

**BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE**

THROUGH PHYSICAL HEARING (WITH HYBRID OPTION)

Appeal No. 16/2023(WZ)
I.A. No. 107/2023(WZ)

Old Cross Fishing Canoe Cooperative Society Ltd. & Ors.

.....Appellant(s)

Versus

M/s South West Port Ltd. & Ors.

....Respondent(s)

Date of hearing: 24.07.2023

**CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER**

Appellant : Ms. Sreeja Chakraborty, Advocate
Respondent(s) : Shri S.S. Kantak, Senior Advocate along-with
Mr. Abhijit Gosavi, Advocate and Mr. Shivshankar
Swaminathan, Advocate for R-1/PP
Mr. Yogesh Nadkarni, Advocate for R-2/MPA
Mr. Pavithran A.V., Advocate for R-3/GSPCB
Ms. Manasi Joshi, Advocate for R-4/State of Goa &
R-5/GCZMA
Mr. Pushkal Mishra, Advocate for R-7/MoEF&CC

ORDER

I.A. No. 107/2023(WZ)

1. This application has been filed seeking condonation of delay of 60 days in filing the present appeal against the EC dated 11.01.2023, which has been granted to M/s. South west Private Ltd. (SWPL)/respondent No.1.

2. It is submitted in this application that the appellants came to know about the grant of Environmental Clearance and CRZ Clearance from a newspaper article "published on 18.01.2023 in Times of India, Goa edition, which is 7 days from the grant of the impugned Environment and CRZ clearance dated 11.01.2023". After obtaining a copy of the said Environmental Clearance and CRZ Clearance from the website of

MoEF&CC (PARIVESH), it took the appellants three weeks' time to hold successive meetings, in order to decide the future strategy to challenge the same. Thereafter, the appellants took time of another three weeks i.e. from 02.03.2023 to consult with the subject experts and researchers and to go through entire voluminous records of the project in question such as Environmental Clearance, Environmental Impact Assessment (EIA), interim 'source apportionment' study report by IIT-Bombay and minutes of the meeting of Expert Appraisal (EAC) under MoEF&CC, where-in the impugned project was discussed. The proposed project had to be compared with the facts and circumstances related to coal pollution since 2000 at Vasco, Goa. Thereafter on 03.03.2023, the appellants filed two RTI applications, one before the Goa State Pollution Control Board (GSPCB) seeking copies of Consent to Operate granted to the impugned berths from January 2019 to 2023, inspection report conducted by GSPCB before grant of consent and a copy of the final 'source apportionment' study report submitted by IIT-Bombay. Another RTI application was filed before Mormugao Port Authority seeking a copy of the Port Limit Notification. A copy of these RTI applications has been annexed as Annexure-2 (*colly*). Thereafter, the appellants received response from GSPCB on 21.03.2023 to the documents sought under RTI application dated 03.03.2023. Thereafter, the appellants took about 5 days to collate all the relevant documents and meet their legal representative in Bangalore on or about 27.03.2023. About 10 days' time was taken by the learned Counsel to prepare and finalize the appeal. Therefore, the delay occurred for *bona fide* reasons as stated above, hence above-mentioned prayer has been made.

3. From the side of respondent No.1/Project Proponent, learned Senior Counsel Shri S.S. Kantak has appeared, who has filed reply affidavit dated 19.07.2023, where-in it is submitted that the answering

respondent has been operating Berth No.5A & 6A situated at Mormugao Port Authority (earlier known as Mormugao Port Trust) since the year 2004 in compliance with all the requisite statutory requirements and has been carrying out activity of handling of cargo at the aforesaid berths by taking all the requisite environmental protection measures. The environment Clearance in question *interalia* includes setting up of a covered shed at the berths of the answering respondent, which is a mega structure of substantial size and span, which would facilitate handling coal in a most environment friendly manner and would house modernized and state-of-the art equipment. This is being done to ensure substantially reduction of any kind of alleged pollution due to the activities of the answering respondent.

4. It is further submitted in this affidavit by the respondent No.1 that there is a *PIL W.P. No. 24/2018 in the matter of Sherwin Correia v. State of Goa & Ors.*, which is pending before the Hon'ble High Court of Bombay at Goa, in which the petitioner (appellant herein) is seized of the issues concerning allegations of alleged pollution in the Mormugao Port areas, in which the answering respondent along-with other private Terminal Operators at the said port is also one of the parties. The Hon'ble High Court is monitoring the issue and has been passing orders from time to time in respect of alleged pollution at the Mormugao port.

