

Item No.4

(Pune Bench)

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

[THROUGH PHYSICAL HEARING (WITH HYBRID OPTION)]

**INTERLOCUTORY APPLICATION NO.101 OF 2023(WZ)
IN
APPEAL NO.15 OF 2023 (WZ)**

Federation of Rainbow Warriors & Ors.

.... Applicants

Versus

Union of India & Ors.

.... Respondents

Date of Hearing : 27.07.2023

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

Applicants

: Ms. Ronita Bhattacharya, Advocate

Respondents

: Mr. Rahul Garg, Advocate for R-1
Mr. Pushkal Mishra, Advocate for R-2
Mr. Yogesh Nadkarni, Advocate for R-3
Mr. Subodh Kantak and Mr. Shivshankar
Swaminathan, Advocates for R-4

ORDER

1. This application is filed seeking condonation of delay in filing the present appeal, which has been preferred against the Environmental Clearance (EC) dated 11.01.2023 granted in favour of respondent No. 4 – South West Port Ltd for the proposed terminal capacity enhancement at Berth 5A-6A of Mormugao Port for handling coal and coal products, iron ore and limestone, including unitized and steel products in Goa under the EIA Notification, 2006.

2. The learned counsel for the applicants submits that the impugned EC is said to have been uploaded by the MoEF&CC on 11.01.2023 at its website, but it was uploaded on the website of GSPCB on 13.01.2023.

However, the applicants came to know about it only on 18.01.2023 through a news item published in Daily Times of India. Thereafter, our attention is brought by the learned counsel for the applicants to the fact that the applicants submitted an application under the Right to Information Act (RTI) on 23.01.2023, which was actually submitted on 27.01.2023, to the GSPCB, seeking inspection of all the files and information/certified copies of the documents and various other documents mentioned in the application, pertaining to air and water pollution caused due to the operation of the berths of the Project Proponent at Mormugao Port Trust. The details of the documents which were prayed to be supplied, are stated in the application (Annexure A-4 at pages 1375 to 1377 of the paper-book), which are 57 in number. These documents were supplied on 13.03.2023. Thereafter, the applicants had to seek legal advice and also had to thoroughly study several ancillary documents to understand the issues to be raised in this appeal. The counsel, who resides in Mumbai, was engaged by the applicants and volumes of documents were handed over to the counsel, whose legal advice was taken in preparing the appeal, which took time, which has been prayed to be condoned, which is within 60 days, which falls in the discretion of this Tribunal besides the period of 30 days within which the appeal is required to be filed.

3. From the side of respondent No.2 – GSPCB,, learned counsel Mr. Pushkal Mishra has appeared but has not filed any objection.

4. From the side of respondent No. 3 – Mormugao Port Authority, learned counsel Mr. Yogesh Nadkarni has appeared, who has filed written objection to the present delay condonation application, which is at pages 1423 to 1425 of the paper-book. He submits that there is no sufficient cause disclosed for condonation of delay. Besides that, it is also submitted that the application under RTI was moved by only one of the

applicants i.e. applicant No.2 namely Ms. Diana Tavares and not by applicant Nos.1, 3 and 4. In fact, according to him, all the three other applicants also should have tried to obtain the said information under RTI separately for getting the delay condoned on this ground. We are not in agreement with the argument of the learned counsel, because if all the applicants/appellants had decided to file the appeal, then one of them was entitled to seek the information under the RTI from the Authority concerned.

5. From the side of respondent No. 4 – South West Port Ltd., learned counsel Mr. Subodh Kantak along with learned counsel Mr. Shivshankar Swaminathan, have appeared, who have filed reply-affidavit, which is at pages 1427 to 1464 of the paper-book, wherein it is submitted that the application, which was moved under the RTI for obtaining certified copies of the documents containing as many as 57 documents, but out of them, only one, which is at serial no.25, has been filed, which too is Consent to Operate and not relevant for considering setting aside of the EC. Therefore, he has tried to state that the ground for delay that time was consumed in obtaining the information under RTI is nothing but a ruse to get over the delay condonation issue. The learned counsel has relied upon a judgment of the Hon'ble Supreme Court in the case of ***Brahampal Alias Sammay and another V. National Insurance Company; (2021) 6 SCC 512***, wherein he has placed reliance on paragraph Nos.17 and 19 thereof, which read as follows:

“17. The aforesaid view was reiterated in the case of Balwant Singh (Dead) v. Jagdish Singh, (2010) 8 SCC 685, wherein this Court held that: (SCC p.696, paras 25-26)

*“25. We may state that even if the term “sufficient cause” has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. **The purpose of introducing liberal construction normally is to introduce the concept of***

“reasonableness” as it is understood in its general connotation.

26. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. **Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party.** Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly.” **(emphasis supplied)**

19. The aforesaid view was taken by this Court in the case of *Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai*, (2012) 5 SCC 157 wherein the Court held that: (SCC pp.168-69, paras 23-24)

“23. What needs to be emphasised is that even though a liberal and justice-oriented approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act and other similar statutes, the courts can neither become oblivious of 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.

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.”** (emphasis supplied)

6. Based on above, it is argued by him that it is clear that when the delay occurs which is directly a result of negligence, default or inaction on the part of the appellants/applicants, the delay should not be

condoned and that justice must be done to both parties equally because if any right accrues to the respondent, that should also be taken into consideration. It is also vehemently argued, based on above ruling, that if any concocted explanation have been given, then in that condition, the delay should not be condoned. In the light of above position of law, it is tried to be submitted that the applicants/appellants have taken this pretext of obtaining information under RTI only to seek condonation of delay of long 60 days, which should, therefore, be disallowed in the light of above position of law.

7. After having heard both the sides and perusing the record, we are of the view that it is true that as many as 57 documents were obtained under the RTI by the applicants. But it cannot be held to be the right approach that when the appeal is required to be filed before this Tribunal of this nature, the appellant should not be required to go through all the documents and out of these, only those documents are required to be filed along with the appeal memo, which are found to be necessary by the learned counsel for the appellant. In this case, learned counsel for the applicants/appellants apprised that not one, but in all five documents have been filed along with the appeal, copies of which had been obtained under the RTI.

8. We find that there is no negligence on the part of the applicants/appellants in this case and the delay which has occurred does not appear to be deliberate, which, according to us, needs to be condoned and the application deserves to be allowed. Accordingly, we condone the delay and allow the application (I.A. No.101/2023).

9. After having considered the grounds raised in the appeal memo, we admit this appeal and direct respondent Nos.3 and 4 to file reply-affidavit in the appeal within four weeks.

10. From the side of respondent No.1 – MoEF&CC, learned counsel Mr. Rahul Garg and from the side of respondent No.2 – GSPCB, learned counsel Mr. Pushkal Mishra have appeared and seek time to file the reply-affidavit. We allow them four weeks' time to file the reply-affidavit.

11. The Registry is directed to issue notice to respondent No.5, returnable within four weeks.

12. Put up this matter (Appeal No.15/2023) on 18.09.2023 for next consideration.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

July 27, 2023
I.A. NO.101/2023 (WZ)
npj