

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

**APPEAL No.3/2017 (WZ)**

**CORAM:**

**Hon'ble Mr. Justice U.D. Salvi  
(Judicial Member)**

**Hon'ble Mr. Bikram Singh Sajwan  
(Expert Member)**

**Between:**

**Austin Francis D'souza**

JM Rebello Chawl, Chawl No.412,  
Room No.4, Sewri Cross Road,  
Wadala Mumbai – 400 031.

... **Appellant**

**And**

**1. Secretary**

Environment Department  
Mantralaya, Mumbai – 400 032.

**2. The Chief Executive Officer**

Slum Rehabilitation Authority  
Anant Kelar Marg,  
Bandra East, Mumbai – 400 051.

**3. New Look Constructions Pvt. Ltd.**

3 Siddharth Nagar  
Ground Floor, MMGS Marg,  
Dadar, Mumbai – 400 014.

... **Respondents**

**Counsel for Appellant (s):**

**Mr. Aditya Pratap, Advocate a/w Appellant in person.**

**Counsel for Respondent (s):**

**Ms. Manasi Joshi, Advocate for Respondent No.1**

**Mr. Girish Utangale, Advocate for Respondent No.2**

**Mr. Saket Mone, Advocate i/b M/s. Vidhi Partners for  
Respondent No.3.**

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**Date: 21<sup>st</sup> November, 2017**  
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## **Judgment/Order**

**1.** The Appellant has assailed the communication dated 26<sup>th</sup> May, 2015 addressed by the Principal Secretary, Environment Department, Government of Maharashtra to the Respondent No.3 – New Look Constructions Pvt. Ltd. thereby withdrawing the proposed directions issued under Section 5 of the Environment (Protection) Act, 1986 read with EIA Notification, 2006 in the present appeal.

**2.** Pertinently the appeal has been preferred on 11<sup>th</sup> January, 2017. Sensing the delay in preferring the present appeal, we issued Notice before admission on the point of limitation to the Respondents vide Order dated 27<sup>th</sup> January, 2017. In response to the said Notice all the parties to the Appeal namely – Respondent No.1 – Secretary, Environment Department, Government of Maharashtra, Respondent No.2 – The Chief Executive Officer, Slum Rehabilitation Authority and Respondent No.3 – New Look Construction Pvt. Ltd. appeared before us and filed replies on the issue of limitation dated 23<sup>rd</sup> March, 2017, 3<sup>rd</sup> March, 2017 and 7<sup>th</sup> March, 2017 respectively. Additional Affidavit dated 8<sup>th</sup> May, 2017 supplementing the facts was also filed by Respondent No.1 – Environment Department, Government of Maharashtra. The Appellant re-joined the respective replies.

**3.** According to the Appellant, he is a resident of Wadala area of Mumbai occupying the premises in Slum

Rehabilitation Scheme developed within the layout of the offending construction and was aggrieved by the impugned communication withdrawing the proposed directions under Section 5 of the Environment (Protection) Act, 1986. The offending construction, the Appellant added, was an expansion of the project crossing the threshold limit under the EIA Notification, 2006 executed on the land bearing C.S. No.298(pt), 299 to 305 & 306 (pt), F.P. No.27 to 34 of Wadala Estate South Scheme No.57 at Katrak Road, Wadala for 'Vitthal-Rakhuma CHS Ltd.' and S.R. Scheme on plot bearing C.S. No.298 (pt.), 306 (pt.) and F.P. No.24, 25, 26, 35, 36 & 37 of Wadala Estate South Scheme No.57 at Katraj Road, Wadala without obtaining the prior environmental clearance as required under the said Notification.

**4.** As regards the limitation, the Appellant pleaded that the impugned communication was not communicated to him as required by Section 16 of the National Green Tribunal Act, 2010 dealing with such appeals provided under the Act. The Appellant further pleaded that the limitation period prescribed under Section 16 of the said Act was to commence from the date of the communication of the order. The Appellant further pleaded that the communication of the order has to be by putting it in the public domain for the benefit of the public at large and making it available to the public with the downloading of

it made possible without any hindrance or impediment. According to the Appellant, he did not find the impugned communication on the website of the Environment Department of Government of Maharashtra and he was prompted to file the present Appeal only when he got some hearsay reference made to corrupt practices in the passing of the impugned order.

