



August 2023 | Vol. 3, Issue 11



## Supreme Court Judgements/ Orders

### Supreme Court Stays NGT's Direction to appoint LG as the Chairman of the Yamuna Committee

*Govt. of NCT Of Delhi vs Ashwani Yadav<sup>1</sup>; Order dated 11 July, 2023*

The order of the National Green Tribunal ("NGT") to nominate the Lt. Governor of Delhi as the Chairman of the Committee on pollution of Yamuna has been stayed by the Supreme Court of India ("Supreme Court"). This matter was heard by a bench comprising of CJI Justice DY Chandrachud, Justice PS Narasimha and Justice Manoj Misra. Government of Delhi cited the recent Supreme Court judgment and argued that such executive powers cannot be granted to a Governor or Lt. Governor. It also suggested that a subject matter expert should be appointed to lead this committee. The Lt. Governor's appointment as the head of the Yamuna committee in the NGT order, according to the appeal, violates the constitution and as also Section 22 of the NGT Act, as per the Delhi Govt.

### The Supreme Court pulls up NGT for

### passing orders by relying only on expert committee reports

*Singrauli Super Thermal Power Station vs Ashwani Kumar Dubey & Ors.<sup>2</sup>; Judgment dated 12 July, 2023*

The National Green Tribunal, Principal Bench, New Delhi had passed a final order just three days after receiving the recommendations of the expert committee and no opportunity was granted to the appellants for rebutting the findings of the committee report. Accordingly, on the ground of violation of the principles of natural justice, the impugned order of the Tribunal was set aside by the Supreme Court and the matter was referred back to the NGT for re-consideration. The apex court also stated that NGT being an adjudicatory body must comply with the principles of natural justice. If the NGT intends to rely on the report of an expert Committee or any other material that is brought to its knowledge, the concerned party must be informed about it in advance and must be provided an opportunity for discussion and rebuttal.

## High Court Judgements/ Orders

### High Court of Patna grants bail to person accused under Environment (Protection) Act, 1986 on the condition of planting five hundred trees.

*Radhe Sharma vs State of Bihar & Ors.<sup>3</sup>; Order dated 25 July, 2023*

The Patna High Court has set planting of five hundred trees as a condition for grant of bail. The High Court was considering the bail application of a person accused of committing

an offence under the Bihar Minor Mineral Concession Rules, 1972 and Environment (Protection) Act, 1986. The Mines Department submitted that it would not object to the grant of bail if the accused plants five hundred trees in an area specified by the Mines Department and undertakes the responsibility for their upkeep for a period of six months. The accused accepted the condition and was granted bail by the High Court.

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## National Green Tribunal Judgements / Orders

### **NGT, Central Zone directs District Collector, Raipur, Chhattisgarh to appear in person and explain the non-compliance with its directions regarding control of noise pollution**

*Chhattisgarh Nagrik Sangharsh Samiti vs State of Chhattisgarh & Ors.<sup>4</sup>; Order dated 17 July, 2023*

The NGT while in consideration of an execution application filed for the execution its judgement regarding control of noise pollution in Raipur directed the District Collector, Raipur to appear in person. The NGT vide its judgement dated 27.09.2016 in Original Application No. 78 of 2016 (CZ) passed certain directions to the State of Chhattisgarh for control of noise pollution caused due to the use of DJs, loudspeakers, fire-crackers etc. during religious functions and weddings. The execution application was filed alleging that the judgement of the Tribunal was not complied with. The Tribunal vide its Order dated 02.05.2023 directed the District Collector, Raipur to submit an action taken report in respect of the allegation made in the execution application. However, the District Collector, Raipur failed to submit an action taken report and could not explain the delay in filing such a report. In view of the same, the Tribunal directed the District Collector, Raipur to be present in person before the Tribunal on the next date and explain the non-compliance of its earlier Order dated 02.05.2023. It also directed that if District Collector, Raipur finds that the judgment dated 27.09.2016 passed by the Tribunal has also not been complied with, he shall also give reasons for such non-compliance.

