

BEFORE THE NATIONAL GREEN TRIBUNAL

SOUTHERN ZONE, CHENNAI

M.A.No.131 of 2017
in**Appeal No. 23 of 2017 (SZ)****Appeal No. 23 of 2017 (SZ)**

Appellant(s)

Respondent(s)

Radhakrishnan K.U
Puthuvyppe
2. S. Murali
Puthuvyppe

1. Union of India
Rep. by the Ministry of Environment and
Forest, New Delhi
2. Indian Oil Corporation Ltd
Rep. by its Senior Manager
Cochin LPG Import Terminal Site Office
Puthuvyppe
3. Elankunnappuzha Grama Panchayat
Rep. by its Secretary, Ernakulam

Counsel appearing for appellants

Counsel appearing for respondents

M/s. Yogeshwaran
Neha Miriam KurianMr. G.M. Syed Nurullah Sheriff for R1
M/s. King & Patridge & M. Vijayan
Mr. M. Kumaresan for R2**M.A.No.131 of 2017**

Applicant(s)

Respondent(s)

Radhakrishnan K.U
Puthuvyppe and anotherUnion of India
Rep. by the Ministry of Environment and
Forest, New Delhi and others

Note of the Registry	Orders of the Tribunal
Item No.	<p>Delivered by Justice Dr.P. Jyothimani</p> <p>Date: 21st September, 2017</p> <p>Whether judgment is allowed to be published on the Internet .. Yes/No</p> <p>Whether judgment is to be published in the All India NGT Reporter .. Yes/No</p> <p>The appeal is directed against the order of the 1st respondent – MoEF & CC dated 6.1.2017 extending the validity of the Environmental Clearance (EC) and CRZ Clearance granted to the 2nd respondent Indian Oil Corporation Ltd., (IOC) for a period of three years with effect from 5.7.2017 and also to direct the 2nd respondent to restore the site to <i>status quo</i>.</p> <p>2. The 2nd respondent IOC was granted EC for LPG Import Terminal at</p>

Puthuvypeen SEZ (Cochin Port Trust, Cochin) by the 1st respondent on 5.7.2010 on the proposal given by the 2nd respondent for establishment of facilities for receipt, storage and dispatch of imported LPG at Puthuvypeen, Cochin with a capacity of 0.6 MMTPA and that the main activity involves unloading of LPG from ships at proposed Jetty of Cochin Port Trust, transfer to mounted bullets through thermal insulated pipelines, effecting storage under pressurized conditions in mounted bullets and loading in road tanker for distribution of the same.

3. The EC was granted subject to the specific and general conditions and the validity of the original EC was for five years which was extended to seven years by the Circular issued by the MoEF & CC dated 29.4.2015. By the impugned order of the MoEF & CC dated 6.1.2017 the period of EC was extended for a further period of three years with effect from 5.7.2017, based on an online proposal made by the 2nd respondent dated 29.9.2016.

4. The appeal came to be filed before this Tribunal on 10.4.2017. The appeal having been filed under Section 16(h) of the National Green Tribunal Act, 2010 (NGT Act) which enables an aggrieved person to file appeal against an order made, after the commencement of the NGT Act, granting EC in the area in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986. Such appeal is to be filed within a period of 30 days from the date on which the order or decision or direction is communicated. The provision also enables the Tribunal to allow a further period of not exceeding 60 days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within 30 days.

5. As the appeal was filed by the appellant beyond the period of limitation and on another ground, the 2nd respondent has raised a preliminary objection in the reply dated 25.4.2017 stating that the appeal under Section 16(h) of the NGT Act is not maintainable, since the impugned order is not on granting EC but only extending the period of EC already granted on 5.7.2010. That apart, the 2nd respondent has also raised a preliminary issue that the appeal is barred by limitation. It is stated that after the date of passing of the impugned order viz., 6.1.2017 immediately the said order was uploaded on the website of MoEF & CC. The appeal having been filed on 10.4.2017 is beyond the period of 90 days and the

appellant has not even chosen to show sufficient reason for not filing the appeal in time. Therefore, it is the case of the 2nd respondent that the appeal was not only not filed within 30 days from the date of the impugned order which was stated to have been put in public domain but even at the time when the appeal was filed it was beyond the condonable limit of 60 days and therefore it is beyond the powers of this Tribunal. In addition to that, the appellant has not shown any reason for the same.

