



Supreme Court Judgments / Orders

Supreme Court upholds the NGT order granting grace period to re-rolling industry to obtain EC under EIA Notification

Gajubha Jadeja Jesar v. Union of India & Ors.; Judgment dated 10 August, 2022¹

The Supreme Court of India ("Supreme Court") has upheld the order of the National Green Tribunal ("NGT") granting one-year grace period to the project proponent to apply for an environmental clearance ("EC") from the relevant authority and ensure compliance with the applicable law. This order was based on the recommendation of the Expert Appraisal Committee ("EAC") to grant such a grace period on account of the ambiguity in law regarding the requirement for re-rolling steel rolling industries to obtain prior EC. Since the industry had obtained all other environmental consents, the Court also set aside the closure order issued by GPCB against this industry for not taking prior EC.

Moreover, the Court noted that this ambiguity is now clarified vide notification issued by Ministry of Environment, Forest and Climate Change ("MoEFCC") on 20 July, 2022 which has granted one year time to industries to apply for EC. Supreme Court noted that all such industries in India have been setup without obtaining prior EC due to this ambiguity.

In this case, the appellant challenged the grace period granted by NGT for obtaining EC on the ground that it has no such jurisdiction as Environment Impact Assessment Notification dated 14 September, 2006 ("EIA Notification") mandates a prior EC. Since EC was not obtained before the setting up of the industry, the time limit of one year is against the mandate of law. Appellant had approached the NGT as the industry was established in violation of EIA Notification, as such plant would fall within category 3(a) i.e., secondary metallurgical industry for which a prior EC is required.

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Karnataka High Court dismisses petition filed against the diversion of semi-grasslands for the construction of a canal project in Karnataka

D.V. Girish & Ors. v. Union of India & Ors.; Judgment dated 08 August, 2022²

The High Court of Karnataka has dismissed a public interest litigation filed against the diversion of Amruth Mahal Kaval land (semi-grasslands) for the construction of a canal project meant for the supply of water

to Chikamangalur, Chitradurga, Tumkur and Davanagere districts of Karnataka. Court noted that the government had applied for requisite clearances from MoEFCC before the commencement of the project and such clearances were currently pending. The decision on infrastructure projects is a matter of policy decision, which cannot be interfered with unless manifest illegality or arbitrariness is shown. The Court observed that the project does not suffer from such infirmities and hence need not be interfered with.



National Green Tribunal Judgments / Orders

NGT directs ONGC to pay INR 22 crore as environmental compensation for environmental violations at its units

Venkatapathi Raja Yenumula v. Union of India & Ors.; Judgment dated 02 August, 2022³

NGT has directed Oil and Natural Gas Corporation Ltd. ("ONGC") to pay environmental compensation of INR 22 crore to Andhra Pradesh Pollution Control Board for multiple non-compliances and breaches observed at its units. The Board has also been directed to take appropriate action against ONGC for such violations. NGT noted that multiple incidents related to leakage from their pipelines were noted in the past and were also highlighted in the instant application. These instances reflect breaches and lapses on ONGC's part. The report submitted by NGT-appointed joint committee also noted multiple instances of violations. The report also noted that Andhra Pradesh Pollution Control Board had already issued certain directions in response to the non-compliances by ONGC regarding the operation of unit without obtaining Consent to Operate.

NGT noted that no environmental compensation needs to be imposed on GAIL, but it has been directed to ensure strict compliance with the norms in carrying out its operations and strictly comply with the recommendations made by the joint committee and SPCB in the consent granted to it. In this case, applicant raised the issue of large-scale air, sound, soil and water pollution being caused by ONGC and GAIL in East and West Godavari districts of Andhra Pradesh.

