



High Court Judgements/ Orders

Telangana High Court stays the NGT order for being ex-parte and in contravention of the National Green Tribunal Act, 2010¹

M/s Kaveri Engineering Projects Pvt. Ltd. & Anr. vs Gadeela Raghuvver Reddy & Ors. and Vice-Chairman and Managing Director, Telangana State Mineral Development Corporation vs Gadeela Raghuvver Reddy & Ors.; Order dated 13 June, 2023

Telangana High Court has stayed the operation of an interim order dated 31 May, 2023 passed by the National Green Tribunal ("NGT") in *Gadeela Raghuvver Reddy & Anr. vs Union of India* [Original Application No. 68 of 2023] wherein the Tribunal was considering an application raising the issue of sand mining being undertaken under the garb of 'de-siltation' and 'dredging' in Manair River and Godavari River falling in Jayashankar Bhupalpally District, Telangana.

The NGT while considering the application was of the opinion that Appendix – IX of the Environment Impact Assessment Amendment Notification dated 15 January, 2016 exempted desilting for the purpose of maintenance, upkeep and disaster management of the dams, reservoirs, weirs, barrages, rivers and canals from the requirement to obtain prior environmental clearance. The Tribunal noted that as per the proceedings of District Level Sand Committee the committee has approved sand de-siltation for a quantity of 42,10,695.50 cubic meter as per Rule 8 of Telangana State Sand Mining Rules, 2015. The Tribunal directed that the Telangana State Mineral Development

Corporation and the contractor working under it can continue their operation only if they have a valid environmental clearance. The Tribunal's Order was challenged by the Telangana State Mineral Development Corporation and the contractor before the Telangana High Court. The Telangana High Court observed that the NGT passed its Order without putting the affected parties to notice and considered it to be in contravention of Section 19(4)(i) of the National Green Tribunal Act, 2010. The Telangana High Court stayed the operation of the Order dated 31 May, 2023 without commenting on the merits of the case and remanded the case back to NGT.

Jammu & Kashmir and Ladakh High Court allows raising of temporary structures for Amarnath Yatra pilgrims²

Court on its Own Motion vs UT of J&K and Ors.; Order dated 15 June, 2023

The Jammu & Kashmir and Ladakh High Court has allowed raising of temporary structures for the convenient transit of Yatris/ Pilgrims going for Amarnath Yatra which is to commence from 1 July, 2023. The High Court was considering a *suo motu* case taken up by the High Court in 2017 based on reports of indiscriminate and unauthorised construction in Sonamarg Development Area. The High Court on 22 August 2017, had directed that no construction activity shall be carried out in the region. The said direction was later modified on 9 May, 2018 wherein the High Court allowed the repairs/ renovations after obtaining proper permissions. Subsequently,

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the High Court on 27 March, 2023, directed the Chief Executive Officer, Sonamarg Development Authority to ensure that no fresh construction is undertaken by any person in the Sonamarg Development Area and made him personally responsible and liable to be proceeded for contempt of Court in case any fresh construction is raised by anybody in the Sonamarg Development Area.

The High Court in its order dated 15 June, 2023 has now modified its earlier Order dated 27 March, 2023 and has allowed the construction of temporary structures under the condition that the structures shall be liable to be demolished on completion of the Yatra by restoring the earlier position in the field.

Uttarakhand High Court directs Tourism Department of Uttarakhand to explain its inaction since 1989 in preparing the Tourism Development Plan for Doon Valley³

Akash Vashishtha vs State of Uttarakhand & Ors.; Order dated 13 June, 2023

Uttarakhand High Court while considering the issue of declaration of Tourism Development

Plan for Doon Valley as per the Ministry of Environment and Forest (“MoEF”) Notification dated 1 February, 1989 has directed the Tourism Department of Uttarakhand to explain the delay in preparing the plan since 1989. The Notification dated 1 February, 1989 restricted certain types of activities in Doon Valley in the erstwhile State of Uttar Pradesh. As per the Notification, the State Department of Tourism was required to prepare a Tourism Development Plan which would then be approved by MoEF and be followed in the Doon Valley. The High Court noted the submissions of the State that it has no plan of preparing a Tourism Development Plan. The High Court expressed its dissatisfaction on the inaction of the Tourism Department for failing to prepare tourism development plan for the past 34 years and opined that the failure on the part of the department defeats the purpose of the statutory notification issued by MoEF. The Secretary, Tourism, Government of Uttarakhand was directed to remain present on the next date of hearing and to explain the inaction of the Tourism Department in preparing the Tourism Development Plan in terms of the MoEF Notification dated 1 February, 1989.

