



Supreme Court Judgements/ Orders

Supreme Court rejects plea to use barium nitrate in fire crackers

Arjun Gopal vs. Union of India,¹ Order dated 22 September, 2023

The Supreme Court of India (“Supreme Court”) rejected an application filed by an association of firecracker manufacturers to include reduced quantities of barium nitrate in firecrackers. In 2019 the Court had banned the use of barium salts in firecrackers and in 2021 the Court had reiterated this ban. It was contended that barium nitrate is used around the world and is the most safe and stable oxidiser and that no country has banned its use in firecrackers. Despite endorsements from the Petroleum and Explosives Safety Organization (“PESO”) and Ministry of Environment, Forest and Climate Change (“MoEFCC”) which asserted that the revised formulation would decrease the emissions by 30%, the apex Court stated that they need to consider the health effects of the emissions by these crackers, even with formulations that guarantee reduced emissions. This verdict aligns with the Court’s earlier decision aiming to curb air pollution and its health effects, especially during festival seasons.

Supreme Court reviews Mines and Minerals Act

State of West Bengal and Anr. vs M/s Chiranjilal (Mineral) Industries of Bagandih and Anr.,² Order dated 12 September, 2023

Supreme Court recently reviewed the Mines and Minerals (Development and Regulation) Act, 1957 (“MMDR Act”). The Court particularly dealt with section 10A (1) of the MMDR Act which stipulates that mining lease applications submitted before 12 January 2015 are deemed ineligible. The essence of this provision is to transition the allocation of mineral resources to an auction-based system. The Court clarified that applications could remain valid if a prospecting license is already granted and the State Government acknowledges its compliance with the MMDR Act. Another exception, the court said, was when the Central Government had already communicated their previous approval, or the State Government had issued a ‘Letter of Intent’ for grant of mining lease before coming into force of the MMDR Amendment Act, 2015. The Court thus set aside the impugned judgement and allowed the appeal, directing the State of West Bengal to execute a mining lease for the land in favour of the petitioner.

High Court Judgements/ Orders

Uttarakhand High Court pulls up State Authorities for inaction on Joshimath landslides

P.C. Tiwari v. State of Uttarakhand,³ Order dated 1 September, 2023 and 20 September, 2023

The Uttarakhand High Court has pulled up the state authorities for not including independent experts for studying the landslides and

land subsidence in the Joshimath area. The petitioner sought the formation of an expert committee consisting of hydrologists, geologists, etc to assess and report on the current environmental disruptions. The bench expressed dissatisfaction with the state’s lack of urgency in addressing this situation. The Court also highlighted its previous direction to engage experts from specialised fields to conduct comprehensive studies. Noting the

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non-compliance, the Court summoned Chief Secretary of Uttarakhand for an explanation. The Court also has raised questions over the state government's decision not to make reports prepared by experts on Joshimath land subsidence public. Subsequently, the state government filed an application for recall of the Order dated 1 September, 2023 which was considered by the Court on 20 September, 2023. The Court observed that the state had prepared different reports through independent experts however, the same was neither published nor was the Court appraised about it during its earlier hearing on 1 September, 2023. The state government was directed to file the said reports prepared by independent experts and serve their copies to the petitioner. In view of the observations, the personal appearance of the Chief Secretary, Government of Uttarakhand was exempted.

High Court of Uttarakhand orders formulation of Tourism Development Plan

Akash Vashishtha v. State of Uttarakhand & Ors.,⁴ Order dated 06 September, 2023

The Uttarakhand High Court directed the State of Uttarakhand to formulate a Tourism Development Plan ("TDP"), and have it approved by MoEFCC within the next four weeks. The bench noted that the State appears to be completely insensitive towards the enormous environmental degradation that the entire state is suffering from. These observations came in response to a public interest litigation ("PIL") filed against the state for preparing TDP and master plan for the Doon Valley. The Court also noted that the policies placed on record do not have any statutory force and the state did not understand the purpose of issuing the Doon Valley notification in the year 1989. The purpose was clear, to preserve the eco sensitive Doon Valley, and to prevent its degradation. The Court also highlighted the necessity of obtaining approval from MoEFCC for any mining projects in the Doon Valley.

