BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI
....

APPEAL NO. 61 OF 2013
&
(M.A. No. 896 of 2014)

In the matter of :

Mr. Aman Sethi
Sole Proprietor,
M/s FGM Mining & Infrastructure Co.
R/o 30, Ishwar Nagar, New Delhi .....Appellant

Versus

1. State of Rajasthan
Through Deputy Secretary
Department of Environment,
Government of Rajasthan,
Jaipur – 302001.

2. Department of Mines & Geology,
Government of Rajasthan,
Through its Director, Bharatpur
Jaipur – 302001.

3. District Collector,
Bharatpur.

4. Sub-Divisional Officer,
Tehsil, Kama District Bharatpur
Jaipur – 302001.

5. Rajasthan State Pollution Control Board,
Through its Member Secretary,
Having its office at 4, Jhalana Institutional Area,
Jhalana Doongri,
Jaipur (Rajasthan)-302001.

6. Maan Mandir Sewa Sansthan Trust,

7. MoEF, New Delhi ....Respondents

Counsel for Appellants :

Mr.Gaurav Sarin, Mr. Veera Angrish, Mr. Ajitesh K. Kir and Mr. Saket Sikri, Advocates.

Counsel for Respondents :

Mr. Shiv Mangal Sharma and Mr. Shrey Kapoor, Advocates, for Respondent No.1 to 5.
Mr. Ritwick Dutta and Ms. Pallavi Talware Advocates, for Respondent No.6.
Ms. Panchajanya Batra Singh, Advocate, for MoEF&CC.

JUDGMENT

PRESENT :

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)
Hon'ble Dr. D.K. Agrawal (Expert Member)
Hon'ble Mr. B.S. Sajwan (Expert Member)

Reserved on 26th March, 2015
Pronounced on 7th May, 2015

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1. Whether the judgment is allowed to be published on the net?
2. Whether the judgment is allowed to be published in the NGT Reporter?

JUSTICE SWATANTER KUMAR, (CHAIRPERSON)

The Government of Rajasthan, in exercise of the powers conferred upon it under Section 5 of the Environment Protection Act, 1986 (for short 'Act of 1986') and Section 18 of the Air (Prevention and Control of Pollution) Act, 1981 (for short 'the Air Act') on 11th September, 2012 issued directions, directing the Rajasthan Pollution Control Board (for short 'RSPCB'), to close down all stone crushing industrial units located in Village Mungaska, Tehsil Pahadi, District Bharatpur, Rajasthan and not to allow establishment and operation of new stone crushing units in the Villages of Jodhpur, Mungaska, Samsalka, Ubhaka, Amruka, Satwadi, Tilakpuri, Mallaka, Bhaiseda, Burana, Kaithwada, Kairua, Dadri and Mandor. These directions were passed with a view to prevent and control pollution of air, restore environment and to save it from further degradation, to protect the places of religious and ecological importance and to safeguard the life and health of people inhabiting or

visiting the ridge area. In furtherance to these directions, the RSPCB on 6th November, 2012 issued a direction to the appellant (M/s. FGM Mining and Infrastructure Company) directing it to close down the stone crushing unit run by it in Village Mungaska.

2. The appellant herein protested against the order vide his letter dated 29th November, 2012, where-after he filed a writ petition before a Single Bench of the Rajasthan High Court Bench, Jaipur (Civil Writ Petition No. 1046 or 1047/2013) titled *Mr. Aman Sethi v. State of Rajasthan & Ors.*, challenging the legality and correctness of the directions as well as the authority of the RSPCB to issue such a direction. The writ petition was filed on 23rd January, 2013 and when the matter came up before the High Court on 16th April, 2013, the appellant withdrew the said writ petition. The writ petition was dismissed as withdrawn with liberty as prayed for. The High Court on 16th April, 2013 passed the following order:

> "Date of Order 16.04.2013
>
> **HON'BLE MR. JUSTICE ALOK SHARMA**
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> Mr. Jaideep Singh, for the petitioner.
> Mr. Akhil Simlote, for the respondent.
>
> Counsel for the petitioner seeks permission to withdraw the petition with liberty to the petitioner to take his remedy in accordance with law.
>
> In view of the submission made, the petition is dismissed as withdraw with liberty as prayed for.
>
> Stay application also stands dismissed."