6. It is not in dispute that at the time of filing the appeal the appellant has not filed any application for condoning the delay. When the appeal came up for admission it was admitted by this Tribunal on 13.4.2017 with specific direction to the respondents 1 to 3 to file reply within two weeks on the question of limitation. It was in fact based on the said direction dated 13.4.2017, the 2nd respondent project proponent has filed reply on 25.4.2017 presented before the Tribunal on 27.4.2017. On 27.4.2017 when the matter came up, the learned counsel appearing for the 2nd respondent has made a specific contention that the appellant has not filed any application to condone the delay, as the appeal was filed beyond the prescribed time, apart from raising the contention that the impugned order is not one of granting EC but is only of extension EC. The learned counsel appearing for the appellant took time for filing rejoinder and additional affidavit and ultimately, as it is seen on record, the appellant has filed M.A.No.131 of 2017 on 21.8.2017 and that application is for condoning the delay of 60 days in filing the appeal. In the application for condoning delay, the applicant has taken a stand that the counsel for the applicant, while searching the 1st respondent's website for another project, has by chance found out the impugned order dated 6.1.2017 and informed the applicant who is referred to as one among the majority of Indians who cannot read or write English and not proficient with the use of computer. It is further stated that in the 1st respondent's website the impugned order of 2017 has been uploaded under the year 2016 and therefore there was no possibility to search the same and in that process there is a delay. It is also the case of the applicant that the 2nd respondent project proponent has not made publication in the local newspapers as well as English as per the provisions of the EIA Notification, 2006 and therefore relying upon the judgment of the National Green Tribunal, Principal Bench in SAVE MON REGION FEDERATION VS UNION OF INDIA (M.A.No.104 of 2012 dated

14.3.2013) the applicant has stated that the stakeholder has not completely performed its obligations and therefore the limitation will not trigger. The applicant, taking the stand that there is no delay in filing the appeal, is stated to have filed the application for condoning delay as an alternate.

7. Even though the 2nd respondent has filed detailed reply on the merit of the appeal also apart from taking the preliminary objection regarding the maintainability, as stated above, as the applicant has filed M.A.No.131 of 2017 to condone delay, we propose to decide the issue of limitation as a preliminary issue and it is only after such decision is rendered in favour of the appellant the merits of the appeal can be looked into.

8. The 2nd respondent has filed reply in M.A dated 22.8.2017 referring to the order of this Tribunal dated 13.4.2017 as it has been stated earlier and also the reply filed by the 2nd respondent dated 27.4.2017 apart from the reply filed by the MoEF & CC dated 3.8.2017 and has stated that when the appeal was listed for hearing on 11.8.2017 the learned counsel appearing for the appellant sought time to file rejoinder and the matter was posted to 23.8.2017. However on 24.8.2017 it was represented that the applicant has filed an application on 21.8.2017 to condone delay. Therefore according to the 2nd respondent, the filing of delay condonation application only on 21.8.2017 even though the matter was pending before this Tribunal from April 2017 onwards, shows want of bona fide on the part of the appellant.

9. It is also stated that the appellant himself is a litigant before the Tribunal in respect of the same issue in an application represented through counsel and in such circumstances it cannot be said that the impugned order of extension of period of EC was not known to the applicant. Therefore, the filing of application for condoning delay is an abuse of process of law. It is also stated by referring to the reply by the MoEF & CC that the impugned order dated 6.1.2017 was uploaded on the website of the 1st respondent on 9.1.2017 and therefore 30 days time for filing appeal has expired on 8.2.2017 and even the further period of 60 days for condonation of delay has expired on 9.4.2017, the appeal having been filed on 10.4.2017 and the application filed for condonation of delay on 21.8.2017 makes it abundantly clear that the appeal has been filed beyond the condonable limit and discretion of this Tribunal. It is stated that unless and until the application to

condone the delay is presented, the appeal filed in April, 2017 is not deemed to have been presented properly and therefore there is a delay of 224 days.