High Court of Bombay upholds Green Cess Act

South Port Limited & Anr. vs State of Goa & Anr. and connected matters,⁵ Order dated

14 September, 2023

The High Court of Bombay at Goa upheld the Goa Cess on Products and Substances Causing Pollution (Green Cess) Act, 2013 and rejected arguments made by businesses that were handling coal, other potentially dangerous chemicals, and petroleum products in violation of the legislation. The Petitioners argued that "environment" and "environmental pollution" are the primary objectives of the law and the purpose of this fee. They added that "environment" is a distinct area of law that isn't listed in any of the three lists in the Seventh Schedule of the Constitution pertaining to the division of power between the Central and the State Government. The Court observed that the entries in the legislative lists are not sources of legislative authority, but rather are essentially topics or legislative fields, and that the entries in the State list cannot be narrowly or pedantically interpreted. They must be interpreted liberally and generously. The Court also observed that they found it difficult to accept the argument that the law is not a legislation with regard to the entries in the Seventh Schedule pertaining to public health, sanitation, water, land, and gas. The Green Cess Act was enacted to provide for the imposition and collection of cess on products and substances, including hazardous substances, whose handling, consumption, utilisation, combustion, movement, or transportation contribute to environmental pollution.

Uttarakhand High Court orders CBI to probe illegal construction and felling of trees

Suo Motu PIL: In the matter of illegal construction In Corbett Tiger Reserve v. Union of India and Ors.,⁶ Order dated 06 September, 2023

Uttarakhand High Court has directed the Central Bureau of Investigation ("CBI") to probe allegations of illegal construction and the felling of over 6000 trees within the Corbett Tiger Reserve. Considering the gravity of the allegations the bench noted that suspending some officers and keeping the matter pending does not come under the purview of concrete action in any way. The Court stressed on the state's responsibility as the guardian of public properties and natural resources. The bench also noted that as per the report of the

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joint committee constituted by the NGT, the construction works of administrative building, service roads, etc. were undertaken without any administrative and financial approval and without any budgetary provisions. Given the circumstances the Court referred the

matter to CBI for proper and uninfluenced investigation in accordance with law. The Court also highlighted the importance of preserving CBI's resources, cautioning against referring cases to them merely based on allegations without merit.

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NGT directs MoEFCC to act against illegal mining in Ranthambore

Devidas Khatri vs State of Rajasthan & Ors,⁷ Order dated 01 September, 2023

The Bhopal bench of NGT has directed MoEFCC to take necessary action against illegal mining carried out without valid Environmental Clearance ("EC") in the buffer zone of Ranthambore Tiger Reserve. The petitioner alleged that there were instances of illegal mining by ACC Cement without environmental clearance and they did not have the permission to do so within 10 kms range of the national park and wildlife sanctuary at Ranthambore. NGT directed the State Pollution Control Board ("SPCB") to take necessary action related to the assessment and calculation of environmental compensation and to ensure its collection. Additionally, MoEFCC has been instructed to take necessary action against illegal mining activities being carried out in violation of environmental regulations and without valid EC.

NGT issues notice to Jindal Steel over death of a worker in a factory

In re: News item titled "Chhattisgarh: Worker killed as molten slag falls on him at steel plant" appearing in PTI dated 22.08.2023,⁸ Order dated 14 September, 2023

NGT has served Jindal Steel and Power Limited with a notice in relation to the death of a worker at the company's steel factory in Patrapali village in the Raigarh district of Chhattisgarh after it was alleged that hot or molten slag fell on him. The case was registered on the basis of a news article published on August 22 in respect of a worker's death. The Bench directed that the guidelines prepared by the Central Pollution Control Board ("CPCB") to deal with handling and management of slags generated from pyro-metallurgical operations in iron and steel industries needed to be looked into.