3. The appellant claims to have obtained a certificated copy of the said order on 26th April, 2013. Thereafter, he filed the appeal before this Tribunal on 8th May, 2013 raising a challenge to the directions

mentioned in the orders dated 11th September, 2012 and 6th November, 2012. It may be noticed that the memorandum of appeal filed by the appellant was not accompanied by any application for condonation of delay.

4. The said appeal remained pending before the Tribunal and various orders were passed by the Tribunal including, directions to the State of Rajasthan and Ministry of Environment, Forest & Climate Change (for short 'MoEF') to carry out a scientific study or the background leading to recording of paragraphs 8 to 10 of the impugned order dated 11th September, 2012. On 14th November, 2014, the learned counsels appearing for the respective respondents raised an objection that the appeal was barred by time and was not accompanied by any application for condonation of delay; thus, the appeal was not maintainable and was liable to be rejected on that short ground alone. Thereafter, on 17th December, 2014, the appellant filed an application, being M.A. No. 896/2014 praying that the period of 94 days spent by the appellant before the High Court of Rajasthan in pursuing the Writ Petition No. 1046 or 1047/2013 should be excluded and the delay of 50 days in filing the appeal before the Tribunal be condoned and the appeal be dealt with on merits.

5. In the application for condonation of delay, the principal contention is that, in terms of Section 14 of the Limitation Act, 1963 (for short 'Act of 1963'), the appellant is entitled to exclusion of 94 days during which the matter was sub-judice before the High Court of Rajasthan. The Writ Petition was dismissed as withdrawn with liberty to approach the National Green Tribunal. Once the period of 94 days is

excluded there is a delay of only 50 days in filing the appeal, which for the circumstances stated in the application is liable to be condoned in terms of proviso to Section 16 of the National Green Tribunal Act, 2010 (for short, 'the NGT Act').

6. This application for condonation has been vehemently contested by the respondents. They filed a detailed reply taking an objection that since the appeal itself was not accompanied by an application for condonation of delay, the same is liable to be rejected on that short ground alone and filing of an application at a subsequent stage does not cure the defect, hence the memorandum of appeal would be liable to be rejected at the threshold. It is also stated that no sufficient cause has been shown for condonation of delay. It is averred that the High Court while dismissing the writ petition has not expressed any opinion that it intends to condone the delay or it was satisfied that the writ petition was not maintainable because of availability of an alternative remedy to the appellant. According to the respondents, even the period of 94 days is not liable to be excluded. It is also the contention of respondents that there was no reason for the appellant to approach the High Court of Rajasthan as the NGT Act had already come into force and the Tribunal was functional. Thus, the appellant cannot take advantage of its own wrong or mistake.

7. Though, we may not dismiss the appeal of the appellant only on the ground that the appeal was barred by time and was not accompanied by an application for condonation of delay, however, still there is merit in this contention raised on behalf of the respondents. An appeal barred by time should be accompanied by an application for

