



Supreme Court Judgements / Orders

Supreme Court sets aside interim order passed by National Green Tribunal (“NGT”) against stone crushers on the ground of *audi alteram partem*

M/s Shree Ganesh Stone Crusher & Ors. v. State of Haryana & Ors.; Order dated 02 November 2020¹

A three judge bench comprising of Justice Rohinton Fali Nariman, Justice Navin Sinha and Justice Krishna Murari set aside an interim order passed by the NGT. The NGT order had called for prosecution and compensation proceedings to be initiated against stone crushers in Haryana for damaging the environment. Observing that none of the parties have been heard by the NGT, the Bench set aside the NGT order on this ground alone and remanded the matter to the NGT to dispose of the matter as soon as possible preferably within four weeks from the date of the order. The Court granted liberty to all the parties to argue their matter before the NGT.

Supreme Court orders Telangana High Court judgment to be brought in line with NGT directions on fire crackers

The Telangana Fire Works Dealers Association v. P. Indra Prakash & Ors.; Order dated 13 November 2020²

The Vacation Bench of the Supreme Court comprising of Justice AM Khanwilkar and Justice Sanjiv Khanna did not agree with the Telangana High Court’s view to completely ban the use, manufacture and sale of firecrackers in Telangana for Deepavali and other festival

celebrations. Instead, the Court modified the High Court order in line with the more comprehensive directions issued by the NGT, on 09.11.2020³ regarding the use and sale of firecrackers across the country, which applies even to the State of Telangana. The Hon’ble High Court in its order dated 19.11.2020 in the matter of *P. Indra Prakash v The State of Telangana & Ors.*⁴ held that uncontrolled and untrammelled use of fireworks may jeopardise the lives of many and directed the State to immediately ban the sale and use of fireworks by the people and by organizations. The Court further directed the State to clampdown and close the shops which are selling fireworks throughout the State with immediate effect.

Appointment of judicial and technical members in NGT to be expedited

NGT Bar Association (Western Zone) v. Union of India & Ors.; Order dated 18 November 2020⁵

A three judge bench of the Supreme Court comprising of Justice AM Khanwilkar, Justice B.R. Gavai and Justice Krishna Murari has requested the Selection Committee to expedite the process for filling up of the vacancies in NGT, while hearing a plea highlighting the large number of vacancies in NGT. The Supreme Court observed that the NGT is working with less than the minimum statutory strength provided. The Apex Court directed a copy of the order to be sent to Secretary, Ministry of Environment, Forest and Climate Change, for information and necessary action and to submit compliance report with respect to the steps taken for appointment.

In this edition

SUPREME COURT JUDGEMENTS / ORDERS

- M/s Shree Ganesh Stone Crusher & Ors. v. State of Haryana & Ors.; Order dated 02 November 2020
- The Telangana Fire Works Dealers Association v. P. Indra Prakash & Ors.; Order dated 13 November 2020
- NGT Bar Association (Western Zone) v. Union of India & Ors.; Order dated 18 November 2020
- Skoda Auto Volkswagen India Private Limited v. State of Uttar Pradesh & Ors.; Judgment dated 26 November 2020

HIGH COURT JUDGEMENTS / ORDERS

- Dr CA A S Vishnu Bharath v. State of Karnataka & Ors.; Orders dated 12 November 2020 and 13 November 2020
- United Conservation Movement Charitable and Welfare Trust (R) v. Standing Committee of The National Board; Order dated 13 November 2020

NGT JUDGEMENTS / ORDERS

- Shantanu Sharma v. Union of India & Ors.; Order dated 04 November 2020
- Tribunal on its own Motion v. Ministry of Environment, Forest & Climate Change & Ors. & other connected matters; Order dated 05 November 2020
- Abhisht Kusum Gupta v. State of Uttar Pradesh & Others; Order dated 06 November 2020
- Keshar Singh Panwar & Ors. v. Union of India & Ors.; Order dated 11 November 2020
- Lt. Col Sarvadaman Singh Oberoi v. Union of India; Order dated 18 November 2020.
- Shailesh Singh v. State of Uttar Pradesh & Ors with Dr. Tanzeen Fatima v. Ministry of Environment and Forest & Climate Change Ors.; Report Submitted on 19 November, 2020
- Gyan Prakash v. Ministry of Environment, Forest & Climate Change; Order dated 20 November 2020

REGULATORY AND POLICY DEVELOPMENTS



Supreme Court dismisses Skoda-Volkswagen's plea to quash FIR over alleged cheat devices

Skoda Auto Volkswagen India Private Limited v. State of Uttar Pradesh & Ors.; Judgment dated 26 November 2020⁶