NGT serves notices to CPCB and SPCB over allegations of hospitality facilities operating without consent

Prasoon Pant & Anr. vs Uttar Pradesh Control Board & Ors,⁹ Order dated 04 September, 2023

NGT issued notices to CPCB and the Uttar Pradesh Pollution Control Board ("UPPCB") seeking their replies against allegations that 21 hospitality facilities in Ghaziabad were operating without obtaining consent from the SPCB. The hospitality establishments include malls, hotels and banquet halls such as Mahagun Metro Mall, Shopprix Mall, Ansal Plaza, and Jaipuria Mall, among others. The petitioners also alleged that UPPCB had granted Consent to Operate ("CTO") to many of these establishments without Consent to Establish ("CTE") which goes against environmental norms. The CPCB and the UPPCB have been asked to file their responses within a month.

NGT directs BRO to plant 10,000 trees in Uttarakhand

Subhash Mishra & Ors. vs State of Uttarakhand,¹⁰ Order dated 25 August, 2023

NGT has directed the Border Roads Organization ("BRO") to plant 10,000 trees in Uttarakhand as compensation for trees they have fallen during the construction of a road from Simli to Gwaldam. The applicant raised allegations against BRO for violating environmental norms, which included the illegal cutting of trees, causing environmental damage, and possibly leading to landslides. The tribunal confirmed that while the permission was granted for felling of 4047 trees, 3814 trees were cut in the forest area, and another 435 in revenue/ private areas. Considering the facts, NGT directed BRO to undertake the plantation and mandated the District Forest Officer to monitor the survival

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of these plants and take measures to prevent landslides in the area.

NGT seeks action taken report on noise pollution by banquet halls in Delhi

Anuj Kansal v. Golden Moments Banquet Hall & Ors.,¹¹ Order dated 13 September, 2023

NGT has requested for action taken report from a committee comprising of Member Secretary of Delhi Pollution Control Committee, Sub District Magistrate, Karol Bagh and Delhi Police regarding alleged noise pollution from several banquet halls in Delhi. The tribunal previously directed the submission of a detailed report on this issue but found the responses lacking concrete data and noticed that directives were not fully complied with by the responsible entities. NGT's attention was drawn by complaints about noise disturbances from various banquet halls around East Park Road, Karol Bagh area. NGT has now ordered the concerned authorities to produce thorough action taken report within the next eight weeks.

NGT constitutes committee to streamline guidelines for idol immersion

Hariharan vs The District Collector Tiruvallur,¹² Order dated 20 September, 2023

The southern bench of NGT has established a three-member committee to streamline guidelines for idol immersion, particularly for the upcoming Vinayagar Chaturthi festival in Tamil Nadu. This decision followed a petition by a Chennai resident addressing the environmental impact of idol immersion in water bodies. The tribunal emphasised the environmental concerns when idols, immersed in natural water bodies, pollute the water bodies, or return to the shore. It noted that the Division Bench of the High Court of Madras at Madurai Bench had also passed an order where the sale of idols made of Plaster of Paris (POP) was prohibited and specifically directed the authorities, general public, etc. to follow the CPCB Guidelines. The Tribunal directed the concerned authorities to ensure that the said guidelines are followed in letter and spirit and it further directed the local authorities to provide sufficient protection to the people who go to immerse the idols, with the help of the Police.

NGT imposes cost for filing frivolous application

Mr. C. Paul Raj vs The Sub Collector,¹³ Order dated 18 August, 2023

The southern bench of NGT has imposed a cost of INR 10,000 on the applicants, for filing a bogus application and wasting the time of Tribunal. The bench noted that the applicants filed a frivolous application for which there was an earlier order passed by the appropriate authority already. These observations came in response to the plea filed by the applicant seeking compensation for the alleged damage caused to a teak wood tree and related mental distress in the Kanyakumari district. The Tribunal clarified that such matters were not within its jurisdiction and should have been directed to an appropriate forum. Notably the dispute had already been addressed and resolved by the Sub-Collector. As a result of wasting the Tribunal's time with a baseless application, the applicants were directed to pay the penalty towards Kanyakumari District Green Committee.