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NGT stays the construction of water supply project in Sikharchandi Hills, Khurda, Odisha⁴

Sachin Mohapatra vs Bhubaneswar Development Authority & Ors.; Order dated 12 June, 2023

NGT has directed the constitution of a Joint Committee comprising of Chief Conservator of Forests, Ministry of Environment, Forest and Climate Change (“MoEFCC”), Central Pollution Control Board, State Pollution Control Board and District Magistrate, Khurda to provide a factual analysis of the allegations raised in an application highlighting the alleged damage being caused to the environment due to the construction work like earth moving, blasting of rocks, and felling of trees in Sikharchandi Hill, which is a part of the Chandaka Wildlife Division in Khurda, Odisha. As per the Applicant, the activities are causing loss of biodiversity in the Sikharchandi hills falling in the eastern ghats and having rare medicinal

and wild plants which are documented in reputed journals on the subject. NGT directed the committee to undertake site visit, interact with concerned stakeholders, and ascertain the factual position with regard to illegal felling of trees, loss of biodiversity and other forms of damage caused to the environment, including cutting of hills. The Tribunal after consideration of the contentions raised by the Applicant, directed that the project in question may be held in abeyance due to its irreversible consequences.

NGT directs removal of all encroachments along the flood plain zone of river Song and Baldi⁵

Meenakshi Arora vs State of Uttarakhand & Ors.; Order dated 30th May, 2023

NGT has directed the District Magistrate, Dehradun to ensure that there is no encroachment by anyone along the flood plain zone of rivers Song and Baldi. NGT

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was considering an application alleging constructions being raised at Khasra No. 171 at Village Dhanaula which lies at the confluence of Song and Baldi rivers. The Tribunal had earlier considered the application on 5 January, 2023 wherein a joint committee comprising of State Pollution Control Board and District Magistrate, Dehradun was directed to file a factual and action report. In pursuance of the Order, the District Magistrate verified and confirmed the existence of encroachment of about 0.486 ha land which formed part of the flood plain zone of the river. NGT directed the District Magistrate to ensure the removal of encroachments and confirm that besides the said encroachment there is no other encroachment by anyone else along the flood plain zone of rivers Song and Baldi.

NGT orders for the constitution of a committee and seeks report on industries operating in Faridabad.⁶

Deepak Tripathi vs State of Haryana; Order

dated 30th May, 2023

NGT in this case was considering a letter petition against industries operating in the residential areas of Faridabad. The letter raised concerns about smoke, contamination of water and noise pollution. The complaint alleged the use of heavy generators and other machines causing water, air and noise pollution and damaging the environment as well as causing health hazards to local people. The NGT was of the opinion that the allegations raised in the complaint form substantial question relating to environment under the NGT Act, 2010 and directed the constitution of a joint committee comprising of State Pollution Control Board, District Magistrate, Faridabad and Central Pollution Control Board. The Tribunal further directed the committee to visit the site, collect all relevant information and submit a factual report indicating permissibility of operation of such industries in residential/non-conformity area and the status of compliance of the consent to operate conditions.

Regulatory / Policy developments

MoEFCC notifies the Draft Green Credit Programme Implementation Rules, 2023⁷

MoEFCC has notified the Draft Green Credit Programme Implementation Rules, 2023 (“Draft Rules”) proposing a Green Credit Programme at the national level. The Green Credit Programme is proposed in the backdrop of Government of India’s “LiFE – Lifestyle for Environment” mission and seeks to introduce a competitive market-based approach for Green Credit which could encourage private sector industries and companies to meet their environmental obligations. The Draft Rules introduce the concept of Green Credit which is defined as a singular unit of an incentive provided for a specified industry, delivering a positive impact on the environment. Activities such as tree plantation, water conservation/ harvesting/ saving activities, sustainable agriculture, waste management, air pollution reduction, mangrove conservation and restoration, ecomark and sustainable building and infrastructure have been identified as Green Credit generating activities. The Draft Rules distinguish Green Credits from Carbon Credits and allow the activities generating

Green Credit under Green Credit Programme to also get Carbon Credits for the same activity under the carbon market.