A three judge bench comprising of the Chief Justice, Justice A.S. Bopanna and Justice V. Ramasubramanian dismissed the plea raised by the international car manufacturer. The petitioner had challenged the Allahabad High Court order dated 01.10.2020 passed in the case of *Skoda Auto Volkswagen India Pvt. Ltd. v. State Of U.P. and Others*⁷ wherein the Hon'ble High Court had dismissed the plea raised by Volkswagen India for quashing of a First Information Report ("FIR") dated 10.07.2020 registered against the manufacturer in Noida for installing 'cheat devices' in its vehicles. The issue raised by the petitioner was whether the Police could investigate an issue, the substratum of which is sub-

judice before the Supreme Court in the civil appeals arising out of the order of the NGT. The Court while dismissing the contention raised by the petitioner held that the interim orders passed in the Civil appeals were with respect to not taking any coercive steps in the context of the directions passed by the NGT which became the subject matter of the civil appeal. It could not be taken as a deterrent for anyone else to lodge a police complaint and seek an investigation. The Court further observed that the proceedings before the NGT were not intended to address issues relating to individuals, such as (i) whether any emissions manipulation software, called in common parlance as 'defeat devices' were installed in the vehicles purchased by certain individuals; and (ii) whether any representation was made to the purchasers of the cars in which such devices had been installed, about the emission efficiency level of the cars. Hence, it refused to interfere with the police investigation and declined to quash the FIR.

High Court Judgements / Orders

Karnataka High Court pulls up Government of Karnataka over the meaning of 'green crackers'

Dr CA A S Vishnu Bharath v. State of Karnataka & Ors.; Orders dated 12 November 2020 and 13 November 2020⁸

The Hon'ble High Court passed an order observing that the State Government has not bothered to lay down the meaning of 'green crackers'. The plea was filed challenging the order of the State Government seeking to ban bursting of firecrackers during the Deepavali festival. Subsequently on 13.11.2020, the Hon'ble High Court took up connected matters wherein not only the issue concerning ill-effects of bursting of crackers was raised but the petitions also raised the issue of implementation of the Noise Pollution (Regulation and Control) Rules, 2000. Observing that the petitioner had approached the court as a matter of interim measure, the Bench directed the State Government, the local bodies and the police to ensure strict implementation of the orders dated 6.11.2020 and 10.11.2020 as clarified by the order dated 12.11.2020. The Court also directed the State to strictly comply with the directions passed by the NGT vide order dated 09.11.2020.

Karnataka High Court restrains Karnataka Power Corporation Ltd from drilling in Sharavati Valley Wildlife Sanctuary

United Conservation Movement Charitable and Welfare Trust (R) v. Standing Committee of The National Board; Order dated 13 November 2020⁹

The Bench comprising of the Chief Justice and Justice S Vishwajith Shetty while hearing the challenge to grant the permission to Karnataka Power Corporation Ltd for drilling 15 bore holes at the identified places in Sharavati Valley Wildlife Sanctuary observed that perusal of the minutes of the meeting of the State Board for Wildlife held on 26.09.2019 did not provide evidence of application of mind by the State Board for Wildlife to the effects of drilling bore holes on the habitat or consideration of the issue whether drilling of 15 bore holes can have an impact on the habitat. The Bench further observed that apart from the issue regarding exercise of the powers by the State Government, there are guidelines by the Government of India which lay down that before such proposals are considered and permission is granted, consultation with the State Board for Wildlife and Standing Committee

In this edition

SUPREME COURT JUDGEMENTS / ORDERS

- M/s Shree Ganesh Stone Crusher & Ors. v. State of Haryana & Ors.; Order dated 02 November 2020
- The Telangana Fire Works Dealers Association v. P. Indra Prakash & Ors.; Order dated 13 November 2020
- NGT Bar Association (Western Zone) v. Union of India & Ors.; Order dated 18 November 2020
- Skoda Auto Volkswagen India Private Limited v. State of Uttar Pradesh & Ors.; Judgment dated 26 November 2020

HIGH COURT JUDGEMENTS / ORDERS

- Dr CA A S Vishnu Bharath v. State of Karnataka & Ors.; Orders dated 12 November 2020 and 13 November 2020
- United Conservation Movement Charitable and Welfare Trust (R) v. Standing Committee of The National Board; Order dated 13 November 2020

NGT JUDGEMENTS / ORDERS

- Shantanu Sharma v. Union of India & Ors.; Order dated 04 November 2020
- Tribunal on its own Motion v. Ministry of Environment, Forest & Climate Change & Ors. & other connected matters; Order dated 05 November 2020
- Abhisht Kusum Gupta v. State of Uttar Pradesh & Others; Order dated 06 November 2020
- Keshar Singh Panwar & Ors. v. Union of India & Ors.; Order dated 11 November 2020
- Lt. Col Sarvadaman Singh Oberoi v. Union of India; Order dated 18 November 2020.
- Shailesh Singh v. State of Uttar Pradesh & Ors with Dr. Tanzeen Fatima v. Ministry of Environment and Forest & Climate Change Ors.; Report Submitted on 19 November, 2020
- Gyan Prakash v. Ministry of Environment, Forest & Climate Change; Order dated 20 November 2020

