

Sridevi Datla vs Union Of India on 2 March, 2021

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Bench: S. Ravindra Bhat

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REPORTABLE

IN THE SUPREME COURT OF INDIA
(CIVIL APPELLATE JURISDICTION)

CIVIL APPEAL NO. 3136 OF 2020

SRIDEVI DATLA

...APPELLANT (S)

VERSUS

UNION OF INDIA AND ORS.

...RESPONDENT(S)

JUDGEMENT

S. RAVINDRA BHAT, J.

1. The appellant is aggrieved by an order of the National Green Tribunal (hereafter referred to as “the NGT”¹) and has, therefore, approached this Court under Section 22 of the NGT Act. The NGT rejected her appeal, preferred to it against the environmental clearance for construction of the Greenfield International Airport, Bhogapuram, Vishakapatnam, which had been sought for by the fifth respondent.

2. The facts are simple: the fifth respondent (hereafter called “the Project Applicant”) proposed the construction of a new Greenfield international airport. As was required by law and extant statutory notifications, it applied to the Ministry of Environment, Forests and Climate Change (hereinafter, the “MoEF”) to seek environmental clearance. The MoEF, after following the prescribed procedure, which included ascertaining the views and objections of the concerned parties, the general Dated 31.07.2020 public etc, indicated its approval by an order dated 14.08.2017. In terms of Section 19 of the NGT Act, the approval was posted on the website of the MoEF on 14.08.2017. Concededly, the Project Applicant published the approval in an English daily on 13.09.2017.

3. The appellant preferred her appeal to the NGT on 13.11.2017. Along with the appeal, she preferred an application for condonation of delay in approaching the NGT, given the stipulation of Section 19 that the appeal had to be preferred within 30 days from the date of communication of the order impugned. She explained that since the clearance and related documents were voluminous and the matter required some technical expertise, requiring the papers to be forwarded to experts and lawyers in Delhi, and the inter se communication delay, the NGT needed to condone the delay, in the interests of justice. After considering the submissions made by the appellant as well as the Project Applicant, which opposed the application for condonation of delay, the NGT, by its impugned order, rejected the appellant's application and consequently the appeal as well.

4. The appellant's arguments before this Court are mainly twofold: that the requirement of Section 16 is to "communicate the order to the concerned parties as well as the public and that a meaningful interpretation should be given to the provision". It was emphasised in this context that communication means not merely the publication on the Central Government's website, but also dissemination of the news or the decision to the affected parties. Learned senior counsel for the appellant – Ms. Anitha Shenoy, in this context, relied upon the terms contained in the environmental clearance/approval given by the MoEF, especially those which obliged the Project Applicant to intimate the decision in dailies having local circulation in the vernacular. She also relied upon the stipulations in the environmental clearance ("EC") which prescribed that the successful project applicant had to, in continuation to so publishing the decision or intimation in local newspapers, also ensure that the decision was forwarded to local communities through the Panchayats etc. for dissemination.

5. It was pointed out that the object of these conditions should be construed as part of a larger scheme of the Act to communicate every decision. The appellant argued that if a contrary interpretation were to be accepted, the appeal given by the statute would be meaningless as most often, large projects which involve either displacement of people or which affect habitats and have the tendency to damage or at least cause significant adverse impact upon the environment would not be considered on its merits by the NGT since people and neighbourhoods cannot be presumed to have knowledge of deliberations in New Delhi.

6. It was also argued on behalf of the appellant that in the circumstances of the present case, at least the appeal could not be said to be time barred. It was argued that the date for reckoning (limitation) is from 14.08.2017, when the MoEF uploaded the decision on its website. The ninety-day period within which appeal was to be filed, expired on 12.11.2017, which was a Sunday. It was submitted that under Section 10 of the General Clauses Act, if any period prescribed ends on a Sunday or a day on which the Court or the Tribunal does not function, the next day should be considered as the terminus quo in point of time. Consequently, it was submitted that the appeal should be considered as within time and should have been entertained on merits.

