

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

THROUGH PHYSICAL HEARING (WITH HYBRID OPTION)

**Misc. Application No.09/2023(WZ)
I.A. No.160/2023(WZ) & I.A. No.171/2023(WZ)
In
Original Application No.78/2020 (WZ)
(Disposed of on 06-04-2023)**

Vinod Kashinath Patkar

.....Applicant

Versus

Nilesh Suresh Chavan & Ors.

....Respondent(s)

Date of hearing: 21.09.2023

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

Applicant	:	Mr. Ashutosh R. Gole, Advocate along-with Mr. Sandeep S. Patil, Advocate and Mr. Deepak Kumbhar, Advocate
Respondent(s)	:	Mr. Rakesh Agrawal, Advocate for R-1 Mr. Amit Goel, Dy. Controller of Explosive-I for R-5 Ms. Manisha Patil, Law Officer, for R-6 Mr. D.M. Gupte, Advocate for R-9/Forest Deptt.

ORDER

I.A. No.160/2023(WZ)

1. This is an application moved by the applicant Nos.1 to 5, who were respondent Nos.12, 13, 14, 16 & 18 respectively in Original Application No.78/2020(WZ), seeking condonation of delay of 75 days in moving the Misc. application for setting aside *ex-parte* order dated 06.04.2023 passed by this Tribunal in the said Original Application.

2. In this I.A., it is submitted by the applicants that they were not aware of the pendency of the present proceedings before this Tribunal nor were they served with any notice issued by this Tribunal. They came to

know about the details of the present proceedings when this Tribunal passed order dated 06.04.2023 (impugned herein), which was uploaded on the website of NGT on 02.05.2023. After that, the applicants had applied for its certified copy of the said impugned order on 04.05.2023. Thereafter, the applicants filed Review Application No.05/2023(WZ) on 30.05.2023 seeking review of the order dated 06.04.2023 passed in above-mentioned Original Application, which was listed for hearing on 05.07.2023. After hearing the applicants, this Tribunal was of the view that the impugned order being an *ex-parte*, an application under Section 19(4)(h) would be more appropriate. Thereafter, the applicants withdrew the said Review Application, which was disposed of as not pressed with liberty to file the present application.

3. It is further submitted in this application that the delay in filing the present application is majorly due to the pendency of the review application mentioned above, which was filed within 30 days from the date of receipt of the order dated 06.04.2023. Hence, the said delay is prayed to be condoned.

4. From the side of respondent No.1/Shri Nilesh Suresh Chavan, objection dated 15.09.2023 against the delay condonation application has been filed, stating therein that Rule 21(2) of the National Green Tribunal (Practice and Procedure) Rules, 2011 provides 30 days' time from the date of passing of the order, within which to move an application to get the *ex-parte* order set aside. In the light of the Judgment passed by the Hon'ble Supreme Court in the case of *Sridevi Datla vs. Union of India & Ors.*[(2021) 5 SCC 321], condonation of delay of 75 days is not permissible.

5. In this regard, our attention is drawn by the learned Counsel for respondent No.1 to para nos.17 & 18 of the above-mentioned Judgment, which are quoted herein below for the sake of convenience:-

“17. Having regard to these decisions, and given the nature of jurisdiction which the NGT has been invested with, the substantial questions of law that arise in the present case, are whether the approach to the issue of limitation by the NGT was correct, and whether on a correct interpretation of law, the appeal under [Section 16](#) was filed within the 90 days period, in the facts of this case.

18. 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.¹⁰ There are several previous judgments of this court holding that where periods of limitation are That provision is as follows:

29. Savings.— (1) Nothing in this Act shall affect Section 25 of the Indian Contract Act, 1872 (9 of 1872).

Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of [Section 3](#) shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in [Sections 4 to 24](#) (inclusive) shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law.” 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.¹¹ 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 the 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 day period, required in the main provision.”

6. In rebuttal, the learned Counsel for applicants has argued that the provision under Section 19(1)(4)(h) provides that this Tribunal, for the purposes of discharging its functions under this Act, shall have the same powers as are vested in Civil Court under the CPC, while trying a suit, in

respect of the matters- “setting aside any order of dismissal or any application for default or any order passed by it *ex parte*” the principles of natural justice are required to be followed.

7. In the light of the above provision, it is argued by the learned Counsel for applicants that this provision specifies that in case of disposal of an application seeking setting aside an *ex-parte* order, the provisions of CPC would be applicable and that CPC also provides inherent jurisdiction under Section 151 of the CPC, where there is no time limit prescribed to move an application seeking setting aside of an *ex-parte* order, if it is found to be justified in the estimation of this Tribunal.

8. After having heard the arguments of both the learned Counsel for parties, we are of the view that the Judgment, which has been relied upon by the learned Counsel for the respondent No.1 in the case of *Sridevi Datla vs. Union of India & Ors. (supra)*, deals with the provisions of Section 16 of the National Green Tribunal Act, 2010 where-under the provision is provided for filing an appeal, which would not be applicable in the present case because in the present case, only an order, which is passed *ex-parte*, is prayed to be set aside, for which there is specific provision made under Section 19(1) and 19(4)(h) of the National Green Tribunal Act, 2010.

9. We are inclined to accept the argument made by the learned Counsel for applicant and take into consideration the fact that this Tribunal had not directed to issue any Notice to the respondents/applicants herein and without ensuring the service upon these respondents, this Tribunal had proceeded to decide the Original Application No.78/2020. Therefore the delay, which has occurred, seems

to be condonable, particularly, in view of the fact that earlier a review application was filed, which also consumed much time, which was allowed to be withdrawn.

10. In view of above, we allow this application and condone the said delay.

I.A. No. 160/2023(WZ) stands disposed of accordingly.

M.A. No.09/2023(WZ)

11. As per the service affidavit filed by the applicant dated 22.08.2023, service of notice has been effected upon all the respondents/opposite parties.

12. Today, from the side of applicant, learned Counsel Mr. Ashutosh Gole has appeared.

13. From the side of respondent No.1/Shri Nilesh Suresh Chavan, learned Counsel Mr. Rakesh Agrawal has appeared, who submits that he has to file reply affidavit against the restoration application to be decided on merits, for which we grant 15 days' time for filing the same with the direction that a copy of the same shall be served upon the learned Counsel for applicant, who may file rejoinder against the same within one day or by the next date.

14. From the side of respondent No.5/The Chief Controller of Explosive-1, Mr. Amit Goel, Dy. Controller of Explosive-1 has appeared, who apprised us that he does not want to file reply affidavit against this Misc. application.

15. From the side of respondent No.6/The District Magistrate and Collector, District: Palghar, Ms. Manisha Patil, Law Officer has appeared, who apprised us that reply affidavit has already been filed.

16. From the side of respondent No.9/The Deputy Conservator of Forest- Jawhar, learned Counsel Mr. D.M. Gupte has appeared, who seeks two weeks' time to file reply affidavit, the same is allowed.

17. None-else has appeared despite sufficient service. Therefore, we have no option left but to proceed against them *ex-parte*.

18. Registry is directed to put up main matter for disposal on 10.10.2023.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

September 21, 2023
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P.Kr