REGULATORY AND POLICY DEVELOPMENTS



of the National Board for Wildlife is necessary. It further restrained Karnataka Power Corporation Ltd. from carrying out further work of drilling bore holes in the sanctuary till the next date. The Bench also granted an opportunity to the

State Board of Wildlife and Standing Committee of the National Board of Wildlife to produce the documents on record which were placed before the State Board in its meeting held on 26.09.2019.

National Green Tribunal Judgements / Orders

NGT orders Central Pollution Control Board ("CPCB") to determine penalty to be imposed on thermal plants for not utilising fly ash

Shantanu Sharma v. Union of India & Ors.; Order dated 04 November 2020¹⁰

The NGT while hearing a plea on the management of fly ash generated by thermal power plants has directed the CPCB to determine the amount of compensation to be levied on thermal power plants that are not utilising the fly ash, thus causing pollution. The Ministry of Environment, Forests and Climate Change ("MoEF&CC") and the CPCB were also directed to file further status reports on the same. The tribunal also noted that the MoEF&CC had failed to ensure proper monitoring and compliance mechanism in spite of issuing notifications on the same.

NGT widens ambit of firecracker pollution notices to 18 States, Union Territories

Tribunal on its own Motion v. Ministry of Environment, Forest & Climate Change & Ors. & other connected matters; Order dated 05 November 2020¹¹

The NGT issued notices to 18 states and Union Territories¹² where air quality was beyond the prescribed norms. A bench headed by NGT Chairperson Justice Adarsh Kumar Goel noted that it has already issued notice to Delhi, Haryana and Uttar Pradesh and the state governments of Odisha and Rajasthan have already issued a notification prohibiting the sale and use of firecrackers. The green court sought response from Andhra Pradesh, Assam, Bihar, Chandigarh, Chhattisgarh, Gujarat, Himachal Pradesh, Jammu & Kashmir, Jharkhand, Karnataka, Madhya Pradesh, Maharashtra, Meghalaya, Nagaland, Tamil Nadu, Telangana and Uttarakhand and West Bengal. The NGT imposed total ban against the sale or use of all kinds of fire crackers in the National Capital

Region from the midnight of November 9-10 till the midnight of November 30-December 1, 2020 which will be reviewed later. The direction was also made applicable to all cities / towns in the country where the average of ambient air quality during November fell under the 'poor' category. The Tribunal further directed that only green crackers were to be sold in cities / towns where air quality was 'moderate' or below. The timings for use and bursting of crackers were to be restricted to two hours during festivals like Diwali, Chhat, Gurpurab, Christmas and New Year's Eve, as specified by the concerned states and if nothing was specified by the state, timings would be from 8 pm to 10 pm on Diwali and Gurpurab, 6 am to 8 am on Chhat and 11.55 pm to 12.30 am during Christmas and New Year's Eve and not otherwise. The Tribunal also directed that at other places, bans / restrictions would be optional for authorities. But if there were more stringent measures under orders of the authorities, they would prevail. The CPCB and SPCBs / Pollution Control Committee ("PCC") were directed to regularly monitor air quality during this period and upload data on their respective websites. CPCB was also directed to compile information on the subject, including the status of compliance of the NGT order from all the states / union territories and file a consolidated report with data compiled till filing of the report, before the next date of hearing.

NGT directs action to be taken against erring high-rise buildings in Noida

Abhisht Kusum Gupta v. State of Uttar Pradesh & Others.; Order dated 06 November 2020¹³

The NGT while considering the issue of the remedial action for preventing untreated sewage going to the "irrigation canal" in Sector 137, NOIDA (New Okhla Industrial Development Authority), Uttar Pradesh has directed that action against "erring high-rise buildings in Noida" must be taken expeditiously and compensation must be

In this edition

SUPREME COURT JUDGEMENTS / ORDERS

- M/s Shree Ganesh Stone Crusher & Ors. v. State of Haryana & Ors.; Order dated 02 November 2020
- The Telangana Fire Works Dealers Association v. P. Indra Prakash & Ors.; Order dated 13 November 2020
- NGT Bar Association (Western Zone) v. Union of India & Ors.; Order dated 18 November 2020
- Skoda Auto Volkswagen India Private Limited v. State of Uttar Pradesh & Ors.; Judgment dated 26 November 2020

