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IN THE HIGH COURT OF DELHI AT NEW DELHI

DECIDED ON: 29.04.2009

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W.P. (C) 3243/2008

GOMANTAK SHETAKARI SANGHATANA

..... Petitioner

Through: Mr. Sanjay Parekh with
Mr. Rahul Choudhry, Advocates.

versus

UOI & ORS.

..... Respondents

Through: Mr. Nitin Serdessai with
Mr. Arvind Gupta, Advocate for Resp-3.
Mr. Bhavani Shankar V. Gadnis, Advocate
for Resp-2.
Mr. Naresh Kaushik with Mr. Ashok Kinagi and
Ms. Manisha Badoni, Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

1. Whether the Reporters of local papers may be allowed to see the judgment? YES
2. To be referred to Reporter or not? YES
3. Whether the judgment should be reported in the Digest? YES

S.RAVINDRA BHAT, J. (OPEN COURT)

% Issue Rule. Mr. Nitin Serdessai, Advocate for Resp-3, Mr. Bhavani Shankar V. Gadnis, Advocate for Resp-2 and Mr. Naresh Kaushik, Advocate waive notice of Rule. With consent, the Petition was heard finally for disposal.

2. The limited challenge in this writ proceedings is to an order dated

28.2.2008 of the National Environment Appellate Authority rejecting the petitioner's application for condoning the delay in preferring an appeal under Section 11 of the National Environmental Appellate Authority Act, 1997.

3. The petitioner which claims to be an Society, engaged in the field of environment and environmental awareness, appealed against the environmental clearance given by the Ministry of Environment and Forests, Central Government on 18.9.2007 to the third respondent proposal for Careamol Iron Ore Mine at village Pirla, Quepem Taluka, Dist. South Goa. The clearance concerned an area of 98.76 Hectares. According to the petitioner the clearance impacted the local community, as it potentially affected quality of life and the water table of the surrounding areas. Claiming to be aggrieved by the said environmental clearance, the petitioner preferred an appeal to the Tribunal on 14.12.2007 along with an application for condonation of delay.

4. Section 11 of the Act provides for an appeal in a prescribed period of limitation (i.e. 30 days in the first instance) extendable by a further period of 60 days, thus providing for a total of ninety days. The said provision is in the following terms: -

“11. Appeals to Authority - (1) Any person aggrieved by an order granting environmental clearance in the areas 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 may, within thirty days from the date of such order, prefer an appeal to the Authority in such form as may be prescribed:

Provided that the Authority may entertain any appeal after the expiry of the said period of thirty days but not after ninety days

from the date aforesaid if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) For the purposes of sub-section (1), "person" means-

(a) any person who is likely to be affected by the grant of environmental clearance;

(b) any person who owns or has control over the project with respect to which an application has been submitted for environmental clearance;

(c) any association of persons (whether incorporated or not) likely to be affected by such order and functioning in the field of environment;

(d) the Central Government, where the environmental clearance is granted by the State Government and the State Government, where the environmental clearance is granted by the Central Government; or

(e) any local authority, any part of whose local limits is within the neighbourhood of the area wherein the project is proposed to be located.

(3) On receipt of an appeal preferred under sub-section (1), the Authority shall, after giving the appellant an opportunity of being heard, pass such orders, as it thinks fit.

(4) The Authority shall dispose of the appeal within ninety days from the date of filing the appeal:

Provided that the Authority may for reasons to be recorded in writing, dispose of the appeal within a further period of thirty days."

5. The petitioner's application for condonation of delay stated that it was unable to approach the authority within the 30 days stipulated initially since the publication of the Central Government's decision was made in the Newspaper only on 28.9.2007, after which it had to approach the local villagers informing them about the likely impact of the decision. The

application also alludes to a meeting with one Mr. Sandeep Azrenkar, a Social Activist based in Goa. It thereafter states that the delay was unavoidable because the petitioner had to approach Delhi and engage a lawyer. The petitioner also submit that the appellate authority should, having regard to the subject matter, take a liberal approach while dealing with the question of limitation and application for condonation of delay.

6. The third respondent urged on the other hand that the petitioner had not disclosed any much less sufficient cause and that its reasons for the delay were vague. It refuted the allegation of having published the decision in a delayed manner and stated that even if the time was to be reckoned from 28.9.2007, the appeal was time barred and no sufficient cause was disclosed.

7. The Tribunal by its impugned order after recording the rival contentions dismissed the application in the following terms: -

“5. The Authority has perused the statements filed by the Appellants and the respondent No.3 and heard the arguments put forward by their respective counsels. The Authority has noted that the information about the grant of Environment Clearance by Ministry of Environment & Forests on 18.09.2007 was published in newspapers by respondent-3 on 28.09.2007. This publication clearly states the availability of Environment Clearance letter being available with the Goa State Pollution Control Board to which the Appellants did not approach for a copy. The appellants could have filed a preliminary/skeleton appeal within the prescribed 30 days and later on, they could have added additional papers/records relevant to case. But they did not do so. The counsel for Appellants has not placed any material evidence to show that they were actually prevented by circumstances beyond their control to finalize the appeal and file it before this Authority in time. The alleged ignorance of the Appellants about the existence of

this Authority having jurisdiction to entertain Appeals against the Environment Clearance orders issued by MoEF, cannot be accepted as an excuse amounting to sufficient cause for condoning the delay in this case. The Authority therefore finds no merit in the argument of the counsel of the Appellants in favour of the delayed filing of Appeal beyond the allowed period of 30 days from the date of clearance order. The plea of the Appellants is, therefore, rejected and appeal is accordingly not admitted."