7. Lastly, it was argued that the NGT's opinion that sufficient cause was not shown while seeking condonation of delay is erroneous. Learned counsel highlighted that any proposal as well as clearances where voluminous documentation is involved, or if any individual or entity is aggrieved, or adversely affected, the only remedy provided is by way of an appeal. To substantiate the grounds

of appeal, it would be essential that in many instances, expert advice is obtained based on which the grounds of appeal can be prepared and urged. If the issue were to be considered in this perspective, the explanation provided by the appellant in her application seeking condonation of delay could not be considered unreasonable and in fact amounts to sufficient cause. Learned counsel relied upon a previous order of the NGT in *Smt. Padmabati Mohapatra v. Union of India*². Reliance was also placed on the judgment of the Nagpur High Court, reported as *Rambir Narhargir Gosai v. Prabhakar Bhaskar Gadhwai*.³

8. On behalf of the Union of India, the ASG, Mr. K.M. Natraj argued that the impugned order does not require to be disturbed. He pointed out that the impugned order had noticed that the appellant made no complaint that the MoEF had put up the decision to grant environmental clearance on its website on 14.08.2017 or that having uploaded the decision it could not be viewed publicly in an uninterrupted manner. He further submitted that the finding that the first date when the decision was communicated by the MoEF on its website is determinative for the purpose of reckoning limitation rather than any other later point in time. It was further emphasised on behalf of the UOI that the need to publish environmental clearances under the Environment Impact Notification 2006, framed under the Environment Protection Act, 1986 is now known to all. The proposal of the Project Applicant clearly fell within the sweep of the Environment Impact Notification in Item No.7(a) to the Schedule (to the notification).

9. It was submitted on behalf of the UOI that in terms of the Environment Impact Assessment Notification, 2006, the clearance had to be published within seven days from the date of uploading. The publication of Environment Clearance dated 14.08.2017 was done on 21.08.2017. Thus, the appellant's plea that she came to know of the environmental clearance on 24.08.2017 is baseless. The learned ASG relied upon a decision of the NGT in *Save Mon Region Federation v. Union of India* ⁴ in this regard.

10. Learned ASG lastly argued that by virtue of Section 33 of the Act, the provisions of all other laws stand overridden and consequently, the question of 2013 SCC OnLine NGT 2177 AIR 1955 Nag 300 2013 SCC OnLine NGT 2511 extending the period of limitation by reference to Section 5 of the Limitation Act would not arise. He further urged that the period of limitation prescribed is actually 30 days for the filing of an appeal, and that further period of 60 days is only by way of acceptance of application for condonation of delay. Thus, no appeal is maintainable after the expiry of 90 days. It is pointed out that in the present case, the 90 day period in fact ended a day prior to the filing of the appeal; it was, therefore, clearly time-barred.

11. Mr. Mukul Rohatgi, learned senior counsel appearing for the Project Applicant supported the submissions of the Union and argued that the concerned Project Applicant, i.e. M/s Bhogapuram International Airport Corporation Ltd., has been conceived in public interest and in replacement of the existing Vishakhapatnam Airport which is primarily a defence airport. Learned counsel relied upon the decision of this Court in *H. Dohil Construction Company Private Limited v. Nahar Exports Limited*⁵ to the effect that any aggrieved litigant should be vigilant in the exercise of his rights and that he cannot claim the exercise of discretion for condoning any delay as a matter of right. Reliance was also placed upon the decision in *BRS Steels Private Limited v. State of Rajasthan*⁶. In this

regard, it was submitted that the appeal before this Court which purports to be under Section 22 of the Act is confined to the grounds specified under Section 100 of the CPC, which is only if the Court is satisfied that the case involves a substantial question of law.

12. Lastly, it was submitted by learned senior counsel that the NGT Act correctly surmised in the circumstances of the case that the appellant had adopted a casual approach and did not believe the contents of the application for condonation of delay. Learned counsel in this context argued that the appellant is an interested person in the sense that her lands had been notified for acquisition and was therefore not uninformed or incapable of receiving appropriate legal advice.

(2015) 1SCC 680 (2012) 6 SCC 782 Analysis and Findings

13. The relevant provision of the Act, i.e. Section 167 reads as follows:

“16. Tribunal to have appellate jurisdiction. -Any person aggrieved by,-

(a) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under section 28 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);

(b) an order passed, on or after the commencement of the National Green Tribunal Act, 2010, by the State Government under section 29 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);

(c) directions issued, on or after the commencement of the National Green Tribunal Act, 2010, by a Board, under section 33A of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);

(d) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under section 13 of the Water (Prevention and Control of Pollution) Cess Act, 1977 (36 of 1977);

(e) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the State Government or other authority under section 2 of the Forest (Conservation) Act, 1980 (69 of 1980);

(f) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the Appellate Authority under section 31 of the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981);

(g) any direction issued, on or after the commencement of the National Green Tribunal Act, 2010, under section 5 of the Environ-

ment (Protection) Act, 1986 (29 of 1986);

(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 in-

Of the NGT Act dustries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Pro- tection) Act, 1986 (29 of 1986);

(i) an order made, on or after the commencement of the National Green Tribunal Act, 2010, refusing to grant environmental clearance for carrying out any activity or operation or process under the Environment (Protection) Act, 1986 (29 of 1986);

(j) any determination of benefit sharing or order made, on or after the commencement of the National Green Tribunal Act, 2010, by the National Biodiversity Authority or a State Biodiversity Board under the provisions of the Biological Diversity Act, 2002 (18 of 2003), may, within a period of thirty days from the date on 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 pe- riod, allow it to be filed under this section within a further period not exceeding sixty days.”