### **NGT directs disciplinary action against Regional Officer, Haryana State Pollution Control Board for failing to take action against illegal mining activities in Yamuna river**

*Munish vs Haryana State Pollution Control Board & Ors.<sup>5</sup>; Order dated 21 July, 2023*

NGT while considering an application alleging illegal mining activities by M/s Ultimate Group, Tehsil Gannaur, District Sonapat, Haryana has directed that disciplinary action be initiated against the Regional Officer, Haryana Pollution Control Board. NGT while hearing

the matter found that the project proponent was undertaking mining activity without obtaining the consent to operate (“CTO”). It was further revealed during investigation that the Regional Officer was aware of the mining being undertaken without CTO and had failed to take any action against the same which indirectly permitted the proponent to operate without CTO. The Tribunal observed that the negligence of Regional Officer in indirectly permitting mining operation without CTO has resulted in loss to state exchequer.

### **NGT directs the State of Odisha to initiate criminal proceedings against Tehsildar for concealment of material facts while applying for environmental clearance and for failing to prevent illegal mining**

*Dillip Kumar Samantara & Ors. vs Chief Secretary Government Of Odisha & Ors.<sup>6</sup>; Order dated 6 July, 2023*

NGT while considering a case regarding the illegal laterite stone quarry mining activities in Khorda district in Odisha directed the state government to prosecute the ex-Tehsildar of Tangi district for concealment of material facts while applying for environment clearance. The NGT found that the land where the mining lease was granted was a forest land as per Sabik record. It was observed that the then Tehsildar while applying for Environment Clearance (“EC”) merely relied upon the fact that the land in question was not a forest land as per Hal record and did not mention that the land was forest land as per the Sabik record. The Tribunal held that any non-forest activity proposed in a land recorded as forest under Sabik record would require forest clearance under the Forest (Conservation) Act, 1980. The NGT after consideration held that the then Tehsildar had obtained EC on the basis of concealed facts. The said EC was then transferred to a private party to undertake mining activities. The NGT also found that the private party which was granted the mining lease was undertaking mining activities in areas outside the lease area and directed the State Pollution Control Board (“SPCB”) to impose environmental compensation upon the private party for undertaking illegal mining activity.

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## NGT issues notice in an application regarding construction in Deobali hill-top for tourism

*Wildlife Society of Odisha vs State of Odisha & Ors.<sup>7</sup>; Order dated 18 July, 2023*

NGT has issued notice in an application challenging the construction of cottages for night stay of tourists in Deobali Hilltop which falls within Deomali Reserve Forest in Koraput District, Odisha. The application alleges that the Deomali project is under the central government's Swadesh Darshan Scheme for development of infrastructure to boost inflow of tourists. The application also raised concerns regarding the proposal for development of eco-tourism complex in Semiliguda forest range as the project is spread over 26 acres of forest land. It further states that the proposal is in violation of the Ministry of Environment, Forest and Climate Change of India ("MoEFCC") Policy for eco-tourism in forest and wildlife area because it does not involve the local community or indigenous knowledge of making house and household articles. The NGT directed the state respondents and MoEFCC to submit their responses.

## NGT, Kolkata issues notice to Centre and State on stone quarrying near sanctuary and forest reserve

*Sukanta Behera vs State of Odisha & Ors.<sup>8</sup>; Order dated 27 July, 2023*

The Eastern Bench of NGT at Kolkata has issued notices both to the Centre and the state government of Odisha on the issue of grant of permit for extraction of stone from Mirigini stone quarry in Balasore and asked them to respond within 4 weeks' time. It was further stated that the Tenda reserve forest and Kuldhia wildlife sanctuary were situated within one km of the proposed quarry. Blasting at any point of the stone quarry at Mirigini village will surely impact the adjoining sanctuary and human habitation and shall cause irreparable damage. Also, it was also stated that the quarrying may deplete the underground water level and a situation of water scarcity may arise in the nearby areas. The petitioner also stated that he along with other villagers had filed their objection time and again before the local authorities, but no action was taken.