NGT seeks report from authorities against curbing pollution in river Ganga

Rajendra Prasad Gupta v. State of U.P.,¹⁴ Order dated 28 September, 2023

NGT has served notice to the Commissioner of the Municipal Corporation, Varanasi and the District Panchayat Raj Officer, Chandauli, seeking their response regarding measures taken based on the recommendations aimed at curbing pollution in the river Ganga in Varanasi. This action was prompted by a letter petition highlighting the discharge of domestic and untreated industrial wastewater into the river Ganga at specific locations in Varanasi. In May 2022, the NGT established a joint committee led by the SPCB, which subsequently proposed the construction of a separate drain for the Ramnagar industrial area and the treatment of domestic sewage from the multimodal terminal, with the treated effluent to be repurposed for gardening, irrigation, or dust suppression. The issue is scheduled for further review on 16 October, 2023.

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CPCB issues circular regarding applicability of conformity of production of Gensets¹⁵

CPCB has issued a circular dated 22 September, 2023 regarding the applicability of conformity of production of gensets. The circular has been released in respect of manufactures/ suppliers/ importers of gensets who were granted exemptions in terms of MoEFCC's Notification dated 14 June, 2023 from the applicability of revised emission standards of Gensets to be manufactured and supplied up to 30 June, 2024 against the purchase orders issued on or before 30 June, 2023. The CPCB circular provides that the Conformity of Production ("COP") shall be conducted / renewed by the manufacturers/ importers/ suppliers for those type of approved genset/ genset engine models which will be availing the benefits of MoEFCC's Notification dated 14 June, 2023 by following the relevant system and procedures for conducting COP test, which will be valid up to 30 June, 2024.

CPCB releases framework for generation of EPR Certificate under E-Waste Rules¹⁶

CPCB on 21 September 2023, has released the Framework for generation of Extended Producer Responsibility ("EPR") certificate under E-Waste (Management) Rules, 2022 ("E-waste rules"). Under the framework, EPR certificates will be issued against key metals recycled from E-waste. The key metals are classified in 3 groups namely precious metals, non-ferrous metals and ferrous metals. In the initial two years, the key metals for generating EPR certificates will be limited to Gold, Copper, Aluminium and Iron. The EPR certificate for rare earth and other precious materials will also be considered and incentivized under the EPR regime.

MoEFCC notifies the Hazardous and Other Wastes (Management and Transboundary Movement) Second Amendment Rules, 2023¹⁷

MoEFCC on 18 September, 2023, notified the Hazardous and Other Wastes (Management and Transboundary Movement) Second Amendment Rules, 2023 to further amend the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016. The amendment has added a new chapter,

namely Chapter VII which talks about EPR for used oil. The Chapter provides key provisions under EPR such as registration, duties and responsibilities of imports / producers, EPR certificate generation etc. The amendment shall come into force from 01 April, 2024.

CPCB releases draft SOP for lead recycling units¹⁸

CPCB on 14 September, 2023, invited comments and suggestions from the public / stakeholders on the draft Standard Operating Procedures ("SOP") for lead recycling units desirous of importing lead scrap / lead acid battery scrap. The SOP discusses provisions relating to CTO and CTE granted under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981. It also discusses renewal of authorization, self-certified compliance report in respect of effluent, emission standards, and the conditions specified in the authorization for hazardous and other wastes. Lastly it mentions process flow sheet of recycling or reprocessing of lead scrap/ used lead acids battery scraps such as scrap lead acid battery, lead battery plates and other lead scrap/ ashes/residues, etc. along with the details of equipment installed.

