

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

(Through Video Conference)

**Interlocutory Application No.42 of 2023 (SZ) &
Interlocutory Application No.61 of 2023 (SZ)
in
Appeal No. 06 of 2023 (SZ)**

IN THE MATTER OF

1. Uma Maheswar Dahagama

S/o Ganapathi Sharma
5-1-270 Krishna Nagar Street
Jyothi Nagar Post Office
Jyothi Nagar, Karim Nagar District
Telangana – 505 215.

2. Akula Rajaram

S/o. Narasimha Reddy
5-3-119, 5th Ward, Malkhapur
Pedapally District, Telangana – 505 215.

3. Gundu Shankaraiah

S/o. Chandraiah
5-3-122, 5th Ward, Malkhapur,
Pedapally District, Telangana – 505 209.

...Applicant/Appellant(s)

Versus

1. Union of India,

Through the Secretary
Ministry of Environment, Forests & Climate Change
Ali Gunj, Jor Bagh Road,
New Delhi – 110 003.

2. Telangana State Pollution Control Board

Through the Member Secretary,
A-3, Paryavaran Bhavan, Sanath Nagar,
Hyderabad, Telangana – 500 018.

3. M/s. NTPC Limited

NTPC Engineering Office Complex
Sector 24, Noida, Gautam Buddha Nagar,
Uttar Pradesh – 201 301.

...Respondent(s)

For Applicant(s):

M/s. D. Nagasaila, V. Suresh, N.S. Tanvi,
Kavya. K & Leelavathi. P.

For Respondent(s):

Dr. C.K. Syed Shaffi for R1.

Mr. T. Sai Krishnan for R2.
Mr. P.S. Raman, Senior Advocate a/w.
Mr. C. Mohan & Kumaresan for
M/s. King & Partridge for R3.

Judgment Reserved on: 29th May 2023.

Judgment Pronounced on: 5th July, 2023.

CORAM:

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

JUDGMENT

Delivered by Smt. Justice Pushpa Sathyanarayana, Judicial Member

1. The above interlocutory application is filed to condone the delay of 101 days in filing the appeal which challenges the Environmental Clearance (*for short "EC"*) granted on 08.08.2022 in favour of the 3rd Respondent herein viz., M/s. National Thermal Power Corporation (*for short "NTPC"*) Limited for the establishment of a 2 x 800 MW Telangana Super Thermal Power Plant at Ramagundam, Peddapalli District, State of Telangana.
2. Admittedly, it is the second round of litigation with regard to the same Thermal Power Plant at Ramagundam by NTPC. Earlier, the Ministry of Environment, Forest and Climate Change (*for short "MoEF&CC"*) had granted EC dated 20.01.2016 to the 3rd Respondent to set up a Thermal Power Plant. The first applicant herein viz., Mr. Uma Maheswar Dahagama had challenged the same in Appeal No.46 of 2016 (SZ) before this Tribunal alleging that the project proponent had falsified the Ambient Air Quality

data and had not conducted the EIA Studies properly. Accepting the said contentions raised by the appellant therein, on 27.05.2021, this Tribunal suspended the EC and directed the project proponent/NTPC to conduct additional studies to establish the environmental feasibility. The said Judgment was challenged before the Hon'ble Supreme Court which was upheld on 20.07.2021. The project proponent was however permitted to continue with the construction work of the Thermal Power Plant on condition that they could not claim equity for the same. Pursuant to the direction of this Tribunal, on 16.08.2021, the SEAC recommended for grant of additional ToR to conduct additional EIA Studies. Accordingly, the additional ToR for the project was granted on 10.09.2021 by the MoEF&CC.

- 3.** The applicants have contended that they were not aware of the progress in the EIA process. Despite checking the website to find out the status of the project frequently, the issuance of the impugned EC was not displayed. However, the earlier EC dated 20.01.2016 which was suspended was only shown on the website. Having waited till October 2022, the applicants have applied under the RTI Act seeking information regarding the status of the project and whether the EC has been granted or not. The applicant was given with a response on 17.11.2022 informing that the MoEF&CC had granted an amended EC dated 08.08.2022. In the reply, it was also stated that the amended EC was uploaded and available on the website of the MoEF&CC. After the said reply was received, when verified, the EC was not available on the website according to the applicants. So, after the receipt of the reply on 17.11.2022, the appeal was filed on 16.12.2022

contending that the appeal was filed within the period of limitation of 30 days. However, later the above I.A. was filed on 23.03.2023 for condoning the delay of 101 days in preferring the appeal.