HIGH COURT JUDGEMENTS / ORDERS

- Dr CA A S Vishnu Bharath v. State of Karnataka & Ors.; Orders dated 12 November 2020 and 13 November 2020
- United Conservation Movement Charitable and Welfare Trust (R) v. Standing Committee of The National Board; Order dated 13 November 2020

NGT JUDGEMENTS / ORDERS

- Shantanu Sharma v. Union of India & Ors.; Order dated 04 November 2020
- Tribunal on its own Motion v. Ministry of Environment, Forest & Climate Change & Ors. & other connected matters; Order dated 05 November 2020
- Abhisht Kusum Gupta v. State of Uttar Pradesh & Others.; Order dated 06 November 2020
- Keshar Singh Panwar & Ors. v. Union of India & Ors.; Order dated 11 November 2020
- Lt. Col Sarvadaman Singh Oberoi v. Union of India; Order dated 18 November 2020.
- Shailesh Singh v. State of Uttar Pradesh & Ors with Dr. Tanzeen Fatima v. Ministry of Environment and Forest & Climate Change Ors.; Report Submitted on 19 November, 2020
- Gyan Prakash v. Ministry of Environment, Forest & Climate Change; Order dated 20 November 2020

REGULATORY AND POLICY DEVELOPMENTS



assessed by a joint Committee of CPCB, Uttar Pradesh Pollution Control Board, NOIDA and District Magistrate, NOIDA within three months. It was noted that one of the major reasons for discharge of untreated sewage was deficient Sewage Treatment Plants ("STP") in 95 high rise buildings in Noida, apart from such discharge sources at some other locations.

Approval of the Zonal Master Plan ("ZMP") for the Bhagirathi Eco-sensitive Area in Uttarakhand by the MoEF&CC challenged before NGT

Keshar Singh Panwar & Ors. v. Union of India & Ors.; Order dated 11 November 2020¹⁴

The NGT while considering the issue raised by the Applicant with respect to the ZMP being in violation of Eco-Sensitive Zone Notification dated 18.12.2012 held that the ZMP currently has no carrying capacity study, study of dried up water bodies, plan to protect land use, ecological studies, integration of different plans and study of e-flow. The ZMP also does not address issues of restoration of the areas affected by road widening activities. The Tribunal directed the MoEF&CC to expressly consider the views of the 11 Member Expert Committee. Based on their scrutiny of the draft ZMP and, if necessary, issue amended approval within three months from the date of the order of the Tribunal.

NGT applies Public Trust Doctrine to hold the State as a trustee of the water bodies for its protection and restoration

Lt. Col Sarvadaman Singh Oberoi v. Union of India; Order dated 18 November 2020.¹⁵

The Full Bench of NGT comprising of Justice Adarsh Kumar Goel (Chairperson), Sheo Kumar Singh (Judicial Member), Dr Stayawan Singh Garbyal (Expert Member) and Dr Nagin Nanda (Expert Member), addressed the issue with regard to the restoration of the water bodies. The Tribunal after relying upon various Supreme Court judgments observed that under the Public Trust Doctrine, the State has to act as a trustee of the water bodies to protect them for public use and enjoyment for current and future generations. The Bench also stated that there is a need for continuous planning and

monitoring at national, state and district levels. Taking a note of CPCB's report, Bench agreed that there needs to be a single agency in every State/Union Territory ("UT") to be set up and passed the following directions:

- All States/UTs may designate a nodal agency for the restoration of water bodies, wherever no such agency has been designated.
- Under the supervision of the Chief Secretaries of the States/UTs, the designated nodal agency may:
 - (a) a. hold its meeting not later than 31.01.2021 to take stock of the situation and plan further steps, including directions to district authorities for further course of action up to Panchayat levels and to evolve further monitoring mechanism as well as Grievance Redressal Mechanism.
 - (b) b. Submit periodical reports to the CPCB / Secretary Jal Shakti Government of India. First such report may be furnished by 28.02.2021.
- Central Monitoring Committee for monitoring remediation of 351 polluted river stretches, headed by the Secretary, Ministry of Jal Shakti may monitor the steps for restoration of water bodies by all the States periodically.