**5.** The Respondent No.1 – Environment Department, Government of Maharashtra revealed the facts leading to the impugned communication through the Affidavits dated 23<sup>rd</sup> March, 2017 and 8<sup>th</sup> May, 2017. The Respondent No.1 contended that from reading of the text of Section 16 of the National Green Tribunal Act, 2010 it is crystal clear that there is no appeal against the decision of withdrawal of the proposed directions under Section 5 is provided in the said provision. Moreover, the Respondent No.1 contended that the State Level Expert Appraisal Committee – 2 (SEAC-2) a Committee for appraisal for MMR construction project had duly recommended the proposal for environmental clearance to the project in question and forwarded the recommendation to the State Environment Impact Assessment Authority (SEIAA); and thereupon the SEIAA in its wisdom issued proposed directions under Section 5 of the Environment (Protection) Act, 1986 read with EIA Notification dated 14<sup>th</sup> September, 2006 to the Respondent No.3 vide letter dated 25<sup>th</sup> March, 2015 to show cause as

to why their building construction activity shall not be stopped forthwith and why further legal action shall not be initiated against them under provisions of the Environment (Protection) Act, 1986 and Rules made thereunder; and following the response to the said Show Cause Notice and the personal hearing held thereafter the Respondent No.1 – Principal Secretary, Environment Department took a decision of withdrawing the proposed directions upon noticing that the plinth of Building No.1 was completed prior to amendment dated 7<sup>th</sup> July, 2004 in the EIA Notification, 1994; and the SEIAA took cognizance of withdrawal of the said proposed directions on 26<sup>th</sup> May, 2015 in its 87<sup>th</sup> Meeting held during 10<sup>th</sup> to 12<sup>th</sup> August 2015, minutes of which were uploaded on the website of the Environment Department. The Respondent No.1 further revealed that thereafter with due deliberation EC to the project had been issued on 13<sup>th</sup> October, 2015.

**6.** The Respondent No.2 – The Slum Rehabilitation Authority resisted the appeal with the reply dated 3<sup>rd</sup> March, 2017 thereby contending:

- (i) that the Appellant has no locus to file the present appeal having enjoyed the fruits of redevelopment in slum scheme;
- (ii) that the Appellant was aware of all the sanctions and permissions given by the authorities including the Respondent No.1's letter dated 26<sup>th</sup> May, 2015 withdrawing directions issued on 25<sup>th</sup> March, 2015;

- (iii) there has been delay of more than 18 months;
- (iv) no appeal was conceived by law against the communication withdrawing the directions issued under Section 5 of Environment (Protection) Act, 1986.

**7.** The Respondent No.3 – New Look Constructions Pvt. Ltd likewise resisted the appeal with the reply dated 7<sup>th</sup> March, 2017 bringing forth the facts regarding the litigation between itself and the Appellant, and further contending that there has been reason to believe that the Appellant was well aware of the impugned letter dated 26<sup>th</sup> May, 2015 since the time it was issued and the decision to withdraw the directions had culminated into grant of EC dated 13<sup>th</sup> October, 2015 and thus got merged with the said EC which was duly uploaded on Ministry website on 15<sup>th</sup> October, 2015; and the appeal against the said EC being apparently time barred, the Appellant has chosen a path to challenge the said communication in order to skirt the predicament arising out of its failure to challenge the EC dated 13<sup>th</sup> October, 2015 well in time. The Respondent No.3 further contended that the communication dated 26<sup>th</sup> May, 2015 being the communication of the decision taken by the authority to withdraw the directions, it cannot be interpreted as a direction against which Section 16(g) specifically provided an appeal and, therefore, no appeal would lie against such letter of withdrawal of directions under Section 16(g) of the National Green Tribunal Act, 2010. The Respondent No.3 further contended that the

authority was not under obligation to communicate the decision to withdraw the proposed directions under Section 5 of the Environment (Protection) Act, 1986 to the Appellant in person, a third party.

