



## Supreme Court Judgments / Orders

Supreme Court sets aside the order of the National Green Tribunal dismissing an application on the ground of limitation and directs its adjudication on merits

### **Sridevi Datla v. Union of India & Ors.; Judgment dated 2 March 2021**

A two judge bench of the Hon'ble Supreme Court of India ("Supreme Court") comprising of Justice L. Nageswara Rao and Justice S. Ravindra Bhat has set aside an order of National Green Tribunal ("NGT") through which the NGT had rejected the appeal filed by the appellant against the environmental clearance ("EC") granted for the construction of the Greenfield International Airport in Bhogapuram, Vishakapatnam.

The appeal before the NGT was filed beyond specified period of 30 days with an application for condonation of delay stating that the clearance and related documents were voluminous and the matter required some technical expertise, requiring the papers to be forwarded to experts and lawyers in Delhi, and the *inter se* communication delay. However, NGT had refused to condone the delay.

The substantial questions of law before the Supreme Court in the present case were whether the approach to the issue of limitation by the NGT was correct, and whether on a correct interpretation of law, the appeal under Section 16 of the National Green Tribunal Act, 2010 ("NGT Act") was filed within the 90 days period, in the facts of this case.

The Court in the present judgement has held that Section 10 of General Clauses Act, 1897

applies *proprio vigore* to all appeals under the NGT Act, i.e. if the limitation period prescribed in the NGT Act expires on a holiday, petitions filed on the next day would be considered within the limitation period. In relation to the condonation of delay, the Supreme Court in the present judgment observed that the term 'sufficient cause' is relative, fact dependant, and has many hues, largely deriving colour from the facts of each case and the behaviour of the litigant who seeks condonation of delay (in approaching the court). However, what can broadly be said to be universally accepted is that in principle, the applicant must display bona fides, should not have been negligent, and the delay occasioned should not be such that condoning it would seriously prejudice the other party. Basis this, the Supreme Court has held that the reasons provided for delay by the appellant are sufficient cause for delay beyond 30 days as professional advice is necessary before challenging a complex environmental decision involving various technical aspects. The Court further held that rejection of this appeal reflects a narrow reading of the law by the NGT as this appeal has the potential of irrevocably changing the environment with the possibility of likely injury.

Supreme Court directs reduction in the rate of environmental compensation for a polluting industry

### **Shamshul Haq v. U.P. Pollution Control Board & Ors.; Order dated 12 March 2021<sup>2</sup>**

A two judge bench of the Supreme Court comprising of Justice L. Nageswara Rao and Justice S. Ravindra Bhat while considering an

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appeal against an NGT order has directed that the rate of environmental compensation should be determined at the rate of 100 instead of 250 and on that basis the appellant is directed to pay an amount of INR 0.532 million.

The background to this case is that the Supreme Court was considering an appeal against an order of the NGT whereby it upheld the order of the Uttar Pradesh Pollution Control Board ("UPPCB") directing closure of the industrial unit for violation of environmental norms and the levy of INR 1.33 million as environmental compensation. Before the Supreme Court, the appellant had only requested for reduction in the rate of determination of the environmental compensation.

Appellant contended that UPPCB had applied the rate of 250 for calculation of the compensation. However, as the rate factor is not rigid and can be relaxed, it was argued that compensation should be charged at the rate between 100 and 500. After considering facts of the case, the Supreme Court has held that the compensation should be determined at the rate of 100. However, the Supreme Court did not discuss in detail the calculation matrix used for determination of the compensation and the underlying reasons for reduction in the rate of its calculation.

### Supreme Court constitutes expert committee to formulate scientific and policy guidelines with respect to cutting of trees for developmental projects

#### Association for Protection of Democratic Rights v. State of West Bengal; Order dated 25 March 2021<sup>3</sup>

A three judge bench of the Supreme Court comprising of the Chief Justice S.A. Bobde, Justice A.S. Bopanna and Justice V. Ramasubramanian has constituted an expert committee to formulate scientific and policy

guidelines with respect to cutting of trees for developmental projects.

The issue before the Supreme Court in this case was whether they should allow the Government of West Bengal to fell the trees in order to construct Road Over Bridges ("ROBs") and widen the roads. In the present order, the Supreme Court has held that it is imperative to make a realistic assessment of the economic value of a tree, which may be permitted to fell, with reference to its value to environment and its longevity, with regard to factors such as production of oxygen and carbon sequestration, soil conservation, protection of flora / fauna, its role in habitat and ecosystem integrity and any other ecologically relevant factor, distinct from timber / wood.

In the present order, the Supreme Court has observed that the right to clean and healthy environment has been recognized as the fundamental right under Article 21 of the Constitution of India. The Court has further opined that conservation and development need not be viewed as binaries, but as complementary strategies that weave into one another.

It is worth noting that in the instant order, the Supreme Court has noted that the present issue assumes significance from the perspective of climate change as a growing national and international concern. In this order, the Supreme Court has observed that the National Action Plan on Climate Change ("NAPCC") formulated by Union Government in 2008 recognizes that the country is committed to increasing tree cover from 23% to 33%. The Court has further noted that under the Paris Agreement, India has committed itself to Nationally Determined Contributions in 2015, wherein one of the stated objectives is to create an additional carbon sink of 2.5 to 3 billion tonnes of CO<sub>2</sub> equivalent through additional forest and tree cover by 2030.

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## High Court Judgments/Orders

Karnataka High Court quashes Karnataka Government's notification releasing state forest land to revenue department without Centre's approval

**Gireesh Acharya v. Government of India and Ors., Order dated 4 March 2021<sup>4</sup>**

A division bench of the Karnataka High Court comprising of the Chief Justice Mr. Abhay S. Oka and Justice S. Vishwajith Shetty has set aside the Karnataka Government's notification concerning the utilisation of the state forest land by the revenue department without the prior approval of the Central Government under the Forest (Conservation) Act, 1980 ("1980 Act").