CPCB makes interim arrangement for generation of EPR certificates under E-Waste Rules¹⁹

CPCB on 11 September, 2023, issued a circular regarding the interim arrangement made for the generation of the EPR certificates by recyclers and transfer the end product credits to producers for fulfilment of the EPR obligation of producers under the E-Waste (Management) Rules, 2022. The recyclers are required to maintain records of sales and purchase of procurement of raw material, sales of end producers, and EPR certificate transactions in an Excel sheet for generation and transfer of EPR certificates on the EPR portal. CPCB is facilitating this interim arrangement for meeting EPR obligations. The producers and recyclers shall be held responsible for malpractices / violations, if any. For utilising this interim arrangement E-waste recyclers are required to register on the interim arrangement portal separately.

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The link for using the interim arrangement for the generation and transfer of EPR certificates is available on the home page of the E-waste management portal.

CPCB makes interim arrangement for generation of EPR for producers of waste tyres under Hazardous Waste Rules²⁰

CPCB on 11 September, 2023, issued a circular regarding the interim arrangement made for the generation of the EPR End Product credits by recyclers and to transfer the end product credits to producers through the portal for the fulfilment of the EPR obligation of producer under the Hazardous Waste Rules. For the generation and transfer of EPR certificates on the EPR portal, recyclers are required to maintain records of procurement of raw material, sales of end products, and EPR certificate transactions in Excel sheets. CPCB has also released its instruction sheet on Producers' Registration at Waste Tyre Management Portal of March 2023 for the interim arrangement. CPCB is facilitating this interim arrangement for meeting EPR obligations and producers and recyclers shall have sole responsibility for malpractices/ violations, if any.

Semiconductor manufacturing industries added to the CPCB list of Classification of Industries²¹

CPCB on 05 September, 2023 added "semiconductor manufacturing industries" into its list of classification of industries which classifies industries into red, orange, green and white categories based on their pollution index. As per CPCB's letter dated 05 September, 2023 circulated to all the SPCBs/ Pollution Control Committees, "semiconductor manufacturing industries" include red category industries such as (i) semiconductor fabs manufacturing, (ii) display fabs manufacturing, (iii) compound semiconductors/ silicon photonics/ sensor fabs manufacturing and orange category industry such as (i) semiconductor assembly, testing, marking and packaging facility. All SPCBs are directed to adopt and implement the categorization of semiconductor manufacturing industries and submit the Action Taken Report, within 15 days.

NABARD issues Sustainable Bond Framework²²

The National Bank for Agriculture and Rural Development ("**NABARD**"), on September 06, 2023, issued the NABARD Sustainable Bond Framework. The Framework describes the proposed usage of proceeds from Sustainable Bonds for being eligible to be considered as financing for Green and Social Projects in a manner consistent with its sustainability goals and values. Further, it aims to ensure transparency through disclosures to the investors in order to aid them in making informed investment decisions. The framework is designed in accordance with the guidelines issued by Securities and Exchange Board of India and the Sovereign Green Bond Framework issued by Government of India. The framework adheres to the voluntary guidelines prescribed by the Green Bond Principles 2021, the Social Bond Principles 2021, and the Sustainability Bond Guidelines 2021, developed by the International Capital Markets Association. The framework also incorporates principles of Climate Bond Standards/ Climate Bond Initiative, wherever applicable.

MoEFCC exempts Extended Reach Drilling (ERD) Projects from the purview of FCA subject to conditions²³

MoEFCC vide its communication dated 12 September, 2023 has accepted the recommendation of Directorate General of Hydrocarbon to exempt the Extended Reach Drilling ("**ERD**") technology from the purview of the Forest (Conservation) Act, 1980 ("**FCA**") to undertake drilling in the forest areas, located outside the protected areas and eco-sensitive zones, subject to fulfillment of certain conditions. These include conditions like setting up of the ERD station outside the forest area at a minimum distance of 500 meters and at least 1 km from the protected areas /corridors/wildlife sensitive areas. It further mandates the State Government to ensure that the recommendations made in the General Standard Operating Procedures are strictly complied with by the User Agency.

