

* IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 11157 of 2009 & CM No. 10550/2009

JAN CHETNA & ANR Petitioners
Through Mr. Rahul Choudhary with Mr. Ritwick
Dutta, Advocate

versus

UNION OF INDIA & ORS. Respondents
Through Mr. Naresh Kaushik with Ms. Aditi
Gupta and Ms. Amita K. Chaudhary, Advocate for
R-1.
Mr. Yogmaya Agnihotri, Advocate for R-2.
Mr. Mukul Rohatgi, Senior Advocate with
Ms. Kanika Agnihotri, Mr. Vaibhav Agnihotri, Ms.
Shikha Tandon and Mr. Aseem Chaturvedi,
Advocates for R-3.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE DR. JUSTICE S.MURALIDHAR

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

% ORDER
14.10.2009

1. The challenge in this writ petition is to an order dated 15th May 2009 passed by the National Environment Appellate Authority ('NEAA') dismissing the Appeal No. 8 of 2009 (*Jan Chetna v. Ministry of*

Environment and Forests) on the ground of limitation.

2. The Petitioner Nos. 1 and 2 filed the aforementioned appeal against the environmental clearance granted by the Ministry of Environment & Forests ('MoEF'), New Delhi on 5th November 2008 to M/s. Scania Steel & Power Limited (Respondent No.3 herein) for expansion of its integrated steel plant and captive power plant at Chattisgarh.

3. Under Section 11 of the National Environment Appellate Authority Act 1997 ('Act'), the appeal against the order granting environmental clearance is to be filed within 30 days of the order. The delay thereafter up to 90 days can be condoned by the NEAA upon the Appellant showing "sufficient cause." Section 11(1) of the Act reads as under:

"11. Appeals to Authority – (1) Any person aggrieved by an order granting environmental clearance in the areas in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards may, within thirty days from the date of such order, prefer an appeal to the Authority in such form as may be prescribed.

Provided that the Authority may entertain any appeal after the expiry of the said period of thirty days but not after ninety days from the date aforesaid if it is satisfied that the appellant was

prevented by sufficient cause from filing the appeal in time.

4. Under Rule 5 (4) of the National Environment Appellate Authority (Appeal) Rules 1997 ('Rules') where there is a delay, the memorandum of appeal shall be accompanied by a separate application for condonation of delay and an affidavit in support of such application.

5. The aforementioned appeal was dispatched by the Petitioners from Raigarh in Chattisgarh on 31st January 2009 and received by the NEAA on 2nd February 2009. In paras 9, 10 and 11 of the memorandum of appeal it was stated thus:

“9. The information about the clearance was not available on the web site of the Ministry till 19.01.2009. The copy of the list of the clearance letter issued by the Ministry dated 19.01.2009 on the website is enclosed as Enclosure Nos. 4-1, 4-2 and 4-3.

10. A request was made on 19.01.2009 by sending letter through fax to Ministry and Chhattisgarh Environment Conservation Board to make available the clearance letter. The copy of fax dated 19.01.2009 is enclosed as Enclosure No. 5.

11. Through the letter dated 21/01/2009 sent by the Ministry of Forest and Environment which was

received on 29/01/2009, came to know that in the respective project, clearance letter has already been issued by the Ministry of Forest and Environment on 05.11.2008. Letter of the Ministry dated 21/01/2009 is enclosed as Enclosure No. 6 and copy of Clearance Letter enclosed as Enclosure No.7.”

6. The Petitioners were informed by the Registry of the NEAA of the following defects in their appeal by a communication dated 6th February 2009 which reads thus:

“You have sent the above appeal against the order F.No. J-11011/1267/2007-IAII(I) dated 5th November 2008 of the Ministry of Environment & Forests granting environmental clearance in favour of M/s. Scania Steel & Power Limited at Village Punjipatra, District Raigarh, Chhattisgarh.

2. On scrutinizing the appeal the following defects are noticed:

(i) The appeal presented by the Appellant is not in Form -A specified in NEAA (Appeal) Rules 1997.

(ii) Necessary parties not impleaded.

(iii) Authorization letter not filed.

(iv) Separate application for condonation of delay along with supporting affidavit not filed; and

(v) Sufficient number of copies of the Application not filed as per the Rules.

(vi) Index of the Appeal is not filed.

3. Please note that above defects are to be removed before 26.2.2009, if the appeal has to be registered for hearing and disposal. You may also note that if the defects are not so removed the appeal will be placed for orders of rejection before the Appellate Authority.”

7. On 26th February 2009 the appeal in the prescribed form together with an application for condonation of delay was filed in the NEAA. When the appeal was taken up for hearing on 31st March 2009 the Respondent No.3 objected to the maintainability of the appeal. It was submitted that the NEAA had no jurisdiction to entertain the appeal beyond the period of 90 days since the appeal was not accompanied at the time of its filing by an application for condonation of the delay in filing the appeal beyond 30 days. It was pointed out that the said application was filed only on 26th February 2009 and not on 31st January 2009 which was the date of filing of the appeal and which was the 90th day after the date of the order granting environmental clearance.