condonation of delay, if it is filed beyond the prescribed period of limitation. It is only when the delay in filing an appeal is condoned that the court gets jurisdiction or can proceed with considering the merits of the appeal. Thus, the condonation of delay is a condition precedent to consideration of an appeal on merits where it is filed beyond the prescribed period of limitation. By a practice, having due recognition in law, an appeal should be filed with an application for condonation of delay. The learned counsel for the appellant has relied upon the judgment of the Supreme Court in the case of *State of M.P. v. Pradeep Kumar* (2000) 7 SCC 372 to contend that non-filing of an application would not result in fatal consequences and the powers of the court should not be closed on such an issue for a litigant. In some cases, the courts have taken a view that as consequences of a time barred appeal, unaccompanied by an application for condonation of delay, have been specified under a particular law or statute, thus, such application could be filed at any stage. The language of Section 16 of the NGT Act is suggestive that an application for condonation of delay should accompany the memorandum of appeal. Such a view has been taken by a Bench of this Tribunal in the case of *Sudeep Srivastava v. Union of India* 2014 All India NGT Reporter (3) Delhi 43. The Tribunal while referring to the judgments of the Supreme Court in paragraph 23 of the judgment held as under:

> "23. We find merit in the contentions raised on behalf of the Respondents that an appeal which is filed beyond the prescribed period of limitation has to be accompanied by an application for condonation of delay in terms of proviso to Section 16 of the NGT Act, and only thereafter the delay can be condoned by the Tribunal when sufficient cause of action is shown for filing the appeal beyond the prescribed period of limitation. In support of this contention, reliance has

> been placed on these three cases: *Ragho Singh v. Mohan Singh and Ors.* (2001) 9 SCC 717, *Dipak Chandra Ruhidas v. Chandan Kumar Sarkar*, (2003) 7 SCC 66 and *Sneh Gupta v. Devi Sarup and Ors*. (2009) 6 SCC 194. As is evident, the appeal has been filed beyond the prescribed period of limitation and is admittedly not accompanied by any application for condonation of delay. In the case of *Dipak Chandra Ruhidas* (Supra), the Supreme Court even dismissed the appeal by revoking the leave already granted, where the appeal was filed beyond the prescribed period of limitation and later on, it was pointed out that the appeal was not accompanied by an application for condonation of delay. The contention that delay would be admitted to have been condoned, as leave was granted, was not accepted by the Supreme Court. In the case of *Sneh Gupta (supra)*, the Supreme Court clearly observed that the Court had no jurisdiction to condone the delay in terms of Section 3 of Limitation Act, 1963, in absence of an application for condonation of delay."

Thus, in light of the above, principally we would accept the objection taken by the respondents, as noticed above.

8. In view of the above, the first question that we are required to answer is: "Whether this Tribunal has the jurisdiction to condone the delay which is beyond 90 days in view of the proviso to Section 16 of the NGT Act?" This need not detain us any further as this question has been dealt with at great length by the Principal Bench of this Tribunal in the case of *Nikunj Developers v. State of Maharashtra* 2013 All India NGT Reporter(Delhi) (1) 40 where, after discussing various judgments of the Supreme Court and while referring to even *para-materia* provisions existing in other statutes, the Bench held as under:

> "24. The use of negative words has an inbuilt element of 'mandatory'. The intent of legislation would be to necessarily implement those provisions as stated.
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> 25. Introduction or alteration of words which would convert the mandatory into directory may not be permissible. Affirmative words stand at a weaker footing

than negative words for reading the provisions as 'mandatory'. It is possible that in some provision, the use of affirmative words may also be so limiting as to imply a negative. Once negative expression is evident upon specific or necessary implication, such provisions must be construed as mandatory. The legislative command must take precedence over equitable principle. The language of Section 16 of the NGT Act does not admit of any ambiguity, rather it is explicitly clear that the framers of law did not desire to vest the Tribunal with powers, specific or discretionary, of condoning the delay in excess of total period of 90 days. At this stage, we may also refer to Principle of Statutory Interpretation by Justice G.P. Singh, 13th Edition, where it is stated as under:

> "(c) **Use of negative words**
> Another mode of showing a clear intention that the provision enacted is mandatory, is by clothing the command in a negative form. As stated by CRAWFORD: "Prohibitive or negative words can rarely, if ever, be directory. And this is so even though the statute provides no penalty for disobedience." As observed by SUBBARAO, J.: "Negative words are clearly prohibitory and are ordinarily used as a legislative device to make a statute imperative". Section 80 and Section 87-B of the Code of Civil Procedure, 1908; section 77 of the Railways Act, 1890; Section 15 of the Bombay Rent Act, 1947; section 213 of the Succession Act, 1925; section 5-A of the Prevention of Corruption Act, 1947; section 7 of the Stamp Act, 1899; section 108 of the Companies Act, 1965; section 20(1) of the Prevention of Food Adulteration Act, 1954; section 55 of the Wild Life Protection Act, 1972 (as amended in 1956); section 10A of Medical Council Act, 1965 (as amended in 1993) and similar other provisions have therefore, been construed as mandatory. A provision requiring 'not less than three months' notice' is also for the same reason mandatory.
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> But the principle is not without exception. Section 256 of the Government of India, 1953, was construed by the Federal Court as directory though worded in the negative form. Directions related to solemnization of marriages though using negative words have been construed as directory in cases where the enactments in question did not provide for the consequence that the marriage in breach of those directions shall be invalid. Considerations of general inconvenience, which would have resulted in holding these enactments mandatory, appear to have outweighed the effect of the negative words in reaching the conclusion that they were in their true meaning merely director. An interesting example,

where negative words have been held to be directory, is furnished in the construction of section 25-F of the Industrial Dispute Act, 1947, where compliance of clause (c) has been held to be directory; although compliance of clauses (a) and (b) which are connected by the same negative words is understood as mandatory. These cases illustrate that the rule, that negative words are usually mandatory, is like any other rule subordinate to the context, and the object intended to be achieved by the particular requirement."

26. The provision of Section 16 of the NGT Act are somewhat similar to Section 34 of Arbitration and Conciliation Act, 1996. Thus, adopting an analogous reasoning, as was adopted in *Chhattisgarh State Electricity Board* (supra), we would have no hesitation in coming to the conclusion that we have no jurisdiction to condone the delay when the same is in excess of 90 days from the date of communication of the order to any person aggrieved.

27. Thus, the application must fail on this ground alone. We are of the considered view that the Tribunal has no jurisdiction to condone the delay of 19 days in filing the present appeal, the same being in excess of 90 days computed from the admitted date of communication of order, that is 2nd June, 2012.

28. Ergo we dismiss the application for condonation of delay."

The above view was also followed by another Bench of five Members in the case of *Sunil Kumar Samanta v. West Bengal Pollution Control Board* 2014(2) All India NGT Reporter Part 5 (Delhi) 250. Following this dictum in the case of *M/s. Krishna Stone Crusher v. Haryana State Pollution Control Board* 2014 All India NGT Reporter (1) Delhi 42, the Bench reiterated that the Tribunal will have no jurisdiction to condone the delay at all if the appeal is filed beyond the period of 90 days. At this stage, we may also notice that the appeal preferred against the judgment of the Tribunal in the case of *Sunil Kumar Samanta* (supra) was dismissed by the Supreme Court as being without merit vide its order dated 21st November, 2014 passed in Civil Appeal No.

10009/2014 titled as *Sunil Kumar Samanta v. West Bengal Pollution Control Board and Others*, thus, giving finality to the judgment of the Tribunal.

9. The other question that we have to now answer is: "Whether Section 14(2) of the Act of 1963 is applicable to the provisions of the NGT Act and the appellant would be entitled to claim exclusion of the period alleged to have been bonafidely spent before another court or forum?" This question, in view of the settled position of law, we have to answer against the appellant.