5. It is further submitted in this affidavit by the respondent No.1 that the present appellants are one of the petitioners i.e. Petitioner no. 4 in the aforesaid PIL WP No. 24 of 2018, hence they are fully aware and seized of the issues sought to be wrongfully espoused or contended by them in the present appeal. The appellants are only attempting to use the RTI applications as a ruse to circumvent the delay caused in filing the present appeal. The documents sought to be obtained under the RTI were at all times available with the appellants as they were part of the records &

proceedings in PIL WP No. 24/2018. None of the said interim source apportionment study documents, which are alleged to have been obtained under RTI by the appellants, have been relied upon by the appellants in the present appeal, while all other documents such as the EIA report, minutes of the meetings of the Expert Appraisal Committee etc. were publicly available on the 'PARIVESH Portal' of MoEF&CC since the year 2018. None of the documents, which have been obtained under RTI by the appellants, are relied upon in the present appeal. Therefore, the appellants have not approached this Tribunal with clean hands and accordingly, this appeal deserves to be dismissed being time barred.

6. It is further submitted in this affidavit by the respondent No.1 that the appellants have acted in most casual manner and purportedly applied for information regarding the grant of the EC almost after 2 months of grant of the Environment Clearance. For the first time, the appellants have applied for information under the RTI was on 03.03.2023 i.e. almost 2 months after the grant of Environment Clearance. The EC was duly uploaded on the website of MoEF&CC on 11.01.2023 and the same was available in public domain, hence the period of limitation would start from 11.01.2023 for filing present appeal. Additionally, the the EC has also been advertised in the two local newspapers i.e. The Times of India and Bhaangar Bhui in Goa, as required within seven (7) days from the grant of EC. The appellants have stated that they took about 3 weeks' time for holding successive meetings and to discuss the future strategy. But these statements are not substantiated with evidence. Imaginary stories have been framed in order to establish a ground for seeking condonation of delay, hence this appeal should be dismissed with exemplary cost.

7. From the side of respondent No.2/MPA, learned Counsel Mr. Yogesh Nadkarni has appeared, who has filed reply affidavit dated

19.07.2023, where-in it is submitted that the appellants have given no justification for condonation of delay because the same would be condoned only for sufficient cause, which prevented the appellants from filing this appeal within stipulated time of 30 days, in which the appellants have failed miserably.

8. Heard the arguments of learned Counsel for the parties and perused the record.

9. From the side of respondent No.1/Project Proponent, the main emphasis has been laid by the learned Senior Counsel on the ground that the appellants should convince this Tribunal that there is sufficient cause to condone the delay and that sufficient cause fell within 30 days, which is a statutory time period, given under Section 16 of the National Green Tribunal Act, 2010 and not within the extended period of time of 60 days. For this, the learned Senior Counsel has placed reliance upon the Judgment *in the matter of Ajit Singh Thakur Singh and Anr. vs. State of Gujarat* [(1981) 1 SCC 495], where-in, in para no. 6, following has been laid down:-

*“6. At the outset, it is urged by learned counsel for the appellants that the High Court erred in condoning the delay in filing the appeal, and the appeal should have been dismissed as barred by limitation. We have examined the facts carefully. It appears that initially the State Government took a decision not to file an appeal and it allowed the period of limitation to lapse. Subsequently, on certain observations made by the High Court while considering a revision petition by Bhulabhai that it was a fit case where the State Government should file an appeal and on notice being issued by the High Court to the State Government in the matter, the appeal was filed. It was filed three months after limitation had expired. A faint attempt was made to show that when the initial decision was taken not to file an appeal all the papers had not been considered by the department concerned, but we are not impressed by that allegation. The truth appears to be that the appeal was not filed at first because the State Government saw no case on the merits for an appeal, and it was filed only because the High Court had observed - and that was long after limitation had expired - that the case was fit for appeal by the State Government. **Now, it is true that a party is entitled to wait until the last day of limitation for filing an appeal. But when it allows limitation to expire and pleads sufficient cause for not***

filing the appeal earlier, the sufficient cause must establish that because of some event or circumstance arising before limitation expired it was not possible to file the appeal within time. No event or circumstance arising after the expiry of limitation can constitute such sufficient cause. There may be events or circumstances subsequent to the expiry of limitation which may further delay the filing of the appeal. But that the limitation has been allowed to expire without the appeal being filed must be traced to a cause arising within the period of limitation. In the present case, there was no such cause, and the High Court erred in condoning the delay.”

