

(Pune Bench)

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

THROUGH PHYSICAL HEARING (WITH HYBRID OPTION)

**Interlocutory Application No. 243/2023
In
Misc. Application No.16/2023(WZ)
In
Appeal No.24/2023(WZ)**

Suhas Rao Rane

.....Applicant

Versus

MoEF&CC&Ors.

....Respondent(s)

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

Appearance:

Applicant	:	Ms. Pooja Ghosh, Advocate
Respondent(s)	:	Mr. Rahul Garg, Advocate for R-1 & 6 Mr. AniruddhaKulkarni, Advocate for R-2, R-3 & R-4 Mr. Sanjay Upadhyay, Senior Advocate along-with Mr. SaumitraJaiswal, Ms. Tripti Sharma, Mr. UtkarshTrivedi, Advocates for R-5 Mr. Rahul Kothari, Advocate along-with Ms. TanviGoenkaAdvocatei/b. M/s Khaitan&Co., for R-8

**Reserved on : 07.05.2024
Pronounced on : 16.05.2024**

ORDER

1. This Interlocutory Application (IA) 243/2023 has been filed by the Applicant/Appellant seeking condonation of delay of 150 days in moving Miscellaneous Application (MA) No. 16/2023 which seeks restoration of the Appeal No. 24/2023 by setting aside the order dated 13.07.2023, whereby Appeal No. 24/2023 was dismissed for default.

2. In the body of that Application, it is submitted that the Applicant was not duly informed of the date of hearing nor did he have any other means to know about the date of hearing for admission of the Appeal. The appellant was solely dependent upon his counsel engaged at that time. The Appellant/Applicant was not able to keep track of the cause list as he was occupied with his personal responsibilities. The Appellant/Applicant came to know about the dismissal of the earlier Appeal at a much later date as the same was not communicated to him. Upon gaining knowledge of the dismissal, he approached the Hon'ble Supreme Court in an appeal filed under Section 22 of National Green Tribunal Act, 2010 (hereinafter referred to as NGT Act) to seek restoration of the dismissed Appeal. On 24.11.2023, the Hon'ble Supreme Court was pleased to grant liberty to the Applicant to approach this Tribunal to seek restoration of the dismissed appeal. A copy of the order dated 24.11.2023 passed by the Hon'ble Apex Court which is attached as Annexure A2 at page 272 of the paper book.

3. The Respondent No. 5 Dr. FarrokhWadia, Designated Partner; Sagittarius Ecospaces LLP has filed an objection against the Interlocutory Application on 28.02.2024, wherein it is submitted by him that the Applicant is a serial litigator who has been filing cases against answering respondent with malafide intention. He has failed to clarify that he is a

bona fide litigant and qualified to be called an 'aggrieved person' under Section 18 of the NGT Act. The Appellant/Applicant is a resident of Mumbai while the project in question is located in the city of Pune and this is the 6th round of litigation being initiated by the Appellant/Applicant.

4. Further it is submitted by Respondent No. 5 in his objection, that the Appeal was preferred on 16.05.2023 by the Appellant/Applicant under Section 16 read with Section 18 of the NGT Act, against the Environmental Clearance (EC) dated 29.08.2022 issued by the Respondent No. 2 - State Environment Impact Assessment Authority, Maharashtra (SEIAA) to Respondent No. 5 for Residential Cum Commercial Project named Bellrue at FP No. 3/3 & FP No. 70/11, Nagar Road, Yeravada, Pune, which was prayed to be quashed. Therefore the present Application for restoration stands barred by limitation and the appeal which has been filed 260 days after the issuance of the given EC is also beyond the period of limitation under Section 16 of the NGT Act.

5. Further it is pointed out by Respondent No. 5 in his objection to the Interlocutory Application No 243/2023 that the present application for restoration of the Appeal along with the Application for condonation of delay is hopelessly time barred as per the provision of the NGT Act read with Rule 20(2) of the National Green Tribunal (Practices and Procedure) Rules, 2011. (hereinafter referred to as 'NGT Rules')

