



Supreme Court Judgments / Orders

Supreme Court sets aside the NGT order imposing penalty against cement companies for using illegally mined coal in Meghalaya

Star Cement Limited & Ors v. State of Meghalaya & Ors.; Judgment dated 02 May, 2023¹

The Supreme Court has set aside the National Green Tribunal (“NGT”) order dated 17 January, 2020 and directed to restore the matter before NGT as it stood before the passing of this order. In the said order, NGT had accepted all recommendations made by the committee constituted by it to assess illegal coal mining in Meghalaya and recover penalty from cement companies using such illegally mined coal. Court noted that NGT had accepted all such recommendations in the committee’s report without an independent application of mind and that none of the appellants were a

party to the proceedings before the NGT. The National Green Tribunal Act, 2010 provides that NGT shall be guided by principles of natural justice and the National Green Tribunal (Practice and Procedure) Rules, 2011 requires issuance of notices to the parties and filing of reply by the respondents. All the appellants before the Supreme Court had no opportunity to deal with the contents of the report before the NGT passed the said order. NGT shall provide an opportunity to the appellants to submit their response and pass orders after hearing all the appellants and dealing with their objections / recommendations in accordance with the law. These appeals were filed against NGT order imposing penalty on different cement companies for using illegally mined coal to manufacture cement after rat hole mining was prohibited by NGT.

High Court Judgments / Orders

Delhi HC holds certain clauses of guidelines issued by Delhi government for cutting/pruning of trees as prima facie incongruent with Delhi Preservation of Trees Act, 1994

Prof Dr Sanjeev Bagai & Ors. v. Department of Environment, Govt of NCT of Delhi & Ors.; Order dated 10 May, 2023²

Delhi High Court has held that clauses 5, 9 and 10 of guidelines issued by Department of Forests, Government of National Capital Territory of Delhi for cutting/pruning of trees

in Delhi are *prima facie* incongruent with provisions of Delhi Preservation of Trees Act, 1994. These provisions essentially permit land owning agency to obtain permission for cutting of trees simply on the averment that trees were coming in the way of reconstruction, and to prune trees upto certain girth without obtaining permission from the tree officer. Court observed that, before cutting of trees, tree officer should inspect the site, apply its mind and exhaust all possibility of saving trees and/or transplantation. These provisions will be creeping legalised genocide

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of trees and Delhi would soon resemble nothing but a mass of concrete. Accordingly, Court restrained implementation of these clauses until the next hearing date.

Madras HC ceases Tamil Nadu government from proceeding with heli tourism project in Nilgiris, Tamil Nadu

T. Murugavel v. The Addl. Chief Secretary, Government of Tamil Nadu & Ors.; Judgment dated 17 May, 2023³

High Court of Madras has issued injunction against heli tourism project launched by Tamil Nadu government to mark 200th anniversary of Ooty as feasibility of commercial helicopter operations over Nilgiris, an ecologically sensitive region, was not cautiously approached and carefully assessed. No document was produced to show clearance sought or granted for heli tourism project by forest department after consultations

with wildlife wardens of nearby wildlife sanctuaries and national parks. This indicates abject non-application of mind by authorities. Court observed that authorities failed to consider aspects like Director General of Civil Aviation guidelines for commercial helicopter operations, impact of the project on resident and migratory birds and other species like elephants and conservation of vulnerable biodiversity area. Government departments rushed with endorsing and advertising heli tourism project without assessing all relevant materials and holding consultations with wardens and officials of forest department. Appropriate assessment and feasibility study after consultation with domain experts would be a pre-requisite for such projects. In this case, petitioner had sought mandamus from Court against the heli tourism project in Ooty, Nilgiris initiated by Tamil Nadu tourism department and Ooty district administration.