Oversight committee report on steps to control pollution of river Kosi by industrial activities in Uttar Pradesh

Shailesh Singh v. State of Uttar Pradesh¹⁶ & Ors with Dr. Tanzeen Fatima v. Ministry of Environment and Forest & Climate Change Ors.; Report Submitted on 19 November, 2020¹⁷

The Oversight Committee submitted an updated report to the NGT on 19.11.2020 in compliance with the NGT order passed in Original Application No. 324/2016. The Oversight Committee headed by Justice S V S Rathore recommended that all units abstracting groundwater should be directed to get water audit conducted to assess the actual water requirement of the plant as well as for assessment of the requirement which could be met from other sources like surface water, reuse of treated water or water harvesting. All such industries should hold discussions with municipal bodies to find out the ways to use treated water for industrial purposes. A holistic

In this edition

SUPREME COURT JUDGEMENTS / ORDERS

- M/s Shree Ganesh Stone Crusher & Ors. v. State of Haryana & Ors.; Order dated 02 November 2020
- The Telangana Fire Works Dealers Association v. P. Indra Prakash & Ors.; Order dated 13 November 2020
- NGT Bar Association (Western Zone) v. Union of India & Ors.; Order dated 18 November 2020
- Skoda Auto Volkswagen India Private Limited v. State of Uttar Pradesh & Ors.; Judgment dated 26 November 2020

HIGH COURT JUDGEMENTS / ORDERS

- Dr CA A S Vishnu Bharath v. State of Karnataka & Ors.; Orders dated 12 November 2020 and 13 November 2020
- United Conservation Movement Charitable and Welfare Trust (R) v. Standing Committee of The National Board; Order dated 13 November 2020

NGT JUDGEMENTS / ORDERS

- Shantanu Sharma v. Union of India & Ors.; Order dated 04 November 2020
- Tribunal on its own Motion v. Ministry of Environment, Forest & Climate Change & Ors. & other connected matters; Order dated 05 November 2020
- Abhisht Kusum Gupta v. State of Uttar Pradesh & Others; Order dated 06 November 2020
- Keshar Singh Panwar & Ors. v. Union of India & Ors.; Order dated 11 November 2020
- Lt. Col Sarvadaman Singh Oberoi v. Union of India; Order dated 18 November 2020.
- Shailesh Singh v. State of Uttar Pradesh & Ors with Dr. Tanzeen Fatima v. Ministry of Environment and Forest & Climate Change Ors.; Report Submitted on 19 November, 2020
- Gyan Prakash v. Ministry of Environment, Forest & Climate Change; Order dated 20 November 2020

REGULATORY AND POLICY DEVELOPMENTS



plan which could lead to minimal wastage of water should be prepared and made operational. It was also recommended that the industries should be directed to install tertiary water treatment facilities to make the water suitable for drinking and consumption. With respect to quality control of ground water, it was suggested by the Oversight Committee that shallow bore wells could be dug around all such units and water samples be periodically analysed by Central Groundwater Authority (“CGWA”) / State Groundwater Authority (“SGWA”) for any traces of contamination.

The Committee discussed the recent Guidelines dated 24.09.2020 issued by the CGWA regarding grant of permission for ground water extraction to various industries in the light of NGT order dated 20.07.2020 in the case of *In re: Shailesh Singh v. Hotel Holiday Regency, Moradabad and others*¹⁸ wherein the NGT had directed that there will be no general permission for ground water extraction, particularly to commercial entities without Environment Impact Assessment covering carrying capacity aspects by an expert committee. The permission would be granted as per Water Management Plan, based on mapping of individual units.

NGT takes notice of over INR 8000 million lying unutilised in Environment Relief Fund under the Public Liabilities Insurance Act, 1991 (“PLI Act, 1991”)

Gyan Prakash v. Ministry of Environment, Forest & Climate Change; Order dated 20 November 2020¹⁹

The full bench of NGT Justice Adarsh Kumar

Goel (Chairperson) and Sheo Kumar Singh (Judicial Member), Dr Satyawan Singh Garbyal (Expert Member) and Dr Nagin Nanda (Expert Member), addressed the issue with respect to non-utilization of more than INR 8000 million meant towards Environment Relief Fund under the PLI Act, 1991 for victims of accidents in the process of handling hazardous substances. The Tribunal observed that the purpose for which law was enacted is not being achieved. The victims were suffering on account of ignorance and even Collectors who were required to publish information were not doing so. The Tribunal observed that there was an urgent need for bridging the existing gaps and enforcement of such law by all concerned and directed MoEF&CC which is the nodal Ministry to look into this aspect and take necessary action.

Noting that there is a need to link Liability Risk Policies to be taken by the industries under the PLI Act, 1991 with the consent conditions under the Water (Prevention and Control of Pollution) Act, 1974 (“Water Act”) and the Air (Prevention and Control of Pollution) Act, 1981 (“Air Act”) as well as Environment (Protection) Act, 1986 and the Rules, the Tribunal directed the SPCBs to ensure that industries required to take policies under PLI Act, 1991 are not granted consents under the Water and Air Acts and the authorization under Environment (Protection) Rules, 1986 till such a policy is obtained.

The Tribunal also directed National Legal Service Authority and the State Legal Service Authorities, constituted under the Legal Service Authority Act, 1987, to look into the matter and take such action as may be found appropriate at their end to provide assistance to the victims.

