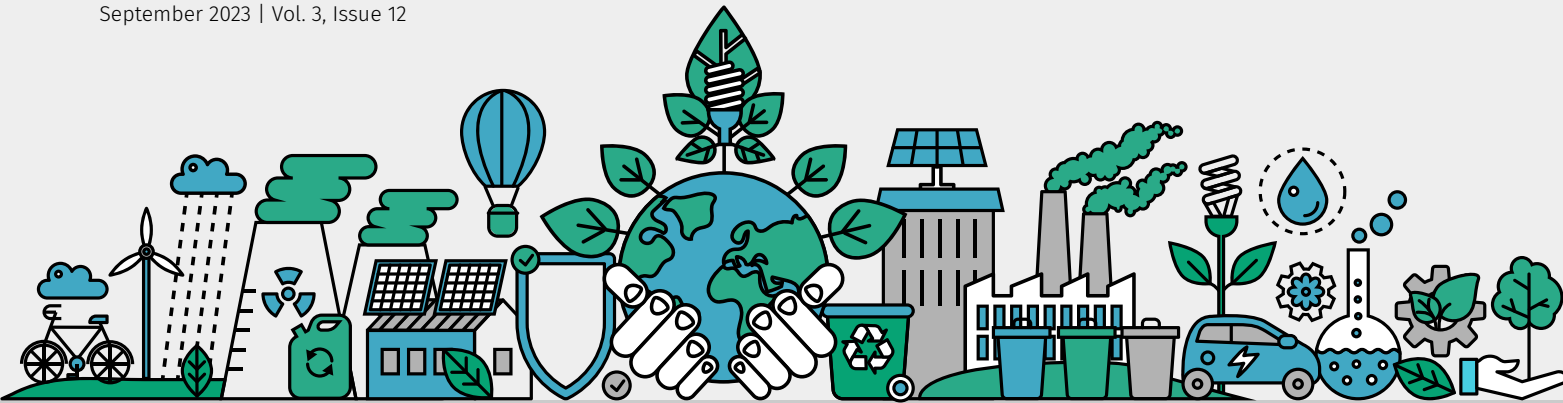




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High Court Judgements/ Orders

Kerala High Court stays the order of NGT on SEIAA clearance

M/s Dragonstone Realty Pvt Ltd vs State Environment Impact Assessment Authority & Ors.¹ Order dated 16 August, 2023

The High Court of Kerala has stayed the National Green Tribunal (“NGT”) order setting aside the environmental clearance granted by the State Environment Impact Assessment Authority (“SEIAA”) to the non-special economic zone (“SEZ”) site of the Taurus Downtown Trivandrum project. The project consists of two components, a 12-acre SEZ parcel and a 10-acre non-SEZ parcel. The standing counsel for SEIAA also submitted that the matter was considered in a comprehensive manner by the SEIAA and there is no question of splitting up of the project. The interim order for staying the operation will be for a period of one month.

High Court of Madras orders relocation of 495 families and asks the Central Government to release funds

Manoj Immanuel vs Union of India²; Order dated 08 August, 2023

The Madras High Court has directed the

Central Government to release fund to the National Tiger Conservation Authority, which in turn will release it to the Principal Chief Conservator of Forests, State of Tamil Nadu so that the same could be immediately disbursed to the villagers and their relocation could be carried out smoothly. The Court opined that the village must be entirely relocated as the Thengumarahada settlement is located within the eastern boundary of the Mudumalai Tiger Reserve and the approach to it is through the Sujalkuttai-Thengumarahada road that runs right in the core zone of Sathyamangalam Tiger Reserve for about 25 kms along the Moyar Valley in the Bhavanisagar range. Thengumarahada area and the adjoining landscape is one of the rare places in India where healthy breeding population of tiger, elephant and other animals are found together. The Court said that when a primordial statutory duty is cast upon the Central Government, especially when the same is pursuant to the Directive Principles of State Policy, non-availability of funds cannot be an excuse. The bench also directed that the relocation must be carried out within a period of one month and the compliance report shall be submitted by 10 October, 2023.

National Green Tribunal Judgements / Orders

NGT directs TNPCB to levy compensation on a unit for operating without consent

B. Saravanan vs The Member Secretary, TNPCB & Ors.³; Order dated 09 August, 2023

The southern bench of NGT has directed the Tamil Nadu Pollution Control Board (“TNPCB”) to levy the compensation for the period in which the plastic recycling unit was

in operation without obtaining the Consent to Establish (“CTE”) and Consent to Operate (“CTO”) by following the due process of law. The Tribunal noted that from the report of TNPCB it was evident that before obtaining the CTO for the unit, the project proponent was operating at the mentioned location. It also stated that if the operation was carried out by the project proponent without consent TNPCB should have computed the number of

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days during which the project proponent was carrying out the operations and should have levied the compensation accordingly.