National Green Tribunal Judgments / Orders

NGT directs stone crushing units to obtain prior EC before undertaking extraction and crushing activities

Biplab Kumar Chowdhury v. West Bengal Pollution Control Board & Ors.; Order dated 01 May, 2023⁴

NGT has directed stone crushing units to obtain prior environmental clearance ("EC") for extraction of minerals and crushing them into small stones for sale. NGT observed that, as per its earlier directions, stone crushing units are required to obtain prior EC and State Environment Impact Assessment Authority, ("SEIAA"), West Bengal, should consider all aspects such as area of lease for stone crushing unit before granting EC. Since the Schedule I of Environment Impact Assessment Notification, 2006 ("EIA Notification") or Parivesh portal of Ministry of Environment, Forest and Climate Change ("MoEFCC") does not specifically contain any provision to apply for EC, NGT directed MoEFCC to make necessary amendments for compliance. In this case, applicant alleged that M/s Larsen and Toubro Limited and M/s Simplex Infrastructure Limited are extracting big stones and boulders from the river bed of

Raidhak-II River and operating stone crushing units to sell them for commercial gain without obtaining necessary permissions.

NGT imposes environmental compensation for illegal dumping of coal nearby residential area

Suo Motu Action in Illegal Dumping of Coal at Railway Siding at Krishnashila, Sonbhadra v. Union of India & Ors.; Order dated 02 May, 2023⁵

NGT has directed M/s Northern Coalfield Ltd, Sonbhadra to pay environmental compensation for dumping of coal to the detriment of environment and public health, thus causing violation of Air (Prevention and Control of Pollution) Act 1981. The report of NGT appointed joint committee also observed the dumping of coal at the site. Uttar Pradesh Pollution Control Board ("UPPCB") imposed environmental compensation against the company, but NGT found it inadequate and revised it to INR 10 crores, with a direction that if more amount is required for restoration, company will be liable to pay the same. In this case, application raised grievance against violation of environmental norms by dumping

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of coal in the vicinity of residential area at Krishnashila Railway siding in Shaktinagar, Sonbhadra district, UP.

NGT directs MoEFCC to consider inclusion of slaughter houses under EIA Notification

Gauri Maulekhi v. Union of India & Ors.; Order dated 03 May, 2023⁶

NGT has directed MoEFCC to consider within two months the requirement of prior EC for slaughter houses in line with the recommendations of expert committee headed by Dr. SR Wate. If MoEFCC fails to decide this in two months, all large slaughter houses, as defined in Central Pollution Control Board's ("CPCB") applicable guidelines, will be covered under EIA Notification and require prior EC as per the procedure applicable to category B projects with effect from 01 August, 2023. NGT noted that CPCB's guidelines categorizing different industries include slaughterhouses in the red category due to their adverse impact on environment. CPCB's comprehensive document on slaughterhouses also notes their adverse environmental impacts and classify them as small, medium and large slaughterhouses. In this case, applicant raised grievance against inadequacy of environmental regulatory framework to evaluate and remedy adverse impact of slaughterhouse activities.

NGT upholds EC granted to Vedanta Ltd. for expansion of project in Goa

Pravir Prabhakar Fadte & Ors. v. Ministry of Environment, Forests and Climate Change & Ors.; Order dated 04 May, 2023⁷

NGT has declined to set aside EC granted to M/s Vedanta Ltd. for upgradation of blast furnace to enhance production capacity of its plant in Goa. NGT observed that the project proponent has taken relevant steps to comply with Terms of Reference ("TOR") issued by MoEFCC. NGT accepted the arguments of company that it is taking several steps to address emission of graphite particles from its plant as per the report submitted by IIT-Bombay. Regarding issue of air pollution, NGT noted that it cannot pass any order as same issue is pending before the Hon'ble High Court of Bombay. It further noted that

Expert Appraisal Committee ("EAC") and MoEFCC had considered all relevant aspects before granting EC for this project. This appeal sought quashing of EC dated 24 January, 2022 issued in favour of Vedanta Limited.

