

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

MISC. APPLICATION NO.82 OF 2015

IN

APPEAL NO.23 OF 2015

CORAM :

**HON'BLE SHRI JUSTICE V.R. KINGAONKAR
(JUDICIAL MEMBER)**

**HON'BLE DR. AJAY A.DESHPANDE
(EXPERT MEMBER)**

In the matter of:

1. SHAKTISINH GOHIL,

Sarpanch, Villge: Jasapara
Taluka: Talaja,
District: Bhavnagar-364 120.

2. HAJABHAI DIHORA,

Village: Mithivirdi, Taluka: Talaja,
Taluka: Talaja,
District: Bhavnagar-364 120.

3. JAGRUTIBEN GOHIL

Village: Jasapara, Taluka: Talaja,
Taluka: Talaja,
District: Bhavnagar-364 120.

4. KRISHNAKANT CHAUHAN

214, R.D. Complex,
Nvagam-Dindoli Road, Udhna,
Surat-394 210.

5. ROHIT PRAJAPATI

37, Patrakar Colony,
Tandalija Road,
Vdodara-390 020.

APPLICANTS

A N D

1. UNION OF INDIA,

Represented through its Secretary
Government of India
Ministry of Environment, Forest and Climate
Change, (MoEFCC)
Indira Paryavaran Bhavan,
Jor Bagh Road,
New Delhi-110 003.

2. GUJARAT POLLUTION CONTROL BOARD,

Paryavaran Bhavan, Section 10A,
Gandhinagar-382 010.

**3. GUJARAT COASTAL ZONE MANAGEMENT
AUTHORITY**

Block No.14, 8th flor,
New Sachivalaya,
Section 10 A, Gandhinagar-382 010

4. ATOMIC ENERGY REGULATORY BOARD,

Niyamak Bhavan, Anushakti Nagar

Mumbai-400 094.

**5. NUCLEAR POWER CORPORATION OF INDIA
LIMITED,**

Nabhikiya Urja Bhavan, Anushaktinagar,
Mumbai-400 094.

.....**RESPONDENTS**

Counsel for Appellant(s):

**Mr. Asim Sarode a/w Alka Babaladi Mr Pratap Vitankar, Ms
Radhika, Ms Shivani Kulkarni, Ms Mrinalini Shinde for the
Applicants.**

Counsel for Respondent(s):

**Mr. Viral K. Shah for Respondent Nos. 2 and 3.
Mr. Krishnakant D. Ratnaparkhi for Respondent No.4
Mr. Ajit R.Toro for Respondent No.5.**

DATE : NOVEMBER 5th , 2015

P.C.

- 1.** We have heard learned Advocates for the parties.
- 2.** By filing this Application – the Applicants, have approached to this Tribunal and are asking for condonation of delay. According to them, there is delay of thirty seven (37) days in filing of Appeal against the

CRZ order, which allegedly was issued on March 3rd, 2015.

3. Shorn of un-essentials, it may be stated that the case of the Applicants is that the impugned order came to their knowledge only when they came across the Newspapers, which were published on 25th March, 2015 in which news item about grant of such CRZ clearance was published by the Project Proponent (PP) and thereafter they decided to prefer an Appeal. Thus, it is their case that date of Application of the Newspaper, which is one of the mode of 'communication' under provisions of the EIA Notification dated 14th September, 2006, has given rise to the 'cause of action' for filing of the Appeal. They further allege that they are residing at a far-away place, where facilities like internet and other technically advanced nature are unavailable. It is for such a reason that they could not come across any communication, if at all might have been put on the website by any of the Authority.

4. Let it be noted that Mr. Viral K. Shah, learned Advocate for the Respondent Nos. 2 and 3, has no objection to condone delay and grant the Application.

