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ENVIRONMENTAL LAW

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I INTRODUCTION

MAHATMA GANDHI, the father of Indian nation famously observed almost a century back that "Earth provides enough to satisfy every man's needs, but not every man's greed." Theodore Roosevelt stated that "To waste, to destroy our natural resources, to skin and exhaust the land instead of using it so as to increase its usefulness, will result in undermining in the days of our children the very prosperity which we ought by right to hand down to them amplified and developed". One can quote any number of such wise statements which are the universal truths in relation to environment, ecology and their protection. The tragedy of the man is that he seems to forget very often that he is both creature and moulder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth.[1] During the year under survey *i.e.,* 2016 it has been observed that many progressive orders, directions and judgments were given by the Supreme Court, various high courts and the benches of the National Green Tribunal (NGT). Some of these directions were in the nature of judicial policy making and therefore judicial activism. Majority of such directions were issued by the NGT, though the higher judiciary contributed in its own way to the environmental protection in India. During the year under survey, it was also over heard that the NGT came in the way of projects and development due to its interventions sought by many applicants. However such criticism mostly came from the government and bureaucrats. During the next few pages, a sincere attempt has been made to give a summary of the judicial response to the environmental protection during 2016.

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1 Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration-June 1972).

II JUDICIAL PRONOUNCEMENTS

Establishment of unauthorized prawn culture farms and environmental pollution

In *A. Paramasivan* v. *Tamil Nadu Pollution Control Board,*[2] the NGT dealt with the impact on environment and ecology by establishment of unauthorised prawn culture farms by encroaching upon *Kaliporamboke* which was under the control and maintenance of the revenue department to the extent of 10 acres without consent or permission from concerned authorities. On inspection by revenue officials it was found that certain respondents were not carrying on such activities but that prawn culture ponds were found lying in dry condition-though no permanent structures were found. The NGT directed the officials of the board and revenue directed to stop unauthorized prawn culture activities by disconnecting electric service and removal of encroachment and also directed the officials to monitor the respondents to prevent further activities in future.

Curbing pollution in national capital territory of Delhi-imposition of environmental compensation by the Supreme Court

In *M.C. Mehta* v. *Union of India,*[3] the Supreme Court dealt with the important issue of Delhi residents undergoing the hardship on account of high of pollution in the city which earned the dubious reputation of being the most polluted city in the world. The court recollected that by its order dated October 9, 2015 certain directions were issued which are as under:[4]

i. The Governments of the States of Uttar Pradesh, Haryana and Rajasthan shall take steps to ensure that commercial traffic for destinations other than Delhi use alternative routes and to ensure that in the course of implementation of the said direction no traffic jams and other inconvenience is caused to the public.
ii. The Government of NCT of Delhi shall direct issue advertisements to inform commercial traffic of the bypass routes and the imposition of the ECC imposed by this Court for entry of the vehicles into Delhi.
iii. The toll collectors shall put in place Radio Frequency Identification (RFID) systems at their own costs at nine main entry points in the city by November 30, 2015 and by 31st January, 2016 at all the remaining 118 entry points to the city. The NCT Government shall install its own CCTV cameras at nine entry points and also organise surprise visits to oversee the collection of ECC and other necessary arrangements.

2 2016 (6) FLT 1 (N.G.T.-S.Z.-Chennai Bench).
3 (2016) 4 SCC 269. Decided on Dec 16, 2015 by a three-judges bench of the apex court. See also, *Shwetha Kapoor* v. *Govt. of NCT of Delhi*, 2016(6) FLT 255 (Del).
4 *Id*. at 277.

By the same order the court directed levy and collection of Environmental Compensation Charges **(**ECC)[5] at different rates ranging from Rs.720 for light duty vehicles to Rs.1300/- for trucks entering the National Capital Territory (NCT) of Delhi for the air pollution caused by them. However, the passenger vehicles, ambulances and vehicles carrying essential commodities like food stuffs and oil tankers for Delhi were exempted from the above charges. On an earlier occasion the court justified its decision saying that, "It appears that vehicles which transit through Delhi do not adhere to the vehicular standards which are applicable in Delhi, namely, they are not Euro II-compliant nor are they using low sulphur and low benzene fuel. There is no reason why very large number of goods vehicles should transit through Delhi thereby adding to the pollution level and the traffic on the road."[6]

In the instant case, the court was informed that imposition of '*Environment Compensation Charge*' (ECC) and the directions issued by this court regarding diversion of commercial vehicles/trucks to alternative routes has made some difference but the pollution levels continue to remain high despite such measures. The court therefore issued further interim directions which are as under:[7]

i. As diesel vehicles of 2000 cc and above and SUVs are generally used by more affluent sections of our society and because of the higher engine capacity are more prone to cause higher levels of pollution, there shall be a direction that Registration of SUVs and private cars of the capacity of 2000 CC and above using diesel as fuel shall stand banned in the NCR up to 31st March, 2016.
ii. All taxis including those operating under aggregators like OLA and UBER in the NCT of Delhi, plying under city permits shall move to C.N.G. not later than 1st March, 2016.
iii. As one of the contributors to the pollution in the city is dust that rises from the roads and pavements which are not fully developed, there shall be direction accordingly to the Government of NCT of Delhi to take immediate steps for repair of pavements and make pavements wherever the same are missing and also to take immediate steps for procurement of the requisite vacuum cleaning vehicles for use on Delhi roads expeditiously
iv. The State Government and the local bodies concerned including M.C.D., N.D.M.C. and all other institutions that are generating solid waste shall take steps to ensure that no part of such waste is burnt and that proper arrangements are made for disposal of such waste in a scientific way without causing any hazard to environment.

