

**BEFORE THE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE) BENCH, PUNE
APPEAL No. 2/2013(WZ)**

CORAM:

**Hon'ble Mr. Justice V.R. Kingaonkar
(Judicial Member)**

**Hon'ble Dr. Ajay.A.Deshpande
(Expert Member)**

B E T W E E N:

1. GRAMPANCHAYT TIRODA,
Through
Deputy Sarpanch,
Taluka-Sawantwadi, Khed,
District Ratnagiri-Pin415621,
Maharashtra.
2. MR.AJAY SHIVAJIRAO BHONSLE,
Age-45 years, Indian Khashewadi, Tiroda,
Taluka-Sawantwadi,
District Sindudurg.
Maharashtra.Appellants

A N D

1. Ministry of Environment and Forest,
Through its Principal Secretary
Government of India,
CGO Complex, Lodhi road,
New Delhi-110 003.
2. MAHARASHTRA POLLUTION CONTROL BOARD, Taluka Khed,
Through its Secretary

Kalpataru Point, 3rd & 4th Floor,
Sion Matunga Scheme, Road No.8,
Opp. Cine Planet Cinema,
Near Sion Circle, Sion
Mumbai-400 022.

3. State of Maharashtra,
Through Its Chief Secretary,
Mantralaya,
Mumbai, Maharashtra.

4. The District Collector,
Sindhudurg,
Sindhudurg, Oras,
Maharashtra.

5. M/s. Gogte Minerals,
Through Its Director
146, Tilak Wadi,
Belgaum-560 006
Karnataka.

6. M/s. Infrastructure Logistics P. Ltd.
Through its Director
Cidade De Goa
Vainguinim Beach, Donapaula,
Goa-403004

.....Respondents

Counsel for Applicants:

Ms. Nikhil Nayyar Advocate.

Counsel for Respondents:

Mr. Ishwer Singh, Adv & Legal Consultant, MoEF

D.M.Gupte Advocate for Respondent No. 2,

Mr. S.S.Bhonsle adv for Respondent No.4,

**Mr. Mehta Sr. Adv with Swati Kamat, Seema Shirodkar Advs
Mr. Stiash Mahambreej Adv. for Respondent No.6.**

DATE : 25th November, 2013

J U D G M E N T

1. The Appellants have filed this Appeal under Section 18(1),14,15,16,17 of the National Green Tribunal Act, 2010, against the order of Respondent No.1, issued vide letter bearing No. No.J-11015/1026/2007-IA, II(M), dated 27.5.2013 and received by the Appellants on 12/8/2013, whereby the Ministry of Environment and Forests(MoEF) Respondent No.1, herein, revived the Environment Clearance (EC) dated 31.12.2008 (No.J-1105/1026/2007-IA. II(M), for the project Tiroda iron Ore Mine (ML area 34.4812 ha and production capacity 0.40 MPTA) at village Tiroda, in Sawantwadi Taluka, in Sindhudurg district in Maharashtra in favour of M/s Gogte Minerals, Respondent No.5, herein, by which the said company was granted EC for mining in the aforesaid area. The Appeal falls infact, only under Section 16 of the National Green Tribunal Act, 2010.

2. M/s Gogte Minerals, Respondent No.5, is a Company involved in mining of iron ore. The Respondent No.1 i.e. MoEF, had granted EC to the said Respondent No.5, vide order dated 31.12.2008, to carry out mining activities in village Tiroda. The Appellants had earlier challenged the said EC vide Appeal No.3 of 2011, alleging various infirmities in the entire process and

also the reports/data submitted by the Project Proponent. The National Green Tribunal, Delhi by its Judgment and order dated 12.9.2011, disposed of the Appeal with the following directions :