NGT seeks factual report on mobile towers in parks from MCF and SPCB

Residents Welfare Society vs State of Haryana & Ors.; Order dated 11 August, 2023

NGT has asked the Municipal Corporation of Faridabad ("MCF") and the State Pollution Control Board ("SPCB") to submit their responses within six weeks in a petition against installation of mobile towers in the public parks of Faridabad. The petitioner sought the removal of mobile towers set up in public parks that can't be used for non-conforming purposes. The bench also directed the joint committee to ensure that till further orders, no mobile towers should be installed in the park area in violation of the applicable rules. The committee was also directed to visit the parks and submit the factual and action taken report within six weeks.

NGT orders removal of encroachments along the banks of Kaliyasot

Dr. Subhash C Pandey vs Chief Secretary, State of Madhya Pradesh; Order dated 11 August, 2023

NGT has ordered the relevant authorities to develop open spaces and green belts by removing all encroachments up to 33 meters from both the banks of the river. The basic grievance was the alleged inaction to implement the mandate of 33 meters of 'No Construction Zone' as well as maintenance of 33 meters green belt area from the boundary of River Kaliyasot and allowing encroachment causing harm to the environment in as much as not only the land of reservoir was encroached illegally but even domestic and municipal sewage was being directly discharged in the water causing pollution to the river water. The bench also noted that the identification of such encroachments shall be completed within two months from the date of the order and demolition exercise shall be taken up and completed by the end of December 2023.

NGT directs immediate suspension of

construction work at Tampara Lake

Wildlife Society of Orissa vs State of Odisha & Ors; Order dated 11 August, 2023

The eastern zonal bench of NGT has directed for immediate suspension of construction work within the 50-metre radius of the 338-hectare freshwater Tampara Lake in Odisha. The Tampara Lake was designated as a Ramsar site in October 2021. NGT has also directed to form a high-level committee comprising of a senior scientist of the Central Pollution Control Board ("CPCB"), the Ganjam District Collector and the Director of Environment, to conduct an investigation and submit its report within four weeks. It also directed the District Collector, Ganjam, to ensure that no illegal constructions are made and no part of the Tampara Lake is encroached or allowed to be encroached.

NGT seeks compliance report for waste management along pilgrim tracks of Uttarakhand

Urvashi Shobhna Kachari vs Urvashi Shobhna Kachari; Order dated 08 August, 2023

The principal bench of NGT has directed the SPCB and the District Magistrates of Rudraprayag and Uttarkashi, to submit the action taken report in compliance with the Tribunal's earlier directions issued for remedies to be taken against violations of environmental norms at Uttarakhand's pilgrimage sites. NGT was hearing a petition claiming non-compliance of its earlier order that directed remedial action for violations of environmental norms, particularly waste management, along the four pilgrim tracks of Kedarnath, Hemkund Sahib, Yamunotri and Gomukh. According to the applicant, no remedial measures have been taken by the authorities concerned. NGT has also directed the Additional Chief Secretary, Environment and Forest, Uttarakhand to furnish status of the meeting / review conducted by the Committee within three weeks.

NGT takes up suo motu action against NLC based on a news report

Suo motu huge pollution risk in 8km around NLC vs Managing Director, NLC

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India Ltd.⁷; Order dated 10th August, 2023

The southern bench of National Green Tribunal has taken up a suo motu case relating to pollution in and around Neyveli Lignite Corporation (“NLC”) and its thermal plants based on a news report dated 9 August, 2023 titled “Huge pollution risk in 8 Km around NLC”. NGT issued notices to the Ministry of Environment, Forest and Climate Change (“MoEFCC”), Tamil Nadu Pollution Control Board, Municipal Administration, Water Supply Department and District Collector of Cuddalore. It was however clarified by NLC that they are in compliance with all relevant environmental norms.

NGT panel to probe illegal mining allegations against Brij Bhushan Singh

Raja Ram Singh vs State of U.P.⁸; Order dated 02 August, 2023

NGT has constituted a Joint Committee to verify the factual position on the allegations pertaining to illegal mining and take appropriate remedial action. The Committee shall comprise of representatives from MoEFCC, CPCB, National Mission for Clean Ganga, Uttar Pradesh Pollution Control Board and District Magistrate, Gonda. The bench directed the Joint Committee to meet within one week, undertake visits to the site, investigate the grievances, verify the factual position and take appropriate remedial action by following due course of law and giving opportunity of being heard to the project proponent. The factual and action taken report needs to be submitted within two months from the date of the order.