8. The petitioner reiterates its submissions in the averments. It relies upon the decision of the Supreme Court in *Collector, Land Acquisition, Anangnag & Anr. v. Mst. Katiji & Ors.* 1987 (2) SCC 107 as well as the order of this Court in *Vimal Bhai v. Union of India* (WP (C) 17682/2005 dated 29.9.2005), in which, Division Bench of this Court stated as follows: -

"The petitioners had filed an appeal challenging the environment clearance granted by the Ministry of Environment and Forests for setting up of Loharinag-Pala Hydroelectric Power Project (600 MW) in Uttarkashi District of Uttaranchal. Though the Appellate Authority is to comprise of one Chairman, one Vice Chairman and three Technical Members but the Authority at the relevant time was a one man Authority consisting only of the Vice Chairman who has passed the impugned order.

The appeal was filed by the petitioners on 1st April, 2005 while the clearance was granted on 8.2.2005. The period of limitation prescribed under the relevant Act is 30 days. It was in this context that the Petitioners sought condonation of delay on the ground that the fact of grant of clearance come to their knowledge much after the clearance was granted. The Vice Chairman of the Appellate Authority rejected their plea for condonation on the ground that Petitioner No.1 (Appellant No.1 therein) had knowledge about the environment clearance after it was issued and that the petitioners have not been able to furnish any credible explanation of what prevented them from filing the appeal within 30 days from the order of clearance, that is, 8.2.2005.

The Vice Chairman passed a detailed order ignoring that the petitioners represented an area where any clearance granted

by the Government of India is said to be not easily accessible and that the delay involved was only of 23 days. The Appellate Authority has also overlooked that these petitioners deserve to be heard on merits as the order of clearance and setting up of the project was bound to affect a sizeable population in the area. As against this the Authority has adopted a very hyper-technical approach in rejecting the petitioners application for condonation of 23 days delay instead of dealing with their plea on merit. This order in our view is unsustainable and is quashed. The petitioners' appeal shall revive. The Appellate Authority should now consider their appeal on merits and pass appropriate orders in accordance with law."

9. It was contended on behalf of the third respondent that the Tribunal was justified in rejecting the application for condonation of delay since the petitioner did not disclose any cause at all. It was contended that the application was absolutely vague and the petitioner did not disclose any particulars as to who approached the lawyer, and at what period of time. Besides it was submitted that the authorization to file the present Writ Petition is questionable.

10. The above discussion would show that there is no dispute on facts. The only question is whether the Tribunal's impugned order rejecting the application for condonation of delay and resultantly rejecting the appeal was justified under the circumstances of this case.

11. The Central Government in this case undeniably granted the clearance on 18.9.2007; the third respondent published it in the Newspaper on 28.9.2007. Therefore, the question of reckoning the date on 18.9.2007 would not arise. The Tribunal, however, reckoned the number of days of delay as 57; facially this appears to be incorrect, it ought to be 47.

12. Now as far as the explanation given by the petitioner that it approached the local villagers to seek their approval of consent, thereafter consulted a social activist and then approached a lawyer in Delhi are concerned, these are grounds which the litigant, in the opinion of the Court, is legitimately entitled to put forth in such proceedings. In a case like the present where environmental clearances' impact on local population in terms of their environmental harm, has to be assessed the approach of the tribunal especially set up for this purpose should be liberal and not "hyper technical" as characterized by this Court in the Division Bench order in *Vimal Bhai's* case (supra). Besides, as held in *Katiji's* case, there is no rule, law or procedure which obliges a litigant to account for each day's delay in the manner understood generally, in civil litigation.

13. The kind of disputes that the Tribunal is expected to adjudicate upon is not really a lis between the litigating parties - it is necessarily a wider one whereby the impact of the State decisions to permit/promotion a kind of project, on the local community or the environment in general has to be considered. Viewed from this perspective, and the statement of objects of the enactment, this Court is of the opinion that the Tribunal has to in each case (where appeals are preferred before it), adopt a broad and liberal, rather than narrow and cribbed approach. The latter view, however, has appealed to the Tribunal. After all when the local community or a person entitled to move an appeal approaches a Tribunal as has happened in this case, the grievance is not the impact on the immediate parties alone, but on

the wider community at large. The Tribunal has to keep that in mind and also that in the event of its rejecting such applications, perforce the appellate remedy would be rendered meaningless. In this view of the matter, the Court is of the opinion that the impugned order cannot be sustained. It is accordingly quashed.

14. The Tribunal is hereby directed to entertain and dispose of the petitioner's appeal on its merits after giving it advance and reasonable notice of hearing.

15. The Writ Petition is allowed in the above terms.

APRIL 29, 2009
/vd/

S. RAVINDRA BHAT
(JUDGE)