5. The Application is, however, strongly opposed on behalf of the Respondent No.5, i.e. Nuclear Power Corporation of India Ltd (NPCIL). It is contended that the PP took all the steps to comply its part for communication of the order of CRZ. It is further stated that the proposal for clearance for Nuclear Power Plant (NPP) at Mithivirdi, District Bhavnagar, Gujarat, was considered during EAC, MoEFCC Meeting held on 28th - 30th January, 2015, at New Delhi. While considering proposal for CRZ clearance, according to PP, the Expert Appraisal Committee (EAC) recommended CRZ clearance for NPP, Mithivirdi, which was uploaded on MoEF (CC), website on February 10th, 2015. It is also allegation of the PP that the Applicants are active in the field of environment and related matters, and had knowledge of such grant of CRZ, much prior to 3.3.2015. Thus, there is delay of more than fifty seven (57) days in filing of the present Appeal, which is not justified at all. The PP further submits that the Notice of Public Hearing dated 5.3.2013 was published in the local newspapers and the clearance of CRZ was also published on 25.3.2015, as per requirement of EIA Notification. On these premises, the PP (Respondent

No.5), would submit that delay should not be condoned.

6. We are conscious of the fact that ordinarily it is duty of the Appellant to approach the Tribunal within prescribed period of limitation of thirty (30) days under Section 16(1) of the National Green Tribunal Act, 2010, for filing of Appeal against the impugned order. The delay caused thereafter can be condoned, only and only if just and reasonable ground/cause is shown as per the proviso appended below the relevant Section 16(1) of the NGT Act.

7. There cannot be duality in opinion, however, that the Law as regards condonation of delay is well settled. There is plethora of case laws to support the view that normally a Court/Tribunal, as and when, there is no delay beyond which condonation is restricted under the Law by itself, should not take hyper technical view. It is necessary to take liberal view in such a matter in order to avoid injustice and imbalance, only because a party has come to the Tribunal after committing some delay.

8. It is true that the Applicants have come to the Tribunal after committing certain amount of delay.

Contention of learned Advocate for the Applicant is that they have come across the grant of CRZ clearance by the CRZ Authority only after reading of the newspaper item in the last week of March, 2015, i.e. on 25th March, 2015. The PP has not placed anything on record to show that any other point triggered cause of action, except and save the above newspaper report. The reply affidavit to delay condonation Application does not cause whisper about any hosting of information on the Website of MoEF or CRZ, whatever it may be. Nor it can be said that the PP had no such knowledge regarding availability of the MoEF Website, because it is categorically stated in paragraph-2 of the reply affidavit that the minutes of Meeting of SEAC were put on MoEFCC Website, wherein EAC recommended CRZ clearance for NPP at Mithivirdi, was reviewed. In the teeth of such clear knowledge available to PP that there was review taken in the Meeting dated 28th-30th January, 2015, by the MoEF for CRZ clearance for NPP at Mithivirdi, we fail to understand as to why PP did not give any kind of information as to when the CRZ clearance proposed in respect of the project in question was put in public domain not submitted with all details, including as to when it was hosted on the

Website of MoEF (CC) and when first cause of action triggered.

9. Though a large number of case-laws are developed and reported spanned and there is rather reiteration of the same view of co-ordinate Benches of the National Green Tribunal, which need not be reproduced, including (1) **Save Mon Region Federation vs Union of India & Ors** (M.A No. 104 of 2012 arising out of Appeal No.39 of 2012) as well as (2) **Medha Patkar vs MoEF & Ors Ors** (Appeal No.1 of 2013), the first cause of action triggered from the date of knowledge which the Applicants allege is 25th March, 2015 and has remained uncontroverted.

10. Under above circumstances, we allow the Misc. Application and condone delay. The Misc. Application No.82 of 2015 is allowed with no costs and accordingly disposed of. The Appeal No.23 of 2015 to proceed further.

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(Justice V. R. Kingaonkar)

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(Dr.Ajay A. Deshpande)

PUNE.

DATE: NOVEMBER 5th, 2015.