5 It is noteworthy that the apex court used the nomenclature of charge as against the tax which no court can impose. It may be an instance of judicial activism.
6 *Supra* note 3 at 278.
7 *Id*. at 280.

These interim directions if implemented effectively would certainly reduce the pollution levels in the NCT of Delhi.[8]

Air pollution and ban on fireworks in national capital region

In a public interest litigation[9] (PIL) filed by Arjun Gopal and two other children all aged 14 years, the Supreme Court dealt with a petition which sought wide ranging reliefs against the use of fireworks (including fire crackers), prevention of harmful crop burning, and further steps towards environmental purity but restricted the order to grant of interim relief in respect of fireworks. In the instant case the court noted that the primary contention of the petitioners was that the use of fireworks in the NCR has posed a serious problem to inhale the air during Diwali and the wedding season. According to the petitioners, the problem has reached proportions in the NCR which are not tolerable and are causing immense harm to the peace, well-being and health both physical and mental.

The court noted that:[10]

> It has been brought to our notice that the severe air pollution in the NCR is leading to multiple diseases and other health related issues amongst the people. It is said that the increase in respiratory diseases like asthma, lung cancer, bronchitis etc. is primarily attributable to the worsening air quality in the NCR. The damage being caused to people's lungs is said to be irreversible. Other health related issues like allergies, temporary deafness are also on the rise. Various experts have pointed towards multiple adverse effects of air pollution on human health like premature deaths, rise in mortality rates, palpitation, loss of vision, arthritis, heart ailments, cancer, etc.

The court recollected that on number of previous occasions also, it was impelled into ensuring clean air for the citizens of the capital region.[11]The court also observed[12] that:

8 See Report of the Air Pollution submitted by the Environment Pollution (Prevention and Control) Authority [EPCA] for the National capital Region dated Feb.1,2017 and EPCA report on November 7, 2016 informing Supreme Court of the smog episode and need for urgent action and strict enforcement of orders; *available at*: http://www.epca.org.in/EPCA-Reports1999-1917/Report-no.65.pdf . As per this report, several initiatives were taken to control pollution in NCR of Delhi which include imposition and collection of ECC, dis-incentivising diesel as fuel for vehicles, Transition to CNG, improve PUC certification programmes, and steps to reduce pollution from waste burning, paddy burning, from brick kilns and power plants.

9 *Arjun Gopal* v. *Union of India* (2017) 1 SCC 412.

10 *Id*. at 416.

11 See *M.C. Mehta* v. *Union of India* (1998) 6 SCC 60; *M.C. Mehta* v. *Union of India* (1998) 8 SCC 648; *M.C. Mehta* v. *Union of India* (1998) 8 SCC 206.

12 *Supra* note 9 at para 14.

> Grievance was made before us about the thousands, even a lakh of crackers on one string going off at night; and several such strings going off in the neighbourhood, totally unmindful of the aged, the tender and the ill. All this firework, even that, which is not noisy, leaves the ambient air thick with noxious particles. Marriage processions, *barats*, passing through an area generated the same kind of noise and leave behind the same kind of air, by the use of fire crackers. It is not necessary to speculate if those who suffer send their good wishes for the event, or to those 'celebrating' Diwali in this way.

Thus the court considered it inappropriate that explosives which are used as fireworks should be available in the market in the NCR till further orders. The court invoked Rule 118 of the Explosive Rules, 2008, framed under the Explosives Act, 1884 which provides for the manner in which licenses issued under the Explosives Act to store and sell explosives could be suspended or cancelled. Sub-rule (5) thereof specifically confers on the Central Government a power to suspend or cancel a license if it considers that it is in public interest. This provision also makes it clear that an opportunity to hear the licensee could be dispensed with if the Central Government considers that in public interest. The court found in the instant case that the grave air quality situation in NCR is one such case, where the court, can intervene and suspend the licenses to store and sell fireworks in the NCR. Therefore it directed the Central Government:

(i) To suspend all such licenses as permit sale of fireworks, wholesale and retail within the territory of NCR.
(ii) The suspension shall remain in force till further orders of this Court; and
(iii) No such licenses shall be granted or renewed till further orders.

In addition to the above, we direct the Central Pollution Control Board (CPCB) to study and prepare a report on the harmful effects of the materials which are currently being used in the manufacture of fireworks. The report shall be submitted within a period of three months to this court. It is worth noting that this ban has been continued in the subsequent year also, in spite of arguments based on the religious practices and beliefs.

Jurisdiction of NGT

In *Central India AYUSH Drugs Manufacturers Association* v. *State of Maharashtra*,[13] the writ petitioners questioned the validity of certain Rules of the Biological Diversity Rules, as *ultra vires* to the provisions of the Biological Diversity Act, 2002. They also sought a declaration that the Guidelines on Access to Biological

13 AIR 2016 Bom 261.

Resources and Associated Knowledge and Benefits Sharing Regulations, 2014 apply only to transactions involving non-Indian entities and the same do not apply to the Indian entities not treading any biological resources with non-Indian entities, and to declare said regulations *ultra vires* to sections 23 and 24 of the Biological Diversity Act, 2002 .

The preliminary and most important question was regarding the jurisdiction of the high court *vis-a-vis* that of the NGT, to deal with the challenge to the constitutionality of such rules and regulations made under the Biological Diversity Act, 2002. The court after referring to an array of judgments relevant to the jurisdiction of the NGT[14] and in the light of sections 14 to 18 of the NGT Act held that – the controversy presented to the court in writ petition does not qualify as a civil case wherein substantial question relating to environment is involved. Similarly, the NGT does not possess power to adjudicate upon the *vires* or validity of any enactment in schedule-I or of subordinate legislation framed under such enactment. However when questions of civil dispute are involved in a matter arising under any of the statutes covered under the NGT Act, the tribunal always enjoys the jurisdiction to decide the same. Thus in *M/s Omega Test House* v. *State of Rajasthan,*[15] dismissed a challenge to the validity of a notification issued by the Rajasthan State Pollution Control Board providing that only those analysis reports from the laboratories recognised by the Ministry of Environment and Forest and Climate Change would be accepted and referred the matter to the NGT.