1. The EC dated 31.12.2008 granted in favour of the fifth respondent shall be kept in abeyance with immediate effect, till a fresh decision is taken by the Respondent No.1, either way. However, the fifth Respondent may be allowed to lift and transport the iron ore already mined and stacked on the site, as per law.
2. The Respondent no.1 shall place the matter before the new EAC (Mining) to which Majumdar is not a party and seek a fresh consideration of the matter taking all the material as available as on date as to compliances. If the EAC considers it necessary to impose additional conditions, it may direct the proponent to comply with the same including fresh EIA based on prescribed ToR before taking a decision for revival of the EC. However, we make it clear that the EAC is at liberty to reject or accept the proposal for recommending revival of EC in favour of the project proponent.
3. The EAC, however, shall call for fresh report in so far as causing air, noise and water pollution keeping in view the proximity of the school as observed in this Judgment and may recommend for relocating the school by constructing a new building at a safe location within Tiroda, revenue village with similar accommodation and suitable playground around, along with all modern basic amenities as required by the local Education Department.
4. The EAC also shall call for a fresh report as to existence of number of iron ore mines in Sawantwadi Taluka and their cumulative effect on the environment and ecology of the area particularly the Tiroda village.”

5. *This entire process shall be completed within a period of 6 months from the date of receipt of this judgment. With the above directions, the Appeal stands disposed of.*

3 Now, the Appellants have sought to set aside the revival or order dated 27.5.2013, reviving EC dated 31.12.2008, claiming that despite the specific directions of the Tribunal in the above Judgment and also specific order, the Respondent No.1, has been casual in analyzing the impact of the proposed mine and also, cumulative impacts of various activities, including the mining in the project area. The Appellants further claimed that the Respondent No.1, erred in not dealing with the issues namely, applicability of CRZ regulations and also the issue of Moratorium and validity of the lease-deed. The Appellants have further claimed that during the Expert Appraisal Committee (EAC), meeting of the MoEF, which was held on 23.5.2012 to 25.5.2012, it had recorded various shortcomings in the submissions made by the Project Proponent and therefore, had asked the Project Proponent to submit information on several aspects as detailed in MoEF letter dated 16-08-2012. The Appellants further claim that subsequent EAC meeting held on 29.8.2012, have recommended this project for revival, even though substantial and relevant information is not submitted by the Project Proponent in response to the detailed query by the EAC. The Appellants further submit that based on this

recommendation of the EAC, dated 29.8.2012 to 31.8.2012, the Ministry had decided to revive the EC to the project with following additional conditions :

- (i) *Cumulative impact of all Sources of emissions (including transportation) on the Ambient Air Quality (AAQ) of the area shall be assessed periodically on a half yearly basis. This data on AAQ and Meteorological data collected should be submitted to the Regional Office of the ministry.*
- (ii) *Hydro-geological study of the area shall be reviewed annually to assess any adverse impact on water regime and submitted to the Regional Office of the ministry.*
- (iii) *Ecological restoration of mined out area simultaneously shall be practiced and it shall be ensured that mining is carried out in a scientific manner and restored as per the approved mine plan.*

4 The Counsel for the Respondent No.5 raised preliminary issue of limitation and submitted that the present revival of EC is dated 27.5.2013. He further submits that as per para (13) of the MoEF affidavit, this EC has been uploaded on MoEF website on 29.5.2013, whereas, the present Appeal has been filed on 31.8.2013. He, therefore, submits that there is delay beyond 90 days in filing of the Appeal from the date of uploading of the EC on the MoEF website, which cannot be condoned by the Tribunal, as per the provisions of National Green Tribunal Act and also, as per earlier Judgment of the Tribunal in this regard. The Counsel for Respondent No.5, heavily relied on the Judgment in

Appeal No.1 of 2013, which is of five (5) Member Bench headed by the Hon'ble Chairperson of the NGT (PB). He submits that as per view taken in this Judgment, "the discharge of one of set of obligation in its entirety by any stakeholder would trigger the period of limitation, which then would not stop running and equally, cannot be frustrated by mere non-compliance of its obligation to communicate or place the order in public domain by other stakeholders". He also referred to para (17) of this Judgment, where it is mentioned that the period of limitation beyond 90 days is non condonable and the Tribunal is not vested with jurisdiction to condone the delay beyond 90 days. He, therefore, vehemently argued that as the Appeal has been filed beyond period of 90 days, the Tribunal has no jurisdiction to condone the delay and therefore, the Appeal be disposed of on this ground itself.