NGT prohibits mining company to undertake further mining activity in Yamuna River

Jahangir v. State of Haryana; Order dated 08 May, 2023⁸

NGT has prohibited M/s Star Mines, Saharanpur from carrying out any mining activity in river Yamuna without fresh appraisal as per the law. The report of NGT-appointed joint committee noted that mining is continuing at the site in excess of replenishable potential and cannot continue any further without fresh appraisal. NGT also accepted the recommendations provided in committee's report for monitoring of mining and mine vehicles. In this case, applicant raised grievance against unscientific and illegal mining by the company by obstructing flow of Yamuna River in UP and Haryana.

NGT imposes environmental compensation against residential and commercial building project in Pune

Shashikant Vitthal Kamble v. Ministry of Environment and Forest and Climate Change, New Delhi & Ors.; Order dated 09 May, 2023⁹

NGT has imposed environmental compensation of INR 32 lakh against M/s M. Kenjale Developers for violation of conditions prescribed in the Consent to Operate ("CTO") issued for its residential and commercial building in Pune. NGT noted that project proponent did not conduct any violation of EIA Notification and conditions prescribed in the EC. However, the project proponent commenced construction of the project without obtaining prior Consent to Establish ("CTE") from Maharashtra Pollution Control Board ("MPCB"), hence it should be liable to pay additional environmental compensation for such violation. NGT directed MPCB to determine environmental compensation for such violation. In this case, applicant requested NGT to issue directions to stop illegal construction at the project site in

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contravention of EC conditions, demolition of illegal construction and restitution of environment.

NGT issues directions to power plants, coal mines and stone crushing units in UP and MP to comply with prescribed norms

Pankaj Kumar Mishra v. Union of India & Ors.; Order dated 10 May, 2023¹⁰

NGT has directed thermal power plants, coal mining units and stone crushers to take necessary preventive and remedial measures, including measures to control dust emissions while transporting coal and fly ash as well as during industrial operations in terms of EC and consent conditions. Fly ash should be handled and utilised as per the prescribed norms and accountability for past non-compliances should also be fixed. The NGT-appointed joint committee noted various violations at the site including covers used on vehicles during transportation of coal being inadequate and of poor quality. NGT also constituted a joint committee to oversee compliance of applicable norms, determine liability of erring units as per polluter pays principle, and assessing carrying capacity of the area to sustain stone crushers. In this case, applicant raised grievance against failure of concerned thermal power projects in Singrauli and Sonbhadra in UP and Madhya Pradesh ("MP") to control air pollution, caused by transportation of fly ash and unregulated coal mining and stone crushing activities.

NGT directs J&K Administration to take immediate action to prevent pollution of river Ban Ganga

Himanshu Sharma v. Union Territory of J&K; Order dated 10 May, 2023¹¹

NGT has directed Jammu & Kashmir ("J&K") Administration to take immediate actions to prevent pollution in river Ban Ganga. The report of NGT-appointed joint committee noted huge pile up of garbage and untreated municipal waste discharge in the river Ban Ganga and recommended certain remedial measures. NGT noted that waste processing facility for 38 tonne per day solid waste is yet to be operationalized, legacy waste is yet to be remediated and sewage treatment

facilities are yet to come up though the same have been planned. Thus, there is need to take necessary measures. In this case, applicant raised grievance against failure of the concerned authorities to take action to prevent pollution of Ban Ganga River at Katra in Jammu & Kashmir. The river is a source of drinking water for inhabitants of the town but it is polluted by discharge of effluents and dumping of garbage in violation of Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1981 and Environment (Protection) Act, 1986.