10. It is the case of the 2nd respondent that the applicant has already filed Application No.151 of 2016 questioning the activity of the 2nd respondent which is the subject matter of the impugned order and the applicant was fully aware of the EC granted in favour of the 2nd respondent in 2010 which has expired after seven years on 4.7.2017 and the applicant having known since he has filed Application No.151 of 2016 that the project has not been completed due to various reasons the project proponent would seek extension of EC which has been granted. An issue has been raised by the 2nd respondent that while the applicant has stated that when his counsel was searching the 1st respondent's website he has found the order of extension granted to the 2nd respondent without even stating as to the date when the counsel is stated to have found out. Apart from raising the objection that the EIA Notification, 2006 does not prescribe the procedure to be followed for extension of EC already granted and the EC originally granted in 2010 was duly put in public domain as per law there is no obligation on the part of the project proponent to again publish in the local newspapers on extension of period of EC. Therefore, there is no valid reason shown for condoning delay and the applicant has not shown as to why he has taken 224 days from 9.1.2017 to 21.8.2017 to file the application for condonation of delay. In the absence of any reason much less acceptable reason, the applicant is not entitled to the relief of condonation of delay, the appeal as well as the application have to be dismissed.

11. The 1st respondent MoEF & CC in its reply dated 19.7.2017 has also raised a preliminary objection regarding the maintainability of the appeal as barred by limitation. It is stated that the 1st respondent has uploaded the contents of the EC dated 6.1.2017 on its website on 9.1.2017 which could be downloaded without any hindrance. Therefore, when the 1st respondent being one of the stakeholders has performed its obligation which is the earliest point of time and the limitation starts running and therefore by filing the present appeal on 10.4.2017, the appeal has been filed 93 days after the impugned order was put in public domain. There is no reason given by the applicant for condoning delay of 60 days beyond 30 days and even if it is taken that the Tribunal exercises its jurisdiction for condoning 60 days delay, the appeal having been filed beyond the said period, the Tribunal itself

has no jurisdiction to condone the delay. The 1st respondent has referred to the decisions of the Hon'ble Supreme Court reported in BASAWARAJ & ANOTHER VS. SPECIAL LLAND ACQUISITION OFLICER 2013 (14) SCC 81 and also the decision of this Tribunal in SUNIL KUMAR SAMANTA VS. WEST BENGAL POLLUTION CONTROL BOARD (2014 All (I) NGT Reporter (2) Delhi 250. The 1st respondent has also relied upon another judgment of the NGT in SAVE MON REGION FEDERATION VS UNION OF INDIA (M.A.No.104 of 2012 dated 14.3.2013) to substantiate the points raised that the limitation be reckoned when once the MoEF & CC puts in the public domain the EC by uploading on its website which can be easily downloaded. It is also the case of the 1st respondent by referring to another judgment of the NGT that beyond the period of 60 days to condone delay, the Tribunal has no jurisdiction.

12. Mr. T. Mohan, learned counsel appearing for the applicant while admitting that the applicant has filed Application No.151 of 2016 in respect of the project of the 2nd respondent which is the subject matter of the impugned order in this appeal and there was an order of *status quo* granted on 2.8.2016 and subsequent orders were passed in the said application, has submitted that when it is the case of the project proponent that the application for extension of time for validity of EC was filed on 29.9.2016 based on which the impugned order of extension was granted on 6.1.2017, the project proponent and the counsel ought to have informed the applicant on various days from 10.1.2017 when there was hearing for modification of order in Application No.151 of 2016 and on subsequent dates viz., 24.1.2017, 15.2.2017 and 10.3.2017 when various applications, including Application under Section 26 of the NGT Act was filed. Having not chosen to mention anything about the impugned order of extension it would amount to deliberate failure on the part of the 2nd respondent in disclosing about the impugned order while connected matter was pending. Therefore, according to Mr. T Mohan, the failure on the part of the project proponent cannot be disadvantageous to the applicant. While reiterating that the applicant is not conversant with English and Internet, he has stated that uploading of the impugned order in the website of the 1st respondent on 9.1.2017 was not easily accessible, since the impugned order is categorized under the year 2016 and therefore there was no possibility for having easy access to the impugned order. It is his case that the NGT was closed from 2.4.2017 to 9.4.2017 and

therefore the appeal was filed on 10.4.2017 on the reopening day. Otherwise, his contention is that the discretionary period of condonation of 60 days delay must be liberally taken and unless in extraordinary circumstances it should be taken to be granted and therefore by taking 90 days, he submitted that filing of appeal on 10.4.2017 is within 90 days and therefore the appeal should be admitted taking that the same has been filed within the period of limitation. He has reiterated that M.A itself has been filed only as a matter of abundant caution since according to him as per the judgment of this Tribunal in **Medha Patkar** the period of limitation has not triggered. He has also raised an issue that apart the fact that the website of the 1st respondent was not easily accessible, the limitation will not run unless all stakeholders have completed their performance as per the EIA Notification, 2016. He has referred to various portions of the judgment of the Tribunal in SAVE MON REGION FEDERATION VS UNION OF INDIA (M.A.No.104 of 2012 dated 14.3.2013) to submit that a liberal attitude must be exercised in condoning delay especially on the factual matrix of this case. He has also referred to the judgment reported in **2000(7) SCC 372** and Vimalbhai judgment to show that reasonable attitude must be exercised in condoning delay.

