

**NATIONAL GREEN TRIBUNAL,
NEW DELHI**

...

M.A. No. 23 OF 2011

ARISING OUT OF APPEAL NO. 17 OF 2011

Paryavana Sanrakshan Sangarsh Samiti Lippa ... Appellant

Versus

Union of India & Ors.

...

Respondent(s)

Date: 15th December, 2011

ORDER

The Appellant seeks to assail the order dated 14th June, 2011 issued by Ministry of Environment and Forests, granting final approval for diversion of 17.6857 ha of forest land in favour of M/s. Himachal Pradesh Power Corporation Ltd., (HPPCL) for construction of 130 MW Integrated Kashang stage II and III Hydroelectric Project in this appeal, filed under Section 18 (1) read with Section 14, 15 & 16 of the National Green Tribunal Act, 2010 (hereinafter referred to as NGT Act).

2. Under Section-16 of the NGT Act, an appeal against an order granting forest clearance, is to be filed within 30 days. The proviso of the said section stipulates that if the Tribunal is satisfied that the appellant was prevented by sufficient cause from filing the appeal

within the said period, allow it to be filed within a further period not exceeding 60 days.

3. The appellant presented the Memorandum of Appeal in the office of NGT on 12th December, 2011. The same was registered as Appeal No.17 of 2011, subject to objection on limitation and notices were issued.

4. After receiving notice, Respondents No. 2 & 3 entered appearance through Mr. Naresh Kumar Sharma. Ms. Neelam Rathore appeared on behalf of Respondent No.1, Union of India. In course of hearing on the question of limitation, Mr. Ritwick Dutta prayed to allow him to file a detailed petition for condonation of delay. The said prayer having been allowed an application for condonation of delay was filed on 12th October, 2011 and was registered as M.A. No. 23 of 2011. A reply to the said application was filed by Respondent No.3. On behalf of Respondent No.1, however, no objection was filed.

5. In course of hearing Mr. Dutta Learned Counsel appearing for the appellant, humbly submitted that Rule 8(1) of the NGT Rules prescribes a form of Memorandum of Appeal and, in the said form there is provision to explain the period of limitation. Drawing our attention to the Memorandum of Appeal, Mr. Dutta submitted that the reasons for presenting the Appeal late has been vividly and sufficiently explained in the Memorandum.

6. Mr. Sharma, Learned Counsel appearing for Respondent No. 2 & 3 responded the stand taken by the Appellant, by filing a reply to the application for condonation of delay. It is urged that the appeal having been filed after 30 days the Memorandum of Appeal should have accompanied by an application for condonation of delay. The delay also having not been properly explained, may not be condoned. Mr. Sharma, further forcefully submitted that the Tribunal should not extend the period of limitation prescribed that under a Statute and the appeal filed after lapse of the period prescribed, that too without a petition for condonation of delay, deserves to be rejected at the threshold.

7. In support of his submissions, Mr. Sharma relied upon the decision of the Supreme Court in the case of **Chhattisgarh State Electricity Board V/s Central Electricity Regulatory Commission and Others (2010) Supreme Court Cases - 23**. In the said decision, the Supreme Court observed as follows:-

27. " It is thus evident that the Electricity Act is a special legislation within the meaning of Section 29(2) of the Limitation Act, which lays down that where any special or local law prescribes for any suit, appeal or application a period of limitation different from the one prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and provisions contained in Sections 4 to 24 (inclusive) shall apply for the

purpose of determining any period of limitation prescribed for any suit, appeal or application unless they are not expressly excluded by the special or local law:

8. Mr. Sharma further relied upon the observations made by the Hon'ble Supreme Court in the case of **Singh Enterprises V/s Commissioner of Central Excise and others (2008) 3 Supreme Court Cases 70**. Wherein it was observed as follows:

“The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only up to 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act”.

9. According to Mr. Dutta, the facts of the cases referred to by Mr. Sharma, are distinctly different and the ratio of the decisions cited shall not apply to the facts and circumstances to the case in hand. Inviting our attention to Section 16 of the NGT Act, Mr Dutta submitted that any party aggrieved by an order or decision made, on or after commencement of the NGT Act, by the State Government or other Authority under Forest (Conservation) Act, 1980, may within a period of 30 days from the date on which the order or decision or direction or determination is communicated to him, prefer an appeal to the Tribunal. The impugned order in the present case, it is submitted,

was passed under the Forest (Conservation) Act, on 14th June, 2011. The Memorandum of Appeal was filed on 12th September, 2011. Thus the same was presented on the 90th day of passing the order.

The proviso of Section 16 of the NGT Act reads as follows:

“Provided that the Tribunal may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed under this section within a further period not exceeding sixty days”.

According to Mr. Dutta, the aforesaid proviso empowers the Tribunal to allow appeals to be filed within a further period not exceeding 60 days, provided the Tribunal is satisfied that the appellant was prevented by sufficient cause from filing the Appeal within the prescribed period of 30 days.

10. Repudiating the said submissions Mr. Sharma, Learned Counsel for Respondent No. 3 & 4 contended that admittedly the Appeal was not filed within the prescribed period i.e. 30 (thirty) days, thus it was barred by time. The Memorandum of Appeal in this case was also not accompanied with a petition for condonation of delay, thus the belated application filed for condonation should not be accepted and the Appeal should be dismissed, on the ground of limitation.