In *Basil Attipetty* v. *Union of India,*[16] the high court directed Union of India and the state to set up a Circuit Bench of NGT at Ernakulum particularly in view of the arrangements made already. However in *Anil Hoble* v. *Kashinath Jairam Shetye,*[17] the Supreme Court took cognizance of an unauthorized construction on a plot falling within the Coastal Zone Regulation (CRZ) within 100 meters from the high tide line (HTL). The said construction was directed to be removed by the NGT and the same was upheld by the Supreme Court.

Stray dog menace

In *Animal Welfare Board of India* v. *People for Elimination of Stray Troubles,*[18] the Supreme Court considered the local government's duty under the Prevention of Cruelty to Animals Act, 1960 to control stray dogs, and issued certain guidelines.

14 *Bhopal Gas Peedith Mahila Udyog Sangathan* v. *Union of India* (2012) 8 SCC 326; *Anil Hoble* v. *Kashinath Jairam Shety,* AIR 2016 SC 5293; *Committee of Management* v. *Vice Chancellor* (2009) 2 SCC 630.

15 2016(6) FLT 32 (Raj HC)

16 2016 (6) FLT 23 (Ker HC)

17 AIR 2016 SC 5293.

18 (2016) 2 SCC 598.

19 AIR 2017 (NOC) 203 (Ker).

Mining

In *Basheer Mohd* v. *District Collector, Thrissur,*[19] the court dealt with quarrying of minor minerals and large scale blasting operations, causing damage to property of residents, and air pollution by generation of air pressure and noise by blasting. The court issued certain directions to mitigate the hardship.

In *Zala Vikram Singhji Kishor Singhji* v. *Alimiya Imam Ali Saiyad,*[20] a division bench of the high court dealt with the mining lease of bauxite stones and allotment of guacharo land for such mining purpose without resumption from the gram panchayat concerned. Holding that such allotment adversely affects the public at large, the court also held that though environmental pollution issues could be involved in the matter, they could not be decided only based on the apprehensions of the petitioner.

In *Social Action For Forest And Environment (SAFE)* v. *Union of India,*[21] the NGT addressed the issue of illegal mining on the river bed of river Ganga and consequent environmental degradation in the State of Uttarakhand. The Bench noted that the NGT had already issued certain directions in the matter in *NGT Bar Association* v. *Ministry of Environment and Forest,*[22] but also took cognizance of the fact that the officers who are expected to safeguard the flood areas and prevent any degradation to the ecology and environment are either active participants or mute spectators to the illegal mining .The NGT therefore was constrained to appoint a committee to inspect the site and find out the extent of illegal mining and assess the loss sustained by the environment and ecology and to suggest remedial measures including realization of the loss from the persons responsible, both illegal miners and officers who assisted them.

Identification of sand dunes within coastal zone

In *Cavelossom Villagers Forum* v. *Village Panchayat of Cavelossim*,[23] the NGT was approached contending that one of the respondents had undertaken a project of construction by dumping mud and erection of structures in the No Development Zone (NDZ) at village Cavelossim, Taluka Salcete in Goa. The main allegation was that such construction is undertaken destroying existing sand dunes in violation of CEZ Regulations and without obtaining permission from the concerned authorities. The NGT bench observed that: [24]

> The importance of coastal sand dunes is well documented. Coastal sand dunes are common in different parts of the world. These are natural structures which protect the coastal environment by absorbing energy

20 2016 (6) FLT 14 (Guj HC).
21 2016(6) FLT 288 (NGT-PB-ND) decided on Feb.18, 2016. See also, *T.N. Godavarman* v. *Union of India* 2016 (6) FLT 319 (NGT-PB-ND).
22 Original Application No.171 of 2013.
23 2016 96)FLT 154 (NGT-WZ).
24 *Id*., para 17.

> from wind, tide and wave action. Sand dunes have been considered as a specific ecosystem due to several common environmental features. Coastal sand dunes constitute a variety of microenvironments due to substrate mobility and d physical processes. Plants establishing on coastal sand dunes are subjected to several environmental fluctuations which affect their growth, survival and community structure. The most important factors include temperature, desiccation, low moisture retention, soil erosion, sand accretion, soil salinity, salt spray, changes in organic matter and pH. CSDs are dynamic but fragile buffer zones of sand and vegetation where the following three characteristics can be found: large quantities of sand; persistent wind capable of moving the sand; suitable locations for sand to accumulate. The Ecological roles and functions of coastal dunes include: essential store of sediments, protecting the land behind them from storm erosion and potential sea level rise; filter for rainwater and groundwater and in some situations, provided aquatic habitats such as dune lakes; protection of islands from storm surges, hurricanes and erosion; trapping of the windblown sand and prevention of sand being blown further inland by the vegetation; habitats for specially adapted plants, birds, and animals - several of which are now rare or endangered; a range of unique landforms and processes which have intrinsic value and are of scientific interest; and nesting sites for sea turtles and birds.

The tribunal reminded the parties that it had earlier issued clear directions to the GCZMA to carry out rapid survey tentatively identify sand dunes present in the villages with CRZ-I areas in coastal areas of Goa and locate them on the map within a period of four (4) weeks and shall not issue any permissions of such areas until detailed survey is conducted by the National Institute of Oceanography (NIO) is completed. It was also noted that this particular direction is very relevant as it was stated that the GCZMA had already issued work order to NIO, including identification and mapping of sand dunes in the State. The bench however observed that the GCZMA had not carried out such mapping survey. Therefore GCZMA was directed to immediately notify the objective criteria for identification of sand dunes in consultation with the Mo EF. This direction is important for identifying and preserving the sand dunes in the coastal zone.