5 He further submits that though the Appellants claim that the copy of EC has been made available and supplied to Appellants only on 12.8.2013, in response to the R.T.I. query dated 6.6.2013, a close perusal of the R.T.I. query clearly indicates that the Appellants had not sought copy of EC in the said R.T.I. application and therefore, the question of not giving the copy under the R.T.I, does not arise. He further submits that the minutes of June and August meeting of EAC are hosted by the MoEF on the website and therefore, the Appellant would have been vigilant enough to track the

development, if he is so affected by the project. Considering the above, the Counsel for the Respondent No.5, claims that there is no delay in communication as envisaged in the Judgment of this Tribunal in the matter of Appeal No.1 of 2013, as to the revival of EC has been hosted on MoEF website on 29.5.2013 itself and therefore, communication is deemed to be complete on the same date and therefore the period of limitation would start to run from the said date. He finally summed up that considering above contentions, the Appeal has been filed beyond the period of 90 days from the date of communication and therefore, the Appeal is not maintainable on the ground of Limitation under the provisions of NGT Act, 2010.

6 Countering the argument, the Counsel for the Appellants submits that the present Appeal is second round of litigation before the NGT. He submits that by Judgment dated 12.9.2011, in the matter of Appeal No.3 of 2011, this Tribunal has kept the EC dated 31.12.2008 granted in favour of the fifth Respondent, in abeyance and the MoEF was directed to take a fresh decision, within a period of six (6) months from the date of said Judgment. The Counsel for the Appellants further submits that the matter was considered by the Expert Appraisal Committee (EAC) of the MoEF, in its meeting dated 23.5.2012 to 25.5.2012, and recorded various requirements of information. The EAC in its subsequent

meeting of August, 2012, recommended the project without ascertaining and assessing the information submitted by the Project Proponent in the light of EAC's May 2012 meeting observations. He further submits that the order of revival dated 27.5.2013, stipulates the condition that "all other conditions stipulated in the EC dated 31.12.2008, shall remain same". He further points out the specific conditions related to communication in the EC dated 31.12.2008, which are reproduced below :

- (xiv) A copy of clearance letter will be marked to concerned Panchayat/ local NGO, if any, from whom suggestion / representation has been received while processing the proposal.
- (xv) State Pollution Control Board shall display a copy of the clearance letter at the Regional office, District Industry Centre and Collector's office/ Tahasildar's Office for 30 days.
- (xvi) The project authorities shall advertise at least in two local newspapers widely circulated, one of which shall be in the vernacular language of the locality concerned, within 7 days of the issue of the clearance letter informing that the project has been accorded environmental clearance and a copy of the clearance letter is available with the State Pollution Control Board and also at web site of the Ministry of Environment and Forests at <http://envfor.inc.in> and a copy of the same shall be forwarded to the Regional Office of the Ministry located in Bangalore.

7 He further points out that as per the EIA Notification, 2006, Regulation No.10, various steps have been described for post EC monitoring, which are reproduced below :

10. Post Environmental Clearance Monitoring:

- (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.

© The Ministry of Environment and Forests 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 Boards, 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.

8 He further submits that the Appellants had filed a detailed R.T.I. application on 6.6.2013, and in response to the R.T.I., the Ministry in its reply dated 5.7.2013, has not disclosed that the revival of EC has been granted. The said communication is as under :

F.No.3-15012/80/2013-IA-II(M)
Government of India
Ministry of Environment & Forests
IA-II(M) Division
Paryavaran Bhawan
CGO Complex, Lodhi Road
New Delhi-1100 003
Dated: the 5 July,2013

To

Ajay S Bhonsle
6 Mini Commercial Complex
Maharashtra Housing Board Colony,
Near Ishanya Mall, Yerwada.
Pune-411006

Subject : Information under RTI Act 2005-regarding.