Regulatory and Policy Developments

CPCB frames guidelines on gold assaying and hallmarking centres; 04 November, 2020

The CPCB submitted a report to NGT in compliance with the NGT order dated 18.11.2019 in the matter of James Jose, Managing Director, CGR Hallmarkers Pvt. Ltd. v. Government of India & Others²⁰, pursuant to which it formulated the ‘Guidelines for Gold Assaying Hallmarking Centres’ in consultation with a constituted expert group of representatives of Bureau of Indian Standards (“BIS”) and CPCB, Delhi. The guidelines were framed also in consultation with

Indian Association of Hallmarking Centres. The report submitted by CPCB on 04.11.2020 before the NGT mentioned that the compliance status report of implementation of Guidelines for Gold Assaying Hallmarking Centres was received from 22 SPCBs/PCCs. Since there did not exist any environmental guidelines for gold hallmarking centres which contribute to air pollution caused by acidic fumes in gold hallmarking centres from the process of gold assaying and hallmarking, the CPCB had published environmental guidelines which make it mandatory for all gold assaying

In this edition

SUPREME COURT JUDGEMENTS / ORDERS

- M/s Shree Ganesh Stone Crusher & Ors. v. State of Haryana & Ors.; Order dated 02 November 2020
- The Telangana Fire Works Dealers Association v. P. Indra Prakash & Ors.; Order dated 13 November 2020
- NGT Bar Association (Western Zone) v. Union of India & Ors.; Order dated 18 November 2020
- Skoda Auto Volkswagen India Private Limited v. State of Uttar Pradesh & Ors.; Judgment dated 26 November 2020

HIGH COURT JUDGEMENTS / ORDERS

- Dr CA A S Vishnu Bharath v. State of Karnataka & Ors.; Orders dated 12 November 2020 and 13 November 2020
- United Conservation Movement Charitable and Welfare Trust (R) v. Standing Committee of The National Board; Order dated 13 November 2020

NGT JUDGEMENTS / ORDERS

- Shantanu Sharma v. Union of India & Ors.; Order dated 04 November 2020
- Tribunal on its own Motion v. Ministry of Environment, Forest & Climate Change & Ors. & other connected matters; Order dated 05 November 2020
- Abhisht Kusum Gupta v. State of Uttar Pradesh & Others; Order dated 06 November 2020
- Keshar Singh Panwar & Ors. v. Union of India & Ors.; Order dated 11 November 2020
- Lt. Col Sarvadaman Singh Oberoi v. Union of India; Order dated 18 November 2020.
- Shailesh Singh v. State of Uttar Pradesh & Ors with Dr. Tanzeen Fatima v. Ministry of Environment and Forest & Climate Change Ors.; Report Submitted on 19 November, 2020
- Gyan Prakash v. Ministry of Environment, Forest & Climate Change; Order dated 20 November 2020

REGULATORY AND POLICY DEVELOPMENTS



and hallmarking centres to obtain consents from the regulatory authorities in compliance with provisions of the Water Act, 1974, the Air Act, 1981 and Hazardous and Other Wastes (Management & Transboundary Movement) Rules, 2016. The Guidelines also mandate maintenance of records for storage and disposal of spent acid / cupels / scrubbed water residue generated during the process. Spent cupels / scrubbed water containing lead should be sent to Treatment Storage and Disposal Facilities ("TSDF") or to the authorized registered lead recyclers / dealers. The Guidelines also mandate that emissions from cupellation and parting process should be channelized through a well-designed suction hood and duct arrangement system to control lead and nitric acid fumes. The extracted fumes from cupellation and parting are required to be scrubbed by installing well designed scrubbing system for removing the pollutants from the exhausted air and discharged through appropriate stack as per SPCBs consent conditions among others.

Declaration of private sector on Climate Change in the India CEO Forum on Climate Change; 05 November 2020

Recently the Hon'ble Minister of MoEF&CC, Shri Prakash Javadekar on the occasion of releasing a Declaration on Climate Change signed by 24 key industrial houses which includes companies like TATA, Reliance, the Adani group, Mahindra, Sun pharma, Dr. Reddy's etc., mentioned that India is among the few countries which is 2 degrees compliant and has taken many decisive actions, in fighting Climate Change, not only at the government level but even at the private level. It is pertinent to note that Climate Action Tracker has rated India's efforts as '2 degree compatible', which means that if all countries made efforts like India, the average global temperature rise could be limited to 2°C by 2100. India is the world's only major economy to be rated so.