13. Per contra, it is the contention of Mr.G. Masilamani, learned Senior Counsel appearing for the 2nd respondent that the appellant was aware, being a party in Application No.151 of 2016 that the original EC granted to the 2nd respondent dated 5.7.2010 would expire on 4.7.2017 and in the knowledge of the appellant that the project of the project proponent has not been completed. Therefore, the appellant should have been vigilant that there is a possibility for extension of EC particularly when the appellant has been represented through counsel who is stated to have searched the website of the 1st respondent in respect of other cases. The learned Senior Counsel would also submit that there is no obligation on the part of the 2nd respondent or his counsel to mention anything about the extension which was not the subject matter of dispute before this Tribunal in the other application. The learned Senior Counsel would submit that if the contention of the applicant that majority of the Indians do not know English and are not aware of operating the computer, there is no necessity for the Limitation Act which prescribes a discretion on the part of the Tribunal to condone delay on reasonable cause being exposed. It is his contention that the impugned order being not an EC but only an extension of

period of EC already granted in 2010, there is no necessity for publication in the local newspapers as per the requirement of EIA Notification, 2006. Therefore, it is his contention that when the impugned order is available on the website of MoEF & CC and thus kept in public domain, it is not for the appellant to put forth the ground to get over the period of limitation which is based on public policy. He also referred to the provisions of Limitation Act particularly Section 3 to contend that even if the issue of limitation is not raised, it is the duty of the court to take note of the same. The learned Senior Counsel has also referred to the order of this Tribunal dated 27.4.2017 passed in this case wherein the learned counsel for MoEF & CC by filing the reply, has submitted that the impugned order was uploaded on the website of the MoEF & CC on 9.1.2017 itself and therefore the appeal, if filed beyond the period of 30 days, the delay is to be explained if it is within the condonable limit. The contention of the learned Senior Counsel is that the applicant has not taken any care to file application for condonation of delay and M.A for condonation of delay was filed much later on 21.8.2017 which shows the willful conduct on the part of the applicant and the same cannot be ignored by this Tribunal. The learned Senior Counsel also would submit that even otherwise there is no acceptable reason given by the applicant in M.A filed belatedly on 21.8.2017 for condoning delay, since the applicant has been taking a stand that the appeal has been filed on time. He has also produced the online EC Query Form of the MoEF & CC to state that what is stated in the Query Form is "All Years" "All State" "indian oil" and if any one of the same is clicked the entire impugned order is shown on the screen next second. Therefore, it is not correct for the learned counsel appearing for the applicant to state that only if 2016 is put, the impugned order will be displayed on the website. The learned Senior Counsel would further submit that when the appellant is fighting against the 2nd respondent project proponent, he cannot take illiteracy as a ground, particularly taking note of the above said conduct of the appellant. It is not only lethargic and inconsistent but also absolutely mala fide. Therefore, it is his contention that the application for condonation of delay is to be dismissed and the appeal has to be rejected.

14. Mr.G.M. Syed Nurullah Sheriff, learned counsel appearing for the MoEF & CC also reiterates the contents of the reply filed by the 1st respondent particularly paragraphs 8, 9, and 11. He has also demonstrated that the website of the 1st

respondent was easily accessible particularly when the impugned order was put in public domain on 9.1.2017 itself.

15. After hearing the learned counsel appearing for the parties and referring to the contents of the pleadings particularly relating to the delay condonation application, the issue to be decided is as to whether the appeal filed against the impugned order of the 1st respondent dated 6.1.2017 is within the period of limitation or not and as to whether M.A.No.131 of 2017 for condoning delay of 60 days is to be allowed.