2.The information requested by you is voluminous, the file contains more than 2000 pages, making copy of the file would need opening the bindings of report and also manpower and resources would be required for the same. Therefore, the photocopy of above mention file cannot be provided as per the sub-section (9) of section 6 for RTI Act 2005. However, you are requested to visit Ministry of Environment and Forests in order to inspected the file on

the subject, you may kindly contact undersigned or Section Officer, TA Division to fix a mutually convenient date and time.

Sd/xxxx

(Sonu Singh)

Deputy Director

011-24362840

9 The Counsel further pointed out that in the same matter, there is an order passed by the Hon'ble High Court of Bombay, which is inter-party in the Judgment and, therefore, is binding on the contesting parties. In the said Judgment, in para-19, Hon'ble High Court of Bombay has observed that "it cannot be overlooked that the EC was granted subject to several, including specific conditions and general conditions. The petitioners could not be held to be constructively posted with the knowledge of all or any of those conditions. In fact, the condition No.16, (xvi) mandates and therefore advertisement itself mentions that the EC was displayed on the website of the MoEF". The Hon'ble High Court of Bombay has observed that the MoEF, while granting EC, itself had recognized the importance and necessity of informing the public at large about the clearance letter, inter alia, by displaying the same on the website of MoEF and making such clearance available with the State Pollution Control Board (SPCB) and other public authorities.

10 The Counsel for Appellants submit that even the Judgment of the Principal Bench in Appeal No.1 of 2003 which has been extensively referred by the Counsel for the

Respondent relied upon, defines the word “communication” in para 16 as follows :

‘A communication will be complete once the order of granting Environmental Clearance is placed in public domain by all the modes referred to by all or any of the stakeholders. The Legislature in its wisdom has, under the provisions of the Act or in the Notification of 2006, has not provided any indicator or language that could be precept for the Tribunal to take any other view’.

11 He, therefore, contends that as per the Notification of 2006, there are multiple modes of placing the Environmental Clearance in public domain namely website, paper advertisement, notice board displays by MoEF at its Head Quarter and also Regional Office and notice board displays by other public authorities including SPCB, Gram Panchyat etc. He, further states that there are three stakeholders namely MoEF, Project Proponent and other public authorities, who have been assigned the responsibility of putting the Environmental Clearance in public domain by one or more modes described earlier. He, further argued that the Legislature has given utmost importance to ascertain the views of the people about the proposed development as stipulated the EIA Notification 2006, and have therefore, incorporated detailed process of public hearing and consultation in the entire decision making process. At the same time, the

Legislature has given equal importance on putting the information regarding the Environmental Clearance into the public domain to provide this information to the concerned local people and therefore, the intent to the Legislature is very clear that the information about the Environmental Clearance and the conditions stipulated therein should reach to the common people who many times do not have access to higher communication technology like websites and depends on print media and also, the information from the Government offices. He, therefore, strongly argued that as held by the Hon'ble National Green Tribunal, (Principal Bench), the communication can be complete only when the information about the EC is placed in public domain by the all modes referred in the Notification, including website, print media and notice board display. He, further pointed out that the EC Notification of 2006 clearly stipulates that apart from hosting Environmental Clearance on MoEF website, the Project Proponent shall give an advertisement in the local newspapers about the Environmental Clearance along with important condition therein.