4. The learned counsel for the applicants contended that the failure of the respondents in communicating the impugned EC cannot be put against the applicant/appellant's right in challenging the impugned EC.

5. The project proponent who is the 3rd Respondent had filed its counter affidavit denying the factual details mentioned in the affidavit filed in support of the delay condonation application. The first applicant Mr. Uma Maheswar Dahagama had earlier filed an Appeal No.46 of 2016 (SZ) challenging the EC granted on 20.01.2016 which went upto the Hon'ble Supreme Court. Therefore, the first applicant is fully aware of the background of the project, the functioning of the MoEF&CC's website, details furnished therein, etc. According to the 3rd Respondent, there is a delay of 227 days in filing the delay condonation application itself. The allegation that the amended EC dated 08.08.2022 was not uploaded and not available on the Parivesh website is incorrect. It is stated that the said information was available on the Parivesh website which was also mentioned in the RTI reply given by the MoEF&CC wherein, it has been categorically stated that *"The Ministry has granted amendment in Environmental Clearance to M/s. NTPC Limited by letter dated 08th August 2022. The said letter is available on Ministry's website namely,*

www.parivesh.nic.in. The copy of the amendment in EC letter is enclosed herewith".

6. Even according to the 3rd Respondent, the amended EC dated 08.08.2022 was uploaded on the Parivesh website on the same day itself and they also enclosed the annexure in support of their contention.
7. The learned counsel for the 3rd Respondent also stated that even on 16.05.2023, the said amended EC was displayed on the website and it was very much available. Therefore, the applicant is not entitled for any indulgence for having filed the appeal with inordinate delay and the condonation of which is beyond the jurisdiction of this Tribunal.
8. An additional affidavit has been filed by the applicant stating that as per Regulation 10 (i) (a) of the EIA Notification, 2006, there is a statutory duty cast upon the NTPC which is as follows:-

"(i)(a) In respect of Category 'A' project, it shall be mandatory for the project proponent to make public the environment clearance granted for their project along with the environmental conditions and safeguards at their cost by prominently advertising it at least in two local newspapers of the district or State where the project is located and in addition, this shall also be displayed in the project proponent's website permanently."

9. It is now alleged that the above conditions have not been fulfilled by the NTPC. The EC has not been advertised in a local newspaper and is also not available on their website. Thus, both the mandatory requirements under the EIA Notification have not

been fulfilled by the NTPC in the present case. Further, it was argued that the limitation under Section 16 of the National Green Tribunal Act, 2010 starts from the “date of communication” of the order. In the instant case, the NTPC has not complied with the Regulation 10 of the EIA Notification, 2006 and it was also not displayed in the office of the local authority. Even the Telangana SPCB had not uploaded the EC on its website.

10. In the rejoinder affidavit, it has been categorically stated by the applicant that even if the MoEF&CC had uploaded the EC on its website, the same was not available for easy download by the common man. The EC uploaded on the MoEF&CC’s website was not available without any impediment or hindrance. Therefore, it is not logical for a common man to consider finding information through the ‘Track your proposal’ option when the description of the option clearly indicates that it is for use by the project proponent. It was also stated that the EC search option which is available prominently on the Parivesh website even as on 25.05.2023, the impugned EC details were not available. Therefore, it was contended that the “communication” of the EC is not complete even as on date. Hence, the limitation commences only upon the receipt of the RTI reply dated 17.11.2022. The appeal has been filed on 16.12.2022 which is within 30 days of the communication of the order, the appeal is to be deemed to have been filed within the period of limitation.

