

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

(By Video Conferencing)

**I.A. NO.68 2023 (WZ)  
IN  
ORIGINAL APPLICATION NO.65 OF 2019 (WZ)**

Mr. Ajay Jayvantrao Bhosale

.... Applicant

Versus

Union of India through Secretary & Ors.

....Respondents

Date of Hearing : 24.04.2023

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

Applicant : Mr. Tanaji Gambhire, Advocate

Respondents : Mr. Rahul Garg, Advocate for R-1, R-8 and R-9  
Ms. Manasi Joshi, Advocate for R-6 and R-7  
Mr. Aniruddha Kulkarni, Standing Advocate for R-4  
Mr. R.B. Mahabal, Advocate for R-11

**ORDER**

1. By this application, the applicant has prayed to recall the order dated 09.11.2022 passed by us in the present Original Application No.65/2023 whereby we had observed in paragraph No.11 of the said order that it would be appropriate for us to deal with limitation issue first as has been pressed by the learned counsel for the Project Proponent.

2. In this application (I.A.), it is submitted by the learned counsel for the applicant that the limitation is a mixed question of law and fact. Therefore, it has to be decided at final stage as it is required to go through the entire record and evidence in the matter. It is further submitted that this is an admitted case of violation by the Project Proponent – respondent No.11, which has caused substantial damage to the environment and ecology. The preliminary issues can be those where

no evidence is required and on the basis of pleadings or the applicable law, if the jurisdiction of the court or the bar to the suit is made out, the court may decide such issues with the sole objective for the expeditious decision. Such is not the case in the present matter. The facts surrounding the limitation are disputed.

3. Against the above plea of the applicant, learned counsel for respondent No.11 – Project Proponent has filed written submissions (Pages 1260 to 1264 of the paper-book) wherein it is submitted that this Tribunal has recently passed an order dated 01.12.2022 in Original Application No.63/2019 (Ajay Bhosale Vs. Union of India), which was not available when the earlier submissions were made on 24.10.2021 and 09.08.2022. The facts of the said matter are absolutely similar to the facts of the present case. Both matters are initiated by the same applicant. Both projects are that of construction under EIA Notification, 2006 under Category 8(a). The above order dated 01.12.2022 has dealt with the submissions of the applicant at point No.14 on the basis of Judgment dated 07.05.2015 in the case of **“Forward Foundation vs. State of Karnataka” in Original Application No.222/2014**, reported in **2015 SCC OnLine NGT 5**. In the present case, the plans (new) were approved on 21.09.2005. The buildings A, B, D and E had been completed and Completion Certificate had been issued on 22.10.2007. The buildings were completed (except “C” building) in the year 2009. The present application has been filed on 18.09.2019, almost 10 years later while limitation under Section 14 of the National Green Tribunal Act, 2010 is of six months and under Section 15, it is of five years. It is further submitted that application of respondent No.11 – Project Proponent is pending before the SEAC-3 and SEIAA for consideration under Violation Category under Standard Operating Procedure (SOP)

dated 07.07.2021. In the circumstances, the preliminary issue should be decided first, this matter being time barred.

4. We have heard the arguments of the learned counsel for the parties and we are of the view that it cannot be denied that limitation in the present case is a mixed question of law and fact and it would require that the entire pleadings are heard as all the parties have filed their respective reply-affidavits. Therefore, it would be appropriate to hear the matter in its entirety. The earlier observation made by us in the impugned order dated 09.11.2022 that “it would be appropriate to hear the matter on limitation issue first” is set aside and we allow this application (I.A.No.68/2023) and direct that the parties may argue this matter (O.A. No.65/2019) finally on the next date as learned counsel for respondent No.11 – Project Proponent submits that he has not come prepared for final arguments today.

5. I.A. No.68/2023 (WZ) is disposed of.

6. Put up the matter (O.A. No.65/2019) for final arguments on 28.07.2023.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

April 24, 2023  
I.A. No.68/2023 (WZ)  
npj