12 The Counsel for the Appellants further submits that it is an admitted fact that the Project Proponent has not published the revival of Environmental Clearance in the news papers, neither the copies of the same have been made available to the other public authorities for display on their

notice board. He, therefore, submits that as per the Environmental Clearance Notification of 2006, the conditions of the Environmental Clearance granted to the Project Proponent No.5 and also, the definition of the communication as per this Tribunal's order in Appeal No.1 of 2013, the communication is not complete as the Environmental Clearance has not been placed in public domain by all the three (3) modes. He, therefore, strongly argued that in the peculiar conditions, the present Appeal is well within the limitation period and should be heard on merits.

13 The Legal Consultant for MoEF, submitted detailed affidavit and submits that the revival letter dated 27.5.2013, was uploaded on the website of MoEF on 29.5.2013. However, MoEF has not expressed any views in the written submissions or even he do not submit any view or challenge on question of limitation in the present case.

14 In view of above facts and circumstances, we deem it necessary to deal with following issues while deciding the question of limitation in the present appeal.

- a) Whether the 'communication' as envisaged in the EIA notification 2009 and further elaborated in judgment of National Green Tribunal, Principal Bench in Appeal No.1/2013 is complete ?
- b) If so, what is the date of communication, which will trigger the limitation as provided in National Green Tribunal Act, 2010 ?

These issues are discussed in subsequent para :-

15 Legislature has given utmost importance to ascertain the public views/procedure of public hearing and consultation before the appraisal of any development project for grant of the EC. Similarly, the reverse flow of dissemination of information about the Environmental Clearance granted and conditions laid therein, has also been described elaborately in EIA notification 2006. The intention of legislature is very clear, which aims to improve the public consultation before grant of the EC and information dissemination about the decision taken on grant of the EC, which is reflected in the increased focus on these aspects in 2006 notification.

16 The public hearing/consultation and Environmental Clearance information dissemination by putting the EC to public domain are conjoint activities, making the information flow complete in the EC decision making process. There are links in both these aspects, as one of the conditions of the EC is :

“The project proponent to give copies of EC to concerned Panchyat/local NGO, if any, from whom suggestion/representation have been received while processing the proposal.”

Though the EIA notification 2006, Rule 10 also stipulates that the copies of the EC shall be displayed by other authorities including SPCB, Gram Panchyat, DIC etc., the Notification is silent about who shall give copies of the EC to these authority which is expected to give that information to the other public authorities. By mere inclusion of a condition to this effect in the EC, the MoEF cannot be expected to ensure compliance of the said Regulations.

17 The EIA notification 2006, Regulation 10 describes the information dissemination by putting the EC in public domain through different modes by different stake holders. The Hon'ble Principal Bench of National Green Tribunal, in its judgment in Appeal No.1/2013 has already dealt on this aspect and relevant paras are reproduced below : –

“12 From the above dictum, it is clear that a communication would mean putting it in public domain and completing the acts as are contemplated in the EIA Notification of 2006, read with conditions of the EC and the provisions of the Act. In terms of the scheme of the notification and law, there are three stakeholders in the process of grant of environmental clearance :

- (a) Project Proponent*
- (b) Ministry of Environment and Forests, and*
- (c) Other agencies which are required to fulfill their obligations to make the communication complete in terms of the provisions of the Act and the notification concerned.*

13 The MoEF shall discharge its onus and complete its acts to ensure communication of the environmental clearance so as to trigger the period of limitation. The MoEF upon granting of the environmental clearance must upload the same on its website within seven days of such order, which would remain uploaded for at least 90 days, as well as put it on its notice board of the Principal as well as the Regional Office for a period of at least 30 days. It should be accessible to the public at large without impediments (Refer Save Mon Region Federation & Anr V. UOI & Ors.)

14 The project proponent, upon receipt of the environmental clearance, should upload it permanently on its website. In addition thereto, the project proponent should publish it in two local newspapers having circulation where the project is located and one of which being in vernacular language. In such publication, the project proponent should refer to the factum of environmental clearance along with the stipulated conditions and safeguards. The project proponent then also has to submit a copy of the EC to the heads of the local authorities, panchyats and local bodies of the district. It will also give to the departments of the State a copy of the environmental clearance.