16. In the above said appeal the following are the admitted facts: The 2nd respondent was granted EC for the project stated above by the 1st respondent on 5.7.2010 which was originally valid for five years and by virtue of the clarification of the Government of India, the validity period of EC was made as seven years and therefore the original EC granted on 5.7.2010 in favour of the 2nd respondent stood valid upto 4.7.2017. It is the case of the 2nd respondent that it has filed an online application for extension of period of EC on 29.9.2016 since the work was not completed and which is well before the expiry of the period of original EC and within the period prescribed under law. It was based on the said proposal for extension of period of EC, the 1st respondent MOEF & CC has passed the impugned order on 6.1.2017, extending the validity period of EC dated 5.7.2010 for a further period of three years from 5.7.2017 till 4.7.2020. The online EC query, the copy of which has been submitted, shows the following particulars:

Ministry of Environment, Forest and Climate Change
Government of India
Online Submission & Monitoring of Environmental Clearances

Environment Clearance Status Query Form

Status Recommended EC Year All years

Category All category State All State

Type Extension of validity

Status details Enter text for search: Indian oil

Help: Kindly click on image button to open the attached files (e.g. Form TDR letter EC letter, Additional information, Cover letter etc.)

S. No	Proposal details	Location	Important Dates	Category	Company/Proponent	Type of project
1	Proposal No.IA/KL/MIS/18884 File No.11-21/2010-IA.III Proposal Name LPG Import Terminal at Pudevypen-SEZ(Cochin Port	State: Kerala District: Ernakulam Total	Date of submission for EC:29 Sep.2016 Date of previous EC Granted 05 Jul 2010 Date of EC granted 06	Infrastructure and Miscellaneous Projets – CRZ	Indian Oil Corporation Limited (IOCL)	Extension

Trust Cochin by M/s.Indian Oil Corporation Ltd. Cochin		Jan.2017			
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On going through the above form, it is clear that even if one puts any year or any State with 'indian oil' , the date of submission of application for extension, date of previous grant of EC and date of the impugned order along with the proposal details and location are displayed on the screen. In such circumstances, there is no reason for this Tribunal to take a different stand and therefore there is no impediment for the outsider to have an easy access to the impugned order.

17. We have no hesitation to hold on going through the said form submitted before us that the impugned order is easily accessible particularly when it is admitted that even if one puts the date of grant of the impugned order viz., 6.1.2017, the entire history is shown in the screen as it is seen in the copy of the query form submitted by the learned counsel for the applicant himself which is extracted below.

Ministry of Environment, Forest and Climate Change
Government of India
On line Submission & Monitoring
of Environmental Clearances

Environment Clearance Status Query Form

Status EC Granted Year 2016
Category Infrastructure and Miscellaneous State Kerala
Type Extension of Validity Enter text for Search

Kindly click on Image button to open the attached files (e.g. Form 1, TOR letter Additional Information, Cover letter etc.

Proposal details	Location	Important Dates	Category	Company/ Proponent	Type of project	Attach ed files	View Essential details sought by MoEF & C
Proposal No. IA/KL/MIS/188884/1910 File No.11-21/2010-IA.III Proposal Name: LPG Import Terminal at Puduvypeen SEZ (Cochin Port Trust, Cochin) by	State: Kerala District: Ernakulam Tehsil:	Date of Submssion for EC: 29.09.2016 Date of previous EC granted : 05.07.2010 Date of EC granted: 06.01.2017	Infra structure and Miscella - neous projects + CRZ	INDIAN OIL CORPORATION LTD. (IOCL)	Extention		

M/s.Indian Oil Corporation Ltd., Cochin								
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18. It is admitted, as it is seen on record that the papers relating to appeal was presented by the appellant before this Tribunal on 10.4.2017. When the impugned order of the 1st respondent dated 6.1.2017 is freely accessible on the website of the 1st respondent on 9.1.2017, the appeal having been filed before this Tribunal on 10.4.2017, it is clearly beyond 30 days which is the prescribed time limit for filing appeal as per Section 16 of the NGT Act. As we have stated above, under Section 16(h) of the NGT Act when the period of limitation is 30 days, even assuming that the impugned order is forming part of EC, on the factual matrix that the impugned order was available in public domain on 9.1.2017 the appeal has been filed beyond the prescribed 30 days. If it is the case of the applicant that there was a delay which is condonable within 60 days, he ought to have filed an application for condonation of delay along with filing of the appeal. The period of 60 days which is a discretionary power of the Tribunal itself, has to be exercised by the Tribunal only when reasonable cause is shown for filing the appeal beyond the period of 30 days and within the period of 90 days. In the absence of such application having been filed along with the appeal, we have necessarily to hold that there is no reasonable cause shown at the time of filing the appeal for condoning the delay. Even otherwise, when it is taken, as correctly submitted by the learned Senior Counsel appearing for the 2nd respondent, even when the matter was called on 27.4.2017 in the presence of the learned counsel appearing for the applicant, the learned counsel appearing for the 1st respondent MoEF & CC has specifically informed before this Tribunal that the impugned order was uploaded in the website of the 1st respondent on 9.1.2017. It was in those circumstances, the Tribunal has passed the following order:

“Learned counsel appearing for respondent No.1, Ministry of Environment, Forest and Climate Change (MoEF & CC) seeks time to file the reply submitting that the impugned order was uploaded in the Website of the MoEF & CC on 09.01.2017 itself. Learned counsel also submitted that the appeal is filed after the period of 90 days.”