The background of this case is that the Karnataka Government issued a notification under the Karnataka Forest Act, 1963 ("1963 Act") de-notifying the state forest land to the revenue department for rehabilitation of project affected families. Although the notification mentioned the 1980 Act, no prior approval of the Central Government was taken before de-notifying the forest land as per the requirement of 1980 Act. Hence, this petition challenged the said notification and certain provisions of the 1963 Act as repugnant to the 1980 Act.

The State contended that the land in question had been taken out of the State forest category through various orders in 1960s, i.e. before the enactment of the 1980 Act, the prior approval of the Central Government under the 1980 Act was not required. However, accepting the petitioners' submission, the Court observed that the de-reservation of the State Forest land could be done under the 1963 Act only through publication in the official Gazette. However, as the publication in the Official Gazette was not done, the forest was not de-reserved and is still a state forest. The Court further observed that Section 2 of the 1980 Act begins with a non-obstante clause and it overrides the 1963 Act, thus, there is no scope of the repugnancy between these acts. Therefore, exercise of powers under the 1963 Act through the said notification to de-notify the forest will require prior approval of the Central Government under the 1980 Act.

Calcutta High Court prohibits any human activity in Sunderban Biosphere Reserve, Sunderban Tiger Reserve and adjoining Reserve Forest

**Kalam Pailan v. The State of West Bengal & Ors.; Order dated 12 March 2021<sup>5</sup>**

In this case, a division bench of the Calcutta High Court comprising of the Chief Justice Thottathil B. Radhakrishnan and Justice Aniruddha Roy while considering the petition concerning the poor ecological situation of Sunderbans area has held that there shall be no activity whatsoever by human intervention in any part of Sunderbans area namely Sunderban Biosphere Reserve, Sunderban Tiger Reserve and adjoining Reserve Forest except to the extent as may be permitted by the Additional Principal Chief Conservator of Forests & Director, Sunderban Biosphere Reserve. The Court has put this system in operation for a period of six months from now and within this period the State Government has been directed to address the issue as to whether all the areas, to which reference is made in this order, could be brought under one umbrella even in terms of administration so that executive control and police control can be effectively and smoothly enforced over the entire area.

The background of this case is that the Court had constituted a committee to prepare a report on ecological threats to the Sunderbans area covering Sunderban Biosphere Reserve, Sunderban Tiger Reserve and adjoining Reserve Forest. The committee had reported that gross onslaught is being carried out on the ecological and environmental fabric of the region. The Court noted that these activities do not only result in encroachment into these lands but also damage its ability to sustain itself as a biosphere.

In this order, the Court has observed that the Sunderban area cannot be utilized or permitted to be accessed except for its preservation, management, protection and custody by and under the control of its custodians in law; and the extremely limited purpose for which human access could be

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permitted under controlled conditions would be imposed by those in custody of that area.

**Odisha High Court issues directions to preserve the habitats and decreasing population of Olive Ridley Turtles along the coast of Odisha**

**In re Olive Ridley Turtles v. Principal Secretary, Forest and Environment Department; Order dated 15 March 2021<sup>6</sup>**

A division bench of the Odisha High Court comprising of the Chief Justice Dr. S. Muralidhar and Justice B.P. Routray has issued directions to the Odisha Government to take various measures to protect and preserve the habitats of Olive Ridley Turtles along the coast of Odisha.

## National Green Tribunal Judgments/Orders

**NGT constitutes a joint committee to analyse the incident of death of a person due to fire in an illegal building**

**In re: News item published in The Times of India dated 28.02.2021 titled "Delhi: Man charred to death as illegal factory catches fire"; Order dated 2 March 2021<sup>7</sup>**

While taking *suo motu* cognizance of a recent fire incident reported in the Times of India wherein one person had been charred to death and three others had been injured, the NGT has constituted a five-member Joint Committee to give its report about the cause of the incident, the extent of damage caused, the extent of compensation required to be paid for damage to the environment as well as for loss of lives, injuries and steps required to be taken for preventing any such occurrence in future within one month.

NGT in the present order has observed that from media reports it appears to be a case of non-compliance of statutory safeguards under the provisions of the Manufacture, Storage and Import of Hazardous Chemical Rules, 1989, the Hazardous and other Waste (Management and Transboundary Movement) Rules, 2016 and the Plastic Waste Management Rules, 2016. The Tribunal further observed that the owner / occupier of the hazardous

Taking *suo motu* cognizance of the increasing instances of deaths of Olive Ridley Turtles along the coast of Odisha, the Odisha High Court through an earlier order had constituted an expert committee to assess the causes of these deaths and steps that can be taken to prevent them in future. The committee submitted its report making various suggestions. Based on this report, the Court through its present order has issued various directions to State Government such as: prohibition of fishing activities by trawlers in the area of Devi River Mouth; clear demarcation of no-fishing zones; fencing of the nesting beach of Turtles at Gahirmatha beach; using technology and geo-coordinates to enable tracking of movement of trawlers and fishing boats around the Gahirmatha Marine Sanctuary.

activity is responsible for compensation to the victims and for restoration of the environment as per law laid down in the case of *M.C Mehta v. Union of India & Ors.* [(1987) 1 SCC 395].

**NGT directs Damodar Valley Corporation to pay environmental compensation for discharge of furnace oil into Damodar river**

**Damodar Valley Corporation v. Jharkhand Pollution Control Board; Order dated 3 March 2021<sup>8</sup>**

The NGT has dismissed the appeal preferred by the Damodar Valley Corporation against the order dated 07.05.2020 of the Jharkhand State Pollution Control Board requiring it to pay compensation for spilling furnace oil into the river.

