

**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI**

Dated this the 20th day of December, 2023.

(Through Video Conference)

I.A. No. 101 of 2023 (SZ)

In

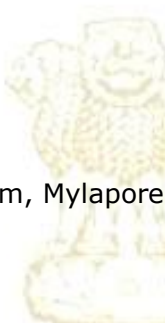
Appeal No.24 of 2023 (SZ)

IN THE MATTER OF

Bharathi. K.

S/o, Kumarasamy C.
97, Kamarajar Salai, Nochikuppam, Mylapore,
Chennai, Tamil Nadu.

... Applicant/Appellant (s)

Versus 

1. The Public Works Department,

Government of Tamil Nadu,
Building Construction Division,
Chepauk, Chennai- 600005.

2. Ministry of Environment, Forests and Climate Change,

Rep by its Secretary,
Jor Bagh, Lodhi Colony,
New Delhi- 110003.

3. The Tamil Nadu Coastal Zone Management Authority,

Rep by its Member Secretary,
No.1, Jeenis Road, Panagal Building,
Ground Floor, Saidapet, Chennai- 600 015.

4. Tamil Nadu Pollution Control Board,

Rep by its Chairman,
No. 76, Mount Salai, Guindy,
Chennai- 600032.

...Respondent(s)

For Appellant (s): Mr. Yogeshwaran.

For Respondent(s): Dr. D. Shanmuganathan for R1 & R3.
 Mr. R. Thirunavukarasu for R2.

Judgment Reserved on: 11th December, 2023.

CORAM:

HON'BLE SMT. JUSTICE PUSHPA SATHYANARAYANA, JUDICIAL MEMBER
HON'BLE DR. SATYAGOPAL KORLAPATI, EXPERT MEMBER

JUDGEMENT

Delivered by Smt. Justice Pushpa Sathyanarayana, Judicial Member.

1. This is an application for condonation of delay of 59 days in filing the appeal against the impugned Environmental Clearance issued by the MoEF&CC. The project is proposed by the Public Works Department of Tamil Nadu.
2. The allegation of the applicant is that the impugned Environmental Clearance was not communicated as per condition no. Xiii of the impugned clearance. The copy of the clearance ought to have been published in the website of the PWD, who is the project proponent or by the MoEF&CC. Therefore, it is alleged that the impugned Environmental Clearance has not been communicated as required by law and was not put in the public domain as required by law. Therefore, it is argued that there was no delay in filing the appeal. However by way of abundant caution, the above Interlocutory Application was filed for condonation of delay of 59 days computed from the date of order.
3. In support of the application, it is stated that the applicant had to obtain the legal advice and had to gather the relevant documents in support of his case. The documents based on which the clearance was issued, namely, the application form, EIA report and other studies, details of appraisal, minutes of meeting etc., had to be obtained. As

those were not easily available, the applicant had to necessarily take some time for filing. In support of his case, the Learned Counsel relied on the **Save Mon Region Federation vs. Union of India & Ors**, the relevant Para reads as follows:

" 19. The limitation as prescribed under Section 16 of the NGT Act, shall commence from the date the order is communicated. As already noticed, communication of the order has to be by putting it in the public domain for the benefit of the public at large. The day the MoEF shall put the complete order of Environmental Clearance on its website and when the same can be downloaded without any hindrance or impediments and also put the order on its public notice board, the limitation be reckoned from that date. The limitation may also trigger from the date when the Project Proponent uploads the Environmental Clearance order with its environmental conditions and safeguards upon its website as well as publishes the same in the newspapers as prescribed under Regulation 10 of the Environmental Clearance Regulations, 2006. It is made clear that such obligation of uploading the order on the website by the Project Proponent shall be complete only when it can simultaneously be downloaded without delay and impediments. The limitation could also commence when the Environmental Clearance order is displayed by the local bodies, Panchayats and Municipal Bodies along with the concerned departments of the State Government displaying the same in the manner afore- indicated. Out of the three points, from which the limitation could commence and be computed, the earliest in point of time shall be the relevant date and it will have to be determined with reference to the facts of each case. The applicant must be able to download or know from the public notice the factum of the order as well as its content in regard to environmental conditions and safeguards imposed in the order of Environmental Clearance. Mere knowledge or deemed knowledge of order cannot form the basis for reckoning the period of limitation."