10. Firstly, the Tribunal would have no jurisdiction to entertain an application for condonation of delay where it is instituted beyond 90 days (30 days being the prescribed period of limitation for institution of the appeal plus a period not exceeding 60 days for claiming condonation of delay). In this regard, we may, without any further deliberation, refer again to a five-member Bench judgment of this Tribunal in the case of *Sunil Kumar Samanta* (supra) where the Tribunal discussed the entire law on the subject as well as the provisions of other statutes which contained, if not identical, similar language and came to the conclusion that the provisions of the NGT Act in relation to the limitation prescribed under Section 16 were mandatory and not directory. Further, the Tribunal held that the provisions of Sections 4 to 24 (both inclusive) of the Act of 1963, were not applicable to the provisions of the NGT Act within the provisions of Section 29(2) of the Act of 1963. It also took the view that provisions like Section 5 and 14 of the Act of 1963, thus, would not come to the benefit of the applicant, while invoking the

remedy available before the Tribunal. It will be useful to refer to the findings recorded by the Tribunal in this regard.

> "14. The policies underlying the law of limitation are ultimately based on justice and convenience and an individual should not live under the threat of a possible action for an indeterminate period since it would be unjust. Prescription of limitation takes in its ambit fairness and expeditious trial. Indefinite uncertainty in relation to bringing an action would be opposed to public policy. This concept is applicable with great emphasis to the environmental jurisprudence where the project proponent may invest large amount for making its project operational. Challenge to such project on the ground that it does not have any Environmental Clearance or otherwise, has to be within a specified time, as otherwise it would not only be unfair but also be seriously prejudicial to the interest of a party. Vigilance in the pursuit of rightful claims should be encouraged so that these are ethical or rational justifications for the law of limitation.
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> 15. We have already noticed that NGT Act is a self-contained code in itself. It provides the forum/procedure that has to be adopted, the limitation period within which the jurisdiction of the tribunal gets invoked, and the power and functions of the tribunal in explicit terms. As a self-contained code, it does not admit of any ambiguity with regard to application of other laws in the adjudicatory process of the tribunal. The legislature in its wisdom has worded provisions of Section 16 of the NGT Act so as to prohibit even filing of an appeal beyond a total period of 90 days. The language of these provisions clearly demonstrates the legislative intendment on excluding application of general law of limitation to this special statute. Such a view would also find clear support from the language of Section 29 (2) of the Limitation Act which postulates that when a special law prescribes for any period of limitation different from the period prescribed in the Schedule to the Limitation Act and the language of the provisions of such special law is indicative of express or implied exclusion, then Sections 4 to 24 (inclusive) of the Limitation Act shall apply only and to the extent they are not excluded by the Special Law. The cumulative reading of Section 16, particularly, the proviso and Section 29 of the Limitation Act leaves no doubt in mind that legislature had clearly intended to exclude the application of the general law of limitation provided under the Limitation Act from the NGT Act. Proviso to Section 16 of the NGT Act uses the expression 'allow it to be filed under this Section within a further period not exceeding 60 days'. The use of the negative language 'not' in the proviso makes it mandatory that appeals cannot be filed after the expiry of total period of 90 days and thus, there is lack of jurisdiction of the tribunal to condone the delay beyond a total period of 90 days. The framers of law, where,

in their wisdom wanted to give a benefit and/or restrict or place embargo on exercise of a right, have done so by using specific language in Section 16 of the NGT Act. A special concession is made available to an appellant to file an appeal beyond 30 days, the initial period of limitation prescribed under that provision. The framers there put a specific embargo on the power of the Tribunal not to entertain an appeal after the expiry of a further period of 60 days. Thus the legislature, by necessary implication excluded the application of general law of limitation from the provisions of the NGT Act. At this stage we may refer to the judgment of the Supreme Court in the case of *Hukumdev Narain Yadav v. Lalit Narain Mishra,* (1974) 2 SCC 133, where the Supreme Court was dealing with the provisions of the Representation of the Peoples' Act, 1951 and the applicability of the provisions of the Limitation Act. The Court in relation to the interpretation of the language of Section 29(2) of the Limitation Act held as:

> "17. What we have to determine is whether the provisions of this section are expressly excluded in the case of an election petition. It is contended before us that the words "expressly excluded" would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. As usual the meaning given in the Dictionary has been relied upon, but what we have to see is whether the scheme of the special law, that is in this case the Act, and the nature of the remedy provided therein are such that the Legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If on an examination of the relevant provisions it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our view, even in a case where the special law does not exclude the provisions of Section 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the Court to examine whether and to what extent the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation."