Appellant argued that it had informed the Board after the incident and there was no foul play on their part in this incident. NGT had constituted an expert committee to analyse the situation. As per the report of this committee, it was found that substantial quantity of oil had been leaked into the river and Corporation was responsible for this incident. Therefore, NGT applied the polluter pays' principle and directed the Corporation to pay the amount for restoration regardless of the existence of the foul play on their part

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in this leakage. In its present order, the NGT has observed that the 'Polluter Pays' principle has also been statutorily incorporated under Section 20 of the NGT Act as a guiding principle in dealing with such matters.

**NGT directs constitution of a Joint Committee for comprehensive study on environmental degradation in SIPCOT Industrial Complex, Cuddalore, Tamil Nadu and its impact on health of local population**

**S Pugazhendhi & Anr. v. Tamil Nadu State Pollution Control Board & Ors.; Judgment dated 5 March 2021<sup>9</sup>**

In this case, the NGT has appointed a Joint Committee to inspect the SIPCOT Industrial Complex, villages in proximity to this complex and probable villages likely to be affected on account of such industrial activities and prepare a comprehensive action plan to remedy the situation.

The Tribunal in this case was considering an application filed by members of the local community regarding environmental degradation in their region due to the SIPCOT industrial estate and its adverse impact on their health.

The Tribunal has directed the Committee to prepare a Comprehensive Action Plan with recommendation of temporary and long term measures to resolve the issue and assess the environmental compensation, fixing the responsibility of the persons responsible for the same and provide necessary data and method of calculation of assessment of environmental compensation. NGT also directed the Tamil Nadu Pollution Control Board to initiate action against the industries identified and impose environmental compensation against them, after following the procedure in accordance with law.

**NGT directs Madhya Pradesh's Chief Secretary to work on mission mode to control pollution in Tapi and Kshipra rivers**

**Harish Solanki v. Central Pollution Control Board & Ors.; Order dated 9 March 2021<sup>10</sup>**

NGT after reiterating its order dated 22.02.2021 in the case of In re: News item published in "The Hindu" authored by Shri Jacob Koshy titled "More river stretches are now critically polluted: CPCB" [O.A. No. 673/2018] held that the State of Madhya Pradesh should take urgent steps to rejuvenate critically polluted stretches of rivers and undertake projects as per the mechanism to be framed by the Union Government.

The Tribunal in this case was considering an application seeking closure of industries which are discharging industrial waste in rivers Tapi and Kshipra in Burhanpur, Ujjain and Dewas districts of Madhya Pradesh.

In the instant order, the Tribunal has observed that the issue of control of municipal and industrial effluents is a matter covered by provisions of the Water (Control of Pollution) Act, 1974 and Article 243 W of the Constitution of India read with the 12<sup>th</sup> Schedule of the Constitution.

**NGT issues notice to State Governments on the status of implementation of Online Continuous Emission Monitoring System to provide data related to air pollution to the public**

**Dharmesh Shah, Chennai v. Union of India and Others; Order dated 9 March 2021<sup>11</sup>**

NGT has issued notice in this case concerning implementation of the Online Continuous Emission Monitoring System ("OCEMS") by State Governments in compliance with orders of the Supreme Court.

Applicant contended that certain States have not implemented the previous directions by the Supreme Court regarding the OCEMS. It was also contended that States and Union Territories ("UTs") have either not installed these systems or they have installed such systems with inadequate facilities. It was contended that the main purpose of this system was to provide to the public current and historical data about air pollution in their area, therefore, these non-compliances raise substantial questions related to the environment, requiring the NGT's interference.

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NGT admitted the matter and issued notices to the respondents. The Tribunal has further directed the concerned State Pollution Control Boards ("SPCBs") and Central Pollution Control Board ("CPCB") to prepare a chart regarding the status of implementation of the directions issued by the Hon'ble Supreme Court in the respective States and if it is not complied with what is the nature of action taken by them for implementing the same in its letter and spirit in these States as directed by the Hon'ble Supreme Court. The State Governments have also been directed to file independent responses regarding the manner in which the directions issued by the Hon'ble Apex Court is being implemented in their respective States and also how it is being made available in the public domain and the monitoring mechanism as to how this is maintained and carried out properly by the responsible persons. The Tribunal has further directed that the States which have not implemented the scheme so far to inform about the reason for the delay and how much time they would require for implementing the directions issued by the Hon'ble Apex Court in this regard.

### NGT observes that lack of funds cannot be an excuse for non-compliance with statutory requirements under SWM Rules

#### Arvind Baniyal v. State of Uttarakhand; Order dated 9 March 2021<sup>12</sup>

NGT was considering a matter related to failure of the state government authorities in complying with Solid Waste Management Rules, 2016 ("SWM Rules") despite various directions issued by the NGT and the Supreme Court. NGT had asked state authorities to submit details of the action being taken by them to ensure such compliances.

Based on reports submitted by state authorities, NGT noted that steps taken for compliance have been inadequate and further steps clearly need to be taken. Accordingly, it observed that the clean environment is the basic right of citizens and the non-availability of funds cannot be an excuse for delay in compliance with statutory requirements under the SWM Rules.

### NGT directs modification in the Zonal Master Plan prepared for Mount Abu eco-sensitive zone

#### Dr. Arun Kumar Sharma v. Ministry of Environment Forests & Climate Change & Anr.; Order dated 10 March 2021<sup>13</sup>

NGT while hearing applications challenging the Zonal Master Plan 2030 (notified on 29.10.2015 after approval by the MoEFCC) as being inconsistent with the Eco-Sensitive Zone ("ESZ") notification dated 25.06.2009 has directed the concerned authorities to modify the Zonal Master Plan in consultation with the committee and finalise the plan within three months taking into consideration all aspects mentioned in the report in detail.