NGT constitutes committee to investigate EC non-compliance by builder

Purab Premium Apartment Allottees Association vs Greater Mohali Area Development Authority & Ors.⁹; Order dated 17 August, 2023

NGT has issued notice to the Greater Mohali Area Development Authority regarding allegations pertaining to Environment Clearance (“EC”) granted to the project proponent. The grievance of the applicant was regarding EC for construction of 6360 flats sanctioned by SEIAA, Punjab with the condition that the same shall be completed

within a time limit of five years but the Project Proponent has failed to complete the project within the prescribed time limit. It was also alleged that the conditions of EC pertaining to installation of Sewage Treatment Plant (“STP”), providing adequate drinking water, rainwater harvesting system, solid waste management system etc. were not complied with. NGT has directed a three-member joint committee to visit the place and submit the factual and action taken report within four weeks.

NGT forms panel to check illegal dumping of waste collected by Dharuhera Municipality

Prakash Yadav vs State of Haryana¹⁰; Order dated 02 August, 2023

NGT has directed a joint committee comprising of Haryana State Pollution Control Board (“HSPCB”) and District Magistrate, Rewari to undertake visits to the site and investigate the grievances of the applicant. The bench stated that the committee shall meet the project proponent to verify the factual position and take appropriate remedial action. It also directed the Committee to report non-compliance with the Solid Waste Management Rules, 2016 pertaining to waste generation, processing and management of legacy waste, if any, in quantifiable terms. The factual and action taken reports need to be submitted within one month.

NGT probes allegations of illegal sand mining in Rayan Ramchandrapur Sand Source

Abani Kumar Sahoo vs State of Odisha & Ors.¹¹; Order dated 04 August, 2023

The Eastern Bench of NGT has directed a five-member committee to look into the allegations of illegal sand mining in Rayan Ramchandrapur Sand Source in an area of 20.38 acres. It was alleged that the CTO was granted illegally without verifying the validity of the EC. NGT also directed the Committee to visit the site within ten days and submit its report within four weeks with regard to the allegations and if any violations are found, the Committee shall suggest remedial measures as well as determine the EC and the concerned officers of the various departments shall also initiate appropriate steps for taking action against the violators.

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NGT pulls up BMC for cutting of several trees in Borvan forest

Mr. Nitin Saxena vs Department of Forest & Ors.¹²; Order dated 04 August, 2023

NGT has directed the Principal Chief Conservator of Forests, Madhya Pradesh, State Wetland Authority and Madhya Pradesh Pollution Control Board to look into the issue pertaining to cutting of several trees in Borvan forest. It was alleged that Bhopal Municipal Corporation ("BMC") has illegally cut several trees in Borvan forest area / Borvan Park where more than 1,25,977 trees are standing and it is a

part of the catchment area of "Bhoj wetland", a Ramsar site. NGT observed that if the Committee finds that the trees have been illegally cut or any construction has been raised on the forest land of Borvan which is a 'deemed forest' without prior approval of competent authority under Section 2 of Forest Conservation Act, 1980, then the said construction activities of BMC shall be restrained, construction already raised shall be demolished and appropriate EC requirement shall also be imposed against BMC. NGT also directed the Committee to submit a compliance report by 31 October, 2023.

Regulatory / Policy developments

PCB extends deadline for sharing comments on draft report on Classification of Industrial Sectors¹³

CPCB, on 31 August, 2023, has notified that the last date to send comments/suggestions on the draft report on the Classification of Industrial Sectors into Red, Orange, Green and White Categories: A Tool for Progressive Environmental Management has been extended to 31 September, 2023.

MoEFCC amends notification relating to restrictions and prohibitions on new projects¹⁴

MoEFCC, on 30 August, 2023 has amended the Environment Impact Assessment ("EIA") Notification, 2006, which deals with restrictions and prohibitions on new projects, activities or on the expansion or modernization of existing projects or activities based on their potential environmental impacts. In Appendix-IX, serial numbers 6 and 7 have been substituted. Extraction sourcing or borrowing of ordinary earth for linear projects such as roads, pipelines, etc. and dredging and de-silting of dams, reservoirs, weirs, barrages, rivers and canals for the purpose of their maintenance, upkeep and disaster management shall be subject to the compliance with standard operating procedures and environmental safeguards issued in this regard from time to time.

CPCB issues draft framework for the generation of EPR certificate¹⁵

CPCB has issued the draft framework for the generation of Extended Producer Responsibility

("EPR") certificate including item-wise average percentage composition in terms of weight of key metals for the generation of the EPR certificate. It provides that EPR certificates will be issued against key metals recycled from e-waste. The key metals are classified in three groups namely precious metals, non-ferrous metals and ferrous metals. The gap between total EPR obligation in terms of gold and gold recycling capacity will be bridged in five years. Annexure-1 of the framework provides item-wise average percentage composition in terms of the weight of key metals for generation of EPR certificate.