MoEFCC issues guidelines with respect to the maintenance of safety zone in a mining lease²⁴

The MoEFCC on 25 September, 2023 issued guidelines with regard to the maintenance of safety zone in a mining lease. It states that the provisions of raising compensatory

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afforestation, as applicable in the entire forest area proposed for diversion, will be applicable in lieu of forest land located in the safety zone as well. The State Government and the Union territory Administration shall ensure provision of safety zone is complied with as per Ministry's guidelines issued from time to time and in cases where no proposal is submitted

for approval under the FCA in respect of forest land located in safety zone, invocation of penal provisions of the FCA shall be ensured. The previous guidelines issued with regards to safety zone except those related to payment of net present value and seeking approval of FCA in already granted mines as applicable, will cease to apply henceforth.

Endnotes

- 1 IA No. 48692 of 2022 and IA No. 104836 of 2023 in W.P.(C) No. 728/2015
- 2 Civil Appeal No. 8238/2022
- 3 WPPIL No.67/2021
- 4 WPPIL No. 225/2021
- 5 Writ Petition No.475 OF 2014 & Ors.
- 6 WPPIL No. 178/2021
- 7 Original Application No. 19/2023
- 8 Original Application No. 547/2023
- 9 Original Application No. 294/2023
- 10 Original Application No. 520/2022
- 11 Original Application No.141/2023
- 12 Original Application No.135/2023
- 13 Original Application No. 82/2023
- 14 Original Application No. 367/2022
- 15 <https://cpcb.nic.in/openpdf.php?id=TGF0ZXN0RmlsZS8zOTBfMTY5NTYxNjQ1MF9tZWRRpYXBob3RvMjYwNDYucGRm>
- 16 <https://cpcb.nic.in/openpdf.php?id=TGF0ZXN0RmlsZS8zOTBfMTY5NTM1ODM1OF9tZWRRpYXBob3RvMjYwNDYucGRm>
- 17 <https://egazette.gov.in/WriteReadData/2023/248814.pdf>
- 18 <https://cpcb.nic.in/openpdf.php?id=TmV3c0ZpbGVzLzEwNF8xNjk0NDUzMzA3X2lZGhchGhdG8yODA2Mi5wZGY=>
- 19 <https://cpcb.nic.in/openpdf.php?id=TGF0ZXN0RmlsZS8zODhMTY5NDQ1MzUxN19tZWRRpYXBob3RvMjYwNDYucGRm>
- 20 <https://cpcb.nic.in/openpdf.php?id=TGF0ZXN0RmlsZS8zODhMTY5NDQ1MzYwMV9tZWRRpYXBob3RvMjYwNDYucGRm>
- 21 <https://cpcb.nic.in/openpdf.php?id=TGF0ZXN0RmlsZS8zODhMTY5Mzk5MTA1N19tZWRRpYXBob3RvMjYwNDYucGRm>
- 22 <https://www.nabard.org/auth/writereaddata/tender/0609231748nabard-sustainable-bond-framework.pdf>
- 23 [https://forestsclearance.nic.in/writereaddata/public_display/schemes/591776161\\$ERD%20Technology.pdf](https://forestsclearance.nic.in/writereaddata/public_display/schemes/591776161$ERD%20Technology.pdf)
- 24 [https://forestsclearance.nic.in/writereaddata/public_display/schemes/496337096\\$11%20151%202022.pdf](https://forestsclearance.nic.in/writereaddata/public_display/schemes/496337096$11%20151%202022.pdf)

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PRACTICE AREA EXPERTS

Pallavi Shroff

Managing Partner and National Practice Head Dispute Resolution
+91 98100 99911
E: pallavi.shroff@AMSShardul.com

Nawneet Vibhaw

Partner - Environmental Law
+91 88004 91477
E: nawneet.vibhaw@AMSShardul.com

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