## NGT constitutes expert committee to examine and frame measures to protect the sinking islands

*In re : News item published in Newspaper The Hindu dated 19.03.2023 titled "India's Sinking Island"<sup>9</sup>; Order dated 11 July, 2023*

NGT Principal Bench has taken suo moto cognizance based on the news report titled 'India's sinking island' which mentioned that several islands along the Indian Coast and rivers are prone to erosion and submergence. The main cause identified for this submergence was rise in sea-level due to global warming. NGT had issued notices to the Ministry of Earth Sciences and MoEFCC to file their responses. The response from the Ministry of Earth Sciences stated that the rise in temperature is largely on account of greenhouse gases induced warming which has resulted in melting of glaciers, rise in sea levels and increasing weather and climate change. NGT has constituted a committee to examine the impact of rising sea-level on the islands and frame policies and measures to protect the same. The committee is directed to submit its report within the time-period of three months.

## NGT imposes a fine of INR 1 crore on Bhopal Municipal Corporation for ecological damages

*Mr. Rashid Noor Khan vs BMC & Ors.<sup>10</sup>; Order dated 11 July, 2023*

NGT has penalised the Bhopal Municipal Corporation ("BMC") for INR 1 crore for damages caused to the iconic Bhopal Lake due to the construction activities. NGT noted that the construction is illegal and impermissible and cannot be allowed. It also stated while applying the 'Polluter Pays' principle that ecology and environment damaged by BMC has to be restored at the cost of BMC only. The NGT approved an interim compensation of INR 1 crore to be paid by BMC for restoration of ecology and environment and if any further amount is required, Madhya Pradesh Pollution Control Board ("MPPCB") can raise a demand at a later stage. It has restrained any new construction and the already standing pillars shall be demolished within a period of one month. BMC is directed to deposit the amount within three months with MPPCB and the amount shall be utilized/spent

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for restoration of the site as it originally was and also for restoration of ecology and environment by preparing a plan. The said plan shall be prepared by a Joint Committee of Central Pollution Control Board (“CPCB”), MPPCB, Integrated Regional Office, MoEFCC and Collector, Bhopal within the next two months. It also directed to spend the compensation amount within six months of the preparation of the plan, for restoration of the site and ecology / environment. NGT also directed to prepare an action taken / compliance report which shall be submitted by MPPCB who shall, if necessary for any further order, place the matter before the Bench. The deadline for submitting the same is 15.04.2024.

## NGT for PPEs for workers exposed to asbestos pollution, asks CPCB to issue appropriate guidelines

*Mr. Narender Pratap Singh vs Central*

## Regulatory / Policy developments

### MoEFCC extends time for cold rolled stainless steel manufacturing industries to apply for Terms of Reference under Environment Impact Assessment Notification, 2006<sup>12</sup>

MoEFCC has issued a notification on 26 July 2023 extending the time limit by six months for standalone re-rolling units or cold rolling units to apply for Terms of Reference (“TOR”) under Environment Impact Assessment Notification, 2006. MoEFCC had earlier *vide* Notification dated 20 July 2022 directed all standalone re-rolling units or cold rolling units, which were in existence and in operation as on the date of the said notification, with valid Consent to Establish and Consent to Operate from the concerned State Pollution Control Board to apply online for grant of TOR followed by Environment Clearance. The earlier notification further provided that such units shall be granted TOR and shall be exempted from the requirement of public consultation provided the application for TOR is made within one year. The notification dated 26 July 2023 extended the time limit to apply for TOR by further six months.

### MoEFCC amends the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016<sup>13</sup>

MoEFCC has amended the Hazardous and Other

### Pollution Control Board<sup>11</sup>; Judgement dated 17 July, 2023

The NGT has reiterated steps to be taken to protect people from the hazards of asbestos and asked CPCB to issue proper measures and guidelines for the same. It also mentioned that the exposure to asbestos is a risk for developing disabling and deadly lung diseases years after the exposure. It is advisable for the industry to implement measures to protect workers, their family members and persons coming in contact with them and the residents of the locality. NGT also directed CPCB to issue appropriate guidelines and measures covering asbestos based industries and similar industries operating in the country and also ensure their strict compliance with the EC and consent conditions. It also directed them to follow the measures for mitigating harmful impacts of asbestos exposure on human health and surroundings.