NGT sets aside EC granted for a water reservoir project in Andhra Pradesh

Gutha Gunasekhar & Ors. v. Union of India & Ors.; Judgment dated 11 May, 2023¹²

NGT has set aside the EC granted to Andhra Pradesh government for construction of Avulapalli Balancing Reservoir and imposed penalty of INR 100 crore on Water Resources Department, State of Andhra Pradesh. NGT observed that the project proponent had adopted dubious methods by concealing information and providing blatantly false and misleading information in documents required under EIA Notification. State Expert Appraisal Committee ("SEAC") and SEIAA, Andhra Pradesh had failed in performing their duties by merely relying on information provided by proponent without calling for supporting documents. The NGT observed that a few documents were submitted even after the grant of EC which showed that authorities are trying to mislead the tribunal. The documents submitted in EIA process had no mention of the different state government approved phases of the project which would increase the total capacity of the reservoir beyond stated capacity in EIA documents. This was intended to change the category of project from A to B2 to avoid rigours of EIA procedure and public scrutiny. In this case, NGT was considering appeal against EC dated 08 September, 2022 issued by the SEIAA in favour of State of Andhra Pradesh for construction of the Avulapalli Balancing Reservoir.

NGT imposes environmental compensation against two mining companies for illegal mining in Son river bed

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Suo Motu Action in Illegal Mining for Excavation of Morrums at Arajai no. 824 kha (Khand 3 and 4) in Area 16.194 and 12.368 hectares, respectively at Village Agori Khas, Tehsil Obra, District Sonbhadra v. Union of India & Ors.; Order dated 19 May, 2023¹³

NGT has directed M/s Sudhakar Pandey and Associates and M/s New India Minerals to pay environmental compensation of INR 8.16 crores and INR 7.08 crores respectively to UPPCB for illegally mining beyond the lease area and in mainstream of Son river. It also noted illegal extraction of groundwater and non-compliance with EC and CTO conditions. NGT further noted that illegal mining in areas nearby Kaimur Wildlife Sanctuary and Son Ghadiyal Wildlife Sanctuary and in Eco-Sensitive Zone ("ESZ") around them is impacting riverine species like ghadiyal, tortoise, etc. Accordingly, it directed MoEFCC and States of Bihar and Uttar Pradesh to consider the declaration of part of river Son passing through these states as Son Ghadiyal Wildlife Sanctuary and its ESZ. It has also constituted a joint committee to revisit all mining leases granted for mining in Son riverbed which are degrading/damaging river stream and/or protected animals, and to take appropriate decision/action in accordance with law. Until then, mining activities in Son river shall not be permitted. In this case, NGT took *suo motu* cognizance of mining of sand and morrum near ESZ and protected reserved forest in violation of environmental laws.

NGT permits DDA to construct lighthouse adjacent to Yamuna floodplains in Delhi

Nizamuddin West Association v. Union of India & Ors.; Order dated 19 May, 2023¹⁴

NGT has permitted Delhi Development Authority ("DDA") to construct lighthouse on Yamuna flood plain as part of a phase-wise project for revival of floodplain forests and grasslands and restoration of floodplain water bodies. NGT noted that construction of a lighthouse will serve as a major attraction

for public as a watch tower (for controlled use) by the visitors of this area, which will also add to the revenue generation and carry forward resolve of involvement of the public at large in this development. This activity can be done subject to approval by the High Level Committee headed by Lieutenant Governor, Delhi. NGT observed that this application became necessary due to prohibition of any construction in flood plain zone unless such activity is of exceptional nature for protection of flood plain. This application was filed by DDA for permission for installation of a lighthouse in the greenway, adjacent to the Yamuna flood plains, for additional surveillance and security of the flood plains.

NGT issues directions to Bihar, Uttarakhand and Dadra and Nagar Haveli & Daman and Diu concerning failure to ensure waste management

In re: Compliance of Municipal Solid Waste Management Rules, 2016 and other environmental issues¹⁵

NGT has directed States of Bihar¹⁶, Uttarakhand¹⁷, Dadra and Nagar Haveli & Daman and Diu Administration¹⁸ to take measures to ensure waste management through stringent monitoring at appropriate levels. NGT determined environmental compensation of INR 4000 crores for Bihar that shall be deposited in a ring-fenced account for managing the solid and liquid waste as per law. NGT directed State of Uttarakhand to deposit INR 200 crore on account of ground situation and undertaking given by the Chief Secretary that adequate funds for handling solid and liquid waste will be made available and provided by way of deposit in an appropriate account. The authorities shall also file six-monthly progress reports with verifiable progress in this regard. In this case, NGT took *suo-motu* cognizance of this case based on directions issued by the Supreme Court pertaining to timeline for compliance with Solid Waste Management Rules, 2016.