11. The question now to be determined is whether the appeal is filed within the period of limitation?

12. The above said question is no longer res integra as in a plethora of cases, the issue has been settled.

13. Section 16 (h) of the National Green Tribunal Act, 2010 provides for an appeal to this Tribunal provided the same is filed within 30 days from the date on which the order/decision/direction/determination is communicated to him prefer an appeal to this Tribunal. The proviso further states that if the Tribunal is satisfied that the appellant was prevented by sufficient cause from filing an appeal within the said period, allow it to be filed under the section with a further period not exceeding 60 days. In the instant case, admittedly, it is 101 days of delay in filing the appeal and more than 200 days of delay in filing the delay condonation application.

14. As already held in **Sunil Kumar Samanta Vs. West Bengal Pollution Control Board [M.A. No.573 of 2013 in Appeal No.67 of 2013]** by the Principal Bench of National Green Tribunal, New Delhi on 24.07.2014, it is settled that the provisions of Section 16 of the National Green Tribunal Act, 2010 are unexceptionally mandatory. The said provision clearly conveys the legislative intent of excluding the application of the provisions of the Limitation Act, 1963. Further, it was stated that the Tribunal has no jurisdiction to condone the delay beyond the total period of 90 days provided under Section 16 of the National Green Tribunal Act, 2010. In fact, it is specifically laid down that this Tribunal cannot permit even the institution of an appeal if there is such a delay. The above principle has been followed by us in a few of the cases which were brought before us viz.,

Ramesh. M Vs. Karnataka SEIAA & Anr. [I.A. Nil of 2023 (SZ) in Appeal No.05 of 2023 (SZ)] vide Judgment dated 30.05.2023.

15. Ms. D. Nagasaila, the learned counsel for the applicant had placed reliance on Regulation 10 (i) (a) of the EIA Notification, 2006 pointing out the statutory duty cast upon the project proponent and it was specifically mentioned that the said conditions were not fulfilled by the NTPC. According to her, the EC had not been advertised in any of the local newspapers and it is not available on the website viz., ntpc.co.in. Thus, these mandatory requirements under the EIA Notification have not been fulfilled by the NTPC in the present case.

16. Secondly, Section 16 of the NGT Act, 2010 specifically mentions the date of communication of the order. The date of communication in these circumstances would be uploading of the EC on the MoEF&CC website from where it can be downloaded without any hindrance or impediment. The EC granted should be uploaded by the project proponent as per the EIA Notification. Further, Regulation 10 of the EIA Notification mandates the project proponent to publish in two of the local newspapers, including in the vernacular language.

17. The next mandate is to communicate the EC to the local body which in turn would display the same to make it known to the general public. There is also a duty cast upon the State Departments by uploading the EC on their website.

18. Quoting all the above non-compliances, the learned counsel for the applicant complained that because of the failure on the part of the NTPC to follow the above Regulation 10 of the EIA Notification, the applicants were kept in the dark and could not come to this Tribunal within the stipulated time. Further, even if the MoEF&CC had uploaded it within time since it was not easily be downloaded by a common man, it amounts to not uploading the EC as per Regulation 10 of the EIA Notification, 2006.

19. The above referred Regulation 10 of the EIA Notification pertains to the Post Environmental Clearance Monitoring which is issued in S.O.1533 (E) of the MoEF&CC Notification dated 14.09.2006. The above S.O. is issued in exercise of the powers conferred by Sub-section (1) and Clause (v) of Sub-section (2) of Section 3 of the Environment (Protection) Act, 1986, notifying the requirement of appropriate EC from the Central Government or SEIAA for the construction of new projects/activities or the expansion or modernization of existing projects/activities listed in the Schedule to the said notification entailing capacity addition with change in process and/or technology.

20. Section 16 of the NGT Act, 2010 provides for an appeal provision within an inbuilt period of statutory limitation, including the extension of limitation. The above provision makes it explicitly clear that no appeal could be filed beyond the period prescribed therein and that the Tribunal also is not vested with the jurisdiction to condone the delay beyond the period prescribed. Accordingly, we are required to look into the aspect as to whether

the appeal is filed within the period of limitation as provided in the statute.