India is a signatory to the Paris Agreement under the United Nations Framework Convention on Climate Change ("UNFCCC"). As a part of its Nationally Determined Contribution ("NDC"), India has three quantitative climate change goals viz. reduction in the emissions intensity of Gross Domestic Product ("GDP") by 33 to 35 percent by 2030 from 2005 level, achieving about 40 percent cumulative electric power installed capacity from non-fossil fuel based energy

resources by 2030 and creating an additional carbon sink of 2.5 to 3 billion tonnes of carbon dioxide equivalent through additional forest and tree cover by 2030. The private sector plays an important role in creating low-carbon sustainable economies that can contribute towards achieving India's NDC goals.

India adds two new "Ramsar Sites"; 11 November 2020

The Lonar Lake in Maharashtra which is also known as Lonar crater, is a notified National Geo-heritage Monument formed by an asteroid collision with earth impact during the Pleistocene Epoch. It, along with Sur Sarovar, also known as Keetham lake, in Agra, a declared bird sanctuary, have been added to the list of recognised Ramsar sites. While Sur Sarovar is Site no. 2440, Lonar Lake is Site no. 2441, becoming the 40th and 41st sites located in India.

Office Memorandum ("OM") issued by MoEF&CC, for change in coal source by thermal power plants; 11 November 2020

The MoEF&CC has issued an OM21 dated 11.11.2020 providing simplified procedure for change in coal source and to encourage thermal power plants to use domestic coal. The OM provides that in case the thermal power plants (including captive power plants) have already obtained Environmental Clearance ("EC"), such plants can change coal source (from imported to domestic, domestic to domestic, and domestic to imported) including lignite directly through e-auction / short term linkage / long term linkage / other linkage options of the Ministry of Coal or any organization recognized for allotting coal linkages without seeking amendment of EC if the plant fulfils the conditions laid down in the OM. In such case the earlier EC would become redundant.

The OM requires the thermal power plants to provide details to the Ministry and its regional office regarding change in source (location of the source, proposed quantity, distance from power plant and mode of transportation), quality (ash, sulphur, moisture content and calorific value). The quantity of coal transported from each source along with mode of transportation is required to be submitted in the EC Compliance Report. There are various other compliance requirements that have been mentioned in the OM.

In this edition

SUPREME COURT JUDGEMENTS / ORDERS

- M/s Shree Ganesh Stone Crusher & Ors. v. State of Haryana & Ors.; Order dated 02 November 2020
- The Telangana Fire Works Dealers Association v. P. Indra Prakash & Ors.; Order dated 13 November 2020
- NGT Bar Association (Western Zone) v. Union of India & Ors.; Order dated 18 November 2020
- Skoda Auto Volkswagen India Private Limited v. State of Uttar Pradesh & Ors.; Judgment dated 26 November 2020

HIGH COURT JUDGEMENTS / ORDERS

- Dr CA A S Vishnu Bharath v. State of Karnataka & Ors.; Orders dated 12 November 2020 and 13 November 2020
- United Conservation Movement Charitable and Welfare Trust (R) v. Standing Committee of The National Board; Order dated 13 November 2020

NGT JUDGEMENTS / ORDERS

- Shantanu Sharma v. Union of India & Ors.; Order dated 04 November 2020
- Tribunal on its own Motion v. Ministry of Environment, Forest & Climate Change & Ors. & other connected matters; Order dated 05 November 2020
- Abhisht Kusum Gupta v. State of Uttar Pradesh & Others; Order dated 06 November 2020
- Keshar Singh Panwar & Ors. v. Union of India & Ors.; Order dated 11 November 2020
- Lt. Col Sarvadaman Singh Oberoi v. Union of India; Order dated 18 November 2020.
- Shailesh Singh v. State of Uttar Pradesh & Ors with Dr. Tanzeen Fatima v. Ministry of Environment and Forest & Climate Change Ors.; Report Submitted on 19 November, 2020
- Gyan Prakash v. Ministry of Environment, Forest & Climate Change; Order dated 20 November 2020

REGULATORY AND POLICY DEVELOPMENTS



Office Memorandum issued by MoEF&CC, for streamlining process of granting environmental clearance (EC); 18 November 2020

The MoEF&CC has issued an OM²² dated 18.11.2020 for streamlining the process to reduce the days taken by the authorities in granting EC. It was observed that the grant of EC is delayed due to various reasons and therefore to avoid the delays MoEF&CC laid down certain guidelines which provide that:

- All Expert Appraisal Committee (“EAC”) meetings to be held at least twice a month to cut down the time of EC approval.
- All fresh EC proposals have to be submitted within 10 days before EAC. Project Proponent would be required to submit presentation along with EC application.
- Acceptance process of EC application shall be limited to checking if all relevant documents have been submitted and all Terms of Reference (“ToRs”) have been covered. Queries have to be raised during EAC meeting only.
- All projects placed in the agenda should be considered by the EAC.
- In case project proponent did not attend the meeting or does not answer queries raised for more than six months the Member Secretary would write to the Regional office of MoEF&CC to carry out site inspection to check if project has started.
- Member Secretary can take up all proposals to EAC for which reply has been received even after agenda has been uploaded until two working days before the next EAC meeting.
- The guidelines are applicable to the ToRs and amendments.