15 Then the Government agencies and local bodies are expected to display the order of environmental clearance for a period of 30 days on its website or publish on notice board, as the case may be. This is the function allocated to the Government departments and the local bodies under the provisions of the notification of 2006. Complete performance of its obligations imposed on it by the order of environmental clearance would constitute a communication to an

aggrieved person under the Act. In other words, if one set of the above events is completed by any of the stakeholders, the limitation period shall trigger. If they happen on different times and after interval, the one earliest in point of time shall reckon the period of limitation. Communication shall be complete in law upon fulfilment of complete set of obligations by any of the stakeholders. Once the period of limitation is prescribed under the provisions of the Act, then it has to be enforced with all its rigour. Commencement of limitation and its reckoning cannot be frustrated by communication to any one of the stakeholders. Such an approach would be opposed to the basic principle of limitation.”

18 It will be also worthwhile to read the related condition of the EC concurrently at this stage :

(xiv) A copy of clearance letter will be marked to concerned panchyat/local NGO, if any, from whom suggestion/representation has been received while processing the proposal.

(xv) State Pollution Control Board shall display a copy of the clearance letter at the Regional Office, District Industry Centre and Collector's office/Tahsildar's office for 30 days.

(xvi) The project authorities shall advertise at least in two local news papers widely circulated, one of which shall be in the vernacular language of the locality concerned within 7 days of the issue of the clearance letter informing that the project has been accorded environmental clearance and a copy of the clearance letter is available with the State Pollution Control Board and also at web site of the Ministry of Environment and Forests at <http://envfor.nic.in> and a copy of the same shall be forwarded to the Regional office of the Ministry located in Bangalore.”

19 It is evident from the joint reading of above para 17 and 18 that though MoEF is expected to host the EC on its website and display the same on Notice Board, and this is also directly linked to the specific condition that the Project Proponent shall publish newspaper advertisement specifying the EC conditions and also, mentioning that complete EC is available on MoEF website. This particular provision has a specific intent of ensuring wide publicity of the EC and conditions stipulated therein, as a part of legislative intent and therefore, it can be observed that both these modes of MoEF website hosting and the project proponent's newspaper advertisement are linked to each other and need to be read together. The other mode of Notice Board display by various authorities is also equally important, besides sending copies to the people/parties who have raised objection in appraisal process. As these authorities and number of people/parties are plural in numbers, it may not be practicably feasible to verify the compliance by MoEF and will delay the process, and therefore, we are of the considered opinion that the confirmation about sending the copies of the EC to these public authorities through speed post/registered post can be sufficient to assume the completeness of this communication mode. These public authorities have been given the responsibility of putting the copies of the EC on their Notice Board, which they are

expected to perform with utmost responsibility. However, mere non-compliance on this ground of communication by one or other public authorities cannot be the basis of incomplete communication.

20 In the present appeal, it is an admitted fact that the project proponent has not given newspaper advertisement on revival of the EC, neither the project proponent has uploaded the EC in downloadable format on its website. Further the project proponent has neither sent the information of EC to various people/parties who raised objection in appraisal process, nor has the project proponent sent copies of the EC to various public authorities for Notice Board display. It is submitted by MoEF that the copy of EC was uploaded on MoEF website on 29th May 2013. This fact is supported by Affidavit of the MoEF as well as its document.

21 It is also an admitted fact that the MoEF has granted the revival of EC on 27th May 2013, based on the recommendation of EAC, as per decision in its meeting dated 29th to 31st August 2012. The Regulation 8 of EIA Notification 2006, stipulates time of 45 days for the authority to take a decision on the recommendation of EAC. In the instant case, this time limit has not been adhered to. In the mean time, the Appellant had submitted a detailed

representation against the project proponent on 8th October 2012 to the MoEF.