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MoEFCC issues draft notification providing EPR guidelines for used oil; 02 May, 2023¹⁹

MoEFCC has issued draft notification to amend the Hazardous and Other Wastes

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(Management and Transboundary Movement) Rules, 2016 for providing extended producer responsibility ("EPR") guidelines for used oil. These guidelines will come into effect from 01 April, 2024. These guidelines provide the registration requirement for different entities – producer, collection agent, recycler and used oil importers, EPR targets for producers and importers, and modalities for generation and trading of EPR certificates.

MoEFCC issues draft ESZ notification for protected area; 02 May, 2023²⁰

MoEFCC has issued a draft notification for ESZ around Tal Chhappar Wildlife Sanctuary in Churu district, Rajasthan. The notification provides zonal master plan, list of prohibited and regulated activities, and measures to be taken by state government for implementing the notification. MoEFCC has invited comments/objections on these notifications.

SEBI issues additional requirements for issuers of transition bonds; 04 May, 2023²¹

SEBI has issued a circular providing the additional requirements for issuers of transition bonds, which is defined as one of the categories of green debt securities defined under SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021. As per this circular, issuer shall disclose a transition plan *inter alia* covering interim targets/milestones, brief project implementation strategy, and mechanism to oversee utilization of funds raised through these bonds. The issuer's annual report shall also provide a transition plan along with a brief on progress of its implementation.

CPCB releases 'removal of difficulties' guidelines for implementation of Plastic Waste Management Rules, 2016; 09 May, 2023²²

CPCB has issued certain measures for removal of difficulties in implementation of EPR guidelines under Plastic Waste Management Rules, 2016. CPCB has provided that registered plastic waste processors can generate EPR certificates for sales made in the year 2022-23 on CPCB portal until 30 June, 2023. MSME producers can apply for provisional EPR registration on portal until 31 October, 2023 by providing proof of the application submitted for grant of CTO.

MoEFCC delegates power to file complaints under Forest (Conservation) Act, 1980; 15 May, 2023²³

MoEFCC has authorized officers of the rank of Divisional Forest Officer / Deputy Conservator of Forests and above of the relevant state government or union territory administration, having jurisdiction over the forest land in respect of which any offense or violation under the Forest (Conservation) Act, 1980 is committed, to file complaints against such person in the court having jurisdiction in the matter. The central government shall communicate the information received by it about such offences or violations to state government or union territory administration, and such information shall be pre-requisite for authorised officers to file complaint before appropriate court of law.

MoEFCC revises emission standards for industrial boilers; 16 May, 2023²⁴

MoEFCC has notified the emission standards for industrial boilers based on fuel type and steam generation capacity by amending Schedule I of Environment (Protection) Rules, 1986. These standards will be effective after a period of two years.

MoEFCC issues draft notification declaring UT of Ladakh as air pollution control area; 16 May, 2023²⁵

MoEFCC has issued the draft notification for declaration of the Union Territory ("UT") of Ladakh as air pollution control area under the Air (Prevention and Control of Pollution) Act, 1981. Such declaration *inter alia* means that any industrial activity in Ladakh would require prior consent from Ladakh Pollution Control Committee. MoEFCC is seeking public comments on this draft for a period of sixty days.

MoEFCC notifies emission standards for hot mix plants; 18 May, 2023²⁶

MoEFCC has notified emission standards for hot mix plants by amending Schedule I of Environment (Protection) Rules, 1986. These standards will be effective after a period of six months.

