BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

.....

M.A. NO. 104 OF 2012

(ARISING OUT OF APPEAL NO. 39 OF 2012)

In the matter of :

1. Save Mon Region Federation
   Through its General Secretary, Lobsang Gyatso
   Near High Secondary School Tawang, P.O. Tawang,
   District Tawang, Pin Code-790 104.

2. Lobsang Choedar
   Khet Village, P.O. Mukto, P.S. Jang,
   District Tawang, Pin Code 790 104
   Arunachal Pradesh.

.....Appellants

Versus

1. Union of India
   Through its Secretary
   Ministry of Environment and Forests
   Paryavaran Bhawan, CGO Complex
   Lodhi Road, New Delhi-110 003.

2. Arunachal Pradesh State Pollution Control Board,
   Through its Member Secretary,
   Arunachal Pradesh State Pollution Control Board,
   Department of Forest, Environment and Wildlife Management,
   Itanagar-791111.

3. NJC Hydro Power Limited
Through its Vice President and CFO
With its registered office at
A-12, Bhilwara Towers, Sector-1, Noida-201301.
Uttar Pradesh.

.....Respondents

Counsel for Appellants :
Mr. Ritwick Dutta, Advocate,
Mr. Rahul Choudhary, Advocate and
Ms. Parul Gupta, Advocate.

Counsel for Respondents :
Mr. Vikramjeet, Advocate, for Respondent No.1
Mr. Raj Panjwani, Sr. Advocate, with Ms. Divya Sharma, Advocate for Respondent No.3.

ORDER

CORAM :

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)
Hon'ble Mr. Justice P. Jyothimani (Judicial Member)
Hon'ble Dr. D.K. Agrawal (Expert Member)
Hon'ble Dr.G.K. Pandey (Expert Member)
Hon'ble Prof. A.R. Yousuf (Expert Member)

Dated : March 14, 2013

JUSTICE SWATANTER KUMAR (CHAIRPERSON)

1. The Ministry of Environment and Forests (for short 'MoEF') accorded clearance for construction of 780 Mega Watts Naymjang Chhu Hydroelectric Project in Tawang district of Arunachal Pradesh. The applicant is an organization based in Tawang, consisting of citizens of Monpa indigenous community who advocate environmentally and culturally sensitive development in the ecologically and geologically fragile, seismically active and culturally sensitive Mon-Tawang region of the State. The applicant being aggrieved from the order dated 19th April, 2012 has preferred an appeal questioning the legality and correctness of the said order.

2. The appeal apparently and admittedly has been filed beyond 30 days from the date of communication of the order to the appellant. The appeal being barred by time, is accompanied by an application (MA No. 104 of 2012) praying for condonation of delay in filing the appeal. In view of the objections raised with regard to the

maintainability of the appeal in as much as it is barred by time, we have to deal with the question of limitation at the first instance and before we dwell upon the merits of the case. Thus, in view of the limited controversy, we shall refer only to the necessary facts relating to the application for condonation of delay.

3. The MoEF granted Environmental Clearance to the project vide its order dated 19th April, 2012. According to the applicant he received no information of passing of the order till 17th May, 2012, when the applicant visited Delhi and came to know that a news item had appeared, mentioning about the environmental clearance. On 15th May, 2012, one Himanshu Thakker informed the MoEF that its website had no information of the said Environmental Clearance. He also mentioned of the non-availability of the compliance reports on the website. Even the Central Information Commissioner had passed an order on 18th January, 2012 stating that the Environmental Clearance should be uploaded on the website at the earliest and should be available to the public. Immediate non-placing of the order dated 19th

April, 2012 on the website, thus, was in violation of the order of the Central Information Commissioner dated 18th January, 2012. The MoEF uploaded the order on its website on 22nd May, 2012. However, still as per the email of the Director of MoEF dated 5th June, 2012, (Annexure R1/2) the Environmental Clearance could not be made available as on that date. In this email to Himanshu Thakker the Director (MoEF) stated that she had tried her level best to upload the Environmental Clearance but there were glitches in the synchronization of their new website with the old one. The said order could only be downloaded by the applicant from the website of MoEF on 8th June, 2012, the date on which applicant claims the completion of communication of the order. The applicant could download the copy of the Scoping (ToR) Clearance granted to the Project Proponent only on 24th June, 2012. The applicant came to Delhi on 4th July, 2012 for obtaining Form-I, which was received by him on 12th July, 2012. He filed the appeal on 17th/18th July, 2012, i.e. on the 90th day from the date of clearance, i.e. 19th April, 2012. It is further the contention of the applicant that he got copy of

the Environmental Clearance only on 8th June, 2012 and could prepare the appeal on 17th July, 2012 which was received in the Registry of the NGT on 18th July, 2012. Therefore, according to the applicant, the appeal has been filed within the extended period of 60 days but beyond the prescribed limitation of 30 days and there being sufficient cause for non-filing of the appeal within 30 days, the delay in filing the appeal may be condoned and the appeal be heard on merits.

4. The MoEF, in its reply, has taken up the stand that the minutes of the Expert Appraisal Committee (EAC)for the River Valley and the Hydro Electric Power (HEP) Projects are displayed on the Ministry's website in a timely manner. It is admitted that the Environmental Clearance was granted to the applicant on 19th April, 2012 and was displayed on the website on 22nd May, 2012. In terms of EIA Notification 2006, the Project Proponent was required to submit the EIA and EMP reports along with the proceedings of public hearing as prayed.

5. The draft reports were submitted to the Ministry and the same were displayed on the website on 15th December,

2010. It was mentioned in the order of the Environmental Clearance that the Project Proponent should, within seven days, advertise the same in at least two local newspapers circulated in the region around the project and the same should be available on the website as well. According to the MoEF, even after getting the copy of the Environmental Clearance on 8th June, 2012, the appeal has not been filed within 30 days and as such, the applicant cannot shift the burden onto the Ministry on the ground of negligence, omission and carelessness.

6. The stand of the Project Proponent is that once the public hearing had been conducted on 8th February, 2011, and the proposal was considered by the EAC on 26th March, 2011 and 16th – 17th September, 2011 and eventually after the grant of the Environmental Clearance on 19th April, 2012, the same was uploaded on 30th April, 2012 on the website of the Respondent No. 3 Company and the relevant information had also been published in the newspaper on 1st May, 2012. Resultantly, the Project Proponent has complied with the conditions by following the due process of law. According to this respondent, the

MoEF, somewhere in May 2012, had put the Environmental Clearance order on the website.