6. The said Appeal No. 24/2023(WZ), which was filed on 16.05.2023, was dismissed by this Tribunal on 13.07.2023 due to the non-appearance of the Appellant/Applicant or any of his representative, after providing sufficient opportunity for appearance. After the passing of that order, there was an opportunity for the Appellant/Applicant to file an

application for the restoration of the said Appeal within 30 days under NGT Rules, from the date of dismissal of an order (viz.thirty days from 13.07.2023, being 12.08.2023). However instead of doing so, the Appellant/Applicant, after the lapse of 30 days, approached the Hon'ble Supreme Court by filing Civil Appeal Number 6814/2023, **Suhas rao Rane Versus Ministry of Environment Forest and Climate Change &Ors**, on 09.10.2022, which is after a lapse of 58 days from the end of limitation for filing the application for restoration before this Hon'ble Tribunal. Thereafter, the Appellant/Applicant has now filed Miscellaneous Application No. 16/2023 for restoration of the Appeal Number 24/2023(WZ) on 11.12.2023 with the present I.A. No. 243/2023 for condonation of delay which is cited above. Therefore on both counts, the MA for restoration as well as the Appeal are hopelessly time-barred.

7. It is further mentioned by Respondent No. 5 that regarding the plea taken by the Appellant/Applicant that he was unable to keep track of the cause list as he was occupied with personal responsibilities, it is submitted that this is the 6th round of litigation initiated by the Applicant, therefore it cannot be believed that, he did not have knowledge of the date fixed for hearing and hence there is no sufficient cause for condonation of delay. No sufficient cause for non-appearance was shown by him for condonation of delay on the date when the matter was listed for hearing.

8. The Appellant/Applicant has also failed to provide clear date on which he became aware of the order of this Tribunal dated 13.07.2023 and has merely stated that, he became aware of it 'much later'. The Appellant/Applicant in order to overcome the statutory bar, provided in Rule 20(2) of NGT Rules, approached the Hon'ble Supreme Court by filing Civil Appeal Number 6814/2023 as he had already crossed the period of

limitation of 30 days, as provided under Section 19(4) (g) & (h) of the NGT ACT read with Rule 20(2) of NGT Rules, for seeking restoration of Appeal and setting aside the order dated 13.07.2023 in Appeal Number 24/2023.

9. Further it is mentioned that the Appellant/Applicant had withdrawn his appeal before the Hon'ble Supreme Court and accordingly same was disposed with liberty to file an Application for restoration of Appeal before this Tribunal, which obviously needs to be decided in accordance with law. The Interim Application seeking condonation of delay is not maintainable as there is no provision in the NGT Act or NGT Rules for condonation of delay in an Application for restoration. It is a settled principle of law that no direction can be passed to any Statutory Tribunal to act outside the scope of its powers. This is so even when an order is passed under Article 142 as the law is settled that vesting of jurisdiction cannot violate a Statute. Regarding this, reliance is placed by the Learned Counsel for Respondent 5 on the Judgment of the Hon'ble Supreme Court in **Nidhi Kain Versus State of MP, (2017) 4 SCC 1**. The Hon'ble Supreme Court in para 91 held that;

“In terms of the judgments in the Supreme Court Bar Assn case, with which we express our unequivocal concurrence, it is not possible to accept that the words ‘complete justice’ used in Article 142 of the Constitution would include the power to disregard even statutory provisions...”

Besides, some other rulings have also been relied upon and based on that, it is prayed that this Appeal along with the delay condonation Application should be dismissed at the very threshold.

10. From the side of the Applicant/Appellant, rejoinder affidavit dated 26.03.2024 has been filed, which is annexed at pages 331 to 341 of the paper book, wherein it is submitted that a bare reading of Section 19 of

the NGT Act provides the procedure of the Tribunal which would be guided by the principles of natural justice. Reliance is placed on the decision of Hon’ble Supreme Court of India in **Sangram Singh versus Election Tribunal, Cota (AIR 1955 SC 425)** wherein it is laid down

“Our laws of procedure are grounded on a Principle of Natural Justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs.....”

11. It is further submitted that the Appeal had been dismissed at the stage of the admission in the absence of the Appellant/Applicant which has affected his cause adversely. The communication of the dismissal order was not available to the Appellant/Applicant nor was the same communicated to the Applicant/Appellant. Non-appearance of his previous counsel on the said date resulted in the issuance of the dismissal order unheard. No information of the said order was issued to the Applicant/Appellant. Due to this reason,when he gained knowledge of the same in the month of September 2023, he approached the Hon’ble Supreme Court to get the same rectified. The dates of important events are shown in the table below. “

10.10.2023	Civil appeal filed by this Applicant before the Supreme Court of India (Diary no. 41883/2023)
18.10.2023	Adjournment sought by the Applicant’s Counsel
20.10.2023	The Civil Appeal No. 6814 of 2023 was listed on this date
24.11.2023	Order by the Hon’ble Supreme Court of India in the Civil Appeal no. 6814 of 2023.