14. Environmental disputes are complicated and entail expertise in diverse fields (such as ecology, chemistry, biology, economics, administration, management, law etc.) for their determination in an effective and speedy fashion, that is not possible within the regular judicial and administrative set up in India. In other words, environmental disputes relating to forests, biodiversity, air and water are complicated in nature; resolving and expeditiously disposing of these cases is not possible without a separate special court. Environmental courts or tribunals have been a long-standing demand for other reasons too. For effective prevention and control of environmental protection, there was an urgent need for a separate environmental court or tribunal to adjudicate without much delay. India is a party to the United Nations Conference on the Human Environment (known as the Stockholm Conference), 1972 where it made commitments relating to safeguarding of natural resources and developing international law, and to provide compensation to victims of pollution and other environmental degradation. India is also a signatory to the Rio Declaration adopted at the United Nations Conference on Environment and Development at Rio de Janeiro in 1992. The Rio Declaration states that participating states must make suitable environmental legislation regarding effective access to the people, to judicial and administrative proceedings, including remedies. The Law Commission's 186 th report recommended that the Union government should establish and constitute separate Environmental Courts in each state, to deal with complex, specialised issues concerning the environment. It was in this background that Parliament enacted the NGT Act. The Act amends various other enactments and adds provisions to them, for appeal before the NGT. These are incorporated in Section 33-B of The Water (Prevention and Control of Pollution) Act, 1974; Section 13-A of The Water (Prevention and Control of Pollution) Cess Act, 1977; Section 2-A of The Forest (Conservation) Act, 1980; Section 31-B of The Air (Prevention and Control of Pollution) Act, 1981; Section 5-A in the Environment (Protection) Act, 1986 and Section 52-A in the Biological

Diversity Act, 2002.

15. In *Jitendra Singh v. Ministry of Environment & Others* 8 the narrow, but important question considered was whether a state could alienate publicly available resources like ponds. This court held that that such transfer or alienation was impermissible. In *Hanuman Laxman Aroskar v. Union of India* 9 this court held that the NGT is under an obligation to consider issues as an expert body, and apply the principle of sustainable development, in adjudicating environmental issues, especially while considering the validity of grant of clearance to large projects under the Environment Protection Act. It was held that the NGT Act:

“provides for the constitution of a tribunal consisting both of judicial and expert members. The mix of judicial and technical members envisaged by the statute is for the reason that the Tribunal is called upon to consider questions which involve the application and assessment of science and its interface with the environment.” 2019 SCC OnLine SC 1510 (2019) 15 SCC 401

16. The court noted that to be a member of the NGT, the individual had to possess specified academic qualifications, including a master’s degree in science with a doctorate in engineering or technology, with prescribed experience in certain domains. To be an administrative member, the individual should possess fifteen years’ administrative experience including experience of five years in dealing with environmental matters in the Central or State Government or in a reputed national or state level institution. The court proceeded to hold in *Hanuman Laxman Aroskar* (supra), that the grant of environmental clearance to a greenfield airport in Goa did not receive proper merits review by the NGT.

17. Having regard to these decisions, and given the nature of jurisdiction which the NGT has been invested with, the substantial questions of law that arise in the present case, are whether the approach to the issue of limitation by the NGT was correct, and whether on a correct interpretation of law, the appeal under Section 16 was filed within the 90 days period, in the facts of this case.

Applicability of General Clauses Act

18. There can be no dispute that the period of limitation set out in a special law, which provides for remedies and appeals, has to be construed in its terms and without reference to the Limitation Act, if it contains specific provisions delineating the time or period within which applications or appeals can be preferred, and confines the consideration of applications for condoning the delay to a specific number of days. Undoubtedly, in such cases, the Limitation Act would be inapplicable.¹⁰ There are several previous judgments of this court holding that where periods of limitation are That provision is as follows:

29. Savings.— (1) Nothing in this Act shall affect Section 25 of the Indian Contract Act, 1872 (9 of 1872).

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law.” prescribed under special laws, appeals that exceed the period granted and are within the extended period of limitation in the special law, can be entertained at the discretion of the tribunal, or court concerned and the Limitation Act would not apply upon expiry of such extended period.¹¹ This court holds that there is merit in the contention of the Union that the provisions of the Limitation Act are inapplicable. This is, however, not dispositive of the issue; the next question is whether there is merit in the appellant’s argument that the NGT should have considered the issue of whether the appeal was filed within the extended period prescribed under the proviso to Section 16, i.e. within sixty days after the expiration of the initial 30 day period, required in the main provision.