The applications challenged the ESZ notification on grounds that it *inter alia* fails to discourage construction activities at or near the heritage sites, conserve the existing water bodies and permits change of land use by illegal structures.

Through its previous orders, NGT had constituted an expert committee to assess the matter and provide a detailed report. In its present order, the NGT has observed that the object of notifying ESZ is to protect specified area from irreversible degradation of environment with a view to give effect to the principles of sustainable development and inter-generational equity and public trust doctrine in exercise of powers under Section 3(2)(v) of the Environment Protection Act, 1986.

### NGT directs Karnataka Government to initiate steps to restore lakes in Bengaluru

#### Court on its own Motion v. State of Karnataka; Order dated 12 March 2021<sup>14</sup>

In this case, NGT was considering an application seeking directions for the State Government to take remedial actions for restoration of Bellandur, Agara and Varthur lakes in Bengaluru, which have been affected by dumping of pollutants and encroachment of their catchment areas.

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NGT had constituted a committee in its previous order to assess the situation. As per the report of the committee, NGT noted that the progress in the matter had been very slow and inadequate and the problem has been continuing for the last four years and that the state authorities have not lived up to the expectations. For instance, the action taken against industrial units for discharging the industrial waste without treatment by not installing requisite sewage treatment plants was inadequate. Out of 61 defaulting units, action was taken only against 10, while compliance was only by 25. Action was yet to be taken against 26 industrial units, while no action had been taken against erring officers.

NGT noted that the monitoring by NGT or its appointed committee cannot continue for an indefinite period. Accordingly, NGT directed the state authorities to execute the action plan for restoration of pristine ecology of the lakes / wetlands, while ensuring that all pending projects for setting up of sewage treatment plants, fencing of lake and removal of encroachments must be executed expeditiously.

### NGT orders Uttar Pradesh Government to comply with waste management rules in the eco-sensitive Taj Trapezium Zone

#### Social Action for Forest and Environment (SAFE) v. Union of India & Ors.; Order dated 15 March 2021<sup>15</sup>

NGT has directed the Chief Secretary, Uttar Pradesh to ensure further remedial action on an urgent basis, taking into account the recommendations of the CPCB and Oversight Committee by ensuring that adequate measures are taken to bridge the gap for solid and sewage management.

The Tribunal gave this direction while considering an application filed to ensure compliance with Solid Waste Management Rules, 2016, Hazardous and other Wastes (Management and Transboundary Movement) Rules, 2016 and Bio-medical Waste Management Rules, 2016 in the city of Agra as well as the areas coming under the Cantonment Board, Agra and eco-sensitive zone of Taj Trapezium Zone.

Through its previous orders, NGT had directed the CPCB and Oversight Committee to provide its report on the status of the compliance with waste management regulations. The report was submitted and was considered by the NGT in this order. Basis this report, NGT observed that the work executed so far is not adequate. Despite this matter being pending for so long and repeated directions being issued, there was still need to enhance the capacity for solid waste (including bio-mining) and sewage management by addressing the infrastructure gaps, installing more equipments and taking all other necessary measures.

The Tribunal through the present order has held that due attention is required on utilization of treated sewage and setting up of adequate capacity for solid waste processing plant to avoid mounting of legacy waste. Leachate re-circulation and treatment has to be ensured as per municipal solid waste rules and ensuring monitoring of ground water to check contamination. There is a need to devise manifest system for tying up rejects and residues arising out of bio-mining. Further, duly authorized bio-medical, plastics and hazardous waste management facilities need to be set up and operated.

### NGT constitutes a twelve-member Oversight Committee to oversee the steps by Meghalaya state authorities for stopping rat hole mining, restoration of environment and other incidental issues

#### Threat to life arising out of coal mining in south garo hills district v. State of Meghalaya & Ors.; Order 15 March, 2021<sup>16</sup>

In this case, NGT was considering an application concerning operation of the rat hole mining in the State of Meghalaya. NGT took cognizance of this matter based on news reports that 30 coal workers were trapped in a coal mine and 15 have died. Through its order dated 17.04.2014, NGT had prohibited rat hole mining in Meghalaya and directed that any illegal transportation of coal should not take place until further orders.

Through its previous orders on this issue, NGT had also formed expert committee to

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ensure that rat hole mining does not take place, assess the coal extracted in the State through this process and environmental damage caused pursuant to that, and suggest remedial measures to restore the damaged environment. However, despite this, there were further incidences of mining continuing and labourers having been trapped. However, there was an appeal against this order of the NGT before the Supreme Court which upheld the NGT's jurisdiction in dealing with this matter as well as its order prohibiting rat hole mining and constituting a committee to monitor the situation. But the Supreme Court allowed the coal mining in Meghalaya provided it is done as per the statutory provisions.

Based on various reports subsequently filed by the expert committee on this issue, NGT noted in its present order that the rat hole mining was still continuing in the state and efforts taken for restoration of environment are inadequate. Accordingly, NGT disposed the matter and held that implementation of steps suggested by Committee needs to be expedited. Since the oversight of the NGT and its Committee cannot continue forever, NGT directed the State authorities to take appropriate measures for complying with Supreme Court's judgment, preventing unscientific and unregulated mining, restoring the environment, rehabilitating the victims and handling of illegally mined coal, which shall be overseen by a twelve-member Oversight Committee.