7. A collective reading of the replies filed on behalf of the non-applicants and the submissions made, shows that their main contention is that the factum of publication of information in the newspaper on 1st May, 2012, the circulation of the order amongst the *panchayats* and putting it on the website is sufficient compliance of the relevant provisions of the National Green Tribunal Act, 2010 (for short 'the NGT Act') and there is no sufficient cause shown by the applicant for not filing the appeal within the prescribed period of limitation under Section 16 of the NGT Act.

8. It is also stated by these non-applicants that the copy of the Environmental Clearance order was circulated in the area affected by the project on 24th April, 2012 and was uploaded on the website of the Project Proponent on 30th April, 2012. The Environmental Clearance was uploaded on the MoEF website on 30th May, 2012.

9. In the rejoinder filed on behalf of the applicant, besides reiterating the facts already noted, it has also been averred that the Project Proponent, Respondent No.3, to whom the Environmental Clearance was granted, has no website in existence even till date. Also, the website of the MoEF does not reflect the complete information. It is contended that the expression 'date on which the order is communicated to him' appearing in the relevant provisions of the NGT Act signifies not merely constructive communication but the actual communication, satisfying all mandatory requirements. The Environmental Clearance was not available on the website of the MoEF till 8th June, 2012. The email sent by the Director, MoEF to Mr. Himanshu Thakker on 5th June, 2012 clearly establishes the fact that the Environmental Clearance was not available on the website of the MoEF. The requisite information, it is contended, had not even been published by the Respondent No. 3 Company in the newspapers, in accordance with law.

10. Undisputedly and admittedly, this is not a case where the appeal has been filed beyond the period of 90

days (i.e. within 30 days from the date of which the order or decision is communicated to him plus further period of 60 days, as permissible under the NGT Act). Thus, we are called upon to decide if there exists sufficient cause for filing the appeal beyond 30 days but within 90 days from the date of communication of the order. Before we advert to examine the sufficiency of cause relatable to the facts and circumstances of the present case, it is necessary for us to examine the legal framework of applicability of the law of limitation to the cases arising under the NGT Act. Section 16 of the NGT Act confers appellate jurisdiction upon the Tribunal and gives the right to appeal to 'any person' aggrieved by any of the orders as stated under sub-sections (a) to (j) of Section 16 of the NGT Act. It will be useful to reproduce the relevant extract of this provision:

> "**16. Tribunal to have appellate jurisdiction. –** Any person aggrieved by, -
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> (h) an order made, on or after the commencement of the National Green Tribunal Act, 2010, granting environmental clearance 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 (29 of 1986);
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> XXXXX XXXXX XXXXX XXXXX
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> May, within a period of thirty days from the date of which the order or decision or direction or determination is communicated to him prefer an appeal to the Tribunal:
>
> 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."

11. The framers of law have worded the limitation provision somewhat differently. It has been worded in the negative language by stating that the Tribunal could condone the delay where the appeal is filed beyond 30 days but not exceeding the further period of 60 days. The legislative intent of applying the period of limitation with its rigors to the appeals under the NGT Act, is clear and unambiguous from the language of the Section itself. The bare reading of the above provision shows

that legislature has used the following significant expressions which require clear interpretation by the Tribunal:

a. Within a period of 30 days from the date on which the order or decision or direction or determination is *communicated to him*.

b. If the Tribunal is satisfied that the appellant was prevented *by sufficient cause* from filing the appeal within the said period.

c. Allow it to file an appeal within a further period *not exceeding 60 days*.

(emphasis supplied)

12. Thus, we are required to examine the interpretation and application of these expressions to enable us to appropriately address and answer the controversy in issue in the present case.

13. The legislature, in its wisdom, has used the expression 'communicated to him' under Section 16 of the NGT Act in contradistinction to 'serving', 'receiving', 'delivery' or 'passing' of the order. Normally, these are the expressions which are used in the provisions relating to limitation.

Generally, limitation is to be reckoned from the date which is relatable to these expressions. For instance, the period of limitation may commence from the date the order is received by or served upon an individual, as presented in the relevant provisions. The expression 'communication' is neither synonymous nor even equivalent in law to the above mentioned expressions. The above-mentioned expressions require merely a unilateral act, that is, dispatch of the order, receipt of the order or service of the order upon an individual. But the act of communication cannot be completed unilaterally. It does require the element of participation by two persons, one who initiates communication and the other to whom the communication is addressed and who receives the same, i.e. the intended receiver.

At this stage, we may examine what is the legal meaning and connotation of the expression 'communication'. "Communication" is initiated by transforming a thought into words, act and expression. It is then converted into a message which is transmitted to the receiver. The receiver understands the message. It may or

may not evoke a response. There may be cases where only the sender and the receiver alone are not of significance but even the channel of communication may have some importance. The Black's Law Dictionary, 9th Edition, explains 'communication' as:

> "1. The expression or exchange of information by speech, writing, gestures, or conduct; the process of bringing an idea to another's perception.
>
> 2. The information so expressed or exchanged."

The Law Lexicon, 3rd Edition, defines 'communication' as:

> "A statement made in writing or by word of mouth by one person to another; the transfer of information by speech and by acts, signs, and appearances."

14. Wharton's Law Lexicon, 15th Edition, explains the terms 'communicate', 'communicated', 'communication' as well as 'communication to the public' as under:

> "**Communicate,** means that sufficient knowledge of the basic facts constituting the "grounds" should be imparted effectively and fully to the detenu in writing in a language which he understands, *Lallubhai Jogibhai Patel v. Union of India*, (1981) 2 SCC 427 (733) : AIR 1981 SC 728 : (1981) 2 SCR 352.

It is a strong word. It requires that sufficient knowledge of the basic facts constituting the grounds should be imparted effectively and fully to the detenu in writing in a language which he understands, so as to enable him to make a purposeful and effective representation. *Kubic Darusz v. Union of India,* AIR 1990 SC 605 (609)

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Communicated, a posted acceptance takes effect when it is communicated to the offeror; communicated is defined as delivered at his address, Halsbury's Laws of England, Vol 9, para 281, p.160.