19. The appellant argues that since there is no indication to the contrary; the appeal is to be considered as having been filed within the extended period of 60 days, since the last (of the 60 days) was a Sunday (12.07.2020). The appellant relied on Section 10 of the General Clauses Act, for this purpose. The respondents, notably the Union, opposed this argument.

20. Section 10 of the General Clauses Act, 1897¹² stipulates that when the last date for doing something falls on a public holiday, the act “shall be considered as done..” if it “is done or taken on the next day afterwards on which the Court or office is open”. This provision applies to all Central Acts enacted after the said Act was brought into force. The scope of this provision was considered by this Court in *H.H. Kaushalya Rani v Gopal Singh* 1964 (4) SCR 982; *Collector of Excise & Customs v. Hongo India (P) Ltd.* (2009) 5 SCC 791; *Union of India v. Popular Construction Co.* (2001) 8 SCC 470; *Patel Bros. v. State of Assam* (2017) 2 SCC “10. Computation of time.— (1) Where, by any Central Act or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open:

Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877, applies.

(2) This section applies also to all Central Acts and Regulations made on or after the fourteenth day of January, 1887.” *Raja Harinder Singh v. S. Karnail Singh*¹³ by a four judge Bench, which explained the object of Section 10 and held as under:

“5. ... Where, therefore, a period is prescribed for the performance of an act in a court or office, and that period expires on a holiday, then according to the section the act should be considered to have been done within that period, if it is done on the next day on which the court or office is open. For that section to apply, therefore, all that is

requisite is that there should be a period prescribed, and that period should expire on a holiday.”

21. Other decisions¹⁴ have followed the same reasoning. It is also noticeable that there is no indication in the NGT Act that Section 10 of the General Clauses Act cannot be applied. It is therefore, held that the provision applies *proprio vigore* to all appeals filed under the NGT Act.

Approach of the court in considering the application for condonation of delay

22. What constitutes “sufficient cause” in terms of Section 16 of the NGT Act? While it is unexceptionable for the Project Applicant to argue that the Limitation Act is *per se* inapplicable to proceedings under the NGT Act, given that the basic, and outer period of limitation for filing an appeal have been enacted, nevertheless, what constitutes sufficient cause, is left to the discretion of the tribunal. Here, the court discerns a surfeit of authority on what the term denotes, and the general approach of the court, in dealing with delay.

23. In *G. Ramegowda v. Land Acquisition Officer*¹⁵, speaking for this court, Venkatachaliah, J summarized the position in the following terms:

“14. The contours of the area of discretion of the courts in the matter of condonation of delays in filing appeals are set out in a number of 1957 SCR 208.

Manohar Joshi v. Nitin Bhaurao Patil (1996) 1 SCC 169; *Mohd. Ayub v. State of U.P.*, (2009) 17 SCC 70.

(1988) 2 SCC 142 pronouncements of this Court. See *Ramlal v. Rewa Coalfields Ltd.* [AIR 1962 SC 361 : (1962) 2 SCR 762] , *Shakuntala Devi Jain v. Kuntal Kumari* [AIR 1969 SC 575 : (1969) 1 SCR 1006] , *Concord of India Insurance Co. Ltd. v. Nirmala Devi* [(1979) 4 SCC 365 : 1979 SCC (Cri) 996 : (1979) 3 SCR 694] , *Mata Din v. A. Narayanan* [(1969) 2 SCC 770 : (1970) 2 SCR 90] and *Collector (LA) v. Katiji* [(1987) 2 SCC 107 : 1989 SCC (Tax) 172] , etc. There is, it is true, no general principle saving the party from all mistakes of its counsel. If there is negligence, deliberate or gross inaction or lack of bona fides on the part of the party or its counsel there is no reason why the opposite side should be exposed to a time-barred appeal. Each case will have to be considered on the particularities of its own special facts. However, the expression ‘sufficient cause’ in Section 5 must receive a liberal construction so as to advance substantial justice and generally delays in preferring appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of the delay.”

