

Item No.2

(Pune Bench)

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

(By Video Conferencing)

INTERLOCUTORY APPLICATION NO.19 OF 2023 (WZ)
IN
REVIEW APPLICATION NO.01 OF 2023 (WZ)
IN
ORIGINAL APPLICATION NO.04 OF 2022 (WZ)

Dr. Mahadev Ganpati Mhetre

.... Applicant

Versus

Shri Tanaji Ruikar and others

....Respondents

Date of hearing: 23.01.2023

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

Applicant : Mr. Makarand B. Kulkarni, Advocate

Respondents : ---

ORDER

1. By this application, the review applicant has sought condonation of delay in filing the Review Application though the number of days of delay has not been stated in paragraph No.8 of the application. It is prayed by the applicant that the delay in filing the Review Application, by which he has prayed to get the order of this Tribunal dated 11.10.2022 passed in Original Application No.4 of 2022 (WZ) reviewed, has occurred on account of the applicant not being aware of the procedure because he was under impression that the total period to move the application for review was 90 days. It appears from the pleadings in the said application that some wrong advice was given by the Advocates because of which this delay has occurred. On being asked as to how-many days' delay the applicant has

sought to be condoned, the learned counsel for the applicant has apprised us that it is 59 days which needs to be condoned.

2. Before passing order on merits on delay condonation, we tried to know from the learned counsel for the applicant as to what is the ground set up by him in Review Application to get the impugned order reviewed, it is stated by him that the order of the Hon'ble Apex Court passed in *Suo Motu Writ Petition (C) No.3 of 2020* in which the limitation in all proceedings before the Courts/Tribunals was extended, has not been considered by this Tribunal while passing the impugned order. On the basis of the said order, no punitive action could be ordered between the period from 23.03.2020 to 28.03.2022, while this Tribunal has directed in the impugned order dated 11.10.2022 that respondent No.1 (present applicant) is liable to pay the environmental compensation for the period from 31.12.2019 till the date of that order as there was no CCA. Therefore, as per the argument of the learned counsel for the review applicant, he wants that the period from 23.03.2020 to 28.03.2022 should be excluded from computation of environmental compensation.

3. As regards the delay condonation, as per Rule 22 of the National Green Tribunal (Practices and Procedure) Rule, 2011, the period prescribed to move an application is 30 days only and there is no provision therein which prescribes for condonation of delay beyond those 30 days.

4. The learned counsel for the applicant has relied upon the judgment of this Tribunal passed in Review Application No.02/2016 and Misc. Application No.63/2016 in Appeal No.58/2015 and Appeal No.20/2016 and Misc. Application No.266/2016, on 04.05.2016 wherein in paragraph Nos.7 to 10 have been relied upon, which are quoted herein below:-

“7. In contradistinction to the language of Sections 14 and 16 of the NGT Act, the language of Rule 22(1) of the Rules of 2011 does not put any restriction on the outer limit of period whereupon the

Tribunal would lose its jurisdiction to condone the delay. From the language of the provisions and the above stated principles it would emerge that Section 14 and 16 are mandatory while that of Rule 22(1) is directory. Reference can be usefully made at this stage to the factors which have to be considered while deciding whether the time limit provided in the Act is directory or mandatory which are provided in interpretation of statutes by P.M. Bakshi 2013 at Page 468 as follows:

“The under mentioned factors have to be considered in deciding whether the time limit provided in the Act is directory or mandatory:-

- 1. The general scheme of the Act and the context of the other provisions.*
- 2. Whether the time limited is insisted upon as a protection for safeguarding the right of property of a person.*
- 3. Whether the statute relates to performance of a public duty by a public officer.*
- 4. Whether serious general inconvenience or injustice to persons who have no control over those entrusted with the duty would arise if the provision is held mandatory and not directory.*
- 5. Whether such a decision would not promote the main object of the legislature.*
- 6. Where the statute itself expressly provides for the result of non compliance with the statutory provision, what can reasonably be held to be the intent of the Legislature.”*