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Communication, means that the electrical impulse or signal transmitted by a telephone call was in itself a communication and any intentional interception of that signal in the course of its transmission through a public telecommunication system was subject to the provisions, *Morgans v. D.P.P. [HL(E)], (2000) 2 WLR 386.* [Interception of Communication Act, 1985, s.1(1)(UK)]

A communication did not take place until the subscriber's telephone was answered at the destination and the calling parties communicated with each other. In other words, the digits dialled were a means to an end in the making of a communication, *Morgans v. DPP (DC),* (1999) 1 WLR 981.

Means information imparted by one person to another, A Dictionary of Law, William C. Anderson, 1889, p.213. In Indian Parliament Communications are exchanged between the President and either House of Parliament and

between both the Houses of Parliament. The President may send a message to either House of Parliament with respect to a Bill pending before it or otherwise and a House which receives such message shall consider any matter required by the message with all convenient dispatch, Constitution of India, Art.86(2).

Communication, in respect of order of dismissal would mean that the same is served upon the delinquent officer, *State of Punjab v. Amar Nath Harika*, AIR 1966 SC 1313.

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Communication to the public, for the purposes of this clause, communication through satellite or cable or any other means of simultaneous communication to more than one household or place of residence including residential rooms of any hotel or hostel shall be deemed to be communication to the public. [Copyright Act, 197 (14 of 1957), S.2(ff)]

Means making any work available for being seen or heard or otherwise enjoyed by the pubic directly or by any mean display or diffusion other than by issuing copies of such work regardless of whether any member of the public actually sees, hears or otherwise enjoys the work so made available [Copyright Act, 1957, s.2(ff)]"

15. The Oxfords Dictionary of English, 3rd Edition, also defines the words 'communication' as under:

"**communication – 1.** The imparting or exchange of information by speaking, writing or using some other medium *: television is an effective means of communication [at the moment I am in communication with London. ;* a letter or message containing information or news;; the successful conveying or sharing of ideas and feelings: *there was a lack of* ***communication between*** *Pamela and her parents.* social contact: *she gave him some hope of some return, or at least of their future communication.*

2 (communications) means of sending or receiving information, such as telephone lines or computers: *satellite communications [as modifier] a communications network.* [treated as sing.] the field of study concerned with the transmission of information.

3 (communications) means of travelling or of transporting goods, such as roads or railways: *a city providing excellent road and rail communications. ….*"

16. Upon analysis of the above, it is clear that 'communication' is made by one and received by another. It requires sufficient knowledge of the basic facts constituting the communication. The action of communicating is precisely sharing of knowledge by one with another of the thing communicated. Communication, particularly to the public, has to be by methods of mass communication, like satellite, website, newspapers etc. 'Communicated' is a

strong word. It requires that sufficient knowledge of basic facts constituting the grounds of the order should be imparted fully and effectively to the person.

17. The expression 'is communicated to him', thus, would invite strict construction. It is expected that the order which a person intends to challenge is communicated to him, if not *in personam* than *in rem* by placing it in the public domain. 'Communication' would, thus, contemplate complete knowledge of the ingredients and grounds required under law for enabling that person to challenge the order. 'Intimation' must not be understood to be communication. 'Communication' is an expression of definite connotation and meaning and it requires the authority passing the order to put the same in the public domain by using proper means of communication. Such Communication will be complete when the order is received by him in one form or the other to enable him to appropriately challenge the correctness of the order passed.

18. Law gives a right to 'any person' who is 'aggrieved' by an order to prefer an appeal. The term 'any person' has to

be widely construed. It is to include all legal entities so as to enable them to prefer an appeal, even if such an entity does not have any direct or indirect interest in a given project. The expression 'aggrieved', again, has to be construed liberally. The framers of law intended to give the right to any person aggrieved, to prefer an appeal without any limitation as regards his locus or interest. The grievance of a person against the Environmental Clearance may be general and not necessarily person specific. This provision of Section 16 requires communication of the order to such person(s). The expression 'him' takes within its ambit 'any person' who is aggrieved by an order. Therefore, the expression 'communication' accordingly has to receive a more generic and at the same time, definite meaning. The nature of the communication has to be such that it reaches the public at large, as that appears to be the legislative intent. A person is expected to, and can, only act when the order is put in public domain. He is expected to download the same from the website of the concerned Ministry/Department, and if he so requires thereafter, make an application for receiving specific

information. However, the content of the order is required to be communicated by the MoEF as well as by the Project Proponent.

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.

20. This brings us to the discussion on sufficiency of cause" which prevented the aggrieved person from filing an appeal within the prescribed period of 30 days, in terms of Section 16 of the NGT Act. It is difficult to state any hard and fast rule or principle that would uniformly apply to all cases, while examining the case for sufficiency or

otherwise of the cause of delay, in a given case. Though undoubtedly, it will necessarily depend upon the facts and circumstances of a given case, the Courts have, more often than not, stated the factors that would provide the precepts in adjudicating such matters.

21. Section 5 of the Limitation Act, 1963 (for short 'Limitation Act') also uses the term 'sufficient cause'. This section deals with power of the Court to condone the delay in filing of various appeals/applications and is founded on the theory of sufficient cause of delay. The Supreme Court, in the case of *Perumon Bhagvathy Devaswom, Perinadu Village Vs. Bhargavi. Amma (Dead) by LRs. and Ors.* (2008) 8 SCC 321while dealing with this expression held as follows:

> "What should be the approach of Courts while considering applications under Section 5 of Limitation Act, 1963, has been indicated in several decisions. It may be sufficient to refer to two of them. In *Shakuntala Devi Jain v. Kuntal Kumari* [1969] 1 SCR 1006 , this Court reiterated the following classic statement from *Krishna v. Chathappan* 1890 ILR 13 Mad 269 :
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> > "... Section 5 gives the Courts a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and

> discretion ought to be exercised upon principles which are well understood; the words `sufficient cause' receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fides is imputable to the appellant."

In *N. Balakrishna v. M. Krishnamurthy* 2008 (228) ELT I62 (SC), this Court held:

> It is axiomatic that condonation of delay is a matter of discretion of the Court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. *Length of delay is no matter, acceptability of the explanation is the only criterion.* Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the Court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior Court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first Court refuses to condone the delay. In such cases, the superior Court would be free to consider the cause shown for the delay afresh and it is open to such superior Court to come to its own finding even untrammeled by the conclusion of the lower Court.