**NGT directs the Joint Committee to assess the environmental compensation for pollution caused by sugar mill**

**Anuradha v. State of Uttar Pradesh; Order dated 15 March 2021<sup>17</sup>**

In this matter, a three-member bench of the NGT comprising the Chairperson Justice Adarsh Kumar Goel, Justice Sheo Kumar Singh and Dr. Nagin Nanda was considering the application filed against a sugar mill for violating environmental norms and polluting the groundwater in the region. NGT had earlier sought a report from a Joint Committee with reference to the instant allegations.

As per report submitted by the Joint Committee, NGT found that there were serious

violations of environmental norms and authorities had failed to perform their duties and recovering compensation from the mill based on polluter pays principle. Accordingly, NGT through its instant order has directed the Joint Committee to assess the compensation for restoration and SPCB to ensure its collection and utilisation for restoration.

**NGT directs SPCB to fix continuing compensation on rising scale till compliance is ensured**

**Sarvesh Dangwal v. State of Uttarakhand, Order dated 15<sup>th</sup> March 2021<sup>18</sup>**

While adjudicating an application pertaining to the allegation of violation of environmental norms by Arborea Luxury Homes, Tarla Nagal, Kulhan, Dehradun, having a swimming pool and 96 apartments, the NGT has directed the Uttarakhand Pollution Control Board ("UKPCB") to take remedial measures to ensure compliance with environmental laws and fix compensation for the violation on the rising scale till compliance.

The UKPCB through its order dated 19.01.2021 had imposed a sum of INR 1.466 million as environment compensation on the hotel under consideration. However, NGT in its present order has observed that the hotel is functioning without statutory consent to operate and also extracting ground water without the requisite permission. The Tribunal further observed that the compensation imposed is insignificant, does not cover the entire period of violation and does not ensure action against continuing violation for which compensation must progressively include element of deterrence to compel compliance.

**NGT directs the State Pollution Control Board to clearly disclose in its order the basis of calculating environmental compensation to be paid by the polluter.**

**M/s Virat Alloys (P) Ltd. v. Gujarat Pollution Control Board; Order dated 18 March 2021<sup>19</sup>**

In this case, NGT was considering the appeal against the order of the Gujarat SPCB dated 12.01.2021 directing closure of the appellant unit and requiring it to pay environmental

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compensation for the damage to the environment.

Gujarat SPCB after inspecting the unit, found the unit liable for “intentional discharges to the environment, land, water and air resulting in acute injury or damage to the environment” and therefore, it directed the unit to pay the compensation of INR 5 million as per the CPCB methodology. Hence, this appeal was filed by the Appellant for reduction in the compensation.

The Appellant contended *inter alia* that the damage caused by the unit was ‘moderate’ to ‘poor’ which attracted compensation of INR 1 million.

NGT deliberated on the methodology to be used for determination of the environmental compensation in such cases. It relied on various guidelines issued by the CPCB related to the environmental compensation but found that the order of the SPCB was lacking clarity on this aspect. Hence, it upheld the violations committed by the unit, but ordered SPCB to clearly indicate the basis of compensation after re-hearing the Appellant.

**NGT directs the operator of a godown and Gujarat Government to pay compensation to victims of a fire accident in a chemical factory**

**In Re: News item published in the “Indian Express” dated 04.11.2020 titled “Ahmedabad: Nine killed as godown collapses after factory blast”; Order dated 23 March 2021<sup>20</sup>**

In this case, NGT was considering the issue of a fire accident in an establishment being used for chemical trading and manufacturing activities without the required compliances under Manufacture, Storage and Import of Hazardous Chemical Rules, 1989, Chemical Accidents (Emergency Planning, Preparedness and Response) Rules, 1996 and various state laws.

Proceedings in this matter have been initiated based on media report of death of nine persons (later the number of deaths has risen to 13 and nine injured have been identified) on account

of a factory blast at Ahmedabad on 04.11.2020. NGT found that the factory was operating in an unauthorized area without a proper license to operate as required under the law. It had no safety audit; no on-site or offsite protocols for management of emergencies established in the locality; no fire control mechanism at site or in the vicinity of the incident / accident site; and necessary safeguards and critical evaluation and review pertaining to simultaneous storage of non-compatible hazardous and toxic had not been done.

In this respect, NGT observed that though primary responsibility to compensate victims is of the persons engaged in illegal hazardous activities, there is also a failure of the statutory authorities in performing their responsibility of checking hazardous activities being conducted without requisite safeguards. Thus, serious negligence of these authorities renders the State of Gujarat vicariously liable for this incident. NGT further noted that such activities continue unchecked resulting in damage to environment and human lives, despite it dealing with and issuing orders in 16 similar tragedies in the recent past.

**NGT directs capacity enhancement of Central and State PCBs through various measures**

**Shailesh Singh v. State of Haryana & Ors.; Order dated 23 March 2021<sup>21</sup>**

In this case, the issue before the NGT for consideration was the revision of existing monitoring mechanism to oversee compliance of environmental norms by the SPCBs, including duration for mandatory inspections of different categories of industries and policy of auto renewals of Consent to Operate under the Water (Prevention and Control of Pollution) Act, 1974 as well as the Air (Prevention and Control of Pollution) Act, 1981.

On this aspect, NGT reduced the period for the frequency of inspection by SPCBs for different categories of industries, and also directed the CPCB to consider these periods for other areas as well.

Besides, it is also important to note that NGT also deliberated on the working and capacity

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of Central and State PCBs for the enforcement of environmental norms. It noted that SPCBs need to be strengthened with expert members, laboratories and modern equipments to ensure monitoring and compliance with environmental norms.

Regarding laboratories, NGT emphasised on the relevance of laboratories for their effective functioning and accordingly directed that SPCBs may undertake capacity enhancement out of consent funds by procuring requisite equipments, setting up of modern labs and recruiting / engaging staff and experts. Further, it also directed that CPCB may also undertake capacity enhancement including procurement of requisite equipment, setting

up of labs, recruiting / engaging staff and experts on above lines utilising environment compensation funds.