NGT directs NOIDA authority and DJB to pay interim environmental compensation of INR 100 crore and 50 crore respectively

Abhisht Kusum Gupta v. State of Uttar Pradesh & Ors.; Order dated 03 August, 2022⁴

NGT has issued multiple directions to government authorities for taking remedial action to prevent discharge of untreated sewage into canals and water bodies which ultimately join Yamuna and Ganga rivers. NGT has directed Central Pollution Control

Board ("CPCB") to issue directions to all State Pollution Control Boards ("SPCB") / Union Territory Pollution Control Committees ("UTPCCs") to ensure that canals, water bodies and natural storm water drains are not used for discharge of treated or untreated trade or sewage effluents. These water bodies should be geo-tagged and given unique ID. It further directed that sewage treatment plants shall be constructed and utilised as per notified environmental standards and treated sewage shall be utilized by thermal power plant.

In relation to the past liabilities for failure to take these steps, NGT also directed NOIDA authority and Delhi Jal Board ("DJB") to pay interim environmental compensation of INR 100 crore and 50 crore respectively for implementation of these remedial steps. NGT noted that the water in canals and drains remains polluted and this has damaged the environment in the past. Contrary to the consent / EC conditions, untreated sewage is flowing outside the group housing societies either in the general sewer or directly in the drain. In this case, NGT considered the issue of dumping of untreated sewage into the irrigation canal in Sector 137, NOIDA through drains from 95 high rise buildings in Noida and industrial wastewater from Delhi and Ghaziabad.

NGT dismisses appeal against two ECs granted to a cement plant as non-maintainable

Raza Ahmad v. State of Chhattisgarh & Ors.; Judgment dated 03 August, 2022⁵

NGT has dismissed an appeal filed against the EC granted to a respondent for setting up of a cement plant as non-maintainable, having been filed beyond the prescribed limitation period in the NGT Act, 2010 ("NGT Act"). As per Section 16 of NGT Act, NGT cannot condone the delay in filing an appeal beyond a period of 90 days. The right to appeal is a statutory right and can be exercised within the prescribed period of limitation. If a party chooses to sleep over its right and permits the remedy available to it to become barred by time, then it can hardly be heard to contend that it has lost a valuable right and the result is unjust. NGT also noted that the appellant had challenged multiple ECs in a single appeal, which is not permitted as per NGT (Practices

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and Procedures) Rules, 2011. The said rules allow one appeal or application to be based upon a single cause of action seeking multiple consequential reliefs.

NGT constitutes a joint committee for ascertaining the cause of two gas leakage incidents in Andhra Pradesh

In re: News item published in Hindustan Times dated 03.06.2022 titled “178 women workers fall ill after gas leak in Andhra’s Visakhapatnam”; Order dated 03 August, 2022⁶

NGT has directed for the constitution of a six-member joint committee to ascertain the factual cause of two gas leakage incidents in Visakhapatnam and Anakapalle in Andhra Pradesh, suggest measures to prevent such incidents in future and for fixing accountability for such incidents. NGT took *suo moto* cognizance of this matter on the basis of a news report noting these gas leakage incidents affecting the surrounding environment and health of more than 200 persons.

NGT directs Tamil Nadu Pollution Control Board to take action against GAIL for laying the pipeline without CRZ clearance

Tribunal on its own motion v. The Chief Secretary to Govt. of Tamil Nadu; Judgment dated 05 August, 2022⁷

NGT has directed Tamil Nadu Pollution Control Board to proceed with the proceedings initiated against GAIL on the basis of a show cause notice issued for violation of environmental laws in laying of its pipeline in a coastal area. NGT noted that a portion of the area through which the pipeline is laid falls in Coastal Regulation Zone (“CRZ”) notified under the CRZ Notifications of 2011 and 2019 and GAIL had started the work without getting the CRZ Clearance.

NGT had taken *suo motu* cognizance of this matter based on the newspaper report highlighting gas leakage from the GAIL pipeline. Tamil Nadu State Pollution Control Board submitted that it has already initiated proceedings against GAIL for laying the pipeline through CRZ area without obtaining prior CRZ Clearance and it will also take steps to recover environmental compensation for

the violations as per the guidelines issued by CPCB.