Amendment to EIA Notification 2006 issued by MoEF&CC for extending time of existing ECs which are expiring in 2020-21; 27 November 2020

The MoEF&CC in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of Section 3 of the Environment (Protection) Act, 1986 read with sub-rule (4) of rule 5 of the Environment (Protection) Rules, 1986 made amendments dated 27.11.2020 in the EIA Notification 2006 via S.O. 4254 (E), taking into account the outbreak of COVID-19 and public health. The recent amendment included Clause 9A extending the validity of existing EC which would expire in 2020-21 till 31 March 2021 or six months from date of expiry of validity.

India Climate Change Knowledge Portal launched by Shri Prakash Javadekar; 27 November 2020

India Climate Change Knowledge Portal has been launched by Mr. Prakash Javadekar, Minister of MoEF&CC on 28 November, 2020. All the major steps taken by the Indian Government at both national and international levels to address the climate change issues will be present on the portal. The portal will serve as a single point of information for all the users who wish to know the status of the initiatives taken by the Government. The eight major components included in the knowledge portal are India’s Climate Profile; National Policy Framework; India’s NDC goals; Adaptation Actions; Mitigation Actions; Bilateral and Multilateral Cooperation; International Climate Negotiations and Reports and Publications.

In this edition

SUPREME COURT JUDGEMENTS / ORDERS

- M/s Shree Ganesh Stone Crusher & Ors. v. State of Haryana & Ors.; Order dated 02 November 2020
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- NGT Bar Association (Western Zone) v. Union of India & Ors.; Order dated 18 November 2020
- Skoda Auto Volkswagen India Private Limited v. State of Uttar Pradesh & Ors.; Judgment dated 26 November 2020

HIGH COURT JUDGEMENTS / ORDERS

- Dr CA A S Vishnu Bharath v. State of Karnataka & Ors.; Orders dated 12 November 2020 and 13 November 2020
- United Conservation Movement Charitable and Welfare Trust (R) v. Standing Committee of The National Board; Order dated 13 November 2020

NGT JUDGEMENTS / ORDERS

- Shantanu Sharma v. Union of India & Ors.; Order dated 04 November 2020
- Tribunal on its own Motion v. Ministry of Environment, Forest & Climate Change & Ors. & other connected matters; Order dated 05 November 2020
- Abhisht Kusum Gupta v. State of Uttar Pradesh & Others; Order dated 06 November 2020
- Keshar Singh Panwar & Ors. v. Union of India & Ors.; Order dated 11 November 2020
- Lt. Col Sarvadaman Singh Oberoi v. Union of India; Order dated 18 November 2020.
- Shailesh Singh v. State of Uttar Pradesh & Ors with Dr. Tanzeen Fatima v. Ministry of Environment and Forest & Climate Change Ors.; Report Submitted on 19 November, 2020
- Gyan Prakash v. Ministry of Environment, Forest & Climate Change; Order dated 20 November 2020

REGULATORY AND POLICY DEVELOPMENTS



Endnotes

- 1 Civil Appeal No. 6368 of 2019
- 2 Special Leave Petition (Civil) Diary No(S). 2465 of 2020.
- 3 Original Application No.249 of 2020.
- 4 Writ Petition (PIL) No. 271 of 2020.
- 5 Writ Petition(s)(Civil) No(s). 1235 of 2017.
- 6 Petition(s) for Special Leave to Appeal (Crl.) No(s)4931/2020
- 7 Criminal Miscellaneous Writ Petition No. 9223/2020.
- 8 Writ Petition 12629 of 2020
- 9 Writ Petition 9833/2020
- 10 Original Application No. 117/2014 and connected matters.
- 11 Original Application No. 249/2020
- 12 Vide Order dated 04.11.2020 in the matter of Santosh Gupta v Ministry of Environment, Forest & Climate Change & Ors. & other connected matters. I.A. No. 368/2020 in Original Application No. 249/2020.
- 13 Original Application No. 1002/2018
- 14 Original Application No. 256 of 2020.
- 15 Original Application No. 325 of 2015
- 16 Original Application No. 324/2016
- 17 Original Application No. 361/2017
- 18 Original Application No. 176/2015.
- 19 Original Application No. 86/2020
- 20 Original Application No. 568 of 2019.
- 21 F.No. J-13102/8/2009-IA.II (T).
- 22 F.No. 22-35/2020-IA. III.

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- Gyan Prakash v. Ministry of Environment, Forest & Climate Change; Order dated 20 November 2020

REGULATORY AND POLICY DEVELOPMENTS

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