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12. Before The Hon'ble Supreme Court, the Appellant/Applicant withdrew his Appeal which was filed under Section 22 of the NGT Act, and he was granted liberty to move an application for restoration of the order of dismissal in default. All these events took some time, hence the delay occurred in approaching this Tribunal. It is further mentioned that there was only one communication of a link to join the Webex meeting received from the NGT Bench on 12.07.2023, (Copy annexed as annexure 1). However due to the applicant being preoccupied with his personal responsibilities, he could not appear either himself or through any Advocate.

13. With respect to the clarification regarding personal difficulty, The Applicant has submitted a copy of the Unique Disability ID, attached as Annexure 2, which pertains to his sister, wherein she is shown to be suffering from 75% disability.

14. The Learned Counsel for Respondent No. 5 Mr. Sanjay Upadhyay, vehemently opposed the documentary evidence presented by the Appellant/Applicant, and argued that this document could not be considered in evidence since there was no certificate issued confirming the disability of the Applicant's sister. We do not agree with the Learned Counsel as such ID is issued only after Chief Medical Officer's (CMO's) Certificate.

15. Further it is mentioned in this rejoinder that, this Tribunal has inherent power to restore the Appeal, because in the case of **Nilesh Suresh Chavan Versus State of Maharashtra and ors**, wherein order was delivered on 21.09.2023 holding that the power was vested with the Tribunal of a Civil Court as provided in Civil Procedure Code, hence there was inherent jurisdiction, as provided under Section 151 of CPC, vested

in this Tribunal also and on that basis 75 days delay in presenting the application was condoned and that the sub-ordinate legislation which prescribes a time period of 30 days as per Rule 20(2) of NGT Rules vests discretion in this Tribunal to condone the delay beyond the prescribed period. It is also submitted that the period of 30 days time limit for moving restoration application is only directory rather than mandatory as held by this Tribunal in the above-mentioned case.

16. Some other grounds have also been raised by the Appellant/Applicant, in view of the objection raised by the Learned Counsel for Respondent No. 5 pertaining to Applicant not being covered in the category of the 'aggrieved person', but we do not find that to be proper to be taken up at this stage because we are solely dealing with delay condonation Application.

17. From the side of Respondent No. 8 reply affidavit is shown to have been filed, wherein it is recorded in this affidavit that it is filed on behalf of Witwicky One Pvt limited which has been wrongly mentioned by Applicant/Appellant as "Brookfields Properties Pvt Ltd". In this affidavit, also condonation delay application is prayed to be rejected, mentioning that restoration application could have been moved within 30 days from the date of the dismissal order.

18. From the side of the Applicant reliance was placed upon the Judgement of this Tribunal in the case of [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)] **Nilesh Suresh Chavan Versus State of Maharashtra and ors**, wherein attention is drawn to the following paragraphs –

“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 provision 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.”

19. Thereafter learned Counsel for the Applicant placed reliance on (M.A. No.49 of 2013 In Application No. 26 of 2012) **Goa Foundation Anr versus Union of India Ors on 18.07.2013** but no specific paragraph of the same was cited during arguments hence we are not able to appreciate in what particular way this ruling is going to help the applicant in the present matter.

20. Thereafter learned Counsel for the Appellant/Applicant mainly placed reliance upon the Judgment and order of National Green Tribunal, dated 04.05.2016 passed in [Review Application No. 02 of 2016 and Miscellaneous Application No. 63 of 2016 In Appeal No. 58 of 2015 and Appeal No. 20 of 2016 and Miscellaneous Application No. 266 of 2016] **Khatema Fibres Versus Uttarakhand Environment and Pollution Control Board and 5 ors** wherein attention is drawn to paragraphs 7, 8 which are as follows –

“7. In contravention 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 restrictions 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 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.

”

21. Based on the above, the main argument of the learned Counsel for the Applicant is that, NGT in **Khatema Firbres** case (supra), held that Rule 22(1) of the NGT Rules is not mandatory but directory and should not be taken in the literal sense by interpreting that only 30 days period from the date of dismissal, would be there within which to file restoration. In fact, the Tribunal has expressed view that the provision of Section 151 of the CPC may be invoked and even if there is delay beyond 30 days, the same may be treated to be condonable.