NGT directs Chief Secretary, Odisha to take appropriate legal action against illegal sand mining in Odisha and for departmental proceedings against Tahasildar concerned for dereliction of duties

Akshay Kumar Tripathy & Ors. v. State of Odisha & Ors.; Judgment dated 05 August, 2022⁸

NGT has directed the Chief Secretary, Odisha to take appropriate legal action against illegal sand mining including action under the Prevention of Money Laundering Act, 2002 against the offenders/illegal miners. NGT noted that the Tahasildar concerned was responsible for dereliction of his duties by allowing illegal sand mining activities to continue in his jurisdiction area till it was pointed out by other officials. Accordingly, NGT directed District Collector, Bhadrak District to initiate departmental proceedings against him for the violation of law. In this case, applicants contended that rampant illegal sand mining is continuing in the sand embankment of River Baitarani in Odisha. However, NGT found no evidence to showcase involvement of the private respondent in such mining.

NGT directs Chief Secretaries of Haryana and Uttar Pradesh to take appropriate action against illegal mining in river Yamuna

Jahangir v. State of Haryana; Order dated 12 August, 2022⁹

NGT has directed the Chief Secretaries of Haryana and Uttar Pradesh to take appropriate criminal, civil and other action for illegal mining activities in or around Yamuna River. NGT has also directed them to take appropriate action against the concerned erring officials who have tried to cover up the act of illegal mining resulting in diversion of river flow and failed to take appropriate action against erring and guilty persons.

NGT also noted that state government departments are *prima facie* guilty of suppressing information. The joint committee constituted by the NGT submitted its report in this regard. NGT noted that an attempt has been made in the report to suppress

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the severity of this issue by observing that the quantity of illegal mining could not be ascertained. However, it is clear that illegal mining activities have diverted the flow of river, but shallow pretexts are being used to not take appropriate action against erring persons. In this case, applicant raised grievances against the unscientific and illegal mining obstructing the flow of Yamuna River in Village Belgarh, Uttar Pradesh.

NGT dismisses the challenge against the EC granted to Chamoli hydroelectric project but prescribes additional safeguards and conditions for its execution

Dr. Bharat Jhunjhunwala & Anr. v. Union of India & Ors.; Order dated 16 August, 2022¹⁰

NGT has dismissed a challenge against EC granted for Vishnugad-Pipalkoti Hydro-Electric Project in district Chamoli, Uttarakhand as it found no procedural illegality in the process of granting EC. However, NGT noted the need for laying down additional safeguards and conditions in execution of the project such as strenuous monitoring mechanism required for areas prone to landslides and to prevent damage to the dam and other infrastructure. Hence, NGT has directed increase in capital layout of Environment Management Plan to 10% of the total project cost and also constituted a six-member monitoring cell headed by the Chief Secretary, Uttarakhand to oversee execution of mitigation measures to prevent damage to the dam, infrastructure and the habitation upstream and downstream the dam.

NGT dismisses review application filed by Municipal Corporation, Ludhiana against NGT's interim order imposing INR 100 crore as environmental compensation

In Re: News item published in The Indian Express dated 20th April, 2022, titled "7 Charred to death in fire near Ludhiana dumpsite"; Order dated 18 August, 2022¹¹

NGT has dismissed the review application filed by Municipal Corporation, Ludhiana against the interim order dated 25 July, 2022 passed by NGT directing the corporation to pay INR 100 crore as environmental compensation for its failure to comply with Solid Waste Management Rules, 2016, which has resulted

in unscientific disposal of solid waste in Ludhiana resulting in huge amount of legacy waste. NGT found that this application does not dispute the compensation or scientific aspects considered for its determination. NGT further observed that scientific assessment of damage caused by this non-compliance is also supported by similar assessments done for landfill sites in Delhi and Gurgaon. Accordingly, there is no case made out for review of its previous order.

NGT imposes environmental compensation of INR 5 crore on a construction project in Pune

Satish Sanjay Magade v. Rhythm Country & Ors.; Order dated 22 August, 2022¹²

NGT has directed M/s Rhythm Country to pay INR 5 crore as environmental compensation for undertaking construction project in Pune in violation of applicable laws. SPCB has been directed to utilise this amount as per the Pune District Environmental Plan. NGT noted that the proponent proceeded with the project without requisite consents from government authorities and continued in spite of stop work orders. The project proponent later obtained EC for the project but undertook construction activities in violation thereof. The report submitted by NGT-appointed joint committee also noted various violations by the project proponent in the said construction project.