4. It is to be noted that as per Section 16 of the National Green Tribunal Act, 2010, 30 days are provided for filing an appeal. However an extendable time of 60 days is given to the Tribunal to condone the delay when sufficient cause is shown.
5. The Learned Counsel appearing for the applicant also quoted **(2002) 3 SCC 195- Ram Nath Sao Vs. Gobardhan Sao and Ors.**, wherein the Hon'ble Supreme Court has dealt with the meaning of 'sufficient cause' and observed that "a liberal construction has to be given so to advance substantial justice when no negligence or inaction or want of bona fide is imputable to the party".

- 6.** Opposing the delay, a counter affidavit was filed by the Executive Engineer, PWD. It is stated that the approval from the MoEF&CC for the Kalaingar Pen Monument was granted on 19.06.2023. Even as early as on 23.06.2023 both the Tamil and English newspaper published a news of grant of clearance issued by the MoEF&CC. Though, the applicant has stated that he has obtained the information from the journalist of media, it is not specifically stated from whom and when such information was obtained by him.

6.1 The Environmental Clearance was issued by MoEF&CC whereas, the applicant, herein, checked the website of PWD and Tamil Nadu Pollution Control Board website. The applicant also as the founder of the South Indian Fishermen's Association even sent a representation for rejecting the Environmental Clearance to all the members of the Expert Appraisal Committee. Therefore, he should have been vigilant in filing the appeal when the Environmental Clearance was issued on 19.06.2023. If he was aggrieved, he should have come before this Tribunal without the delay. Moreover two more applicants have filed appeals within time. Therefore, it was prayed that the delay is wilful, wanton and condoning the same would result in serious pre-judice and untold hardship to the project proponent.

- 7.** On the above pleadings, whether delay of 59 days deserves to be condoned in filing the appeal?
- 8.** The case of the applicant is that the impugned Environmental Clearance dated 19.06.2023 was not communicated as mandated by law as none of the stakeholders have complied with the obligation as mandated by law. As per Section 16, a period of 30 days from the

date of order or decision or direction or determination is communicated to prefer an appeal before the Tribunal. Therefore, the period of limitation is 30 days from the date of the decision with a further period of 60 days on an application for condonation of delay before this Tribunal.

- 9.** The proviso to Section 16 empowers the Tribunal to condone a period of 60 days and before the expiry of the said 60 days the appeal has been preferred by the applicant. As per the proviso, the Tribunal is empowered to condone the delay of another 60 days, if the applicant can establish sufficient cause for the same. In this case, it was alleged that the order was not communicated to the applicant or uploaded in the website of the MoEF&CC on the day it was cleared.
- 10.** Admittedly the project proponent had not published in their website about the clearance which is mandated by the EIA Notification. At this juncture to be noted is that already two appeals, namely, Appeal No. 12 of 2023 and Appeal No. 30 of 2023 are pending before this Tribunal challenging the very same clearance granted. They are filed within the threshold given under the proviso. It also cannot be denied that the project proponent had not uploaded the Environmental Clearance in its website.
- 11.** In several cases the Hon'ble Supreme Court has held that the term "Sufficient Cause" should be understood in their proper spirit and purpose, regard being had to the fact that those terms are basically elastic and are to be applied in proper perspective. When a collective cause is represented it should be given some acceptable latitude. Though no precise formula can be laid down regarding the concept of judicial discretion as conscious effort for achieving consistency should

be made. Therefore, there should be a liberal, pragmatic and justice oriented approach while dealing with condonation of delay. As such the National Green Tribunal Act, 2010 itself has prescribed only 30 days with an extended period of 60 days.

12. As already there are two challenges made to the same Environmental Clearance granted, it will not pre-judice the respondents if the delay is condoned and the appeal is admitted. Merely because two of the appeals have been filed within the period of limitation, it will not preclude the applicant in preferring an appeal with the delay which is within the extended time given under proviso to Section 16 of the National Green Tribunal Act, 2010.

13. Therefore, we are satisfied that there is a sufficient cause shown by the applicant in filing the application to condone the delay. Accordingly, the delay is condoned.

14. In view of the same, the I.A. No. 101 of 2023 is allowed and the appeal be listed on 31.01.2024 along with Appeal Nos. 12 of 2023 and 30 of 2023.

Smt. Justice Pushpa Sathyanarayana, JM

Dr. Satyagopal Korlapati, EM

Internet – Yes/No
All India NGT Reporter – Yes/No

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**Before the National Green
Tribunal
Southern Zone (Chennai)**

**I.A. No. 101 of 2023(SZ)
In
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Bharathi K.
Vs.

PWD, Tamil Nadu & Ors.

