BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

Cause No. : 602/14

In the matter of:

SOHUNLALL MOOTHOOR & OTHERS

Appellants

v.

DISTRICT COUNCIL OF RIVIERE DU REMPART

Respondent

In presence of:

INDIAN OIL (MAURITIUS LTD.)

Co-Respondent

RULING

The present appeal has been lodged against the decision of the Respondent to have granted a Building and Land use permit (BLUP) to the Co-Respondent for the construction and operation of a 'filling station' at Royal Road, Pointe aux Cannoniers.

The Respondent has entered a plea in limine litis to the effect that the appeal is outside the statutory delay set out in section 117 of the Local Government Act, thus the Appellants are precluded from proceeding with the appeal.

The Co-Respondent, through a statement made by its counsel, has also raised the point that the appeal has been lodged outside delay and therefore this Tribunal has no jurisdiction to hear the present appeal. The Co-Respondent also raised that that there has been procedural impropriety in lodging this appeal in view of the delay in lodging this appeal and given the absence of any ground of appeal communicate

d to the Tribunal.

We have duly considered the submissions made on behalf of the Respondent and Co-Respondent respectively.

Is the appeal outside delay?

Emphasis has been placed by the Co-Respondent on the delay in lodging the appeal. The Co-Respondent relied on the date when the 'notice of appeal as per the prescribed form' was lodged at the Tribunal as being the material date. This was on 28 February 2014, date which is well over the 21 days delay as provided by section 5(4)(a) of the ELAT. However, we cannot obliviate the fact that something did happen before the 28 February 2014. Both the Respondent and Co-Respondent have made reference to a letter dated 27 January 2014 from the Appellant. Indeed, in this letter which is on record, the Appellant stated the following: "*We would like to appeal against the decision of the Executive Committee and that we maintain the objections raised in our letter sent to the District Council, dated 28 September 2013*". This letter, received at the tribunal on the 28 January 2014, is a clear intention to 'lodge' an appeal.

The contention of the Co-Respondent is that the mechanism of appeal, i.e. the procedure set out in section 5(4)(a) of the ELAT has not been followed, namely, that of depositing with the Secretary a notice of appeal in the form set out in the Schedule.

Certain observations have been made on the correspondences between the Tribunal and the Appellant, whereby the Appellant had been requested to fill in the prescribed form. However pertinent those observations may be, the issue to be determined here is whether the point as to the appeal being outside delay is substantiated.

After considering the submissions made, we observe that the point in law raised can hold water only if the date found on the prescribed form is taken to be the relevant date. Yet, as stated above, there had been a notification of the Appellant's appeal, made as far back as 27 January 2014 and this was acknowledged on the 28th January 2014 at the Tribunal. Furthermore, this 'notice' has been recognized as having been 'lodged' in a letter from the Tribunal dated 17 February 2014.

Would it be correct to reject an appeal entered for the sole reason that it has been made by way of simple letter? We do not subscribe to this view. There is a delay prescribed by law. The Appellant was notified of this delay by the letter sent to him by the District Council where reference was made to section 117(14) of the Local Government Act 2011 which provides that any aggrieved party may appeal to the Secretary of the ELAT within 21 days of the receipt of the notification. However, what the aggrieved party was not made aware of was that the existence of a prescribed form to appeal. The Appellant's notice of appeal took the form of a simple letter.

We are of the view that, despite the drafting of Section 5(4) (a) of the ELAT, which lays down the procedure to be followed to lodge an appeal, this does not preclude other expressions of the intention to appeal, which a 'notice of appeal' is meant to be, the more so that the aggrieved party has not been informed of this specific procedure to appeal. This was followed by a letter from the Tribunal to give to the Appellant (for the first time) the required information on how to place on record his intention to appeal. What followed cannot be taken as a "restart button". The procedure that had been launched by the letter dated 27 January 2014 simply continued.

Although Section 5(4)(a) of the ELAT has laid down the mode to appeal in a mandatory language, it cannot be looked at in isolation. The above section has to be looked at in the entirety of the ELAT Act which has propounded flexibility in its approach, namely in the conduct of its proceedings (*Section 5(3) (b) of the ELAT Act provides that: "Any proceedings of the Tribunal shall be conducted with as little formality and technicality as possible").*

Furthermore, the above stand finds support in **Binda Interpretation of Statutes (8th Edition)** which provides: ***"the golden rule is that the words of the statute must prima facie be given their ordinary meaning. But to arrive at the real meaning it is necessary to get an exact conception of the aim, scope and object of the whole Act. The true meaning of any passage is to be found not merely in the words of the passage but in comparing it with other parts of the law. Construction is to be made of all parts together and not of one part only by itself, because the true meaning is that which harmonises with every other passage of the statute".***