> The primary function of a Court is to adjudicate the dispute between the parties and to advance substantial justice.... *Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly.*
>
> A Court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the Court is always deliberate. This Court has held that the words *"sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice.*
>
> It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the Court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, and then the Court should lean against acceptance of the explanation.
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> (emphasis supplied)"

25. The principles applicable in considering applications for setting aside abatement may thus be summarized as follows:

(i) The words "sufficient cause for not making the application within the period of limitation" should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts and

circumstances of the case, and the type of case. The words 'sufficient cause' in Section 5 of Limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bona fides, deliberate inaction or negligence on the part of the Appellant.

(ii) In considering the reasons for condonation of delay, the courts are more liberal with reference to applications for setting aside abatement, than other cases. While the court will have to keep in view that a valuable right accrues to the legal representatives of the deceased Respondent when the appeal abates, it will not punish an Appellant with foreclosure of the appeal, for unintended lapses. The courts tend to set aside abatement and decide the matter on merits, rather than terminate the appeal on the ground of abatement.

(iii) The decisive factor in condonation of delay, is not the length of delay, but sufficiency of a satisfactory explanation.

(iv) The extent or degree of leniency to be shown by a court depends on the nature of application and facts and circumstances of the case. For example, courts view delays in making applications in a pending appeal more leniently than delays in the institution of an appeal. The courts view applications relating to lawyer's lapses more leniently than applications relating to litigant's lapses. The classic example is the difference in approach of courts to applications for condonation of delay in filing an appeal and applications for condonation of delay in refiling the appeal after rectification of defects.

(v) Want of 'diligence' or 'inaction' can be

attributed to an Appellant only when something required to be done by him, is not done. When nothing is required to be done, courts do not expect the Appellant to be diligent. Where an appeal is admitted by the High Court and is not expected to be listed for final hearing for a few years, an Appellant is not expected to visit the court or his lawyer every few weeks to ascertain the position nor keep checking whether the contesting Respondent is alive. He merely awaits the call or information from his counsel about the listing of the appeal.

22. In **Ram Nath Sao v. Gobardhan Sao** (2002) 3 SCC 195, the Supreme Court observed thus:

> "12. Thus it becomes plain that the expression "sufficient cause" within the meaning of Section 5 of the Act or Order 22 Rule 9 of the Code or any other similar provision should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fides is imputable to a party. In a particular case whether explanation furnished would constitute "sufficient cause" or not will be dependent upon facts of each case. There cannot be a straitjacket formula for accepting or rejecting explanation furnished for the delay caused in taking steps. But one thing is clear that the Courts should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over-jubilation of disposal drive. *Acceptance of explanation furnished should be the rule and refusal, an exception, more so when no negligence or inaction or want of bona fides can be imputed to the defaulting party.* On the other hand, while considering the matter the Courts should not lose sight of the

fact that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine-like manner. However, by taking a pedantic and hypertechnical view of the matter the explanation furnished should not be rejected when stakes are high and/or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against whom the *lis* terminates, either by default or inaction and defeating valuable right of such a party to have the decision on merit. While considering the matter, Courts have to strike a balance between resultant effect of the order it is going to pass upon the parties either way."

23. The Court went further and recorded certain principles:-

"13. The principles applicable in considering applications for setting aside abatement may thus be summarized as follows :

(i) The words "sufficient cause for not making the application within the period of limitation" should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case, and the type of case. The words `sufficient cause' in section 5 of Limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bonafides, deliberate inaction or negligence on the part of the appellant.

(ii) In considering the reasons for condonation of delay, the Courts are more liberal with reference to applications for setting aside abatement, than other cases. While the Court will have to keep in view that

a valuable right accrues to the legal representatives of the deceased respondent when the appeal abates, it will not punish an appellant with foreclosure of the appeal, for unintended lapses. The Courts tend to set aside abatement and decide the matter on merits, rather than terminate the appeal on the ground of abatement.

(iii) The decisive factor in condonation of delay, is not the length of delay, but sufficiency of a satisfactory explanation.

(iv) The extent or degree of leniency to be shown by a Court depends on the nature of application and facts and circumstances of the case. For example, Courts view delays in making applications in a pending appeal more leniently than delays in the institution of an appeal. The Courts view applications relating to lawyer's lapses more leniently than applications relating to litigant's lapses. The classic example is the difference in approach of Courts to applications for condonation of delay in filing an appeal and applications for condonation of delay in refiling the appeal after rectification of defects.

(v) Want of `diligence' or `inaction' can be attributed to an appellant only when *something* required to be done by him, is not done. When nothing is required to be done, Courts do not expect the appellant to be diligent. Where an appeal is admitted by the High Court and is not expected to be listed for final hearing for a few years, an appellant is not expected to visit the Court or his lawyer every few weeks to ascertain the position nor keep checking whether the contesting respondent is alive. He merely awaits the call or information from his counsel about the listing of the appeal."

24. It may be noted that these principles, however, are, not an innovation of the Court in the above case, in the strict sense of the term, and draw their origin from earlier judgement of the Supreme Court in the case of *Collector, Land Acquisition, Anantnag and Another v. Mst. Katiji and Others 1987 (2) SCC 12* where the Court laid down the following principles:

> "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.
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> 3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every 10 hour's delay, every second's delay? The doctrine must be applied in a rational commonsense pragmatic manner.
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> 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.
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> 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."