22. Perusal of second Affidavit filed by Respondent No.1 (MoEF) shows that information pertaining to grant of revival letter of EC of Tiroda Iron ore Mine of M/s. Gogate Mineral was duly uploaded on the website of the Ministry on 29th May 2013. Copy of the record of NIC is also annexed with the Affidavit in order to show the date of uploading of the EC letter issued by the MoEF. It goes without saying that the first information was available on the website on 29th May 2013. Those who were diligent and could have due access to the internet could have obtained such information on that day or atleast within short span after the day of uploading of the said information pertaining to the grant of EC vide the letter issued by the MoEF. According to the Appellant, the publication of the EC on the website mandates that the same should be communicated to the Village Panchyat, Local NGO from whom the suggestion/representation had been received while processing the proposal. In the written submission (para 3.5) such contention is raised by the Appellant. It is further submitted that the communication was never received by the Appellant. It is pointed out that the Clause (xv) of the EC letter dated 31st December 2008 has not been complied with. It is contended that the Respondent No.5 has wilfully

disobeyed the conditions stipulated in the EC letter dated 31st December 2008 and as such the Respondent No.5 cannot be permitted to raise the plea of limitation. The Learned Counsel for the Appellant contended that the Hon'ble Principal Bench of the National Green Tribunal in its Judgment dated 11th July 2013 in Appeal No.1/2013 (Medha Patkar Vrs. MoEF) interpreted the word "communication" as enumerated Section 16 of the National Green Tribunal Act as an act of putting in public domain and completing the acts as contemplated in MoEF Notification 2006, read with conditions of the EC. He, therefore, argued that mere information uploaded on the website of the MoEF cannot be treated as "communication" of the EC in question. In other words, it is his contention that the limitation will not start running w.e.f. 29th May 2013 and therefore, the Appeal cannot be held as barred by limitation.

23 Let it be noted that in case of "The Sarpanch Gram Panchyat, Tiroda and Ors Vrs. Ministry of Environment (MoEF) Writ Petition No.7050/2010", (Anx.A-15), Hon'ble Divisional Bench of the High Court Bombay, delivered inter-party judgment. However, the order challenged before the Hon'ble Division Bench in Writ Petition No.7050/2010 was rendered by the National Environment of Appellate Tribunal rejecting the Appeal preferred by the

Appellants (petitioners) on the ground that it was barred by limitation. The Hon'ble High Court of Bombay considered scope of Section 11 of the National Environment Appellate Authority Act, 1997. It is pertinent to note that the Hon'ble Division Bench was pleased to quash the impugned order and send the matter to the National Green Tribunal. The Hon'ble High Court of Bombay held that the limitation had triggered from 30th May 2009 when the EC letter was displayed on web site of the MoEF for the first time. So, we do not find any difference of opinion between the view taken by the Hon'ble High Court of Bombay and the view expressed by the Hon'ble Principal Bench of the National Green Tribunal. However, the Learned Counsel for the Appellants invited our attention to certain observations of the Hon'ble High Court. They are :

“While ordinarily this argument would have appealed to us, it cannot be overlooked that environmental clearance was granted subject to several conditions including specific conditions and general conditions. The petitioners could not be held to be constructively posted with the knowledge of all or any of those conditions. In fact, condition no.(xvi) mandated and, therefore, the advertisement itself mentioned that the environmental clearance was displayed on the website of the Ministry of Environment & Forests and the State Pollution Control Board. Hence the burden was on the respondents to show that the environmental clearance letter was displayed on the website of the said authorities. The clearance having been granted subject, inter-alia, to the conditions (xiv), (xv) and (xvi) specifying the mode of service/publication of the order, the order could come into effect only upon the compliance thereof.”

As stated before, ultimately the Hon'ble High Court of Bombay held that the delay could be condoned because the date of communication was the date on which the EC was displayed on the website of the MoEF i.e. 30th May 2009.