CPCB issues Guidelines on Management of Pyro-metallurgical slags¹⁶

CPCB has issued the Guidelines on Management of Pyro-metallurgical Slags (Copper Smelters) on 18 August, 2023. These guidelines will facilitate copper smelter units in handling and management of large volumes of slags generated from pyro-metallurgical operations due to the increased processing of copper concentrates. The manufacturing process of copper smelters and the guidelines for the management of pyro-metallurgical copper slags have also been provided.

MoL&J notifies the Offshore Areas Mineral (Development and Regulation) Amendment Act, 2023¹⁷

The Ministry of Law and Justice ("MoL&J") on 11 August, 2023, has notified the Offshore Areas Mineral (Development and Regulation) Amendment Act, 2023 to amend the Offshore Areas Mineral (Development and Regulation)

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- Biological Diversity (Amendment) Act, 2023 notified



Act, 2002. The requirement for a composite license has been introduced which is a two-stage operating right granted for the purpose of undertaking exploration followed by production operation. Operating rights shall be granted to public sector undertakings (“PSUs”) in the mineral bearing areas reserved by the Central Government. The limit has been introduced on the total area one person can acquire offshore. Now, a person cannot acquire more than 45 minutes latitude by 45 minutes longitude in respect of any mineral or prescribed group of associated minerals under one or more operating rights. A new provision has been inserted to setup an Offshore Areas Mineral Trust which will maintain a fund under the Public Account of India. To promote ease of doing business, a new provision has been inserted for easy transfer of composite license or production lease. Production lease, as well as a production lease under a composite licence, shall now be valid for 50 years. There has been an increase in fines too for various offences under the Act.

Mines and Minerals (Development and Regulation) Amendment Act, 2023 notified¹⁸

On 09 August, 2023, MoL&J has notified the Mines and Minerals (Development and Regulation) Amendment Act, 2023 to amend the Mines and Minerals (Development and Regulation) Act, 1957. Certain minerals from the list of atomic minerals have been removed which were earlier being mined and explored only by PSUs. Exploration and mining of these minerals are now open to private sector. The new amendment also empowers the Central Government to exclusively auction mining lease and composite licence for certain critical minerals. It also inserts new provisions for grant of a new mineral concession called Exploration Licence (“EL”), in the Act. The exploration licence granted through an auction shall permit the licensee to undertake

reconnaissance and prospecting operations for critical and deep-seated minerals mentioned in the newly proposed Seventh Schedule to the Act.

MoL&J notifies the Forest (Conservation) Amendment Act, 2023

¹⁹MoL&J has notified the Forest (Conservation) Amendment Act, 2023 to amend the Forest (Conservation) Act, 1980 on 4 August, 2023. The amendment includes 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, any land that was used for a non-forest purpose would not be covered under the Act. Additionally, certain types of lands like the land needed for national security initiatives within 100 km of India’s border, minor roadside conveniences and public roadways leading to a habitation etc. have been excluded from the scope of the statute.

Biological Diversity (Amendment) Act, 2023 notified²⁰

The Biological Diversity (Amendment) Act, 2023 has been notified on 3 August, 2023 to further amend the Biological Diversity Act, 2002. 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. It also makes violations 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.

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Endnotes

- 1 WP(C) NO. 27000/2023
- 2 W.M.P.(MD)No.1962/2022
- 3 Original Application No.61/2023 (SZ)
- 4 Original Application No. 471/2023
- 5 Execution Application No.01/2023(CZ)
- 6 Execution Application No. 27/2023
- 7 Original Application No. 107/2023(SZ)
- 8 Original Application No. 462/2023
- 9 Original Application No. 493/2023
- 10 Original Application No. 458/2023
- 11 Original Application No.84/2023/EZ
- 12 Original Application No.67/2023(CZ)
- 13 <https://cpcb.nic.in/openpdf.php?id=TGF0ZXN0RmlsZS8zNzdfMTY5MDI2Mjg1OV9tZWVpYXBob3RvMjk0MjluZGhvdG8yNjA0OS5wZGY=>
- 14 <https://egazette.gov.in/WriteReadData/2023/248436.pdf>
- 15 <https://cpcb.nic.in/openpdf.php?id=TmV3c0ZpbGVzLzEwM18xNjkyMzU0NTYwX2lZGlhcGhvdG8yNjA0OS5wZGY=>
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- 19 <https://egazette.gov.in/WriteReadData/2023/247866.pdf>
- 20 <https://egazette.gov.in/WriteReadData/2023/247815.pdf>

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