Wastes (Management and Transboundary Movement) Rules, 2016 (“Hazardous Waste Rules”) on 12 July, 2023. The amendment relates to the import of used Electrical and Electronic Assemblies (“EEA”). Prior to the amendment, the Hazardous Waste Rules allowed the import of used EEA only for their repair. The recent amendments to the Hazardous Waste Rules allow the import of EEA for their refurbishment as well. Further, before the amendment the repaired EEA could be re-exported only to Original Equipment Manufacturers (“OEMs”). Now the amendment allows the repaired/ refurbished EEA to be re-exported to any other company in the country of origin or to any other company in any other country. It further allows the retention of five percent of the unrepairable used EEA (by weight) in the country and requires the importer to ensure that it is sent to authorised recyclers in accordance with the E-Waste (Management) Rules, 2022.

### MoEFCC notifies the Wild Life Disposal of Wild Animal Article Rules, 2023<sup>14</sup>

MoEFCC has notified the Wild Life Disposal of Wild Animal Article Rules, 2023 (“Animal Article Rules”) on 12 July 2023. The rules provide the procedure to be followed while disposing of any wild animal article, trophy or uncured trophy

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or meat derived from any wild animal, which is a property of state government or central government. The Wild Life (Protection) Act, 1972 ("WLPA") provides that every wild animal other than vermin, which is hunted or kept or bred in captivity or found dead or killed by mistake, shall be the property of the state government and in cases where the hunt has been committed in a sanctuary or national park declared by the central government, they shall be the property of the central government. Further, the animal articles, trophy or uncured trophy, meat derived from any wild animal referred earlier in respect of which an offence has been committed are also the property of the state government or the central government.

The Animal Article Rules mandate the disposal of state government and central government property and provide the procedure to be followed while undertaking such disposal. The property is required to be incinerated in the presence of a committee comprising of the officer having custody of such property, representative of local gram panchayat, representative from revenue department and expert in field of wild life. Further, the committee is required to submit a report to the Chief Wild Life Warden on incineration within a period of ten days from the date of incineration.

### **MoEFCC notifies the Environment (Utilisation of Crop residue by Thermal Power Plant) Rules, 2023<sup>15</sup>**

MoEFCC has notified the Environment (Utilisation of Crop residue by Thermal Power Plant) Rules, 2023 on 11 July 2023. The rules mandate all the coal based thermal power plants of power generation utilities operating in the national capital region to use a minimum of five per cent blend of pellets or briquettes made of crop residue along with coal. The Commission for Air Quality in National Capital Region and Adjoining Area has been empowered to impose environmental compensation for non-utilisation of five percent crop residue along with coal. The rules provide the rate of environmental compensation applicable for the year 2024-2025 and a separate rate from the year 2025-2026 onwards for each unit of electricity generated.

### **MoEFCC amends the Coastal Regulation Zone Notification, 2011<sup>16</sup>**

MoEFCC has amended the Coastal Regulation Zone Notification, 2011 ("CRZ, 2011") on 03 July 2023. The said amendment was made to bring the CRZ, 2011 in line with the Environment Impact Assessment Notification, 2006 ("EIA, 2006"). The provisions related to validity and transfer of clearance have been inserted. The amendment provides that the clearance accorded under CRZ, 2011 shall be valid for a period of ten years. The validity of clearance means the period from which a CRZ clearance is granted to the applicant, to the start of production operations by the project or activity or the completion of all construction operations in case of construction projects. In cases where the project requires both environment clearance and CRZ clearance, the validity of such clearances would be according to EIA, 2006. Further, the period from 1 April 2020 to 31 March 2021 shall not be considered for the purpose of calculation of period of validity of CRZ clearance. The amendment allows that transfer of CRZ clearance to another person during its validity on the same terms and conditions under which the CRZ clearance was initially granted. It further allows the splitting up of CRZ clearance among two or more legal persons during the validity of the project.