Mr. Dutta reiterated his stand and submitted that no separate application is needed to be filed under the NGT Act as there is a provision in the Format, prescribed under the Rules, to explain the delay in the Memorandum of Appeal itself. Mr. Dutta, further submitted that only by way of abundance and caution, the appellant had filed an application for condonation of delay further elucidating the cause shown in the Memorandum of Appeal, in order to satisfy the Tribunal, that there were cogent grounds and sufficient reasons for not filing the appeal within 30 days. Mr. Dutta further forcefully submitted that the appellant was diligently prosecuting the *lis* and no deliberate laches whatsoever can be attributed. That apart the appeal having been presented within 90 days and this Tribunal being empowered under the NGT Act to accept the appeal filed within a period of 60 days from the date of expiry of time, in other words, within a period of 90 days from the date of the order sought to be impugned the delay should be condoned and the Appeal should be heard.

11. The submission of the Learned Counsel for the parties have been considered. It is true that, Section 16 of the Act, requires that the period of limitation should be 30 days from the date on which the order or decision is communicated. However, according to the said Section the outer limit for filing of such appeal is 90 days provided the Tribunal is satisfied that the Appellant was prevented by sufficient cause from filing the appeal in time.

12. It appears that the form prescribed under the NGT Act & Rules has a column to explain limitation. In the Memorandum of Appeal under the heading of Limitation it is averred as follows:

“ 1. That as per order dated 12th May, 2011 of the Hon’ble Supreme Court in Vimal Bhai Vs Union of India SLP No. 12065/2009, delay occurring in filing of an Appeal/Application under the National Green Tribunal Act, 2010, till 60 days after 30th May, 2011 has been condoned.

2. That Appellant organization is based in Lippa village of Kinnaur District of Himachal Pradesh. The village is interior of the Himachal Pradesh and its difficult to access other parts of the country. It takes almost two to three days to reach Delhi from the village and cost of travelling is also very high. During the monsoon season, because of landslide it is even more difficult and expensive to travel in that area of Himachal Pradesh.

Paragraph iv, v, vi, vii and viii of the Memorandum of Appeal also set out the reasons as to why the appellant could not file the appeal within the period of 30 days from the date of the order granting forest clearance.

13. In the application filed for condonation of delay the appellant has vividly explained the reasons already averred in the Memorandum

of Appeal. In our view, the reasons assigned are sufficient and the delay caused has been properly explained.

14. The legislature under the provision of Section 16 of the NGT Act has conferred the power to condone delay up to 60 days after the period of limitation which is 30 days. This has been contemplated with the pious objective and in order to enable the Courts to do substantial justice to the parties by disposing of matters on merits. The expression “sufficient cause” used by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice. The Supreme Court in the case of **Collector, Land Acquisition, Anantnag and Another Versus Mst. Katiji and Others (1987) 2 Supreme Court Cases 107**, laid down 6 guidelines to be kept in mind while dealing with limitation:-

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- 1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.**
 - 2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.**
 - 3. “Every day’s delay must be explained” does not mean that a pedantic approach should be made. Why not every hour’s delay, every second’s delay? The**

doctrine must be applied in a rational commonsense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account for mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.”

15. In the case of **Ram Nath Sao Versus Gobardhan Sao and others (2002) 3 SCC 195**, the Supreme Court while dealing with the word “sufficient cause” observed that a liberal construction has to be given so as to advance substantial justice when no negligence or in action or want of *bona fide* is imputable to a party.

16. There cannot be a straight jacket formula for accepting or rejecting explanation furnished for the delay caused in taking steps. A

cumulative reading of all the decisions referred to *Supra* leads to an irresistible conclusion that the approach of the Tribunal so far as question of limitation is concerned, should not be hyper technical.

17. The submission of Mr. Sharma that the President of the Appellant Samiti was present in the Ministry when the order was passed, is not very much material, as no document is produced before us to reveal that the copy of the impugned order was served upon him, nor there is any material to reveal on what context he went to the MoEF.

18. In the considered view of this Tribunal, the aforesaid mentioned appeal having been filed within 90 days from the date of impugned order, cannot be said to be time barred, only because the Memorandum of Appeal was not accompanied by a separate application for condonation of delay. The reasons assigned in the Memorandum of Appeal coupled with the reasons elaborated in the petition filed for condonation of delay latter, reveals that the delay in not presenting the appeal within 30 days has been well explained and we are satisfied that for the reasons mentioned in the Memorandum of Appeal, the appellant was prevented by sufficient cause from filing the appeal within a period of 30 days. As a matter of fact, the appeal has been filed on the 90th day and under the proviso of Section 16 of the NGT Act, this Tribunal has the authority and jurisdiction to condone the delay.

19. The application is accordingly allowed, the delay is condoned, with no order of cost.

List the appeal for hearing on merits.

(DR. G.K. PANDEY)
Expert Member

(JUSTICE A.S. NAIDU)
Judicial Member

Durga Malhotra
15th December, 2011