Therefore, the applicant, through his counsel, was aware of the order passed on 27.4.2017. We do not understand as to why the applicant has taken time till 21.8.2017 to file M.A.131 of 2017 to condone the delay. The conduct of the

appellant would certainly mean that from 27.4.2017 there was an effective knowledge of the impugned order which was not only put in public domain on 9.1.2017 and also made known on 27.4.2017 and inspite of that the application to condone delay with reason has not been filed before this Tribunal before 21.8.2017.

19. Taking all these circumstances cumulatively, one has to come to an irresistible conclusion that the conduct of the applicant is not bona fide in prosecuting the case. Even otherwise, the period of delay, if it is calculated properly, it is beyond the condonable limit of 60 days which is not within the jurisdiction of this Tribunal. Further, admittedly, other Application (No.151 of 2016) pursued by the applicant also relates to the same project of the 2nd respondent in respect of which EC was granted on 5.7.2010.

20. As it is stated by the Hon'ble Supreme Court in COLLECTOR, LAND ACQUISITION, ANANTNAG & ANOTHER VS. KATIJI & OTHERS (1987) 2 SCC 107 while showing sufficient cause each and every day's delay need not be explained and there is no need for pedantic approach. But on the factual matrix of this case, the applicant has been taking consistent stand that the impugned order was not available in public domain which is otherwise, as we have stated above. The judgment of the Hon'ble Division Bench of the High court of Madras in MSN LABORATORIES LTD VS. THE REGISTRAR NATIONAL GREEN TRIBUNAL, SOUTHERN ZONE, CHENNAI & OTHERS (W.P.No.7272 of 2015 dated 16.3.2015) is certainly not applicable to the facts of this case for the reason that admittedly in that case there has been sufficient cause explained and that was relating to the challenging of EC. But on the factual matrix of this case, even though the appeal papers were presented before this Tribunal on 10.4.2017 by which time the period of limitation has already expired and even condonable period has been crossed, the applicant has deliberately kept quiet in filing the application for condonation of delay which was filed only on 21.8.2017 and therefore the conduct of the applicant in this case cannot be compared to the case decided by the Hon'ble High Court of Madras. The judgment relied upon by the learned counsel appearing for the appellant in M. JEEVA AND ANOTHER VS. MoEF & CC AND OTHERS (M.A.No.105 of 2013 dated 31.10.2013) is also not applicable to the facts of this case. In fact, in that case we have made it very clear after finding that there was no bona fide in the attitude of the applicant in that case and therefore

considering the sufficient reason, the delay condonation application came to be allowed. The reference made to the judgment of the Principal Bench of NGT in M.S. MEDHA PATKAR VS. MOEF & OTHERS (Appeal No.1 of 2013) makes it very clear as follows

“16. The Tribunal must adopt a pragmatic and practical approach that would also be in consonance with the provisions of the Act providing limitation. Firstly, the limitation would never begin to run and no act would determine when such limitation would stop running as any one of the stakeholders may not satisfy or comply with all its obligations prescribed under the Act. To conclude that it is only when all the stakeholders had completed in entirety their respective obligations under the respective provisions, read with the notification of 2006, then alone the period of limitation shall begin to run, would be an interpretation which will frustrate the very object of the Act and would also cause serious prejudice to all concerned. Firstly, this completely frustrates the purpose of prescription of limitation. Secondly, a project proponent who has obtained environmental clearance and thereafter spent crores of rupees on establishment and operation of the project, would be exposed to uncertainty, danger of unnecessary litigation and even the possibility of jeopardizing the interest of his project after years have lapsed. This cannot be the intent of law. The framers of law have enacted the provisions of limitation with a clear intention of specifying the period within which an aggrieved person can invoke the jurisdiction of this Tribunal. It is a settled rule of law that once the law provides for limitation, then it must operate meaningfully and with its rigour. Equally true is that once the period of limitation starts running, then it does not stop. An applicant may be entitled to condonation or exclusion of period of limitation. Discharge of one set of obligations in its entirety by any stakeholder would trigger the period of limitation which then would not stop running and equally cannot be frustrated by mere noncompliance of its obligation to communicate or place the order in public domain by another stakeholder. The purpose of providing a limitation is not only to fix the time within which a party must approach the Tribunal but it is also intended to bring finality to the orders passed on one hand and preventing endless litigation on the other. Thus both these purposes can be achieved by a proper interpretation of these provisions. A communication will be complete once the order granting environmental clearance is placed in public domain by all the modes referred to by all or any of the stakeholders. The legislature in its wisdom has, under the provisions of the Act or in the notification of 2006, not provided any other indicator or language that could be the precept for the Tribunal to take any other view.