24. Much later, in *Esha Bhattacharjee v. Raghunathpur Nafar Academy* ¹⁶ this court referred to a large number of previous judgments¹⁷ , and observed that adoption of a strict standard of proof sometimes fails to protect public justice and it may result in public mischief. Other decisions have

highlighted that there cannot be a universal formula to judge whether sufficient cause has, or has not been shown and the exercise is necessarily fact specific; in *Improvement Trust v. Ujagar Singh*¹⁸, the court held:

“16. While considering [an] application for condonation of delay no straitjacket formula is prescribed to come to the conclusion if sufficient and good grounds have been made out or not.”

25. The court also emphasized that each case has to be balanced on the basis of its facts and the surrounding circumstances in which the parties act and behave.

(2013) 12 SCC 649 *State of Nagaland v. Lipok Ao* (2005) 3 SCC 752; *New India Insurance Co. Ltd. v. Shanti Misra* (1975) 2 SCC 840; *N. Balakrishnan v. M. Krishnamurthy* (1998) 7 SCC 123; *State of Haryana v. Chandra Mani* (1996) 3 SCC 132; and *Tehsildar (LA) v. K.V. Ayisumma* (1996) 10 SCC 634.

(2010) 6 SCC 786

26. Yet another dimension to the issue was highlighted in *Maniben Devraj Shah v. Municipal Corpn. of Brihan Mumbai*¹⁹, where the court underlined a distinction between a case where the delay is inordinate, and a case where the delay is of few days and that in the former case the consideration of prejudice to the other side will be a relevant factor; in the latter case, no such consideration arises. After noticing that a liberal and justice-oriented approach needs to be taken, it was stated that the court, equally should be sensitive to the fact that “the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost.” The court then held that:

“24. What colour the expression ‘sufficient cause’ would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay.”

27. It is evident that the term sufficient cause is relative, fact dependant, and has many hues, largely deriving colour from the facts of each case, and the behaviour of the litigant who seeks condonation of delay (in approaching the court). However, what can broadly be said to be universally accepted is that in principle, the applicant must display bona fides, should not have been negligent, and the delay occasioned should not be such that condoning it would seriously prejudice the other party.

28. Keeping these principles in mind, it is relevant to consider whether the NGT’s refusal to exercise discretion, in the facts and circumstances of this case, was erroneous. The court is conscious of the fact that exercise of discretion, per se, is a fact dependent one, and considerable latitude should be

given to the court or tribunal of the first instance, in the performance of that task. Nevertheless, as decided, cases (2012) 5 SCC 157 and judgments have shown that the exercise of discretion does at times, call for appellate scrutiny by this court. This is one such. The appellant pleaded that since the documentation attendant to the clearance granted to the Project Applicant was voluminous, and expert as well as professional legal advice of the kind necessary to approach the NGT was not available in the State of Andhra Pradesh, the procuring of relevant documents, and correspondence with counsel in Delhi and drafting of the appeal entailed some delay.

29. This court is of the opinion that there is merit in the appellant's argument. The respondents, especially, the project applicant, had urged that the appellant is an interested party, and cannot be called a public-spirited citizen, because she had opposed acquisition of land for the airport and therefore, was able to access legal advice at the High Court stage. There is, in our opinion, nothing in the NGT Act which excludes parties who would be directly affected by a project, that has environmental repercussions, from accessing the tribunal (NGT). Likewise, characterizing the nature of legal advice that can be accessed for challenging land acquisition, as similar to a challenge to environmental clearance which involves application of mind to technical issues in a detailed manner, would be unfair and simplistic. Scientific or technical support – apart from expert professional legal advice is necessary, if the NGT were to be approached. In these circumstances, this court is of the opinion that given the mandate of the NGT Act, the exercise of discretion, as was done in this case, to reject the appeal by dismissing the application for condonation of delay, on the ground that no sufficient cause was shown, was erroneous and based on a narrow reading of the law. An appeal to the NGT in such matters is no ordinary matter; it has the potential of irrevocably changing the environment with the possibility of likely injury. Application of judicial mind by an independent tribunal in such cases, at the first appellate stage, is almost a necessity.

30. In view of the foregoing findings, this court is of the opinion that the impugned order of NGT has to be and is, therefore set aside. The delay in filing the appeal before the NGT is hereby condoned; the parties shall now appear and proceed to argue the appeal on its merit, which shall then be disposed in accordance with law. The appeal is allowed. There shall be no order on costs.

.....J [L. NAGESWARA RAO]J [S. RAVINDRA BHAT] New Delhi, March 02, 2021.