16. From the above dictum of the Supreme Court of India, it is clear that the exclusion can be by explicit language or even by necessary implication. It will depend upon the scheme of the Act, it being a self-contained code and what is the intent of legislature? Furthermore, in the case of *Union of India v. Popular Construction & Co.*, AIR 2001 SC 4010, the Supreme Court held that the word 'excluded' appearing in Section 29(2) of the Act would also include 'exclusion by necessary implication'. In the case of *Gopal Sardar v. Karuna Sardar,* (2004) 4 SCC 252, the Supreme Court read exclusion by

implication, where some of the provisions in West Bengal Land Reforms Act, 1955, provided for giving benefit of Section 5 of the Limitation Act but Section 8 of the said Act did not make such a provision. The court took the view that legislature consciously excluded the application of Section 5 of the Limitation Act.

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19. The bare reading of the above provision shows that power to condone the delay is vested with the Tribunal under that Act but the said appeal cannot be permitted to be filed before the appellate tribunal beyond the period of 60 days. The expression used in the proviso to the section is 'allow it to be filed within a further period not exceeding 60 days.' This provision came up for consideration before the Supreme Court in the case of *Chhattisgarh State Electricity Board v. Central Electricity Regulatory Commission*, (2010) 5 SCC 23, where the Supreme Court held that the appellate tribunal had no jurisdiction to entertain the appeal beyond the prescribed period of 120 days specified in Section 125 of the Electricity Act and Section 5 of the Limitation Act was not applicable. It was held that the proviso to Section 125 of the Electricity Act and the interpretation attracting the application of Section 5 of the Limitation Act read with Section 29(2) thereof, will defeat the object of the legislation, namely, to provide special limitation for filing an appeal against the decision or order of the Tribunal and proviso to Section 125 will become nugatory.

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49. In contradistinction thereto, the provision of Section 16 of the NGT Act is specific, unambiguous and clearly conveys the legislative intent of making the provisions 'mandatory'. The provision of Section 16 of the NGT Act, undisputedly has inbuilt element of consequences. The party loses its right to even institute an appeal after the prescribed period of limitation and a duty is cast upon the Tribunal not to permit such institution. As already stated by us above, the language of Section 16, by necessary implication excludes the application of the general law of limitation. Thus, it cannot be said that the language is *para materia* to Order VIII Rule 1 and hence the consequences thereof should be identical.

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53. From the above discussion, it is clear that provisions of Order VIII Rule 1 of the Code of Civil Procedure, 1908, do not impose any embargo upon the power of the Court to extend the time. The provision is in the domain of procedural law and was held to be 'directory' by the Supreme Court. On the contrary, the provision of Section 16 of the NGT Act is in unambiguous language and imposes restriction upon the

> power of Tribunal to permit even institution of an appeal beyond the prescribed period. Besides this and for the reasons afore-recorded, the provision has to be construed as 'mandatory'.
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> 54. Having dealt with the various aspects of this case and the rival contentions raised on behalf of the respective parties we are of the considered view that the provisions of Section 16 of the NGT Act are unexceptionally 'mandatory'. The said provision clearly conveys the legislative intent of excluding the application of the provisions of the Limitation Act, 1963. Further, with approval we reiterate the view taken by the Tribunal in the cases referred supra that this Tribunal has no jurisdiction to condone the delay beyond the total period of 90 days provided under Section 16 of the NGT Act. In fact, the Tribunal cannot permit even institution of an appeal if there is such a delay."