Closure of polluting industries under the Water Act

During the year under survey, it has been observed that certain pollution control boards had directed the closure of industries allegedly polluting the environment. The affected industries naturally approached the NGT benches having jurisdiction seeking relief. The NGT had passed the following orders.

In *M/s Pushp Sanitary Appliances* v. *Delhi Pollution Control Committee*[25] three appeals were filed under section18 (1) of the NGT Act, 2010 questioning the orders issued by the Delhi Pollution Control Committee (DPCC) ordering the closure of the industry as well as disconnections of essential supplies like water and electricity to the factories under Section 33-A of the Water (Prevention and Control of Pollution) Act, 1974 (the Water Act).In the instant case ,the NGT found merit in the contentions raised on behalf of the appellant though they did not express any opinion at that stage. The detailed reply as submitted by the industry taking up plea that it has consent of the board, its ETPs are functioning properly, analysis reports have been taken. Furthermore the unit showed its willingness in using the latest and recent technology to ensure that they become a zero discharge unit. They had also specifically stated that they had permission/ authorization for storing of Hazardous waste.

The NGT observed that passing a direction of closure under section 33-A of the Water Act is an order of very serious consequence. In fact, it amounts to civil death of a unit. The order has to be passed strictly in compliance with the procedure prescribed under section 33-A of the Water Act. The procedure prescribed under Rule 34 of the Water (Prevention and Control of Pollution) Rules, 1975 has to be adhered to. The procedure prescribed requires service of the copy of the proposed direction and an opportunity of not less than 15 days from the date of service of a notice to be provided from the date of the objection and these objections would be dealt with as per procedure provided under the sub-rules (3) and (5) of the rules, opportunity of being heard has to be provided even to occupier and after considering the objections, the order containing directions has to be passed. This is a mandatory procedure and in any case the principles of natural justice are to be complied with. Person must be provided an opportunity before any adverse order could be passed against him, there should be application of mind, that is, the authority must deal with the objections raised by the affected party and then an order which is reasoned should be passed.

Pollution of river Ganga and its tributaries by tanneries:

In *Krishna Kant Singh* v. *Haque Tanners*[26] the NGT took note of the pollution of river Ganga and its tributaries and disposed of 130 original applications filed by various industries, in response to the notices issued by the Uttar Pradesh Pollution Control Board (UPPCB) in terms of the order of the tribunal. It is pertinent to note that the tribunal *vide* its order on December 15, 2014 had directed the concerned states to report to the tribunal as to how many industries are located on the bank of river Ganga and its tributaries in respective states? How many of these industries or units are operating without obtaining consent of the board? What steps have been

25 2016(6) FLT 60 (NGT- PB-ND). See also *Angrej Singh* v. *State of Punjab*, 2016(6) FLT 471 (P&H HC) where the court directed the regular monitoring of a rice mill in a village to check pollution.

26 2016 (6) FLT 65 (NGT-PM-ND).

taken against the defaulting industries? Which are the industries or industrial clusters which are stated to operate with the consent of the board? and whether the effluent discharged by them is within the prescribed limit or not? Also if the industries which are stated to be Zero liquid Discharge units actually discharging no liquid and details of the process. In this very order it was also noticed that number of industries be closed their business voluntarily or under the orders of the board, courts and tribunal. They were nearly three such industries. Vide this very order the principal committee appointed in the main case was also directed to declare the criteria for categorization of industries as red, green and orange. They were also directed to provide clear definition of zero liquid discharge unit and the guidelines which are required to be issued in that behalf along with the economic and other aspects examining the possibility and utility, viability of the direction regarding installation of online monitoring system even by the small industries. After the joint inspection team and the UPPCB had conducted an inspection of various industries and upon perusing their reports, the NGT observed that all the industries or all the applicants can be categorized under three different heads *viz.,* industries which have been found to be compliant upon joint inspection, Non compliant industries which can broadly be bifurcated into two categories firstly non compliant industries, which are presently operational, secondly the one non compliant industries which are lying closed or have been ordered to be closed by the board and application for permission to re-commence their operations are pending before the tribunal .The tribunal noted that about 11 industries were lying closed on the date of joint inspection. The industries were the ones which were operational but chose to shut down their plants so that the joint inspection team which even included representatives from IIT Roorkee could not inspect the unit and find the correct position in regard to their operations and the extent of pollution that they were causing and direct them to operate strictly in consonance with the prescribed parameters and standards.

In respect of these 11 industries, the tribunal observed that their right to carry on business is not absolute but is subject to the reasonable restriction imposed by law that is the Water (Prevention) and Control of Pollution Act, 1974 and the Air (Prevention) and Control of Pollution Act of 1981. The conduct of these industries is such that they cannot be granted any discretionary relief.

Admittedly all of them are using chromium which is found in the effluents some of them have installed chromium recovery units while some of them have not even done that. Whether the chromium recovery units are working effectively and the effluent finally discharge into the conveyer belt or the river carries chromium or not, is a question of serious consequence. Since they have been granted consent by the board they have no reason to stop their operations on the date of inspections. The units which are lying closed under the orders of the board obviously shown that they were polluting units which lead to revoking of the consent which was granted to them by the board in and directing the closure. Thus, for these reasons the tribunal directed that all the 11 industries remain closed and if operating shall be shut down forthwith. They would be at liberty to install anti pollution devices including chromium recovery unit and ensure that the trade effluent that they are discharging into the drain or the

conveyer belt leading to the CETP (Common Effluent Treatment Plants) should be strictly in accordance with the prescribed parameters. They should also ensure that their plant is perfectly in operation and management in all respects. Then they can move an application to the board for grant of consent to operate with appropriate documents. If the consent is granted by the board same shall become effective only after the joint inspection team has inspected the unit and submitted report in that regard and further orders of the tribunal. The CETP at Jajmau was directed to pay sum of Rs. one lakh as a token environmental compensation for causing pollution and for improper operation and maintenance. The amount shall be paid to the UPPCB and it shall obtain the consent of the Board within three months from the date of this judgment. A clear analysis of this judgment shows that the NGT has cracked the whip at least against the most polluting industries. It is hoped that this action would be an eye opener to other industries continuing to pollute the river Ganga and its tributaries.