**8.** The Appellant re-joined the replies. No new dimension to his case was set forth with the rejoinders filed by the Appellant.

**9.** Controversy thus raised before us persuade us to answer the following points:

I. Whether the impugned letter dated 26<sup>th</sup> May, 2015 communicating the withdrawal of proposed directions issued under Section 5 of the Environment (Protection) Act, 1986 is appealable under any of the provisions of Section 16 particularly Section 16(g) of the National Green Tribunal Act, 2010.

II. Whether the appeal is barred by limitation prescribed under Section 16 of the National Green Tribunal Act, 2010.

**Point No.I**

**10.** Learned Counsel Mr. Aditya Pratap on behalf of the Appellant vehemently argued that the limitation being a procedural law needs to be liberally construed and in the present case, the decision to withdraw the proposed directions issued under Section 5 of the Environment (Protection) Act, 1986 amounted to an order appealable under Section 16(g) of the National Green Tribunal Act, 2010; and this order was never communicated to the Appellant nor was it published on the website.

**11.** It is revealed by Respondent No.1 – Environment Department of Government of Maharashtra that no directions were issued under Section 5 of the Environment (Protection) Act, 1986 but a Show Cause Notice proposing the directions under Section 5 of the Environment (Protection) Act, 1986 dated 25<sup>th</sup> March, 2015 was issued and after extending personal hearing to Respondent No.3 on 18<sup>th</sup> May, 2015 a decision was taken by the Respondent No.1 to withdraw the proposed directions as per law. Rule 4 of the Environment (Protection) Rules, 1986 prescribes procedure for issuance of directions under Section 5 of the said Act in the manner quoted herein below:

**“4. Directions.** - (1) Any direction issued under section 5 shall be in writing.

(2) The direction shall specify the nature of action to be taken and the time within which it shall be complied with by the person, officer or the authority to whom such direction is given.

[(3-a) The person, officer or authority to whom any direction is sought to be issued shall be served with a copy of the proposed direction and shall be given an opportunity of not less than fifteen days from the date of service of a notice to file with an officer designated in this behalf the objections, if any, to the issue of the proposed direction.

[(3-b) Where the proposed direction is for the stoppage or regulation of electricity or water or any other service affecting the carrying on any industry, operation or process and is sought to be issued to an officer or an authority, a copy of the proposed direction shall also be endorsed to the occupier of the industry, operation or process, as the case may be and objections, if any, filed by the occupier with an officer designated in this behalf shall be dealt with in accordance with the procedures under sub-rules (3a) and (4) of this rule:

Provided that no opportunity of being heard shall be given to the occupier if he had already been

heard earlier and the proposed direction referred to in sub-rule

(3b) above for the stoppage or regulation of electricity or water or any other service was the resultant decision of the Central Government after such earlier hearing.]

(4) The Central Government shall within a period of 45 days from the date of receipt of the objections, if any or from the date up to which an opportunity is given to the person, officer or authority to file objections whichever is earlier, after considering the objections, if any, received from the person, officer or authority sought to be directed and for reasons to be recorded in writing, confirm, modify or decide not to issue the proposed direction.

(5) In case where the Central Government is of the opinion that in view of the likelihood of a grave injury to the environment it is not expedient to provide an opportunity to file objections against the proposed direction, it may, for reasons to be recorded in writing, issue directions without providing such an opportunity.