In this case, the applicant raised grievances against violation of environmental law by M/s. Rhythm Country in setting up a construction project in Pune. Applicant contended that construction commenced without requisite EC under EIA Notification and without requisite consents under the Air (Prevention & Control of Pollution) Act, 1981 and Water (Prevention & Control of Pollution) Act, 1974.

NGT directs Rajasthan Government to ensure strict compliance with noise pollution law

Consumer Unity and Trust Society, Jaipur v. State of Rajasthan & Ors.; Order dated 23 August, 2022¹³

NGT has directed Government of Rajasthan to ensure strict compliance with laws relevant for motor vehicles and for controlling noise pollution and to take strict action against the violators of such laws. NGT deliberated on

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the components of noise, health impacts of noise pollution, legal provisions and judicial precedents concerning noise pollution. NGT noted that motor vehicles are responsible for substantial urban noise pollution in Jaipur, Rajasthan as contended by the applicant. In this case, applicant had raised grievances regarding the vehicular sources of noise pollution in Rajasthan. The applicant also contended that use of air pressure horns by the State-owned buses violate the existing law on noise pollution.

NGT dismisses application challenging CEPI score determined by CPCB

In re: News item published in “The Asian Age” Authored by Sanjay Kaw Titled “CPCB to rank industrial units on pollution levels”; Judgment dated 29 August, 2022¹⁴

NGT has dismissed the challenge filed by South Gujarat Textile Processors Associations against Comprehensive Environmental Pollution Index (“CEPI”) score assessment prepared by CPCB to identify critically polluted areas in India. NGT noted that CEPI bridges perceptive gap between experts, public and government departments by simplifying complexity of environmental issues. It aims at categorising critically polluted industrial areas based on scientific criteria so as to ascertain various dimensions of pollution. CEPI score is not against any individual industry but based on the environmental conditions of those areas and therefore, per se, it cannot be said to be adverse or prejudicial or detrimental to any individual industry. It could also not be proved that CEPI score is per se illegal or that any aspect which has been considered in its assessment should not have been considered at all.

In this case, the applicant association had challenged CEPI score used by CPCB to categorize different areas based on their level of environmental pollution. It was contended that authorities act illegally against industries in these areas by imposing highly excessive environmental compensation and blindly issuing directions for closure of industries etc. NGT noted that CEPI score is not an attempt to defeat or destroy economic development or industrial development, but it is a progress or step forward towards achieving the principle of sustainable development and precautionary principle.

NGT directs Chief Secretaries of Delhi, Haryana and Uttar Pradesh to submit report on continuing pollution in river Yamuna

Ishika v. Govt. of NCT of Delhi; Order dated 30 August, 2022¹⁵

NGT has directed Chief Secretaries of Delhi, Haryana and Uttar Pradesh to ascertain latest factual position and provide their report as to why coercive and penal measures be not taken in terms of fixing accountability for blatant failure of state governments in protecting the water quality of river Yamuna, which is a tributary of Ganga, by preventing discharge of pollutants. NGT noted that the water quality of river Yamuna is a matter of serious concern and reflects inability of the authorities to clean the river flowing through India's capital in spite of clear roadmap for its rejuvenation and clear judicial directions. NGT has also directed its Central Monitoring Committee to file compliance status and action taken report on this issue. In the instant case, applicant raised grievances against the pollution of river Yamuna.