Noise Pollution

In *Sukumar Balla* v. *Union of India,*[27] the Kolkata Bench of the NGT dealt with the issue of mandatory direction against a particular respondent to prohibit the use of amplifier system for which permission was given in 2015 by the sub divisional officer to use microphones/amplifiers for religious functions during the holy Ramjan month. It was also noted that the tribunal by a subsequent order in November 2015 directed the respondent, who is the in charge of the religious place, to remove the sound system which was already installed inasmuch as the permission to use the same had already lapsed due to efflux of time for which the permission was granted. In the instant case, the tribunal was informed that the religious place had been continuing to use the sound amplifiers even after the lapse of the holy month for which permission was granted by the competent authority. The tribunal made the following observations which should guide all the concerned relating to noise pollution related to religious functions:[28]

> There can be no dual opinion to the ground reality that in particular circumstances, during religious activities like Azan in the month of holy Ramjan, there may be necessity of requiring amplification of sound, so temporary permission could be granted by the competent authority during the staid period, as provided in the relevant Rules. In the present case, the competent authority granted permission in terms of the Noise Pollution (Regulation and Control) Rules, 2000 (for short Rules) under provisions of Rule 3, Rule 5 thereof. It is important to know that in rule 5 of the Rules there is restriction on the use of loud speakers/public address system and sound producing instruments. It is clearly provided therein that loud speakers/public address system and

27 2016(6) FLT 80 (NGT-EZ).
28 *Id*. at para 4-5.

> sound producing instruments shall not be used at night time except with prior written permission of the authority. Sub-rule (3) of Rule 3 of the Rules reads as follows:-
> " 3. "(3) The State Government shall take measures for abatement of noise including the noise emanating from vehicular movements, blowing of horns, bursting of sound emitting fire crackers, use of loud speakers or public addressing system and sound producing instruments and ensure that existing noise levels do not exceed the ambient air quality standards specified under these rules".

There is right to perform religious activity but it has to be balanced with environmental law and that is why the Noise Rules and other laws have been enacted. We cannot overlook the fact that before amplifier or loudspeakers were invented, religious activities were going on and similarly before the Dolby sound or DG system was introduced, Durga Puja and other religious activities like Ganesh Puja were being celebrated. For the purpose of using amplifier or loudspeaker, a temporary permission 5 for a particular period is granted by the competent authority in accordance with rules but that does not mean that there is a perennial right to use the amplifier permanently.

The tribunal therefore considered the entire legal position, particularly the rights of parties, and also the fact that so far there was no compliance of the order of the tribunal regarding removal of the microphone/amplifier as directed in the earlier order. The tribunal was of the view that there was no due regard to the law paid by the defaulter whom the tribunal did not wish to name at that juncture. Under the circumstances, there was a direction to the authorities to immediately, within a week, remove the amplifier/microphone or any other system like Dolbi system/DJ system, from the premises in question. If there was any resistance from anybody, due protection should be given to the executor of law in doing their work under police protection.

Poultry farms- environmental pollution and health hazards

Though poultry products constitute an important source of food in modern times, running the poultry forms without following the regulations may lead to greater danger leading to more pollution and health hazards. The NGT has taken cognizance of this problem first in the case of *Dipak Mondal* v. *Pollution Control Appellate Authority West Bengal*[29] and later in *Qamaruddin Gazi* v. *Chief Secretary, Government of West Bengal.*[30] The NGT noted the environmental pollution and injury to the human health, particularly to the people living nearby a poultry farm established in a residential area particularly when such farm has no consent to establish and consent to operate to run the poultry farm in a residential area. While It is an admitted fact that there is no guideline framed by the West Bengal State Pollution Control Board relating to

29 2016(6) FLT 112(NGT-EZ).
30 Original application No.52/2015/EZ; MANU/GT/002T/2016.

establishment of poultry farm in a particular site though as per management regime it is an industry of green nature, having regard to the impact on human body, particularly the health hazards and nuisance from the odour as well as pollution of the air and water from the wastes as generated in a poultry farm is concerned, the issue was dealt with exhaustively in the latter case. The tribunal held that under section 2(a) of the Air (Prevention and Control of Pollution) Act, 1974 the air pollutants are defined, and the poultry farms are covered under the definition. Similarly, having regard to the emissions from the poultry farms, the Air (Prevention and Control of Pollution) Act, 1981 is clearly applicable for regulatory measure regarding management and regulation of site of poultry farms. It was also noted that the CPCB has framed guidelines for poultry farms and the State Government of Haryana on recommendation of Haryana State Pollution Control Board has issued directions under section 5 of the Environment (Protection) Act, 1986 based on those guidelines. The NGT therefore directed the constitution of a committee consisting of Director, Animal Husbandry and Veterinary Services, Head of Regional Office, CPCB, Kolkata and Member Secretary, State Pollution Control Board (as member-convener) to frame guidelines for siting criteria and management of waste and pollution generated from 'poultry. Accordingly, the NGT directed that the interim order passed by it, against respondents to stop their poultry farm business, would continue till 'Consent to Establish' and 'Consent to Operate' are granted by the state pollution control board.