25. Still in 1996, a three judge Bench of the Supreme Court in the case of *State of Haryana Vs Chandra Mani and others 1996 (3) SCC 132* while dealing with the power of Court to condone the delay with reference to 'sufficient cause', held:

> 6. In *State of Kerala v. E.K. Kuriyipe* 1981 Supp SCC 72, it was held that whether or not there is sufficient cause for condonation of delay is a question of fact dependent upon the facts and circumstances of the particular case. In Milavi Devi v. Dina Nath 1982 (3) SCC 366, it was held that the appellant had sufficient cause for not filing the appeal within the period of limitation. This Court under Article 136 can reassess the ground and in appropriate case set aside the order made by the High Court or the tribunal and remit the matter for hearing on merits. It was accordingly allowed, delay was condoned and the case was remitted for decision on merits.
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> 11. ...The expression "sufficient cause" should, therefore, be considered with pragmatism in justice–oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the

> functioning of the Governmental conditions would be cognizant to and requires adoption of pragmatic in justice-oriented process. The Court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid down by the state viz-a-viz private litigant could be laid to prove strict standards of sufficient cause…"

26. The above view was also taken with approval, by the Supreme Court in *Improvement Trust Ludhiana vs Ujagar Singh and Others 2010 (6) SCC 786* where the Court opined that while considering the application for condonation of delay no straitjacket formula can be prescribed to come to the conclusion if sufficient and good grounds have been made out or not. Each case has to be weighed from its facts and the circumstances in which the party acts and behaves. From the conduct, behaviour and attitude of the applicant it cannot be said that it had been absolutely callous and negligent in prosecuting the matter. The Court further stated, "justice can be done only when the matter is fought on merit and in accordance with law rather than to dispose of it on such technicalities and that too at the threshold".

27. The aforementioned judgments, clearly suggest that the term 'sufficient cause' has to be construed liberally and the Court should be inclined to determine the cause on merits rather than to throw out the petition on the ground of delay at the threshold. The conduct and attitude of the applicant is a relevant consideration. If there is no direct or culpable negligence on part of the applicant and such application does not suffer from the vice of malafides and is in fact bonafide, the Court would be more inclined to condone the delay if such condonation does not cause grave injustice to the other side. This liberal approach has developed over a period of time in limitation jurisprudentia.

28. The other approach to examine the application of law of limitation is that of somewhat strict interpretation. According to this approach, the law of limitation has to be normally construed strictly as it has the effect of vesting in one and taking away right from the other. To condone the delays in a mechanical or a routine manner may amount to jeopardizing the legislative intent behind the provisions relating to limitation.

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.

34. Further, the Supreme Court in *P.K. Ramachandran v. State of Kerala, JT 1997 (8) S.C. 189* held that law of limitation may hardly effect a particular party but it has to be applied with all its rigour when the statute so prescribe and the Courts have no power to extend the period of limitation on equitable grounds. In other words, the provisions relating to limitation cannot be so liberally construed as to frustrate the very purpose of the said provisions.

35. When a petition becomes barred by time, a right accrues to the other party and such a right cannot be taken away by the Court merely on an application which lacks bonafides and does not disclose any sufficient cause for condonation of delay.

36. As noticed above, the law of limitation is founded on public policy, its aim being to secure the quiet of the

community and to prevent oppression. The framers of law fixed the time for determination of the controversies at different levels and they should be raised and controverted limited to that fixed period of time. Rule of limitation is intended to serve the ends of justice by preventing continued litigation and requires the aggrieved to act with expeditiousness and in any case, within the prescribed period of limitation and to ensure that a successful party can enjoy the fruits of the result of the litigation. In that sense, the object of rule of limitation is preventive and curative. It imposes a statutory bar after a certain period and gives a quietus to the legal proceedings to enforce an existing right. Limitation, as such does not destroy the rights of the parties but bars a remedy, which otherwise was available to the party within the period so prescribed, the object being that an unlimited and perpetual threat of litigation is avoided as it leads to disorder and confusion and creates insecurity and uncertainty. In other words, it also helps in advancing the cause of the doctrine of finality.

37. Another principle which can be applied while construing and examining such provision is the presumption that the Legislature was aware of all the relevant laws in force when it enacted the law in question. If the Legislature opts to use some expressions or words in the provisions, that too, in a particular manner and with some emphasis, then such words and expressions must be given their plain meaning and import. Such provisions should be applied with all their rigour.

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.

39. In the case of *Ranghunath Rai Bareja and Others vs Punjab National Bank (2007) 2 SCC 230* the Supreme Court held as under:

> 30. Thus in Madamanchi Ramappa v. Muthaluru Bojjappa (vide AIR p. 1637, para 12) this Court observed:
>
> > "[W]hat is administered in Courts is justice according to law and considerations of fair play and equity however important they may be, must yield to clear and express provisions of the law."
>
> 31. In Council for Indian School Certificate Examination v. Isha Mittal (vide SCC p. 522, para 4) this Court observed:

> "Considerations of equity cannot prevail and do not permit a High Court to pass an order contrary to the law"

32. Similarly in P.M. Latha v. State of Kerala (vide SCC p. 546, para 13) this Court observed:

> "13. Equity and law are twin brothers and law should be applied and interpreted equitably but equity cannot override written or settled law."
>
> (emphasis supplied)

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39. In Hiralal Ratanlal v. STO this Court observed AIR p. 1035)

> "In construing a statutory provision, the first and the foremost rule of construction is the literary construction. All that the Court has to see at the very outset is what does that provision say. If *the provision is unambiguous and if from that provision the legislative intent is clear, the Court need not call into aid the other rules of construction of statues. The other rules of construction of statues are called into aid only when the legislative intention is not clear*"(SCCp. 224, para 22)
>
> (emphasis supplied)

40. Once we examine the provision of Section 16 of the NGT Act in light of the above principle, it is clear that the provision is neither ambiguous nor indefinite. The expressions used by

legislature are clear and convey the legislative intent. The communication of an order granting the Environmental Clearance has to be made by the MoEF as well as the Project Proponent in adherence to law. The communication would be complete when it is undisputedly put in the public domain by the recognised modes, in accordance with the said provision. The limitation of 30 days would commence from that date. If the appeal is presented beyond the period of 30 days, in that event, it becomes obligatory upon the applicant to show sufficient cause explaining the delay. The delay must be bonafide and not a result of negligence or intentional inaction or malafide and must not result in the abuse of process of law. Once these ingredients are satisfied the Tribunal shall adopt a balanced approach in light of the facts and circumstances of a given case.