MoEFCC amends EIA Notification for pump storage projects; 18 May, 2023²⁷

MoEFCC has amended EIA Notification to

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provide that pump storage projects will be appraised as category B2 projects irrespective of power generation capacity, if such projects do not attract forest clearance and/or wildlife clearance; creation of new reservoir is not required; and there is no increase in capacity of the existing reservoir and in submergence area of reservoir. The notification notes that development of pumped storage is critical for energy storage and smooth integration of renewable energy in the grid. Pumped storage projects are currently considered as part of hydropower projects in the notification; however, their environmental impacts are less as compared to classical hydro projects as well as irrigation and water supply projects.

Ministry of Power waives ISTS charges for offshore wind and green hydrogen/ammonia projects; 29 May, 2023²⁸

Ministry of Power, Government of India has announced complete waiver of interstate transmission (“ISTS”) charges for 25 years for: (i) offshore wind power projects commissioned on or before 31 December, 2032; and (ii) green hydrogen and green ammonia projects commissioned on or

before 31 December, 2032. The waiver will be available to only those green hydrogen and green ammonia projects which use renewable energy, pumped storage, or battery storage system. Projects commissioned after the said cut-off dates will attract graded ISTS charges ranging from 25 to 100%.

SEBI issues informal guidance on application of BRSR on listed companies; 31 May, 2023²⁹

SEBI has issued an informal guidance based on the representation received from M/s Nectar Lifesciences Ltd. regarding application of Business Responsibility and Sustainability Reporting (“BRSR”) on top 1000 listed companies. SEBI clarified that such requirement applies to top 1000 listed entities by market capitalization as on 31 March, 2022 or any financial year thereafter. Moreover, such requirement will continue to apply even if such entity falls below this threshold in subsequent financial year. However, since the applicant was not among top 1000 listed entities as on 31 March, 2022 and 31 March, 2023, BRSR related requirement is not currently applicable on it.

Endnotes

- 1 Civil Appeal No 3280 of 2020.
- 2 W.P.(C) 2317/2023 and CM APPL. 8779/2023.
- 3 W.P. No. 15200 of 2023 and W.M.P. No. 14710 of 2023.
- 4 Original Application No. 72/2022/EZ.
- 5 Original Application No. 817/2022.
- 6 Original Application No. 879/2022 (I.A. No. 38/2023).
- 7 Appeal No. 18 of 2022 (WZ).
- 8 Original Application No. 268/2021.
- 9 Original Application No. 01/2022 (WZ).
- 10 Original Application No. 862/2022.
- 11 M.A. No. 13/2023 in Original Application No. 338/2021.
- 12 Appeal No. 56 of 2022(SZ).
- 13 ORIGINAL APPLICATION NO. 818/2022.
- 14 I.A. No. 555/2023 in Original Application No. 06/2012.
- 15 Original Application No. 606/2018.
- 16 Order dated 04 May, 2023.
- 17 Order dated 11 May, 2023.
- 18 Order dated 11 May, 2023.
- 19 <https://egazette.nic.in/WriteReadData/2023/245597.pdf>
- 20 <https://egazette.nic.in/WriteReadData/2023/245595.pdf>
- 21 https://www.sebi.gov.in/legal/circulars/may-2023/additional-requirements-for-the-issuers-of-transition-bonds_70937.html
- 22 <https://cpcb.nic.in/openpdffile.php?id=UmVwb3J0RmlsZXNvMTUzM18xNjgzNzg4MDIwX21lZGlhcGhvdG83MTUwLnBkZg==>
- 23 [https://forestsclearance.nic.in/writereaddata/public_display/schemes/1616066454\\$Guidelines%20on%20](https://forestsclearance.nic.in/writereaddata/public_display/schemes/1616066454$Guidelines%20on%20)

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- 26 <https://egazette.nic.in/WriteReadData/2023/245956.pdf>
- 27 <https://egazette.nic.in/WriteReadData/2023/245943.pdf>
- 28 <https://pib.gov.in/PressReleasePage.aspx?PRID=1928128>
- 29 https://www.sebi.gov.in/sebi_data/commndocs/may-2023/Nectar_lifescience_IG_p.pdf

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