### **MoEFCC amends the E-Waste Management Rules, 2022<sup>17</sup>**

MoEFCC has amended the E-Waste Management Rules, 2022 on 24 July, 2023. The amendment inserts new provisions for ensuring secure, accountable and sustainable management of refrigerant generated during the manufacture of refrigeration and air-conditioning equipment by adopting approved destruction technologies. Also, Rule 14 now states that in case where multiple end products must be recycled, the conversion factor for generation of extended producer responsibility ("EPR") certificate will be determined as per the guidelines issued by the CPCB with the approval of the Steering Committee. The amended Rule 16 now focuses on reduction of hazardous substances in the manufacturing of electrical and electronic equipment and their components or consumables or parts or spares. The new sub-rule 2A exempts electrical and electronic equipment specified in Schedule- II C which are placed in the market on or before 1/4/2025 and sub-rule 2B exempts components/ consumables/ parts/

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spares required for electrical and electronic equipment referred in sub-rule 2A till the 1/4/2028, provided reduction of hazardous substances compliant parts and spares are not available. In addition to that, three new schedules have been inserted namely – II A, II B & II C which relate to Rule 16.

## **CPCB issues Guidelines on the Design, Construction, O&M and Annual Certification of Coal Ash Ponds<sup>18</sup>**

The Central Pollution Control Board on 4 July, 2023, issued Guidelines on the Design, Construction, Operation and Maintenance and Annual Certification of Coal Ash Ponds. According to the Guidelines, thermal power plants most frequently dispose of both precipitated fly ash and bottom ash together as a slurry to the pond in which it was held for a longer period of time due to economic viability. If proper precautions are not taken in their design, construction, operation, and maintenance, fly ash disposal can over time result in issues like large surface setting lagoons for storage, infiltration of transport of water from deposit to soil, dust carryover in wind from dried lagoons and leads to ecological and environmental imbalances. The largest source of pollution influencing the general aesthetics of the environment in terms of land usage, health hazards and air, soil and water in particular, and so leading to environmental concerns are reported to be coal-based thermal power plants. Therefore, responsible disposal and profitable use are the main issues to protect the interests of the environmental system.

## **Environmental Guidelines for Stone Crushing Units<sup>19</sup>**

It has long been known that stone crushing operations are a significant source of fugitive dust emissions and severe air pollution. In response to that, CPCB has released the Environmental Guidelines for Stone Crushing Units. The Guidelines majorly discuss about the four aspects involved in stone crushing - stone crushing process, environmental issues associated with stone crushing units, environmental guidelines for stone crushing units, and the regulatory/monitoring mechanism for stone crushing unit. It also provided a format / checklist for SPCBs/PCCs before issuance of CTE & CTO to the units.

## **CPCB issues draft report for comments and suggestions for Classification of Industrial Sectors into Red, Orange, Green and White Categories<sup>20</sup>**

In order to achieve uniformity and impartiality in pollution control measures, the initial technique, developed in 2016, classified industries as Red, Orange, Green and White. The updated classification system aims to persuade industries to adopt cleaner technology and less harmful business practises, which will ultimately improve their environmental performance. The proposed modifications deal with a number of concerns, such as the scoring system and the formula used to calculate the pollution index. The updated methodology now provides weightage to the adoption of cleaner technologies and fuels besides other aspects.

## **Forest (Conservation) Amendment Bill, 2023 passed by the Lok Sabha<sup>21</sup>**

The Forest (Conservation) Act, 1980 is being amended by introducing a bill which shall include specific categories of land within the scope of the Act. These include areas that were designated as forests under the Indian Forest Act of 1927 or that appeared in official records after the 1980 Act took effect. Before December 12, 1996, land that was used for a non-forest purpose would not be covered by the Act. Additionally, it excludes certain types of lands from the Act's scope like land needed for national security initiatives within 100 km of India's border, minor roadside conveniences and public roadways leading to a habitation. The bill passed by the Lok Sabha provides very wide discretion to the Central Government when it comes to usage of forest land.