8. The distinction in language of Rule 22(1) of the Rules of 2011 and Sections 14 and 16 of the NGT Act is clear and unambiguous and has to be given its appropriate meaning. Once there is clear linguistical distinction between the above mentioned provisions it will not be proper for the Tribunal to give interpretation to these distinct provisions on the touchstone of same principles. In the case of Kaushlya Rani v. Gopal Singh (AIR 1964 SC 260) the Supreme Court while laying emphasis on the fact that if the special or local law expressly excludes the applicability of Section 5, it would stand displaced but if the language necessarily does not specify exclusion or by necessary implication then it will not be possible to displace the application of Section 5 of the Limitation Act. The Supreme Court was dealing with Sub Section 4 of Section 417 of the Code of Criminal Procedure, 1898 and held that the language does not suggest exclusion, much less an express exclusion of Section 5 of the Limitation Act. When in the normal course of events the language of the Section does not create a legal impediment in applying the provisions of Section 5 of the Limitation Act, then in law it will not be permissible to infer exclusion of Section 5 of the Limitation Act and when the provision of Section 5 becomes applicable to Rule 22 (1) of the Rules of 2011 then the Tribunal would have the Jurisdiction to condone the delay beyond the prescribed period of limitation of 30 days.

9. We may refer to the judgment which would further administrate that if legislature has used such language then the provisions of Section 5 of the Limitation Act would be attracted.

10. In view of the above stated position of law we are of the considered opinion that the provisions of the Section 5 of the Limitation Act, 1963 would come to the rescue of the applicant in getting the delay condoned beyond the specific period of limitation as provided under Rule 22 (1). In view of the settled principle of law stated by the Tribunal in the case of *Sunil Kumar Samanta v. West Bengal Pollution Control Board* (supra), the above conclusion would be of no avail to the applicant who asks for condonation of delay, in excess of the prescribed period of limitation (90 days) under Section 14 & 16 of the NGT Act.”

5. Based on above, it is argued that the delay condonation application is maintainable even beyond 30 days in case of admissibility of Review Application.

6. As against this, we would like to rely upon the judgment of the Hon’ble Apex Court in ***Sridevi Datla Vs. Union of India and others; (2021)5 SCC 321***, in paragraph No.19 of which, following is held :-

“19. 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. There are several previous judgments of this court holding that where periods of limitation are 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. 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 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 days period, required in the main provision.”

7. Because the Hon’ble Apex Court has settled the law on this point in the matter under the National Green Tribunal Act, 2010, we would like to reproduce Section 19 sub-section (4) clause (f), which is as follows:

19.Procedure and powers of Tribunal –

(1) *****

(2) *****

(3) *****

(4) *The Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil Court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:-*

(a) to (e) *****

(f) *reviewing its decision;*

(g) to (k) *****

8. Further under sub-section (4) of Section 4 read with Section 35 of the National Green Tribunal Act, 2010, the National Green Tribunal (Practices & Procedure) Rules, 2011 have been framed. Rule 22 thereof is as follows:-

“22. Application for review. – (1) *No application for review shall be entertained unless it is filed within thirty days from the date of receipt of copy of the order sought to be reviewed.*

(2) *A review application shall ordinarily be heard by the Tribunal at the same place of sitting which has passed the order, unless the Chairperson may, for reasons to be recorded in writing, direct it to be heard by Tribunal sitting at any other place.*

(3) *Unless otherwise ordered by the Tribunal sitting at the concerned place, a review application shall be disposed of by circulation and the Tribunal may either dismiss the application or direct notice to the opposite party.*

(4) *When an application for review of any judgment or order has been made and disposed of, no further application for review shall be entertained.*

(5) *No application for review shall be entertained unless it is supported by a duly sworn affidavit indicating therein the source of knowledge, personal or otherwise, and also those which are sworn on the basis of the legal advice.*

(6) *The counter affidavit in review application shall also be on a duly sworn affidavit wherever any averment of fact is disputed.”*

9. In view of the law laid down in **Sridevi Datla Vs. Union of India and others** (supra), the provisions of the Limitation Act would not

be applicable in computation of period of limitation, particularly there being no provision for condoning delay beyond thirty days under Rule 22 of the National Green Tribunal (Practices & Procedure) Rules, 2011. We find that the application which has been moved by the Review Applicant is not maintainable for seeking condonation of delay.

10. In the result, the application (I.A. No.19/2023) is rejected. Consequently, the Review Application No.01/2023 (WZ) also stands dismissed being time barred.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

January 23, 2023
I.A. NO.19/2023 (WZ)