Ban on export of shark fins upheld

The High Court of Madras dealt with a challenge to a notification issued by the Director General of Foreign Trade, prohibiting the export of Shark fins of all species of Shark in the case of *Marine Products Exporters Association* v. *Union of India.*[31] The case of the petitioner was that India, which has a long coastal line of about 7500 Kms, has thousands of fishing villages along the coastal line. Though Shark meat is consumed only by a very small percentage of the Indian population, Shark fins are used extensively by the Chinese, who consider the same to have medicinal effect. Therefore, several countries export Shark fins to China. It appears that the export of Shark fins from India is increasing year by year since 2012-13. According to the petitioner, there are 480 species of Shark, out of which only 18 species are protected by an International Convention to which 180 countries including India are signatories.

The petitioner challenges the impugned notification primarily on the following grounds:

(i) That under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), only 18 species out of 480 species of Shark are protected and hence, a total ban on export is contrary to the Convention;

(ii) that even under Schedule I to the Wild Life Protection Act, only 6 species of Shark and 3 species of Ray are prohibited of being

31 2016 (6) FLT 193 (Mad HC).

hunted and hence, the Notification issued under the Foreign Trade Policy is contrary to law;

(iii) that the decision to impose a total prohibition was taken in a meeting convened by the Secretary to Government in the Ministry of Commerce and Industry, wherein a proposal was mooted by one member whose credentials are not known and especially when the proposal made by the member was without any basis or factual details justifying the ban; and

(iv) That when the hunting of Shark for domestic consumption is not prohibited, the total prohibition of export of Shark fins is irrational, arbitrary and unjustified.

On the other hand, the respondent contended that section 5 of the Foreign Trade (Development and Regulation) Act, 1992, confers power upon the Central Government to formulate and announce the Foreign Trade Policy and also to amend the policy from time to time. based on representation from different quarters on preventing cruelty to animals and request to department of commerce to ban export of shark fins, that while there was a ban on the export of 9 species of sharks as notified by Ministry of Environment Forests and Climate change, it is extremely difficult, at the time of capture of fishes/sharks, for anyone to differentiate between the prohibited species and non-prohibited species and that there should be a complete ban of shark fishing for fins in the Indian EEZ as it was resulting in not only destruction of Indian fish resources and threatening the livelihood of food security of Indian Fishermen, but also resulting in the degradation of the marine environment.

After considering the rival contentions, the court rejected the contentions of the petitioner and upheld the validity of the notification on the grounds that a municipal law which prescribes a higher standard will prevail over the prescription contained in the Convention, that there is no conflict between the legal framework under the Wild Life (Protection) Act, 1972 and the Foreign Trade (Development and Regulation) Act, 1992. In fact, the legal framework has been developed in such a manner that the Ministry of Environment and Forests works in close coordination with the Ministry of Commerce. What is prohibited under the Wild Life (Protection) Act, 1972, cannot even be hunted and hence, there is no question of any export of such an item. But, what is not prohibited under the Wild Life (Protection) Act, 1972, can be exported, subject only to a total prohibition or a restriction under the Foreign Trade Policy issued in terms of the Foreign Trade (Development and Regulation) Act, 1992. There is no conflict between the two if an item not prohibited under the Wild Life (Protection) Act, 1972, is prohibited of being exported under the other enactment and 3) the distinction that the respondents have made between domestic consumption and export, is actually a reasonable classification, which does not offend article 14 of the Constitution.

Tree felling and impact on environmental protection

During the year under survey, the question indiscriminate tree felling by private persons and public authorities include certain municipal corporations came up for

challenge before the NGT and courts. An analysis of the orders given shows that the NGT has been steadfast in restraining tree cutting for any reason.

In *Amandeep Aggarwal* v. *State of Punjab,*[32] the NGT took note of the indiscriminate cutting of trees in the State of Punjab at various road widening projects and canal banks. The applicant submitted that the trees were cut without proper permission and various projects were carried on without forest clearance thus there was unscientific removal of trees and huge trees which were thrown on the road side. Further there was no effort made for transplantation of trees much less of compensatory afforestation. This was particularly related to Nawashahar and Jallanddar Districts. Convinced with the *prima facie* case, the NGT restrained the State of Punjab, any project proponent, various authorities and departments of State of Punjab from felling and cutting of any tree in the entire State of Punjab without specific permission of the tribunal.

In Association *for Environment Protection Rep. by its Secretary* v. *The Principal Chief Conservator of Forests, Kerala,*[33] an application was filed in public interest against the proposed indiscriminate cutting of shady trees in the Railway Compound of Aluva Railway Station in Ernakulum District, which is contrary to the endeavours of tree conservation, internationally accepted. The trees existing within the compound of the said railway station provide shade and give oxygen, which makes the atmosphere cool and keeps a better environment. If discriminate cutting of trees is allowed, it would cause severe impact on the atmosphere of the area. Considering the importance, the Government of Kerala has made suitable amendment to the Kerala Promotion of Tree (Growth in Non-Forest Areas) Act. The authority in charge of the property, where the trees stand has to necessarily make an application there for to the competent authority who would decide as to the steps to be taken including the planting of saplings of tree species in the same or nearby locality. While so, the Divisional Manager (Works) Southern Railway, Thiruvananthapuram, the in charge of all the railway properties had decided to cut and remove about four number of big trees standing in the railway station compound at Aluva. The reason stated for doing so was for the construction of shelters to the vehicles being parked by the commuters of railway. On enquiry, the applicant came to know that no application was either filed or any orders were passed for cutting and removing the trees.