25 Reliance is also placed on some observations in "State of Maharashtra and Ors. Vrs. ARK Builders Pvt.Ltd." (2011)4 S.C.C. 616. While interpreting Ss.34(3)(i)(v) of the Arbitration and Conciliation Act, 1996, the Apex Court held that the expression "party making that application had received the Arbitral Award" cannot be read in isolation and it must be understood in the light of Section 31(v) that requires a signed copy of Award to be delivered to each party. It is held that conjoint reading of the Sections and the sub-clauses is necessary to interpret the provision. In the present case, the expression "communication" is interlinked with three (3) different modes of publication. We may make it clear that Section 16 of the National Green Tribunal Act, 2010 is not *pari-materia* with section 34 of the Arbitration and the Conciliation Act, 1996. That makes the difference while interpreting the word "communication" in the context of the Section 16 of the National Green Tribunal Act.

25 At this juncture, we may refer to case of "Chhatisgarh State Electricity Board Vrs. Central Electricity Regulatory Authority and Ors (2010)5, S.C.C. 23". In the

said case the Apex Court considered Section 125 of the Electricity Act 2003 alongwith Proviso appended thereto. The Apex Court held that the limitation period provided under section 125 is of 60 days and could be extended upto 60 days under Proviso to Section 125 but there is no provision in the said Act for extension beyond this period. It is held that the Electricity Act is a special legislation which is excluded from purview of the Limitation Act, 1963 by virtue of Section 29(2) of the Limitation Act and therefore, Section 5 of the Limitation Act, cannot be invoked. It is quite clear, therefore, that Section 5 of the Limitation Act is not applicable to the Appeal which comes within ambit of Section 16 of the NGT Act, 2010.

26 Still, however, if the argument of Learned Counsel for the Appellants is accepted and the commencement of the limitation period is held to be connected with compliances to be made by the Project Proponent and/or other public authorities, notwithstanding the uploading of EC letter on the website of the MoEF, then probably, the Appeal may not be within the stipulated period of limitation. For, the Project Proponent did not publish the EC letter in local newspapers. Though there was such obligation under the conditions statutorily imposed. The other statutory bodies also did not place the information on the Notice Board. So, if such defaults are interlinked, excluding the date of the uploading

of the information on the website of the MoEF, then perhaps the things would be different. We have to, however, say nothing more in this context. We are bound by the view expressed by the Hon'ble Principal Bench in its judgment in Appeal No.1/2013 in case of "Medha Patkar" (Supra). The Hon'ble Principal Bench held that the first mode amongst the three (3) modes of publication will trigger the limitation. Obviously, it will have to be taken as the starting point of limitation.

27 It is well settled that once the limitation has started running, then it cannot be arrested. But for view expressed by the Hon'ble Principal Bench in the above matter, probably we had some scope to consider the contentions of the Learned Counsel for the Appellant. We do not find any such denting available nor do we wish to go into such arena, particularly, because the judicial discipline and propriety requires maintenance of due respect to the view taken by Hon'ble Principal Bench.

28 How we wish, we could help the Appellants to wriggle them out of the procedural difficulty. This is particularly so when the delay is marginal, unintentional and otherwise could be condoned in case legal provision like Section 5 of the Limitation Act being made applicable. Moreover, we find that the project proponent is at fault since the EC letter was not placed in public domain by way of

newspaper publication which was mandatory condition to be complied with by him. The Appellants require help to get out of such procedural default. There appears no way out for them despite having our empathy tilted on their side. For, we cannot disregard the Judicial Dicta of the five (5) Members Bench in “Medha Patkar’s case” (Supra) by which our hands are tied. Taking a stock of foregoing discussion, we deem it proper to uphold the legal objection and conclude that the appeal is barred by limitation. Hence, it is dismissed. No costs.

....., JM
(Justice V. R. Kingaonkar)

....., EM
(Dr. Ajay.A. Deshpande)

NGT