In **Argos (Cargo Ex.) Gaude v Brown LR 5PC134)**, their Lordships of the Privy Council observed: "***It is a very useful rule in the construction of a statute, to adhere to the ordinary meaning of the words used, and to the grammatical construction, unless that is at variance with the intention of the Legislature, to be collected from the statute itself leads to any manifest absurdity or repugnance, in which case the language may be varied or modified so as to avoid such inconvenience but no further."***

In this respect, the notice of appeal dated 27 January 2014, although not drafted in the form as prescribed, cannot be discarded. We do not consider that a purely textual application of section 5(4)(a) of the ELAT is warranted because the consequence of such an approach would, in our view, lead to a manifest incongruity or unfairness and would be inconsistent with the overall intention of the legislature for a less formalistic approach. This view is supported in the '*mango tree*' case (reference being made here to the case of **Margaret Toumany and John Mullegadoo v Mardaynaiken Veerasamy 2010 Privy Council Appeal No.0017 of 2010).**

We therefore hold that the notice of 27th January 2014 has been rightly accepted and do not subscribe to the view that there is no appeal before the Tribunal.

The delay applicable to objectors:

It has also been submitted on behalf of the Appellant that section 5(4)(a) of the ELAT Act does not apply to objectors but is targeted towards persons/applicants who are aggrieved by a decision and who have been notified of same. We agree that section 5(4)(b) of the ELAT Act may be interpreted as the relevant section that caters for objectors, being given that it refers to persons 'not required to be notified' of the decision in question. In such a case the legislator has provided for a delay of 42 days from the date of the public notice of the decision of the relevant authority.

Mr. Mothoor and others are objectors in this case. Yet, there is a correspondence to the effect that Mr. S. Mothoor has been notified of the decision of the District Council on the 10th January 2014. This does not necessarily bring him into the realm of section 5(4)(a) of the ELAT Act and it is still arguable whether the delay provided by section 5(4)(b) is not applicable in this case. This proposition was however not pursued by counsel.

We are alive to the fact that there is very often no public notice of the decision of the relevant authorities, such that potential objectors only get to know of a decision at a later point in time. In the present case, there was letter sent to Mr. Mothoor which amounts to such notification made to him. It is yet to be established if other objectors (as referred to in the notice of 27 January 2014) have also been notified/ or any public notification was made at all. We find that it is not in the interest of justice to thrash out this issue in the absence of any evidence to that effect.

Grounds of Appeal

It has been submitted that this is another cause for impropriety of the notice of appeal. It is true that the letter of the 27 January 2015 does not list out "clearly and concisely" the grounds of appeal. It simply states that the objections sent to the District Council dated 28 September 2013 are maintained. It has rightly been pointed out that the District Council is a distinct jurisdiction and the Tribunal is not privy to the objections raised at that level.

However, the basis for challenging the decision of the Respondent is contained in the statements of case of the Appellant. It is true that the present argument is "ex facie the pleadings". Nonetheless, none of the parties can claim ignorance as to each other's position as the stand of the respective parties has been communicated to each other, albeit the fact that the grounds are not in the form set out in the manner prescribed.

At this juncture, where we have to decide whether to take a rigid approach or be flexible, we are guided by the principle that was laid down by the Privy Council in the "***mango tree***"(Re: the case of **Margaret Toumany and John Mullegadoo v Mardaynaiken Veerasamy 2010 Privy Council Appeal No.0017 of 2010)**, namely that technicality should not dictate substance.

We are conscious some formalism is required in procedures, just as those set out in section 5 of the ELAT, and it has the credit of providing certainty and clarity. But when weighed in the balance, the need to address the crux of the matter, namely the environmental issue, for which one and all are custodians, the spirit of flexibility in the Act is called for.

However, it is also important to know **how** the Tribunal will assess the basis of the challenge in the absence of grounds of appeal. Those grounds were placed on record in a 'notice of appeal' filed on a prescribed form submitted on the 28 February 2014. The Respondent and Co-Respondent have addressed those grounds in their respective statements of case. In this respect, no prejudice is likely to affect each other's case by allowing the hearing to proceed.

For all the above reasons, the plea in limine litis is set aside at this stage and the case is to proceed on its merits.

Delivered on 9th February 2015

V. Bhadain	**P. Thandarayan**	**V. Reddi**
Chairperson	**Member**	**Member**