10. The learned Senior Counsel for the respondent No. 1 has also placed reliance upon the Judgment of Hon’ble Panjab and Haryana High Court delivered in *Regular First Appeal No. 148 of 1993 (Tara Wati versus State of Haryana) [(1994) SCC Online P&h 565: ILR (1994) 2 P&H 407 : (1994) 3 RRR 458 (FB) : PLR (1994) 107 P&H 761 (FB) : AIR 1995 P&H 32]*, where-in reliance is placed on para no. 6, relevant portion of which is quoted herein below:-

“Act No. X of 1922 and keeping in view the long judicial experience and pronouncements made by various Courts Section 5 has suitably been modified to achieve the objectives, - vide the provisions of Limitation Act No. 36 of 1963. To attract the provisions of Section 5 of the Limitation Act a Suitor is under an obligation to show that he had sufficient cause for not preferring the appeal or making application within the period of limitation prescribed under the said Act or under any other statute governing the filing of the appeals or applications. Even though normally the grounds of sufficient causes have been spelt out by various pronouncements of different High Courts and the Apex Court yet no ground can be held to be generally applicable without exception. The question of existence of sufficient cause is to be decided on the basis of the facts and circumstances of each particular case. The Courts have found it difficult to generally define precisely the meaning of sufficient cause sufficient reason. Making such an attempt would amount to crystalised into a rigid definition with judicial discretion which the Legislature has for the best of all reasons left undetermined and unfettered. Sufficient cause within the meaning of the Section must be a cause which is beyond the control of the party invoking the aid of the Section and the test to be applied would be to see as to whether it was a bona fide cause, inasmuch as nothing could be considered to be bona fide which is not done with due care and attention. The person invoking the jurisdiction of the Court for condonation of delay is required to satisfy the Court that he was unable to present his appeal in time on account of some misadventure or incapacity or the circumstances beyond his control or such sufficient cause which bona fide prevented him in filing the appeal within the prescribed limitation. Precisely, the meaning of the word

sufficient cause and its scope should not be crystalised by any rigid definition.”

11. Besides that, the learned Senior Counsel for the respondent No.1 has also hammered the point that one of the appellants i.e. appellant No.1 was a party to PIL WP No.24/2018 (*supra*) pending before the Hon'ble High Court of Bombay and had full knowledge of the subject matter in dispute. It is further argued by him that he has miserably failed to show sufficient cause for condonation of delay within the 30 days of the statutory period. It cannot be believed that meetings would be held up to three weeks, only to determine that the appeal was required to be filed by them, in order to get the EC in question set aside.

12. On the other hand in rebuttal, the learned Counsel for the appellants has vehemently argued that the appellants, who are traditional artisanal fishermen, are not equipped with the sound knowledge of law and therefore, for engaging an Advocate, they had to hold meetings, in order to decide as to whether the appeal is required to be filed in the present matter. They were quite scared that they could be evicted as they had received notices of eviction as well. It is also vehemently argued by the learned Counsel for the appellants that huge bulky documents were required to be gone through in the present appeal, which certainly would consume lot of time and therefore, the period, which has been prayed to be condoned, should be condoned as there is no deliberate delay on their part.

13. We find that the delay, which is sought to be condoned, is falling within our discretionary period of extended 60 days and we are convinced that bulky documents would needed to be gone through before filing the present appeal, may have consumed such a time which is being prayed to

be condoned and accordingly, we hold that this delay application deserves to be allowed and accordingly, it is allowed.

I.A. No. 107/2023(WZ) stands disposed of accordingly.

Appeal No. 16/2023(WZ)

14. Since the learned Counsel for the respondents are not opposing the admission of this appeal at this stage, we admit this appeal.

15. Registry is directed to issue Notice to the remaining respondent, returnable within 04(four) weeks.

16. Appellants are directed to take necessary steps for service to the respondent by both ways (Dasti as well as by Registered Post) and also on available e-mail/WhatsApp and submit service affidavit within one week.

17. Appellants are directed to provide copy of the application and relevant documents to the respondents within a week.

18. Respondents are directed to submit their reply affidavits within four weeks and also circulate the same to the appellants as also other respondents by available e-mail.

19. Rejoinder, if any, is directed to be submitted within one week thereafter.

Put up this matter for further consideration on 18.09.2023

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

July 24, 2023
Appeal No. 16/2023(WZ)
I.A. No. 107/2023(WZ)
P.Kr