8. In its impugned order, after referring to Rule 5 (4) of the Rules, the NEAA noted that the appeal had been filed on 31st January 2009 i.e. the 90th day from the date of grant of environmental clearance by the MoEF, without being accompanied by a separate application for condonation of delay. Since the appeal was not accompanied at the time of its filing by a separate application for condonation of delay, the delay was not condoned and the

appeal was dismissed.

9. We have heard Mr. Rahul Chaudhary, learned counsel for the Petitioners and Mr. Mukul Rohatgi, learned Senior counsel appearing for the Respondent No.3.

10. Mr. Rohatgi, learned Senior counsel reiterated the contention urged before the NEAA that an appeal filed after 30 days and not accompanied by an application for condonation of delay could not have been entertained by the NEAA. The appeal was filed only on the 90th day and that too without such application. Referring to the language of Section 11 of the Act, he submits that the period of 90 days had to be calculated from the date of the order granting environmental clearance and not the date of knowledge of such order. Therefore, the mere fact that the Petitioners became aware of the order dated 5th November 2008 only on 19th January 2009 could not extend the period of limitation. In any event, the appeal could not have been entertained later than 90 days after the date of grant of environmental clearance. Mr. Rohatgi also questioned the locus standi of the Petitioners. According to him, the description of Petitioner No.1 was vague and unless the Petitioners were able to establish their locus standi, neither the present petition nor their appeal before the NEAA ought to be entertained.

11. The submissions of learned counsel for the parties have been considered.

It is true that Section 11(1) of the Act requires that the period of limitation should be computed from the date of the order granting environmental clearance. However, the outer limit for filing of such appeal is 90 days provided the NEAA is satisfied that “the Appellant was prevented by sufficient cause from filing the appeal in time.” Although Section 11 does not expressly state that an appeal filed beyond 30 days and before the expiry of 90 days should be accompanied by an application for condonation of delay, Rule 5 (4) of the Rules mandates this.

12. It appears to this Court that the application for condonation of delay would set out the reasons why the Appellant could not file the appeal within the period of 30 days from the date of the order granting environmental clearance. In the instant case, paras 9, 10 and 11 of the memorandum of appeal, as already extracted hereinbefore, set out the reasons why the appeal could not be filed by the Appellants within time. In our view, these were sufficient reasons for the NEAA to have condoned the delay in filing the appeal.

13. It transpires that the website of the MoEF uploads the orders granting environmental clearance long after they have been passed and invariably after the expiry period of 30 days which is the limitation for filing appeals. As a result, the persons who desire to file an appeal before the NEAA, and who are located outside Delhi, are unable to file them within time. If, as contended by Mr. Rohatgi, a strict construction has to be placed on the

proviso to Section 11 of the Act, then it would be mandatory for MoEF to disclose on its website not only the information about the order granting environmental clearance in each case, but the entire order as well, not later than five days after the date of the order granting such clearance. This is because an aggrieved person, not being privy to the order granting environmental clearance, is unlikely to learn of the order within a reasonable time thereafter, except by looking for it on the website of the MoEF.

14. Considering that Section 11(1) of the Act mandates the filing of an appeal within 30 days of the order and not the date of knowledge of such order, any delay in the MoEF uploading the order on its website would defeat the right of an aggrieved person to file an appeal.

15. In the considered view of this Court, the aforementioned appeal of the Petitioners cannot be said to be time barred only because their appeal was not accompanied by a separate application for condonation of delay. The appeal was dispatched by the Petitioners from Raigarh in Chattisgarh to the NEAA in New Delhi on 31st January 2009, within ten days of receiving a communication from the MoEF confirming the grant of environmental clearance to Respondent no.3. It is not denied that intimation of the order dated 5th November 2008 was not available in the public domain earlier than 19th January 2009 when the MoEF's website first disclosed that information. As long as the reasons for the delay were explained by the Petitioners in the main memorandum of appeal itself, repeating those reasons in the

application for condonation of delay was going to be only a formality. Consequently, this Court is unable to sustain the technical view taken by the NEAA that the appeal of the Petitioners should be dismissed on the ground of delay.

16. The impugned order dated 15th May 2009 passed by the NEAA dismissing the appeal No. 8 of 2009 is hereby set aside. The appeal No. 8 of 2009 is restored to the file of the NEAA. The NEAA is directed to dispose of the appeal on merits in accordance with law as expeditiously as possible and not later than three months from the date of receipt of this order.

17. As regards the plea of Respondent No.3 questioning the locus standi of the Petitioners, we permit the Respondent No.3 to raise this contention before the NEAA which will deal with such contention in accordance with law.

18. Before concluding, we are constrained to observe that if the remedy by way of an appeal before the NEAA against an order granting environmental clearance has to be made meaningful, it would be the obligation of the MoEF to ensure that information of the passing of such order must be in the public domain at the earliest, and definitely within a period of five days of passing such order. Apart from uploading the full text of such order on its website, the MoEF will publish the said order in two local newspapers in the

area in which the industry concerned (which has been granted permission) is located or is proposed to be located, one of which is in the local language. We direct accordingly.

19. The writ petition is accordingly allowed with no order as to costs. The pending application also stands disposed of.

20. A certified copy of this order be delivered by special messenger to the Secretary, MoEF not later than 21st October 2009 for compliance with the directions in para 18 of this order.

CHIEF JUSTICE

S.MURALIDHAR, J

OCTOBER 14, 2009
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