To the NGT it was quite evident that a number of fully grown trees are situated within the compound of Aluva railway station. The NGT held that though the area within which the railway station is situated is within the control and management of the respondent, there cannot be any defence by railway authority that they are entitled to cut and fell trees without getting necessary permission from the concerned authorities as required by law.

32 2017 (2) RCR (Civil) 768; MANU/PH/0396/2017.

33 2016(6) FLT 214 (NGT-SZ).See also, *Nagrik Chetna Manch* v. *State of Maharashtra* 2016(6) FLT 326 (Bom HC) where the high court refused give restricted meaning to the forest under the Act of 1927 holding that it includes urban forestry also.

In *Pilerne Citizens Forum* v. *Chief Secretary, Government of Goa,*[34] the applicant approached the NGT bench against alleged act of cutting trees and thereby destruction of forest for alleged act of cutting trees and thereby destruction of forest in the areas certain areas. However, by virtue of power conferred under provisions of the Forest Act, the Forest Department had carried out investigation/verification and had come to logical end that there was felling of trees in non-forest area, and not in the forest area, as alleged by the applicant. Besides, it was submitted on behalf of the forest department that punitive action has been taken against one Respondent for felling of trees, without permission in non-forest area and they had also stated that penalty imposed on him. In view of such submission of forest department, and undisputed position, the NGT was satisfied that no further action from the tribunal was required as it might amount to double jeopardy.

Indiscriminate Exploitation of Ground water

In *Mukesh Yadav* v. *State of Uttar Pradesh Through Principal Secretary Uttar Pradesh,*[35] the application was filed against illegally digging the land area up to 40 feet deep for the purpose of construction near village Bishrakh, Gautam Budh Nagar, Uttar Pradesh. He contended that a construction company, while building residential apartments in Greater NOIDA West, adjacent to village Bishrakh in the District Gautam Budh Nagar, have started digging soil up to a depth of 40 ft which is causing water to ooze out from the construction site and the same is being pumped out and thrown away in the Hindon river. As a consequence thereof, hand pumps and the lands in the neighbouring village and other adjacent areas have dried up and this is adversely affecting agriculture and is creating a famine like situation in the villages. He further contended that if the withdrawal of ground water continues for some more time, the village Bishrakh will have no water for drinking and irrigation purposes. The bore wells in the adjoining villages have to be dug deeper and deeper due to the continuous decline of the water table.

On the other hand, the respondent construction company contended that they have already laid down the foundation of three buildings and their pillars have been constructed. As per the respondents, the water is seeping naturally in to the foundation of the proposed building due to the rainy season and that the respondents are only removing the said water into two harvesting pits and two artificial ponds constructed by the respondents for the purpose adjacent to the construction site. The respondents have denied that they are extracting water illegally and throwing into Hindon River. The respondents have also submitted that the housing project has obtained environmental clearance from the State Environmental Impact Assessment Authority, Uttar Pradesh. The NGT after reviewing the law, case law, facts and contentions of the parties has made the following observations which are self explanatory.

34 App.No.139 of 2015 before NGT (Western Zone), Pune; MANU/GT/0098/2016.
35 2016(6) FLT 295 (NGT-PB-ND).

India is the largest groundwater user in the world, with an estimated usage of around 230 cubic kilo meters per year, more than a quarter of the global total usage. With more than 60 percent of irrigated agriculture and 85 percent of drinking water supplies dependent on it, groundwater is a vital resource for rural areas in India. Reliance of urban and industrial water supplies on groundwater is also becoming increasingly significant in India. Through the construction of millions of private wells, there has been a phenomenal growth in the exploitation of groundwater in the last five decades. This era of seemingly endless reliance on ground water for both drinking 24 water and irrigation purposes is now approaching its limit as an increasing number of aquifers reach unsustainable levels of exploitation, and a 2004 nationwide assessment found 29 percent of groundwater blocks to be in the semi-critical, critical, or overexploited categories, with the situation deteriorating rapidly. The potential social and economic consequences of continued weak or non-existent ground water management are serious, as aquifer depletion is concentrated in many of the most populated and economically productive areas. The implications are disturbing for attainment of the Millennium Development Goals, for sustaining economic growth and local livelihoods, and for environmental and fiscal sustainability. The consequences will be most severe for the poor. Furthermore, climate change will put additional stress on ground water resources; while at the same time will have an unpredictable impact on groundwater recharge and availability.[36]

The NGT also referred to the judgment of the High Court of Kerala in the matter of *Perumatty Grama Panchayat* v. *State of Kerala,*[37] also known as the landmark "Coca Cola Case" decided on the issue of the excessive exploitation of ground water which had held:[38]

> Ground water is a national wealth and it belongs to the entire society. It is nectar, sustaining life on earth. Without water the earth would be a desert… Our legal system – based on English common law – includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea, shore, running waters, air, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These 25 resources meant for public use cannot be converted into private ownership (emphasis supplied)… In view of the above authoritative statement of the Hon'ble Supreme Court, it can be safely concluded that the underground water belongs to the public. The State and its

36 The World Bank Report – Deep Wells and Prudence, 2010, para 34. *Available at*: https://siteresources.worldbank.org/INDIAEXTN/Resources/295583126819013719 5/DeepWellsGroundWaterMarch2010.pdf(last visited on Oct. 10, 2017).

37 2004 (1) KLT 731.

38 *Id.*, para 25.

> instrumentalities should act as trustees of this great wealth. The State has got a duty to protect ground water against excessive exploitation and the inaction of the State in this regard will tantamount to infringement of the right to life of the people guaranteed under Art. 21 of the Constitution of India. The Apex Court has repeatedly held that the right to clean air and unpolluted water forms part of the right to life under Art. 21 of the Constitution… the Panchayat and the State are bound to protect ground water from excessive exploitation.