NGT also expressed concerns regarding pending vacancies in SPCBs and directed the CPCB to prepare a format which may contain qualifications, minimum eligibility criteria, required experience for the key positions and the specifications of equipment required for functioning of SPCBs. These criteria may be followed by States / UTs thereafter.

Additionally, NGT also directed that MoEF&CC and CPCB may design a mechanism for annual performance audit of all the SPCBs.

## Regulatory and Policy Developments

### Constitution of technical committee for preparation of "Guidelines on handling and management of high volume low effect waste – Slag from pyro-metallurgical operations"; 2 March 2021<sup>22</sup>

CPCB through an office order dated 02.03.2021 has constituted a technical committee for preparation of "Guidelines on handling and management of high volume low effect waste – Slag from pyro-metallurgical operations (Iron & Steel and Ferrous Alloy Units)". This office order communicates the terms of reference ("ToR") for this committee as well. As per this office order, the tenure of the said committee shall be 12 months which may be extended further by CPCB, if required.

### Amendment in the Environmental Impact Assessment Notification, 2006, ("EIA Notification") providing exemption to certain existing projects from fresh environmental clearance; 2 March 2021<sup>23</sup>

EIA Notification requires existing projects to obtain fresh environmental clearance in case of: (i) expansion or modernisation resulting in increase in production capacity through the change in process and/or technology; or (ii) change in the product mix in existing manufacturing units beyond the specified range, before undertaking such changes in the project. However, in the past, EIA Notification was amended to exempt the requirement for the fresh clearance for existing projects undertaking above-said changes provided

there is no increase in their pollution and increase in production capacity is within 50% above the specified limits.

In this respect, MoEFCC through a notification dated 02.03.2021 has further amended the EIA Notification to exempt from fresh clearance: (a) any change in configuration of the plant or activity from the EC conditions during execution of the project after detailed engineering, provided there is no change in production capacity and no increase in pollution load; or (b) any increase in production capacity of projects in specific sectors with or without any change in (i) raw material-mix or product-mix or (ii) quantities within products or number of products including new products falling in the same category or (iii) configuration of the plant or process or operations in existing area or in areas contiguous to the existing area (for which prior EC has been granted), provided there is no increase in the pollution load. The criteria to determine the 'pollution load' has also been incorporated. The aforesaid projects have also been required to provide information about such change on PARIVESH portal as well as to the relevant SPCBs or UT Pollution Control Committee in the specified manner.

### Exemption of the establishment and operation of coastal aquaculture hatcheries within 200 m from the HTL; 5 March 2021<sup>24</sup>

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To redress the apprehension with various stakeholders, the Coastal Aquaculture Authority ("CAA") in exercise of the powers conferred on this Authority by the second proviso of subsection 8 of Section 13 of CAA Act, 2005, resolved to permanently exempt the establishment of coastal aquaculture hatcheries within 200 m from the High Tide Line ("HTL") from the provision of subsection 8(a) of Section 13 of CAA Act 2005, to facilitate the operation of coastal aquaculture hatcheries.

Accordingly, the establishment and operation of coastal aquaculture hatcheries within 200 m from the HTL stands exempted from the provision of subsection 8(a) of Section 13 of CAA Act 2005 which specifies that no coastal aquaculture shall be carried out within 200 m from HTL.

## MoU signed for developing Paradeep Plastic Park between IOCL and IDCO; 9 March 2021<sup>25</sup>

Indian Oil Corporation Limited ("IOCL") and Odisha Industrial Infrastructure Development Corporation ("IDCO") has inked an agreement and a Memorandum of Understanding ("MOU") to develop Paradeep Plastic Park. This MoU has been signed on a hybrid mode.

With the view to attract investments in downstream polymer industries at Paradeep Plastic Park, IOCL has announced a special strategic incentives scheme. An incentive of INR 2000/MT on polypropylene granules from Paradeep Refinery shall be offered to the manufacturing units located in the Paradeep Plastic Park till 31.03.2030. Around 26 units are estimated to come up at the plastic park with an estimated investment of INR 5,000 million which is likely to generate direct and indirect employment of 6,000.

## Draft Plastic Waste Management (Amendment) Rules 2021; 11 March 2021<sup>26</sup>

The MoEF&CC through a notification dated 11.03.2021 has published the draft Plastic Waste Management (Amendment) Rules, 2021. The draft rules are open for public comments for 60 days.

Through these draft rules, on the supply side, it has proposed to extend the applicability of the rules to brand-owner, plastic waste processor

(including the recycler, co-processor, etc.) from manufacturers, producers, importers as were mentioned earlier. Besides, it proposes to increase the thickness of carry bags made of virgin or recycled plastic to 120 microns from 50 microns from 30.09.2021. However, such thickness requirements would not be applicable for carry bags and commodities made of compostable plastic.

Further, it also proposes a ban on the manufacture, import, stocking, distribution, sale and use of specific single-use plastic products like ear buds with plastic sticks, plastic sticks for balloons, plastic flags, etc. from 01.01.2022, and products like plates, cups, glasses, invitation cards, and cigarette packets, etc. from 01.07.2022.