21. Now, the learned counsel has placed reliance on the Regulation 10 of the EIA Notification, 2006 which provides for the Post Environmental Clearance Monitoring. The said monitoring is to be done by the authority which issued the EC by either the Central Government or the SEIAA. The non-compliance of the Post EC Monitoring duties by a project proponent would be taken care of by the authority who has issued the notification.

22. Whether the said Regulation 10 of the EIA Notification, 2006 can be taken advantage of by the applicant?

23. The law in this respect is well settled to the extent that whenever there is a conflict between the provisions of a statutory Act and that of a notification or circular issued by an administrative authority, the provisions of the statutory Act will prevail over such conflicting provisions of a notification or circular of an administrative authority. The said principle of law is so well entrenched that we are not required to refer to any specific judgment on the said point of law and it is also a well accepted principle of law.

24. It is also well established that the conflict between the provisions of the statutory Act and that of a notification or circular, the Hon'ble Supreme Court has, in a catena of decisions, held that when the notification is in conflict with the provisions of the statutory Act, the notification has to be ignored. This is because

the legislature cannot work out all the details to fit the various aspects of complex situations. Necessarily, the same should be delegated to the executive or any other agency.

25. The Constitution of India under Article 13 (3) provides for the power to make subordinate laws. Similarly, Section 469 and 470 of the Companies Act, 2013 empowers the Ministry of Corporate Affairs to issue circulars, orders, and clarifications to administer the Act, so also the Central GST Act and Income Tax Act.

26. In the instant case, the Regulation of the EIA Notification, 2006 relied upon by the applicant is issued by the MoEF&CC only for easy implementation of the statute which is the Environment (Protection) Act, 1986. These administrative circulars are issued in relation to a field of law to ensure the implementation of its objectives and provide clarifications in the execution of the same. Therefore, the power of the MoEF&CC to issue such notifications or circulars is circumscribed by the Act and the Rules.

27. Whether the MoEF&CC is empowered to interpret the Act or Rules by issuing such circulars and clarifications?

28. It is already a settled law that it is not the task of the Government to interpret the law and it is the task of the Courts. Even if the Government understood the law in a particular manner that cannot be a true and correct interpretation unless it is so held by the Court. These regulations and circulars are merely advisory in nature. Therefore, these clarifications should not be cited as an authority of a binding character as usually done

in Courts. These regulations do not have any mandatory effect and it is merely advisory in character. The Courts have consistently held that the executive has no inherent or implied law making power by itself, unless and until the same is derived through delegation by the legislature. Any action taken by the administrative body has to be judged within the parameters of the empowering act and it cannot travel beyond it or run counter to it or change the essential features, the identity and the structure of the policy of the Act.

- 29.** Therefore, even presuming that there is a non-compliance with Regulation 10 of the EIA Notification, 2006, the same cannot be taken in support of the case of the applicant, as the National Green Tribunal Act, 2010 specifically prescribed the period of limitation.
- 30.** Admittedly, the appeal is preferred beyond the period of the prescribed number of days and also the extended number of days, the alleged non-compliance of Regulation 10 of the EIA Notification, 2006 cannot be taken advantage of by the applicant to condone the delay as has been held in **Sunil Kumar Samanta Vs. West Bengal Pollution Control Board [M.A. No.573 of 2013 in Appeal No.67 of 2013]** by the Principal Bench of National Green Tribunal, New Delhi on 24.07.2014 which has been followed by us in **Ramesh. M Vs. Karnataka SEIAA & Anr. [I.A. Nil of 2023 (SZ) in Appeal No.05 of 2023 (SZ)]** vide Judgment dated 30.05.2023.

31. Accordingly, we dismiss the interlocutory application [I.A. No.42 of 2023 (SZ)] for condonation of delay. Consequentially, the appeal is rejected and any other interlocutory application filed is also closed.

.....J.M.
(Smt. Justice Pushpa Sathyanarayana)

.....E.M.
(Dr. Satyagopal Korlapati)

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

I.A. No.42/2023 (SZ) &
I.A. No.61/2023(SZ) in
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05th July,2023. (AM & MN).



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

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I.A.No. 61 of 2023(SZ)
In
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Uma Maheswar Dahagama &
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