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Regulatory / Policy developments

Parliament approves Indian Antarctic Bill, 2022; 01 August, 2022¹⁶

India's Parliament has passed the Indian Antarctic Bill, 2022 to provide for national measures to protect Antarctica's environment and associated ecosystems and to give effect to multiple international legal instruments related to the region. The Bill *inter alia* provides for constitution of Indian Antarctic Authority (IAA) under the Ministry of Earth Sciences, which shall be the apex decision making

authority and shall facilitate programmes and activities permitted under the Bill. The Bill also prohibits certain activities in Antarctica including: (i) nuclear explosion or disposal of radioactive wastes, (ii) introduction of non-sterile soil, and (iii) discharge of garbage, plastic or other substance into the sea which is harmful to the marine environment.

Joint Parliamentary Committee submits its report on Biological Diversity (Amendment)



Bill, 2021; 02 August, 2022¹⁷

The Joint Parliamentary Committee constituted to examine Biological Diversity (Amendment) Bill, 2021 has released its report for Union Government's consideration. The report has been prepared after considering comments from various stakeholders including different ministries, National Biodiversity Authority, State Biodiversity Boards, individuals, civil society and industrial associations. Biological Diversity (Amendment) Bill, 2021 was introduced in the Parliament to amend Biological Diversity Act, 2002.

Lok Sabha passes Wild Life (Protection) Amendment Bill, 2022; 03 August, 2022¹⁸

Lok Sabha has passed the Wild Life (Protection) Amendment Bill, 2022 to amend the Wild Life (Protection) Act, 1972. The Bill seeks to amend the Act for better implementation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Bill *inter alia* seeks to rationalise schedules in the Act and reduce them from six to four. It also proposes enhanced monetary penalties for contravention of provisions of the Act. It also empowers the central government to regulate or prohibit import, trade, possession, or proliferation of invasive alien species whose introduction or spread may pose a threat to wildlife. It also provides for the constitution of a Standing Committee for State Boards for Wildlife.

Union Cabinet approves updated NDC for India; 03 August, 2022¹⁹

Union Cabinet has approved India's updated Nationally Determined Contribution ("NDC") to be communicated to the United Nations Framework Convention on Climate Change ("UNFCCC"). As per the updated NDC, India has committed to reduce emissions intensity of its GDP by 45 percent by 2030 from 2005 level and to achieve about 50 percent cumulative electric power installed capacity from non-fossil fuel-based energy resources by 2030.

CAQM issues revised GRAP for Delhi-NCR; 05 August, 2022²⁰

Commission for Air Quality Management in National Capital Region and Adjoining Areas ("CAQM") has issued the revised Graded Response Action Plan ("GRAP") for Delhi-NCR with effect from 01 October, 2022 under the provisions of the Commission for Air Quality Management in National Capital Region and

Adjoining Areas Act, 2021.

The revised GRAP provides for 4 different stages of adverse air quality in Delhi: Stage - I 'Poor', Stage - II 'Very Poor', Stage - III 'Severe' and Stage - IV 'Severe +'. Unlike the earlier GRAP where actions under these stages were taken once levels of PM 2.5 and PM 10 reached specified levels, such actions will now be invoked at least three days in advance of the air quality index reaching to the projected levels of that stage, based on the dynamic model and weather/ meteorological forecast. The restrictive actions taken under higher stages will be in addition to the action taken under previous stages.

Lok Sabha passes Energy Conservation (Amendment) Bill, 2022; 08 August, 2022²¹

Lok Sabha has passed the Energy Conservation (Amendment) Bill, 2022 to amend the Energy Conservation Act, 2001. The bill *inter alia* provides that: (i) central government can enforce the obligation for specified energy consumers to meet minimum energy share from non-renewable sources; (ii) central government can introduce carbon trading scheme; (iii) central government can specify energy conservation code for buildings; and (iv) expansion of energy conservation codes to office and residential buildings meeting specified criteria.

21 more wetlands in India recognized as Ramsar wetlands; 13 August, 2022²²

India is a signatory to Ramsar Convention which recognizes wetlands of international importance. 21 more sites from India have been recognized as wetlands of international importance taking the total number of such sites to 75 in India.