(6) Every notice or direction required to be issued under this rule shall be deemed to be duly served

(a) where the person to be served is a company, if the document is addressed in the name of the company at its registered office or at its principal office or place of business and is either-

(i) sent by registered post, or

(ii) delivered at its registered office or at the principal office or place of business;

(b) where the person to be served is an officer serving Government, if the document is addressed to the person and a copy thereof is endorsed to this Head of the Department and also to the Secretary to the Government, as the case may be, in-charge of the Department in which for the time being the business relating to the Department in which the officer is employed is transacted and is either-

(i) sent by registered post, or

(ii) given or tendered to him;

(c) in any other case, if the document is addressed to the person to be served and-

(i) is given or tendered to him, or

(ii) if such person cannot be found, is affixed on some conspicuous part of his last known place of residence

or business or is given or tendered to some adult member of his family or is affixed on some conspicuous part of the land or building, if any, to which it relates, or

(iii) is sent by registered post to that person;

*Explanation.*-For the purpose of this sub-rule,-

(a) "company" means any body corporate and includes a firm or other association of individuals;

(b) "a servant" is not a member of the family."

Thus, it is within the domain of the Government to take such decision either to confirm, modify or decide not to issue such directions. Obviously the decision not to issue said directions is not a direction but a decision taken by the authority. By any standard such decision can never be regarded as a command or instruction or even a guidance to any person, officer or any authority so as to bind him to comply with such command, instruction or guidance as envisaged under Section 5 of the Environment (Protection) Act, 1986. It is correct that the power vested with the Central Government to issue such directions under the said section has a wide amplitude as can be seen from the inclusive enunciation of its sweep in the Explanation of Section 5. However, the same has to be understood in context with the meaning of the word "direction".

**12.** Section 16 of the National Green Tribunal Act deals with the appellate jurisdiction of the Tribunal and with particular reference to Section 5 of the Environment (Protection) Act, 1986 which provides for an appeal in following words:

“16(g) any direction issued, on or after the commencement of the National Green Tribunal Act, 2010, under section 5 of the Environment (Protection) Act, 1986 (29 of 1986);”

Law makers have studiously omitted the use of words “order” or “decision” as is found used in clause (a), (b), (d), (e), (f), (h), (i) and (j) of Section 16. Thus, law envisages an appeal only against the direction under Section 5 of the Environment (Protection) Act, 1986 and not against any order or decision taken by the authority while exercising such authority vested in it under Section 5 of the Environment (Protection) Act, 1986. As observed herein above, the letter dated 26<sup>th</sup> May, 2015 is not a direction but a communication of the decision taken by the authority. No appeal would, therefore, lie against such letter under Section 16(g) of the National Green Tribunal Act, 2010 and as a corollary thereto there is no obligation to communicate this decision to any third party.

**Point No. I is thus answered negatively.**

**Point No.II**

**13.** There is no reason to disagree with submission made on behalf of Respondents that the decision to withdraw the proposed directions under Section 5 of the Environment (Protection) Act, 1986 merged into the EC dated 13<sup>th</sup> October, 2015 in view of the facts leading to the grant of EC as disclosed in the Affidavit in Reply of the Respondent No.1 – Environment Department, Government of Maharashtra. There is also material on record to show

that the EC dated 13<sup>th</sup> October, 2015 was uploaded on the website of the Environment Department of Government of Maharashtra on 15<sup>th</sup> October, 2015 vide Affidavit dated 8<sup>th</sup> May, 2017. This fact of uploading of the EC is not disputed by the Appellant. No appeal has been preferred against the said EC. Present appeal, therefore, appears to be a clever ploy to skirt the predicament arising out of the failure to prefer an appeal against EC within time. There is also an undisputed material on the record to show that the Minutes of 87<sup>th</sup> Meeting dated 12<sup>th</sup> August, 2015 of State Environment Impact Assessment Authority - wherein the fact of withdrawal of proposed directions vide letter dated 26<sup>th</sup> May, 2015 was noted - was uploaded on the website on 10<sup>th</sup> September, 2015. We have, therefore, no hesitation in holding that the present appeal which ought to have been preferred within a period prescribed in the proviso under Section 16 of the National Green Tribunal Act, 2010 but not preferred so in time is grossly time barred. The Appeal, therefore, must fail.

**Appeal No.3/2017 is, therefore, rejected.**

....., **JM**  
**(Justice U.D. Salvi)**

....., **EM**  
**(Bikram Singh Sajwan)**

**Date: 21<sup>st</sup> November, 2017**  
**mk**