Requirement, Mode and obligation of communication

41. The requirement to make communication of Environmental Clearance order is not an administrative one but a legal requirement. Once it is a legal right, it has to be stated as to whose legal obligation it is to communicate the order and the manner in which such communication should

be effected. This legal obligation emerges from two different aspects. Firstly, imposition of certain safeguards and conditions in exercise of the powers vested in MoEF under the Environment (Protection) Act, 1986. Secondly, the limitations and modus that may be directed in regard to the Environmental Clearance, in terms of the rules and regulations framed under Environmental Regulations read in conjunction with the Environmental (Protection) Rules, 1986. In terms of these rules and regulations, projects falling under Category Á' of the Schedule are mandated to obtain prior environmental clearance from the MoEF while the projects falling under Category 'B' are to obtain such Environmental Clearance from the concerned State Environment Impact Assessment Authority. The notification of Environmental Clearance Regulation, 2006 was issued on 14th September 2006 and deals with grant of prior Environmental Clearance as well as with the 'Post Environmental Clearance Monitoring'. For the purpose of the present dispute it would be sufficient for us to notice Regulation 10, which reads as under:-

> "**10. Post Environmental Clearance Monitoring-** [(i) (a) In respect of Category 'A' projects, it shall be mandatory for the Project Proponent to make public

the environmental 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.

(b) In respect of Category 'B' projects, irrespective of its clearance by MoEF/SEIAA, the Project Proponent shall prominently advertise in the newspapers indication that the project has been accorded Environment Clearance and the details of MoEF website where it is displayed.

(c) The Ministry of Environment and Forest and the State/Union Territory level Environmental Impact Assessment Authorities (SEIAAs), as the case may be shall also place the environmental clearance in the public domain on Government portal.

(d) The copies of the environmental clearance shall be submitted by the Project Proponents to the Heads of local bodies, Panchayats, and Municipal Bodies in addition to the relevant offices of the Government who in turn has to display the same for 30 days from the date of receipt.]

[(ii)] it shall be mandatory for the project management to submit half-yearly compliance reports in respect of the stipulated prior environmental clearance terms and conditions in hard and soft copies to the regulatory authority concerned, on 1st June and 1st December of each calendar year.

[(iii)] All such compliance reports submitted by the project management shall be public documents. Copies of the same shall be given to any person on application to the concerned regulatory authority. The latest such compliance

report shall also be displayed on the website of the concerned regulatory authority."

42. Since the present case relates to a Category 'A' project, we are primarily concerned with Regulation 10 (i)(a) of the Environment Clearance Regulations, 2006. The most noticeable expression used in this regulation is that it 'shall be mandatory' for the Project Proponent to make public the Environmental Clearance granted for their project along with the environmental conditions and safeguards at their cost by prominently advertising it in at least two local newspapers of the district or State where the project is located, and in addition, this shall also be displayed on the Project Proponent's website permanently. The use of the words 'shall' and 'mandatory' in Regulation 10 of 2006 Regulations clearly exhibits the intent of the Legislature not to make the compliance to these provisions "directory'. There is no legislative indication or reason for construing the word 'shall' as 'may'. Settled canon of statutory interpretation contemplates that it is necessary to lay emphasis on the language used by the framers of the regulations. Once a provision has no element of ambiguity and the provision its

being mandatory is clearly discernible from the plain language thereof, it would be impermissible to hold, even impliedly, that the provision is directory in its content and application. It would be required of the concerned stakeholders to comply with such provisions *stricto sensu.* The principle of substantial compliance would have no application to this provision and on its plain reading the provision is mandatory and must be complied with as provided. The Project Proponent is legally obliged under this provision to make public the Environmental Clearance granted for the project with the environmental conditions and safeguards at their cost by promptly advertising it in at least two newspapers of the district or in the state where the project is located. In addition, the order shall also be displayed on its website permanently.

43. Still in addition thereto, the Project Proponent also has an obligation to submit the copies of the Environmental Clearance to the Heads of local bodies, *Panchayats* and Municipal bodies in addition to the relevant offices who in turn have to display the same for 30 days from the date of receipt thereof.

44. An obligation is also cast upon the MoEF or the State/Union Territory Level Environmental Impact Assessment Authority, as the case maybe, to place the Environmental Clearance in the public domain on Government portal. On the analysis of Regulation 10 and its sub-regulations, it is clear that the obligation to communicate the Environmental Clearance in the prescribed manner lies both upon the MoEF/State Government/State Environmental Impact Assessment Authority, on the one hand and the Project Proponent, on the other. This mandatory legal obligation is intended to safeguard the public interest, on the one hand and protection of the environment, on the other. That is why the legislature has given the right to 'any person' to prefer an appeal against such order irrespective of his *locus standi* or his interest in the *lis*.

45. This brings us to an ancillary question as to what is required to be published/advertised in the two newspapers of the district or the State where the project is located. The answer is provided in the Regulation itself which states that it is mandatory to make public the Environmental Clearance granted for the project along with the environmental

conditions and safeguards. In other words, mere publication of information about the order granting Environmental Clearance would not be construed as compliance with this provision *stricto sensu*. The conditions for granting of Environmental Clearance with definite safeguards have to be published in the newspaper. The purpose behind publishing a notice with the contents of the order is only that 'any person' would be able to make up his mind whether he needs to question the correctness or legality of such order.

46. The Project Proponent is not vested with any option but to put the Environmental Clearance order on its website and advertise it completely in the form as required. It has no discretion to perform them partially or in extracts. It is expected to necessarily comply with the conditions prescribed under Regulation 10, Environment Clearance Regulations, 2006. These are:

a) The Project Proponent shall publish or advertise the order of Environmental Clearance, its conditions and said safeguards in at least two newspapers of district or State where the project is located. The Project Proponent has to do it on its cost;

b) The Project Proponent has to put the same on its website permanently;

c) Lastly, the Project Proponent has to submit the copies to the Heads of local bodies, *Panchayat* and Municipal Bodies in addition to the relevant offices of the Government.

Further, either the MoEF or the State Authority, as the case may be, is obliged under Regulation 10(i)(c), to place the Environmental Clearance in public domain on Government portal.

47. The expression 'public domain' will mean anything which is accessible to the public at large and anyone can access that information without any restriction. Public domain is the state of being available to the public as a whole. It is synonymous to public notice, i.e. a notice given in such a manner as could bring it to the knowledge of the concerned and also to the public in general. To put it precisely, it is *publici juris* which means that it is of public right or is available to the public at large.

48. The MoEF is also to ensure that its order of Environmental Clearance is brought to the notice of the concerned persons as well as to the general public. The regulation clearly provides that the MoEF must upload the order on its website. Once it is so provided then it must be complied with in a manner which is flawless and free from ambiguity and uncertainty. The MoEF and the Project Proponent must discharge their statutory obligation in terms of the provisions. The Project Proponent must advertise the factum of order, conditions and safeguards brought in the Environmental Clearance order within the specified time, besides putting it on the company's website. The website of MoEF should always be functional and accessible to the public at large, who should be in a position to download the Environmental Clearance order without restrictions, inconvenience and any patent or latent defect. The MoEF must make every effort to put the Environmental Clearance orders on the website immediately upon passing of such order but in any case not later than one week from the date of passing of such order. Needless to mention that the website should be regularly updated.