MoEFCC notifies Battery Waste Management Rules, 2022; 22 August, 2022²³

MoEFCC has notified the Battery Waste Management Rules, 2022 to supersede the Batteries (Management and Handling) Rules, 2001. The new rules apply to producer, dealer, consumer, entities involved in collection, segregation, transportation, refurbishment and recycling of waste batteries. All types of batteries regardless of chemistry, shape, volume, weight, material composition and use are covered in the rules. It requires producers, recyclers, and refurbishers of waste battery to register on an online portal provided by CPCB

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and it also sets recovery targets for various persons dealing with waste batteries.

MoEFCC issues clarification for use of forest land within the ROW of roads for laying Optical Fiber Cables (OFCs) and drinking water supply pipelines; 22 August, 2022²⁴

MoEFCC has issued clarification for use of forest land for laying down optical fiber cables and drinking water supply pipelines. State Governments shall authorise their nodal officers to consider permissions for re-diversion for laying of fiber cables within the already diverted right of way ("ROW") of roads located outside the protected areas. The guidelines, as applicable to laying of underground cables, will also apply to overhead laying of cables on the existing poles within the ROW. There shall be no exemption of such projects located in protected areas from payment of net present value in terms of Supreme Court's orders.

Union Cabinet approves MoU between India and Nepal on biodiversity conservation; 31 August, 2022²⁵

Union Cabinet has approved the proposal of MoEFCC for signing Memorandum of Understanding ("MoU") with Government of Nepal on biodiversity conservation, with a view to strengthen and enhance the coordination and cooperation in the fields of forests, wildlife, environment, biodiversity conservation and climate change, including restoration of corridors and interlinking areas and share knowledge and best practices

between the two countries. The MoU would help in promoting cooperation between both the countries in mentioned fields.

CAG releases audit reports on compensatory afforestation in Odisha and conservation of coastal ecosystem in India; August, 2022

Comptroller and Auditor General of India ("CAG") released its audit report on implementation of compensatory afforestation scheme in State of Odisha on 01 August, 2022. The report noted that Odisha Government failed to achieve its plantation targets due to lack of coordination, working plan, improper selection of plantation sites and plant species. The report also noted that despite Sal being its principal specie, Odisha Government planted teak, acacia and eucalyptus as major species affecting the native vegetation and biodiversity in the State.²⁶

Further, CAG also released its report on conservation of coastal ecosystems in India on 08 August, 2022.²⁷ The report noted critical aspects related to functioning of National Coastal Zone Management Authority, State/ Union Territory Coastal Zone Management Authorities and District Level Committees, as per CRZ Notifications. It also noted serious deficiencies in environmental and costal clearance granted to different projects in coastal states as well as post-clearance monitoring and implementation of these clearances.

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- 1 Civil Appeal Nos. 3116 and 3576 of 2020.
- 2 W.P. No. 8745 of 2020 (GM-RES).
- 3 Original Application No.175 of 2020 (SZ).
- 4 Original Application No. 1002/2018.
- 5 Appeal No. 1/2013 (CZ).
- 6 Original Application No. 448/2022.
- 7 Original Application No. 133 of 2020 (SZ).
- 8 ORIGINAL APPLICATION No. 84/2021/EZ.
- 9 Original Application No. 268/2021.
- 10 Appeal No. 21/2021.
- 11 Review Application No. 21/2022 in Original Application No. 286/2022.
- 12 Original Application No. 14/2021(WZ) (I.A. No. 90/2021).
- 13 Original Application No. 79/2021 (CZ).
- 14 Original Application No. 1038/2018.
- 15 Original Application No. 562/2022.
- 16 <https://www.pib.gov.in/PressReleasePage.aspx?PRID=1847047>



- 17 [http://164.100.47193/lsscommittee/joint%20Committee%20on%20the%20Biological%20Diversity%20\(Amendment\)%20Bill%202021/17_Joint_Committee_on_the_Biological_Diversity_\(Amendment\)_Bill_2021_1.pdf](http://164.100.47193/lsscommittee/joint%20Committee%20on%20the%20Biological%20Diversity%20(Amendment)%20Bill%202021/17_Joint_Committee_on_the_Biological_Diversity_(Amendment)_Bill_2021_1.pdf)
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