action was taken the appeal was filed on 26.07.2023 with a delay of 57 days.

3. Relying upon certain judgments of NGT and Hon'ble Supreme Court counsel for the appellant has prayed for condonation of delay on the plea that a liberal approach is required to be adopted especially when environmental issues are complicated.

4. Learned counsel for respondents has opposed the delay application. Counsel for the Respondent 1 & 2 have submitted that since there is no power of review with the authority therefore no purpose was to be served by submitting any representation to the respondents.

5. We have heard the learned counsel for the parties and perused the records. The limitation of filing the appeal is 30 days, thereafter, the Tribunal has the power to condone the delay upto 60 days. In the present case the applicant has been filed seeking condonation of delay which is within 60 days from the date of expiry of original limitation for filing the appeal. Counsel for the appellant has relied upon the order of NGT in the matter of *Jaya Mathachan Vs. Ministry of Environment, Forest & Climate Change*, 2021 SCC Online 1024 wherein there was an delay in filing the appeal and the Tribunal referring to the earlier order had held:

*“18. Further, in the recent decision in Sridevi Datla v. Union of India which was taken up by the appellant in that case against the order passed by the Tribunal in **M.A. No. 231 of 2017 in Appeal No. 18/2020 as Civil Appeal No. 3136 of 2020 dated 31.07.2020** holding that the appeal was filed beyond 90 days, as it was filed on the 91st day and also after holding that the delay of even 90 days has not been properly explained, but the Hon'ble Apex Court had observed that this Tribunal, while considering the delay condonation, should not have taken such a pedantic view that each day delay had not been properly explained, especially when the substantial environmental issues have been raised and set aside the order passed by this Tribunal and condoned the delay in filing the appeal and sent back the matter to this Tribunal to consider the appeal on merit.*

19. So, if the principle laid down in the above decision has been followed, the Court must be liberal in considering the condonable period of delay in filing the appeal and an opportunity must be given to the parties to meet the case on merit, instead of dismissing the appeal on technical ground of limitation.”

6. He further placed reliance upon the order of the Tribunal in the matter of *Dyaneshwar Vishnu Shedge vs. Union of India* SCC Online NGT 80 wherein the Tribunal had observed as under:

“13. On consideration of the submissions advanced interse by the parties, we feel in a case like the present one, where the Environmental impact of the project on local population in terms of their environmental harm, has to be assessed, the approach of this Tribunal, especially set up for the said purpose, should be liberal and not “hyper-technical”.”

7. The judgment of Hon’ble Supreme Court in the matter of *Shridevi Datla Vs. Union of India*, (2021) 5 SCC 321 has been relied upon wherein the Tribunal had rejected the applicant for condonotion of delay and consequently dismissed the appeal and this order was subject matter of challenge before the Hon’ble Supreme Court and the Hon’ble Supreme Court while setting aside the order of the NGT and condoning the delay had observed that:

“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.

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30. *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, characterising 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 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 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.”

8. He has also placed reliance upon Judgment of Hon’ble Supreme Court in the matter *Maniben Devraj Shah Vs. Municipal Corporation of Brihan Mumbai*, 2012 5 SCC 157 wherein Hon’ble Supreme Court considering scope of the expression “sufficient clause” in Section 5 of the Limitation Act has 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.”

9. Having regard to the above position in law and considering the explanation which has been furnished by the appellant in the application for condonation of delay and also taking note of the fact that the delay is of 57 days whereas the Tribunal has the power to condone the delay upto 60 days, we find that a sufficient cause is shown by the appellant and a good ground is made out to condone the delay.

10. Accordingly, I.A. No. 641/2023 is allowed and delay is condoned.

11. Learned Counsel for the appellant has pointed out that the writ petition (c) No. 1394/2023 is still pending before the Hon’ble Supreme

Court wherein the correctness of the O M on the basis of which the order impugned in this appeal is under challenged.

12. He submits that meanwhile the appellant wants to press his applicant for stay in this appeal. Learned Counsel for the respondents seek time to prepare on the issue of interim relief.

13. List on 04.07.2027.

Prakash Shrivastava, CP

Arun Kumar Tyagi, JM

Dr. A. Senthil Vel, EM

May 16, 2024
Appeal No. 15/2023
HB