11. Exclusion of time for pursuing a remedy bonafidely before a court or a forum can be claimed by an applicant only if the provisions of Act of 1963 applied to the proceedings before a statutory tribunal in terms of the statute that governs it. If the provisions of the Act of 1963 are excluded expressly or by necessary implication in terms of Section 29(2) of the Act of 1963 and it provides for a special period of limitation and/or the period which can be condoned, then recourse to Act of 1963 would be impermissible, as held above.

12. The learned counsel appearing for the appellant placed reliance upon the two-Member Bench judgment of the Tribunal in the case of *M/s. Golden Seam Textile Pvt. Ltd. v. Karnataka State Pollution Control Board*, Appeal No. 17-18 of 2012 decided on 18th September, 2012 to contend that in principle this judgment takes the view that the period spent before the High Court can be excluded and delay in such cases could be condoned. We are afraid that this contention is misconceived and is based upon misconstruction of the judgment of the Bench. Firstly, the Bench specifically held that mere ground of liberty by the

High Court will not be enough to assume that the High Court excluded the time under Section 14(2) of the Act of 1963. The appellant himself cannot say that the writ petitions were not maintainable because of the availability of an alternative remedy. The doctrine of alternative remedy imposes a self-imposed restriction while exercising power under Article 226 of the Constitution of India, 1950 (for short 'Constitution'). So, unless the High Court had expressed an opinion that, because of an alternative remedy available to the appellant, the Writ Petitions were likely to be dismissed, withdrawal of the writ petitions will be of no avail to the appellant to seek exclusion of the time spent before the High Court. The Bench held that in their opinion, therefore, the time spent by the appellant in pursuing the remedy for review of the order of the State Appellate Authority and the time spent before the Karnataka High Court cannot be excluded under Section 14(2) of the Act of 1963. The Bench also relied upon its earlier judgment in the case of *Thervoy Graamam Munnetra Nala Sangam v. Union of India & Ors.,* Appeal No. 14/2011 (before the National Green Tribunal) where it held that the Tribunal had no jurisdiction and the period of limitation could not be extended by the Tribunal. The proceedings before the High Court were not proceedings before the wrong forum.

13. Reliance placed by the appellant upon the judgment of the Bombay High Court, Nagpur Bench, in the case of *Vinod Kumar v. Kailash Kumar,* an Appeal against Order No. 118 of 2009 decided on 7th October, 2010 primarily had to consider a question whether the application under Order XXXIX Rule 11 of the Code of Civil Procedure (for short 'CPC') is maintainable or not, if the documents as are directed by the Court are not produced on record within the provisions of Order XXI

Rule 11 of the CPC? An implied reference was made to the provisions of Order XXXIX Rule 11 being directory and that the power to strike out defence should be exercised where there is a wilful disregard and/or the conduct of the party is contemptuous, causing prejudice to others. It no way helps the case of the appellant before us.

14. Lastly, the arguments advanced in support of exclusion of the period spent is that, the Supreme Court in the case of *Bhopal Gas Pidit Mahila Udyog Sangathan and Ors. v. Union of India*, (2012) 8 SCC 326 on 9th August, 2012 had directed that the cases pending before the High Court, which raise substantial question of environment in relation to the Acts mentioned in Schedule 1 of the NGT Act should be transferred to the National Green Tribunal (for short 'NGT'). Thus, in light of the judgment, the appellant had withdrawn the writ petition from the High Court with liberty, which was granted by the High Court vide its order dated 16th April, 2013 and thus, that period should be excluded. Before we proceed to discuss the merits or otherwise of this contention, we would like to record here that in paragraphs 40 and 41 of the judgment in *Bhopal Gas* (supra) there were two classes of cases. The first, were the cases instituted before the High Courts after coming into force of the NGT Act, related to the matters arising from the implementation of provisions of Acts mentioned in Schedule 1 of the NGT Act and these were to be transferred and instituted and such cases should be instituted only before the NGT. The other class of cases were the matters pending before the High Courts involving substantial questions of environmental laws relating to any of the seven statutes specified in Schedule 1 of the NGT Act. It was said that the courts may be well-advised to direct transfer of such cases to NGT, in its <u>discretion</u>.