## MoEFCC issues notifications to demarcate ESZ in various states; 12 March 2021<sup>27</sup>

MoEFCC through notifications dated 12.03.2021 has notified ec0-sensitive zones (ESZ) in various parts of the country. This includes an area of 1217.684 square kms around Kanha Tiger Reserve, Madhya Pradesh. This also includes an area of 54.68 sq. kms. around Katepurna Wildlife Sanctuary in Maharashtra being declared as an ESZ. An area of 14.93 sq kms has been notified as ESZ around the Galathea National Park and an area of 65.81 sq kms has been declared as ESZ around the Campbell Bay National Park in Andaman and Nicobar Islands. In Madhya Pradesh, an area of 99.73 sq kms has been declared as an ESZ around the Veerangana Durgawati Wildlife Sanctuary and in Himachal Pradesh a total area of 46.74 sq kms has been declared as ESZ around the Tundah Wildlife Sanctuary. The notifications require each of the State Governments to prepare a Zonal Master Plan for management of the ESZ, and also prescribes a list of prohibited, restricted and promoted activities within the ESZ.

## Draft Motor Vehicles (Registration and Functions of Vehicle Scrapping Facility) Rules, 2021; 15 March 2021<sup>28</sup>

Ministry of Road Transport and Highways has released the notification of draft Motor Vehicles (Registration and Functions of Vehicle Scrapping Facility) Rules, 2021. The draft rules is open for public comments for 30 days.

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The provisions under these draft rules shall lay down the procedure for establishment of Registered Vehicle Scrapping Facility ("RVSF"). These will apply to all vehicles and their last registered owners, Automobile collection centres, Automotive Dismantling, Scrapping and Recycling Facilities and recyclers of all types of automotive waste products.

The draft rules describes the eligibility criteria, powers, obligations and registration process for a vehicle scrapping facility. It provides that, after registration, these facilities can carry out the scrapping of certain vehicles such as: those without renewed Certificate of Registration; those which have not been granted the certificate of fitness; that have been damaged due to fire, riot, natural disaster, accident or any calamity, following which the registered owner self certifies the same as scrap; vehicles which have outlived their utility or application particularly for projects in mining, highways, power, farms etc. as may be self-certified by the owner, etc.

#### **Concession Agreement Signed for Development of Sewage Treatment Plants in Moradabad; 15 March 2021<sup>29</sup>**

A tripartite Concession Agreement has been signed between the National Mission for Clean Ganga ("NMCG"), Uttar Pradesh Jal Nigam and M/s. GA Infra Private Limited-Lahoti Buildcon Limited for development of Sewage Treatment Plants ("STPs") in Moradabad on hybrid annuity public-private partnership ("PPP") mode.

This contract has been awarded at a total cost of INR 996.8 million. This project aims to eliminate flow of untreated sewage from Moradabad city into the River Ganga thereby reducing pollution load in the river. NMCG has approved the project for construction of the 25 MLD Sewage Treatment Plant (STP), among other works such as developing Interception & Diversion (I&D) structures, I&D network laying, sewage pumping stations including operation and maintenance for 15 years etc. This project also aims to take care of the existing sewerage problems in the town and the resultant sewage pollution in Ram Ganga.

#### **MoEFCC mandates that project proponents should provide essential details sought under the EC process within 30 days; 15**

#### **March 2021<sup>30</sup>**

MoEFCC through an office memorandum ("OM") has communicated that in case the reply to Essential Details Sought (EDS) by the authorities is not received from project proponents on PARIVESH portal within 30 days, the proposal will be excluded from the pendency list shown on PARIVESH. However, they can be relisted with filing of reply to Essential Details Sought.

MoEFCC in this OM has also noted that project proponents are already aware of essential details as required by authorities for EC applications. Hence, their failure to provide these details reflect lack of due diligence on their part while submitting the proposals for EC.

#### **Indo-Israeli joint venture to boost India's e-Mobility aspirations; 17 March 2021<sup>31</sup>**

A joint venture named as IOC Phinergy Private Limited between Indian Oil Corporation Limited ("IOCL") and Phinergy, an Israeli start-up company specializing in hybrid lithium-ion and aluminium-air/zinc-air battery systems has been launched.

This joint venture intends to develop fuel cells and indigenous hydrogen storage solutions for promoting green mobility. It also plans to manufacture aluminium-air systems in India. Under this technology, used aluminium recycling will help India in becoming "Aatmanirbhar" for energy requirements.

#### **Exemption from public hearing for projects whose EC had expired and which has applied afresh; 18 March 2021<sup>32</sup>**

MoEFCC through a notification dated 18.03.2021 has brought an amendment in the EIA Notification 2006. Through this amendment it has been provided that the projects where construction and commissioning of proposed activities have not been completed within the validity period of the EC and a fresh application for EC has been submitted due to expiry of the said period of the EC, the concerned Expert Appraisal Committee or State Level Expert Committee, as the case may be, may exempt the requirement of public hearing subject to the condition that the project has been implemented not less than fifty percentage in its physical form or construction.

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**Formation of committees for expediting the transition from linear to circular economy; 18 March 2021<sup>33</sup>**

With a view to expedite the transition of India from a linear to a circular economy, 11 committees have been formed for 11 focus areas. These committees will be led by the concerned line ministries, comprising of officials from MoEFCC and NITI Aayog, domain experts and representatives from

academics and industry. The committees have been tasked to prepare comprehensive action plans for transitioning from a linear to a circular economy in their respective focus areas. The committees will further carry out the necessary modalities to ensure effective implementation of their findings and recommendations. The 11 focus areas and concerned line ministry are as follows:

S. No.	Focus Area	Concerned Line Ministry
1	Municipal Solid Waste and Liquid Waste	Ministry of Housing and Urban Affairs
2	Scrap Metal (Ferrous and Non-Ferrous)	Ministry of Steel
3	Electronic Waste	Ministry of Electronics and Information Technology
4	Lithium Ion (Li-ion) Batteries	NITI Aayog
5	Solar Panels	Ministry of New and Renewable Energy (MNRE)
6	Gypsum	Department for Promotion of Industry and Internal Trade
7	Toxic and Hazardous Industrial Waste	Department of Chemicals and Petrochemicals
8	Used Oil Waste	Ministry of Petroleum and Natural Gas
9	Agriculture Waste	Ministry of Agriculture and Farmers' Welfare
10	Tyre and Rubber Recycling	Department for Promotion of Industry and Internal Trade
11	End-of-life Vehicles (ELVs)	Ministry of Road Transport and Highways