22. The above argument was rebutted by the learned Counsel Mr. Sanjay Upadhyay for respondent No. 5, by saying that the Judgment of this Tribunal in the case of **Khatema Firbres** Case (supra) is not applicable in the case in hand, in view of subsequent view of the Hon'ble Supreme Court expressed in a different matter which would be cited by us at appropriate stage.

23. From the side of Respondent No.5, a note has been submitted through email dated 07.05.2024 in order to summarize their stand in the case in hand point-wise, wherein he has given an account of delay, which has been committed by the Applicant/Appellant in this case, the details of which are quoted herein below in tabular form from the said note;

S.No.	Event	Date	Duration (days)
1	Order dismissing the Appeal no 24/2023 due to default ("Dismissal Order"	13 July 2023	-
2.	30 (Thirty) days from Dismissal Order	12 August 2023	30
3.	Appellant's appeal before the Supreme Court (Civil Appeal No. 6814 of 2023)	10 October 2023	59
4.	Order by the Supreme Court in the above Civil Appeal ("Supreme Court Order")	24 November 2023	45
5.	Miscellaneous Application filed by the Appellant for restoration of the Appeal	11 December 2023	17
6.	Interim Application seeking condonation of delay filed by the Appellant	14 December 2023	3

7.	Total time taken by the Appellant to file application for restoration		151
8 .	Total time taken by the Appellant to file application for restoration along with application for condonation of delay		154

24. Thereafter learned Counsel for Respondent No. 5 has taken us through 30 case laws, which have been cited in support of his arguments, all of which are not being mentioned by us for the sake of brevity but the main emphasis that was laid was upon the Judgment of Hon’ble Supreme Court delivered, in Civil Appeal No 5784 of 2022, **My Palace mutually aided cooperative society versus B. Mahesh &ors**, wherein following was held, which is annexed at Annexure R 27. For the sake of convenience relevant paragraph of the said judgment is quoted hereunder;

“28. Section 151 of the CPC can only be applicable if there is no alternate remedy available in accordance with the existing provisions of law. Such inherent power cannot override statutory prohibitions or create remedies which are not contemplated under the Code. Section 151 cannot be invoked as an alternative to filing fresh suits, appeals, revisions, or reviews. A party cannot find solace in Section 151 to allege and rectify historic wrongs andbypass procedural safeguards inbuilt in the CPC.”

25. It is absolutely clear that this Judgment in **My Palace mutually aided cooperative society versus B. Mahesh & ors** (supra) is of subsequent date, i.e. after the judgment was pronounced by this Tribunal

on 04.05.2016, wherein the Hon'ble Supreme Court has very clearly laid down that the provision of Section 151 CPC cannot be invoked to override the statutory provision. Hence, in the case in hand, Statute provides a strict 30 days limitation period within which the restoration application is required to be filed, therefore that period cannot be allowed to be overridden under the garb of using power under section 151 CPC as is being prayed by the learned Counsel for the Appellant/Applicant.

26. We are also of the view that for revocation of dismissal order even within 30 days of its having been moved, sufficient reason is required to be shown for the non-appearance of the Appellant/Applicant. In the case in hand the sole ground which is said to be there is that, the sister of the Appellant/Applicant was suffering from disability and because of that Appellant/Applicant could not pay attention to the case in hand and could not contact his counsel within the time. It does not appear to be good enough ground for us to treat the same to be reasonable to condone the delay, because anyone could have appeared from the side, of the appellant/applicant seeking restoration within 30 days and it is very common practice that in such cases of dismissal in default, the courts liberally grant restoration. There would be no reason for us not to do same. But we failed to understand as to why the appellant/applicant did not appear before us, instead he went to the Hon'ble Supreme Court and that too after considerable long delay. Even the Hon'ble Supreme Court has not given any direction to this Tribunal to give an exemption from the limitation period. Therefore we find ourselves incompetent to grant exemption beyond the 30-day time period. Accordingly, we reject this Application for delay condonation. Consequently Misc. Application 16/2023 also stands rejected and the appeal stands dismissed as being time-barred.

27. No order as to costs.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

May 16, 2024
Interlocutory Application No. 243/2023
Misc. Application No.16/2023(WZ) In
Appeal No.24/2023(WZ)
PJB