49. The relevant offices of the Government referred to in Regulation 10(i)(d) upon receiving the copy of the Environmental Clearance through its concerned department shall display the same for 30 days from the date of receipt of such copy. The expression 'display' may either be construed as putting the order on the website of the Government or as displaying it on the notice board of the concerned Department of the Government.

50. In other words, in addition to Project Proponent, the MoEF and concerned officers of the stated authorities are also required to display such order in a manner that it comes to the notice of the public at large. All the three stake holders, i.e., the Project Proponent, the MoEF and the concerned Government/Authority are statutorily obliged to comply with the conditions stated in this Regulation. None of them can alter the mode or methodology of bringing the order in the public domain. The basic feature of this provision is that it not only recognizes or contemplates the factum of passing of an order of Environmental Clearance but also brings its contents in the public domain.

51. Lastly, the requirement of placing the Environmental Clearance in public domain through a specified mode is contemplated as a condition of the order of Environmental Clearance. The Condition 13 of the Environmental Clearance dated 19th April, 2012 reads as under:

> "The Project Proponent should advertise within 7 days at least in two local newspapers widely circulated in the region around the project, one of which shall be in the vernacular language of the locality concerned informing that the project has been accorded Environmental Clearance and copies of clearance letters are available with the State Pollution Control Board/Committee and may also be seen at Website of the Ministry of Environment and Forests at http://www.envfor.nic.in."

52. The language of 'Condition 13' of the Environmental Clearance order is clearly in addition and not in derogation to the requirements stated in Regulation 10 of the EC Regulations, 2006. The Project Proponent as per this condition is required to advertise within seven days, the grant of Environmental Clearance. This condition is at some variance to the requirement of Regulation 10. As per the above condition the order has to be published in two newspapers and one has to be in vernacular language. On a plain reading of 'Condition 13', it is clear that the intention behind it is to

only give an intimation of the grant of Environmental Clearance, as it requires the Project Proponent to state that the clearance letter is available with the concerned authorities. Thus, the requirement of 'Condition 13' is somewhat different than what is commanded by Regulation 10.

53. These are the conditions precedent for a Project Proponent and the MoEF or State Authority to validly give effect to an order of Environmental Clearance. These provisions being mandatory do not admit of lapses, which in every likelihood would adversely affect the implementation of such Environmental Clearance. The maxim *Conditio praecedens adimpleri debet prius quam sequatur effectus* (a condition precedent must be fulfilled before the effect can follow) will have application to such situations.

54. The purpose appears to be to ensure that the factum of Environmental Clearance as well as the environmental conditions and safeguards imposed in the order are brought to the notice of the public at large. The intention is not to make it available *in personam* but *in rem*.

55. Besides the fact that there is a statutory obligation upon the authorities and the Project Proponent to bring the order in

the public domain by the specified modes aforementioned, the approach that we have afore-stated can also be supported by the reasoning that to make the remedy of an appeal effective, efficacious and meaningful, the availability of reasons, conditions and safeguards stated in the order would be necessary. A person must know the content of the order which he has a right to challenge in an appeal. It is only when the content of the order is available and known to a prospective appellant that such appellant would be able to effectively exercise the right of appeal. Thus, 'communication of the order' would mean and must be construed as meaning the date on which the factum and content both, of the Environmental Clearance order are made available in the public domain and are easily accessible by a common person. These provisions have to be interpreted by giving them the meaning that will advance the purpose of the provision and make the remedy practical and purposeful. This is the requirement of law and is tilted in favour of the larger public interest. Mere inconvenience or the expenses incurred by the parties or by the authorities would not be a ground to adopt a

different approach. *Necessitas publica major est quam private (*The public necessity is greater than the private interest).

Discussion of merits of the case :

56. Undisputedly, the environment clearance order was passed on 19th April 2012. It is stated that it was put on the website of the MoEF on 8th June, 2012 and an appeal was filed on 17th July, 2012. If these facts stated by the applicant are taken to be correct then there is a delay of ten days in filing the appeal as the date of the order would have to be excluded. According to the applicant, despite the fact that it was put by the MoEF on the website in June 2012, still it could not be downloaded as the website of the MoEF was not accessible. To support this fact, the applicant relies upon the order passed by the Central Information Commissioner dated 18th May 2012 directing the Ministry to correct its website and provide the complete details as it was not being done as per the applications moved by Sh. Himanshu Thakkar. Furthermore, the Director of the MoEF, vide her email dated 5th June, 2012, had informed Sh. Himanshu Thakkar that due to some glitches in synchronisation of the new website/portal with the old one, they were experiencing certain difficulties in

uploading the Environmental Clearance. In this mail, it was admitted that the MoEF itself could not see the minutes and agenda uploaded by them and had assured that she would send the scanned copy of the Environmental Clearance to Sh. Himanshu Thakkar by the evening. This polite letter written by the Director, MoEF, clearly establishes that the Environmental Clearance was not freely accessible and therefore could not be downloaded by any person.

57. This stand of the applicant has to be examined in light of other circumstances of the present case. The Project Proponent had miserably failed to comply with the statutory obligation placed upon him in terms of Regulation 10 (i) (a). He only published an intimation stating that the Environmental Clearance has been granted. The company never published the environmental conditions and safeguards in the two newspapers, as required under the said Regulation. In fact, there is no compliance of Regulation 10(i)(a) as well as proper compliance of Condition 13 of the Environmental Clearance order dated 19th April, 2012 by the Project Proponent. It was further expected of the Project Proponent to provide copies of the Environmental Clearance to the Heads of

the local bodies, *Panchayats,* Municipal bodies, in addition to providing the same to the relevant offices of the Government, who in turn were expected to publicly display the same for a period of 30 days. From the record available before us, it cannot be stated that this Regulation was complied with. It is stated on behalf of the Project Proponent that it was given to the *panchayats* but no details have been furnished as to when and to which local authority and government body the Environmental Clearance was given and when was the same displayed on the Board of such Authority/Government, as is required under Regulation 10(i)(d).