15. Another Bench of the Supreme Court in the case of *Adarsh Cooperative Housing Society and Ors. v. Union of India,* SLP(C) No. 327/2013 vide its order dated 10th March, 2013 directed that the direction for transferring of cases in paragraphs 40 and 41 may not be given effect to, till further orders. However, this Special Leave to Appeal came to be withdrawn with liberty to the appellant to pray for expeditious disposal of the writ petition 369/2011 before the Bombay High Court. The question of law was left open. In other words, as of today, the judgment of the Supreme Court in the case of *Bhopal Gas (supra)* and the directions as contained in paragraphs 40 and 41 of the judgment is fully in force and operative. Despite this, the appellant cannot claim any advantage. The appellant ought not to have withdrawn the writ petition but should have got the same transferred to the NGT in terms of the *Bhopal Gas* (supra) judgment. The appellants could have prayed before the High Court in the alternative to make observations with regard to the disposal of the writ petition because of alternative remedy being available before another forum and for exclusion of the period spent before the High Court, as observed by the Bench of the Tribunal in the case of *Golden Seam Textiles* (supra). The applicant did nothing of this kind. We are in agreement with the view of the Bench in the case of *Golden Seam Textiles* (supra) that the appellant could not have, by himself, withdrawn the writ petition in the manner as he did. If the cases were transferred to the NGT, the question of limitation would not even arise for consideration.

16. It is like rejection or return of a plaint under the procedure of Order VII of the CPC to the applicant for its institution in the court of competent jurisdiction. Firstly, it cannot be said that the High Court is

not a court of competent jurisdiction. Secondly, in the case of *Wilfred J. & Anr. v. MoEF & Anr.* M.A. No. 182 of 2014 & M.A. No. 239 of 2014 in Appeal No. 14 of 2014 and M.A. No. 277 of 2014 in Original Application No. 74 of 2014 decided on July 17, 2014, a five-Member Bench of the Tribunal have already taken the view that the jurisdiction of the High Court and Supreme Court under Articles 226 and 32 of the Constitution, is no way affected by coming into force of the NGT in light of the NGT Act.

17. The impugned direction or orders that are challenged before the Tribunal are of 11th September, 2012 and 6th November, 2012 respectively. The appeal was required to be filed within 30 days from the date of the order or its communication, which should have been filed on or before 6th December, 2012, or at best by 15th December, 2012, if the averment of the applicant that he was communicated the order on 15th November, 2012 is accepted. However, the appeal is filed on 8th May, 2013, which is even beyond the total period of 90 days, as prescribed in proviso to Section 16 of the NGT Act.

18. The appeal has been filed after 175 days of the admitted communication of the order dated 6th November, 2012. Even if for the sake of arguments, 94 days as prayed are excluded, still the appeal has been filed with a delay of 51 days, i.e. beyond the 30 days period, which is the prescribed limitation. There is no explanation, much less a sufficient cause shown for condonation of 51 days delay in filing the appeal. Even if we, for the sake of arguments, take the view that the appellant is entitled to consideration of the application for condonation

of delay in terms of proviso to Section 16 of the NGT Act, still, the appeal would be liable to be dismissed as being barred by time.

19. Thus, we find no merit in the contentions raised on behalf of the applicant. The application M.A. No. 896/2014 is without merit and is liable to be dismissed. Since we have declined to condone the delay as prayed, the application M.A. No. 896/2014 is dismissed. Resultantly, the appeal does not survive for consideration and is accordingly disposed of. However, we leave the parties to bear their own costs.

Justice Swatanter Kumar
Chairperson

Dr. D.K. Agrawal
Expert Member

Mr. B.S. Sajwan
Expert Member

New Delhi
7th May, 2015