(Emphasis supplied)

21. When once one of the stakeholders perform its obligation, the period of limitation starts triggering and would not stop running and in fact quoting the said paragraph the NGT (WB) in WIRELESS CO-OPERATIVE HOUSING SOCIETY VS. CHAITRALI BUILDERS/SUMASHIP (P) LTD (M.A.NO.151 of 2014 dated 26.5.2015) has held that the extension of EC is independent of EC even though it is

connected with the main EC but by challenging the extension order one cannot be permitted to challenge the original EC. In fact, the Tribunal held that it is necessary to protect the project proponent from the delayed litigation when certain investments have been made by the project proponent and substantial development might have been done.

22. The term "communication" and putting the order of MoEF & CC in public domain has been explained in SAVE MON REGION FEDERATION VS. UNION OF INDIA 2013(1) ALL (I) NGT PB (1) in which one of us (Justice Dr.P. Jyothimani) is a party. While deciding about the period of limitation, no doubt the Tribunal has held that liberal approach must be followed to determine the cause on merits rather than throw out the petition on the ground of delay, but the said approach must be followed only if the conduct of the applicant which is relevant consideration to show that there is no negligence or mala fide on his part. It was held as follows:

"29. It cannot be disputed that the law of limitation is founded on public policy and is enshrined in the maxim "interest reipublicae ut sit finis litium" which means that it is for the general welfare that a period be part to litigation. The very scheme of proper administration of justice pre-supposes expediency in the disposal of cases and avoidance of frivolous litigation. In construing enactments which provide period of limitation for institution of proceedings, the purpose is to intimate people that after lapse of a certain time from a certain event, a proceeding will not be entertained where a strict grammatical construction is normally the safe guide. Law is not an exercise in linguistic discipline but the substance of legislative intention can also not be frustrated merely by uncalled for equity or sympathy. (Reference : U.N. Mitra's Law of Limitation and Prescription, 12th Edition 2006).

30. In the case of **Banarasi Devi v. ITO : AIR 1964 SC 1742**, the Supreme Court clearly stated the principle that the provisions introduced to open up liability which had become barred by lapse of time will be subject to the rule of strict construction. Over a period of time this principle has prevailed, may be with some variation, relatable to the sufficiency of cause shown by the parties.

31. To law of limitation, the argument of hardship or alleged injustice has to be applied with greater care. The argument "ab inconvenienti" said Lord Moulton, "is one which requires to be used with great caution". (Reference: Principles of Statutory Interpretation by Justice G. P. Singh, 11th Edition, 2008).

32. The essence of the above enunciated principle, thus, reflects a simple but effective mandate that a provision must be construed on its plain and simple language. The provision of limitation should be construed strictly, but at best, its application could be liberalised where actual sufficient cause in its true sense is shown by an applicant who has acted bonafide and with due care and caution.

33. It may be noticed that even after sufficient cause has been shown, a party is not entitled to the condonation of delay in question as a matter of right. The proof of sufficient cause is a condition

precedent for the exercise of the discretionary jurisdiction vested in the Courts/Tribunals. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage that diligence of the party or its bonafides may fall for consideration.

38. As already noticed, the law of limitation is relatable to the principle of public policy. Legislative intent behind prescribing limitation is to further the cause of public policy, on the one hand and to aid the doctrine of finality, on the other. This would impliedly help in expeditious disposal of cases. In our considered view, it is always better to adopt a balanced approach with reference to the facts and circumstances of a given case. A strict interpretational approach may subserve the cause of justice while too liberal an approach may defeat the ends of justice. The law of limitation, therefore, must receive a reasonable construction with the aid of the principle of plain reading. Wherever the Court/Tribunal finds sufficient cause being shown and conduct of the applicant being bonafide, that is to say his approach and attitude is not that of negligence and inaction, he has approached the Court with clean hands and true facts and that there would be no grave and irretrievable injustice done to the other parties, the judicial discretion of the Court may be tilted more towards condoning the delay rather than shutting the doors to justice right at the threshold.”