**MoEFCC directs that State Government cannot impose additional conditions after the grant of Stage-I approval under the Forest (Conservation) Act 1980 by the Central Government; 22 March 2021<sup>34</sup>**

MoEFCC through a communication dated 22.03.2021 addressed to the Addl. Chief Secretary (Forest) / Principal Secretary (Forest) / All State Governments / UT Administrations has reiterated following directions:

- A State Government / UT Administration will not impose any additional condition after in-principle approval has been accorded for a proposal seeking approval under Forest (Conservation) Act, 1980 for any non-forestry purpose. However, in exceptional situations, giving due justifications, additional condition may be imposed with the prior approval of the Central Government.
- The provision in sub-section 3 of Section

4 of the Compensatory Afforestation Fund Act, 2016 shall be strictly adhered to and it shall be the responsibility of the State Government / UT Administration to ensure the same.

- The State Government / UT Administration shall also ensure that the user agency deposits compensatory levies in full as estimated for implementation of Wildlife Management Plan, Catchment Area Treatment Plan, or any other stipulated activity on time.

**MoEFCC extends the date for General Approval under Section 2 of Forest (Conservation) Act 1980 for diversion of less than one hectare of forest land for non-forestry purpose; 22 March 2021<sup>35</sup>**

MoEFCC through a communication dated 22.03.2021 addressed to the Addl. Chief Secretary (Forest) All State / UTs Government

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has communicated that in all such cases in which the State Government has accorded Stage I approval prior to 31.12.2019 and are pending for Stage II approval, State government can grant final approval under the provisions of Forest (Conservation) Act, 1980 within five years of issue of Stage-I approval.

**United Nations Office for Project Services partners with Government of Denmark to support Jal Jeevan Mission in Bundelkhand & Vindhya region of UP; 22 March 2021<sup>36</sup>**

United Nations Office for Project Services ("UNOPS") has entered into a partnership with the Government of Denmark to support the Jal Jeevan Mission in Uttar Pradesh.

The reason for the partnership between the Government of Denmark and UNOPS is to provide strategic technical support to Jal Jeevan Mission. UNOPS shall be focussing on instituting scalable delivery models in focused 11 water-scare districts of Uttar Pradesh in Bundelkhand and Vindhya regions as per the priorities laid down in the Operational Guidelines of Jal Jeevan Mission. Through this coordination it will be ensured that the partnership and the bilateral Indo-Danish cooperation on the Jal Jeevan Mission mutually support and reinforce each other in order to support the achievement of the Jal Jeevan Mission's goals.

**Cabinet approves the MoC signed between India and Japan in the field of Water Resources; 23 March 2021<sup>37</sup>**

The Union Cabinet has approved the Memorandum of Cooperation ("MoC") signed between Department of Water Resources, River Development and Ganga Rejuvenation, Ministry of Jal Shakti, Government of India and Water and Disaster Management Bureau, Ministry of Land, Infrastructure, Transport and Tourism of Japan in the field of Water Resources.

This MoC has been signed for development of a long-term cooperation in the field of water and delta management, and water

technology in order to increase the exchange of information, knowledge, technology and scientific allied experience as well as implementation of joint projects between India and Japan. This MoC will help in achieving water security, improved irrigation facility and sustainability in water resources development.

**MoU signed towards execution of planned actions in time bound manner in 132 cities under NCAP; 26 March 2021<sup>38</sup>**

A Memorandum of Understanding ("MoU") has been by representatives of SPCBs, urban local bodies and institutes of repute for 132 identified cities for implementation of city specific action plans under the National Clean Air Programme ("NCAP"). This MoU will ease the smooth and binding execution of planned actions in time targeted manner. A national knowledge network comprising of leading air quality specialists has also been constituted as a technical advisory group to support activities under NCAP and guide local institutes of repute ("IoRs") in conducting air quality research.

**CPCB releases the report of Contaminated Sites in India<sup>39</sup>**

CPCB has released the report on Contaminated Sites in India. As per the report, there are 112 sites in India contaminated by toxic and hazardous substances. Besides, there are 168 sites that may be contaminated but require investigation and confirmation. Odisha tops the list with 23 contaminated sites, followed by Uttar Pradesh (21) and Delhi (11).

'Contaminated sites' have been defined as areas in which "constituents and characteristics of the toxic and hazardous substances, caused by humans, exist at levels and in conditions which pose existing or imminent threats to human health and the environment".

As per the report, remediation work has been initiated in 14 such sites.

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CPCB releases the report of Contaminated Sites in India



## Endnotes

- 1 Civil Appeal No. 3136 of 2020.
- 2 Civil Appeal No. 716 of 2021.
- 3 SLP(C) No. 025047 of 2018.
- 4 Writ Petition No. 43037 of 2019.
- 5 WPA No. 8514 of 2020.
- 6 Writ Petition (C)/7118/2021.
- 7 Original Application No. 65/2021.
- 8 Appeal No.09/2020 (EZ).
- 9 Original Application No 34 of 2015 (SZ).
- 10 Original Application No. 103/2020 (CZ).
- 11 Original Application No. 82 of 2021 (SZ).
- 12 Original Application No. 144/2019.
- 13 Original Application No. 312/2016.
- 14 Original Application No. 125/2017.
- 15 Original Application No. 176/2020.
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- 17 Original Application No. 234/2020.
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