Ministry of Power notifies the Carbon Credit Trading Scheme, 2023⁸

The Ministry of Power has notified the Carbon Credit Trading Scheme on 28 June, 2023. The scheme provides for creation of a National Steering Committee, Registry, Technical Committee, Carbon Verification Agency, Regulator for carbon trading. The scheme notifies the Central Electricity Regulatory Commission as the regulator for trading activities under the Indian Carbon Market. As per the Scheme, carbon credit is defined as a value assigned to a reduction or removal or avoidance of greenhouse gas emissions achieved and is equivalent to one ton of carbon dioxide. The scheme provides that the sectors and obligated entities covered under the compliance mechanism would be decided by the Ministry of Power. The identified sectors and obligated entities would be required to comply with the greenhouse gas emission norms. On the other hand, the

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- MoEFCC notifies the Draft Green Credit Programme Implementation Rules, 2023
- Ministry of Power notifies the Carbon Credit Trading Scheme, 2023
- MoEFCC issues emission parameters for operation of Calcined Petroleum Coke
- Commission for Air Quality Management in National Capital Region and Adjoining Areas issues direction for diesel generator sets and for adoption of revised Schedule for its regulated operation across all sectors in National Capital Region.



greenhouse gases emission intensity targets would be notified by the MoEFCC under the Environment Protection Act, 1986 on the basis of the recommendations made by Ministry of Power and the obligated entities shall be required to achieve the greenhouse gases emission intensity in accordance with the targets as may be notified by MoEFCC.

MoEFCC issues emission parameters for operation of Calcined Petroleum Coke⁹

The MoEFCC has amended the Environment (Protection) Rules, 1986 on 5 June, 2023 and prescribed the emission norms for operation of Calcined Petroleum Coke ("CPC") units. The amendment prescribes the permissible emission limits for particulate matter and Sulphur Dioxide ("SO₂") levels for CPCs with production capacity less than 150 tonnes per day and more than 150 tonnes per day. The CPCs are also required to install continuous emission monitoring system for particulate matter and SO₂. It further mandates the carbon monoxide monitoring by CEMS and Volatile Organic Compounds testing on a quarterly basis for better process control.

Commission for Air Quality Management in National Capital Region and Adjoining Areas issues direction for diesel generator

sets and for adoption of revised Schedule for its regulated operation across all sectors in National Capital Region.¹⁰

The Commission for Air Quality Management in National Capital Region and Adjoining Areas ("CAQM") has issued Direction No. 73 on 2 June, 2023 and has prescribed systems to be adopted for control of emissions through Diesel Generator sets ("DG sets") of all capacities above 19 kW. The standards set for different types of DG sets include adoption to dual fuel mode, retrofitting of emission control devices and any other type of emission control device. The CAQM subsequently issued an advisory on 28 June, 2023 clarifying that the directions issued in Direction No. 73 are applicable on all sectors and activities and thereby removing the exemption granted to emergency/ essential services which were earlier permitted to operate for DG sets during periods of restriction under Graded Response Action Plan. As per Direction No. 73 all industrial, commercial, residential and office establishments etc. are required to convert to dual fuel mode and/ or retrofit emission control devices latest by 30.09.2023 failing which the use of Diesel genset shall not be permitted under any circumstances, anywhere in the National Capital Region.

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Endnotes

- 1 Writ Petition No. 14415 of 2023 and Writ Petition No. 14726 of 2023
- 2 PIL No. 404/2011
- 3 Writ Petition (PIL) No. 225 of 2021
- 4 OA No. 65 of 2023 [EZ]
- 5 OA No. 920/2022
- 6 Original Application No. 379 of 2023
- 7 <https://egazette.gov.in/WriteReadData/2023/246825.pdf>
- 8 <https://egazette.gov.in/WriteReadData/2023/246859.pdf>
- 9 <https://egazette.gov.in/WriteReadData/2023/246296.pdf>
- 10 <https://caqm.nic.in/WriteReadData/LINKS/73efc2ebf5-b9a7-4330-8e82-6eb3710f0343.pdf>

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