(emphasis supplied)

23. In SUNIL KUMAR SAMANTA VS.M/S. SAMANTA ENGINEERING WORKS 2014 ALL (1) NGT REPORTER (2) (DELHI) 250 while dealing with the limitation in filing appeal under Section 16 of the Act, the Principal Bench of the Tribunal has held as follows:

“9. A bare reading of the above provision shows that appeal as contemplated under Section 16 against an order or decision or direction or determination, has to be filed within 30 days from the date on which the order is communicated to the aggrieved persons. Proviso to Section 16 of the NGT Act provides for a special limitation i.e. the appeal could be filed beyond the period of 30 days within a further period not exceeding 60 days, upon showing ‘sufficient cause’. This means the tribunal cannot allow an appeal to be filed under Section 16 beyond a total period of 90 days. The NGT Act is a self-contained code as it provides for the forum, procedure, limitation, functions and powers of the tribunal. Furthermore, the scheme of the NGT Act, particularly, with reference to the language of Section 16 of the NGT Act, provides special limitation period. Thus, it necessarily excludes the operation of the general law of limitation. The provisions of the Limitation Act cannot be harmoniously construed with the provisions prescribing special limitation under the NGT Act as in that event it would defeat the very purpose of the NGT Act. A limitation provided under special law must prevail over the general law of limitation; particularly in face of the overriding effect given to the NGT Act by the framers of the law in terms of Section 33 of the NGT Act. In terms of Section 33, the provisions of the NGT Act shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force. The cumulative effect of all these factors would be that the special limitation prescribed under the NGT Act does not admit any exception to attract the applicability of the provisions of the Limitation Act. Section 16 of the NGT Act controls the very institution of an appeal in the Registry of the Tribunal. In terms of Section 16, the appeal can be filed ‘within a further period not

exceeding 60 days' but thereafter the Tribunal is not vested with the power to allow the appeal to be filed beyond the total period of 90 days. Thus, the tribunal loses its jurisdiction to entertain an appeal after the expiry of the special period of limitation provided under proviso to Section 16 of the NGT Act.

12. In all the above cases, the consistent view of the tribunal has been that the tribunal has no jurisdiction to condone the delay beyond the period of 90 days and it is in fact the very filing of the appeal that is impermissible in terms of proviso to Section 16 of the NGT Act. Admittedly, in the present case, the delay in filing the appeal is beyond 90 days i.e. the total delay being 125 days. Thus, this tribunal has no jurisdiction to entertain the appeal after the expiry of the special limitation period provided under the relevant provisions. We are unable to find any substance in the submissions of the learned counsel appearing for the appellant, that the judgments of the tribunal do not state the correct law and/or are not applicable to the facts of the present case. We have no hesitation in rejecting the said contention raised on behalf of the appellant.

24. In *BASAWARAJ & ANOTHER VS. SPECIAL LAND ACQUISITION OFFICER* (2013) 14 SCC 81 while dealing with the condonation of delay in the context of Section 5 of the Limitation Act, the Hon'ble Supreme Court considered the term "sufficient cause" only to ensure substantial justice when negligence in action or lack of bona fide cannot be imputed on a party. It was reiterated that the court has no power to extend the period of limitation on equitable ground.

"11. The expression "sufficient cause" should be given a liberal interpretation to ensure that substantial justice is done, but only so long as negligence, inaction or lack of bona fides cannot be imputed to the party concerned, whether or not sufficient cause has been furnished can be decided on the facts of a particular case and no straitjacket formula is possible. (Vide Madanlal V. Shyamlal) and Ram Nath Sao v. Gobardhan sao)

*12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation." The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim *dura lex sed lex* which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute.*

15. The law on the issue can be summarized to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within the limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not

acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.”

25. In view of the above said legal position and also taking note of the factual matrix of this case, particularly the conduct of the applicant, we see no reason to accept the contention of the learned counsel appearing for the applicant and accordingly the application in M.A.131 of 2017 fails and the same is dismissed. Consequently, Appeal No.23 of 2017 stands rejected.

....., JM

(Justice Dr. P. Jyothimani)

....., EM

(Shri P.S. Rao)

NGT