58. In regard to the availability of the said order on the website of the MoEF, a serious controversy was raised. In fact, such grievance has been raised before the Tribunal even in other cases. As far as the present case is concerned, in view of the order of the CIC as well as the letter of the Director of the MoEF itself, it can safely be concluded that all is not well with the website/portal of the MoEF. It is not only the administrative duty but a statutory obligation of the MoEF to place such orders in the public domain to ensure their accessibility to the public at large.

59. The applicant has also claimed that he could obtain Form 1 and Scoping Clearance (TOR) only on 12th July, 2012 despite his best efforts. In other words, he filed the appeal within five days from the date on which the complete record and information of the entire case was available to him. We are unable to accept this contention as the requirement of law is only to place on the website and bring in the public domain, the order of Environmental Clearance with environmental conditions and safeguards stated therein. It is this order which is appealable before the Tribunal in terms of Section 16(h). The minute details in regard to the above, such as the Form 1 and the Scoping Clearance (TOR) which an applicant may like to obtain are not part of the essentials of communication of Environmental Clearance Order for the purposes of preferring an appeal. Thus, that cannot be the foundation for commencement of limitation on the premise that it is a 'communication of the order' that was completed on 12th July, 2012.

60. The MoEF claims to have put the order of Environmental Clearance on the website on 22nd May, 2012, thus 30 days would expire on 21st June, 2012. If we accept this contention,

then the appeal would be barred by 26 days. We have already recorded that the website of the MoEF was not accessible as late as 5th June, 2012 and, therefore, we would believe the version given by the applicant that he could download the order from the Ministry's website only on 8th June, 2012 and therefore, the appeal is barred only by 8 days, which is well within the jurisdiction of the Tribunal to condone, being within 60 days, in excess of the prescribed period of 30 days. Even if for the sake or arguments we accept the case of the MoEF, then also the appeal would be barred by 26 days which again falls well under the prescribed period of 60 days, and such delay is condonable by the Tribunal.

61. From the above discussion, it is clear that the applicant has been able to show sufficient cause for condonation of 8 days delay or even 26 days delay in filing the appeal. Not even a single instance of negligence, carelessness has been pointed out by the non-applicant before us. In any case, it would hardly lie in the mouth of the Project Proponent and the MoEF to raise an objection of limitation as it has been established on record that both of them have failed to comply with their statutory obligations. They cannot be permitted to take

advantage of their own wrong, particularly, the Project Proponent, who has committed defaults under Regulation 10(i)(a) as well as Regulation 10(i)(d) of the Environment Clearance Regulations, 2006.

62. Ergo for the reasons afore-recorded, we have no hesitation in condoning the delay of 8/26 days in filing the present appeal which we do hereby condone and direct the appeal to be heard on merits.

63. It is expected of the judicial forum to eliminate the cause of litigation, particularly when it is a cause for repeated litigation *boni judicis est causas litium dirimere*. As such pleas are taken more often than not in cases of condonation of delay relatable to the compliance of these provisions, thus, it needs clarity and certainty in its application.

64. Before we part with this file, we are of the considered view that it is required of us to pass certain directions so as to provide clear meaning to the expression 'communication' and also to ensure that none of the stakeholders, including MoEF, Project Proponent and the other concerned persons are placed in a disadvantageous position for inaction or lapse of the other in fulfilment of their respective statutory obligations. To serve

the ends of justice better and in the larger public interest, we hereby issue the following directions:

1. The MoEF shall, within seven days from the date of passing of the order of Environment Clearance, upload it on its website. It shall be the duty of the MoEF to ensure that immediately upon its uploading the same should be made accessible and can be downloaded without any delay or impediment. It would remain so uploaded on the website for a period of at least 90 days.
2. The Ministry shall also maintain a public notice board in its premises including its regional offices, where the public is permitted without hindrance and display the order of environmental clearance on that notice board for a period of 30 days.
3. Orders communicated and displayed shall be complete, particularly in relation to the environmental conditions and safeguards, and proper records of the order being uploaded on the website and its placement on the public notice board of the MoEF shall be maintained by MoEF in normal course of its business.

4. The Project Proponent in terms of Regulation 10(i)(a) shall publish the factum of environmental clearance granted to the project along with environmental conditions and safeguards, at its own costs. Such publication shall be effected in two local newspapers of the district or State where the project is located.

5. In addition thereto, the Project Proponent shall display on its website permanently, the factum, environmental conditions and safeguards of environmental clearance. This shall be done in the name of the company, unit or industry which is the Project Proponent and not in the name of its parent or subsidiary company or sister concern.

6. The Project Proponent shall also submit the copies of the Environmental Clearance to the Heads of the local bodies, *panchayats* and municipal bodies of that district.

7. The Project Proponent shall also submit to the concerned department of the Government of that State, copy of the Environmental Clearance which in turn shall be displayed by the concerned department of that

government for a period of 30 days on its website as well as on its public notice board.

8. Besides the above, a Project Proponent, under the conditions of the consent order, if so provided therein, shall publish the factum of grant of Environmental Clearance in two newspapers, one being in vernacular language, having circulation in the area where the industry is located. It shall give such necessary information, which may not contain the conditions and safeguards for grant of Environmental Clearance.

9. In view of the order of the Central Information Commissioner and the record before us, we hereby direct the MoEF to ensure that its website is always in working order and shall be positively accessible to the public at large to enable any person to download the requisite information instantaneously. Such steps should be taken forthwith.

10. The date on which the order of Environmental Clearance is communicated to the public at large, shall be the date from which the period of limitation shall reckon as contemplated under Section 16 of the Act.

Communicating the order, in other words, shall mean putting the order in the public domain in its complete form and as per the mode required under the provision of the NGT Act of the Regulation 2006. The limitation shall start running and shall be computed as referred to in Para 19 of the judgment. Where different acts by different stakeholders are complied with at different dates, the earliest date on which complete communication is carried out, shall be the date for reckoning of limitation.

Justice Swatanter Kumar
Chairperson

Justice P. Jyothimani
Judicial Member

Dr. D.K. Agrawal
Expert Member

Dr. G.K. Pandey
Expert Member

Prof. A.R. Yousuf
Expert Member

New Delhi;
March 14, 2013