## **Biological Diversity (Amendment) Bill, 2023 passed by both houses of the Parliament<sup>22</sup>**

The Biological Diversity (Amendment) Bill, 2023 which amends the Biological Diversity Act, 2002 has been passed by both the houses of the Parliament. The amendment aims to promote the Indian medical system, speed up the research and patent application processes and decriminalise all Act-related violations. It exempts AYUSH registered practitioners, local residents and communities, including biodiversity growers and cultivators, from having to notify state biodiversity boards in advance in order to exploit biological resources for commercial use. The Bill makes violations

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like failing to obtain official authorisation for specific activities, which was punishable by up to five years in prison, a fine, or both, less serious.

## New category of Mutual Fund schemes for ESG Investing introduced by SEBI<sup>23</sup>

According to the existing regulatory criteria, mutual funds are only allowed to introduce one equity scheme that includes environmental, social and governance (“ESG”) investment. Asset management firms will now be able to introduce funds that follow six new strategies thanks to the Securities and Exchange Board of India (“SEBI”). Any project falling within the ESG category may be launched using one of the following strategies: Exclusion,

Integration, Best-in-class & Positive Screening, Impact Investing, Sustainable Objectives, and Transition or investments relevant to the transition. Additionally, SEBI has imposed some disclosure guidelines for ESG plans like the name of the ESG strategy should be made explicit in the name of the relevant ESG fund or scheme. In their monthly portfolio statements of ESG schemes, mutual funds are required by SEBI to include security-wise Business Responsibility & Sustainability Report (“BRSR”) Core scores in addition to the BRSR scores. Along with the ESG scores, mutual funds must also list the names of the ESG Rating Providers (“ERPs”) that provide the ESG scores for the ESG schemes.

## Endnotes

- 1 Civil Appeal Diary No.22325/2023
- 2 Civil Appeal No. 3856/2022
- 3 Crl. Misc. No. 57511 of 2022
- 4 Execution Application No. 4 / 2023 (CZ) in Original Application No. 78/ 2016 (CZ)
- 5 Original Application No. 269/ 2023
- 6 Original Application NO.10/2023/EZ
- 7 Original Application No.76/2023/EZ
- 8 Original Application No.80/2023/EZ
- 9 Original Application No. 249/2023
- 10 Original Application No.74/2022(CZ)
- 11 Original Application No. 649/2022
- 12 <https://egazette.gov.in/WriteReadData/2023/247634.pdf>
- 13 <https://egazette.gov.in/WriteReadData/2023/247267.pdf>
- 14 <https://egazette.gov.in/WriteReadData/2023/247266.pdf>
- 15 <https://egazette.gov.in/WriteReadData/2023/247241.pdf>
- 16 <https://egazette.gov.in/WriteReadData/2023/246989.pdf>
- 17 <https://egazette.gov.in/WriteReadData/2023/247586.pdf>
- 18 <https://cpcb.nic.in/openpdffile.php?id=TGF0ZXN0RmlsZS8zNzVfMTY4ODQ3MDEzOF9tZWRRpYXBob3RvMjU0NDMucGRm>
- 19 <https://cpcb.nic.in/openpdffile.php?id=TGF0ZXN0RmlsZS8zNzVfMTY5MDgwNjIxOF9tZWRRpYXBob3RvMjU0NDMucGRm>
- 20 <https://cpcb.nic.in/openpdffile.php?id=TGF0ZXN0RmlsZS8zNzVfMTY5MDI2Mjg1OV9tZWRRpYXBob3RvMjU0NDMucGRm>
- 21 <https://egazette.gov.in/WriteReadData/2023/244883.pdf>
- 22 <https://egazette.gov.in/WriteReadData/2021/231943.pdf>
- 23 [https://www.sebi.gov.in/legal/circulars/jul-2023/new-category-of-mutual-fund-schemes-for-environmental-social-and-governance-esg-investing-and-related-disclosures-by-mutual-funds\\_74186.html](https://www.sebi.gov.in/legal/circulars/jul-2023/new-category-of-mutual-fund-schemes-for-environmental-social-and-governance-esg-investing-and-related-disclosures-by-mutual-funds_74186.html)

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