This judgement clearly laid down that the State has a right and obligation to restrain the use of groundwater if it causes harm to others.

The NGT also relied upon a judgment of the apex court. Concerned with the rampant, indiscriminate and unscientific exploitation of ground water and a total absence of an effective regulatory mechanism to monitor and manage ground water resources, Supreme Court of India in *M. C. Mehta* v. *Union of India*.[39] Directed, "The Central Government in the Ministry of Environment and Forests shall constitute the Central Ground Water Board as an Authority under section 3(3) of the Act. The Authority so constituted shall exercise all the powers under the Act necessary for the purpose of regulation and control of ground water management and development. The Central government shall confer on the authority the power to give directions under section 5 of the Act and also powers to take such measures or pass any orders in respect of all the matters referred to in sub-section 2 of section (3) of the Act. The Board having been constituted an Authority under section 3(3) of the Act, it can resort to the penal provisions contained in sections 15 to 21 of the Act. The main object for the constitution of the board as an authority is the urgent need for regulating the indiscriminate boring and withdrawal of underground water in the country. The Authority so 26 constituted shall apply its mind to this urgent aspect of the matter and shall issue necessary regulatory directions with a view to preserve and protect the underground water. The Central Government in the Ministry of Environment and Forests shall issue the necessary Notification under section 3(3) of the Act as directed, before January 15, 1997."

It was also noted that in pursuance to the direction of the Supreme Court, the Central Government in the Ministry of Environment and Forests issued the notification constituting the central ground water board as an authority for the purposes of regulation and control of ground water management and development. The Central Ground Water Authority was initially constituted for one year in January, 1997. The term of authority was extended for five years in January, 1998. The Authority was made a permanent body in November, 2000. The authority would have the following function, "The Authority has to exercise the following powers and perform the following functions namely: - I. Exercise of powers under section 5 of the Environment (Protection) Act (EPA), 1986 for issuing directions and taking such measures in respect

39 (1997) 11 SCC 312.

of all the matters referred to in subsection (2) of section 3 of the said Act. II. To resort to penal provisions contained in Sections 15 to 21 of the said Act. III. To regulate and control, management and development of ground water in the country and to issue necessary regulatory directions for the purpose. ....”

The NGT went on to hold that although the decline in the ground water table is attributable to withdrawal of ground water for various uses like agriculture, drinking and other developmental activities, it cannot be disputed that there is an adverse impact on the water table due to the large scale construction activity particularly in and around the area in question. The facts in the case established that the Project Proponents have not taken effective measures for Rain Water Harvesting and recharge of ground water as required under “General Conditions” and the “Specific conditions” of the EC as per the inspection report filed by CGWA. The said report of CGWA clearly indicates that although the recharge pits were constructed, they were not properly maintained and that even the recharge pipes were not properly designed thereby causing pollution of ground water.

Holding that the reply of the CGWA clearly established that the project proponents have neither applied nor taken any permission of the CGWA in terms of condition imposed in the EC granted to the Project Proponent. The Project Proponents had not even disputed this aspect. It was thus clear that the Project Proponents had violated this condition of the EC. The Public Authorities, namely, the CGWA, UPPCB, Greater NOIDA Authority and the State had also failed to fulfil their statutory obligation to regulate activities which will impact ground water, either directly or indirectly. Even though construction at the site admittedly started in April, 2014, the NOC (Consent to 28 Establish) was granted by the Uttar Pradesh Pollution Control Board only in June, 2015 *i.e.,* after one year and two month of construction having commenced. Indisputably, the construction commenced before the grant of no objection certificate by the Uttar Pradesh Pollution Control Board. Thus, there was absence of a complete and comprehensive compliance to the EC granted under the EIA Notification of 2006 issued under the Environment (Protection) Act 1986, by the project proponent. The project proponents had failed to take effective steps for the recharge of ground water on account of the defective design and lack of maintenance of the rain water harvesting pits. In view of these findings, the NGT held that the project proponents had not observed complete and comprehensive compliance to the conditions imposed in EC and had violated the conditions of EC.

The NGT invoked the polluter pays principle as recognised by the Supreme Court in *Indian Council for Enviro-legal Action* v. *Union of India* [40] and held that respondent had, by their actions, caused serious environmental degradation and necessarily, they are liable to pay environmental compensation for restoration of environment. Therefore, it was directed that the builders should pay Rs 50 lakhs as environmental compensation under the “Polluter Pays Principle”. The amount shall be paid to Uttar Pradesh Pollution Control Board with in a period of two months to be

40 (1996) 3 SCC 212.

deposited in a separate account maintained by Uttar Pradesh Pollution Control Board. The NGT also issue the following directions:[41]

i. The State of UP shall constitute a Committee consisting of District Magistrate Gautam Budh Nagar, representative of the UPPCB, a representative of Water Resources Department of State of UP, Senior Officer of Greater NOIDA and the representative of CGWA to prepare a plan for environmental restoration in the affected villagers in question, including measures for improving ground water recharge, arresting surface run off, rain water harvesting and other water conservation measures in the area. While finalising the plan, consultation with the affected villagers should also be carried out to elicit their suggestions in the matter.
ii. Greater NOIDA Authority shall in consultation with the CGWA issue guideline for ensuring that the future constructions permitted in the area take into account the status of ground water table and impose appropriate restrictions on digging below the ground water level for the purposes of construction of basements in the multi-story buildings/ apartments and other related activities.
iii. The Environmental Restoration Plan and the Guidelines for regulating constructions at (i) and (ii) Supra should be prepared within a period of 3 months and filed in the Registry of the Tribunal.

This judgment has a far reaching effect on those builders and officials who commit or aid in indiscriminate exploitation of ground water.

III CONCLUSION

On a clear analysis of the aforementioned response from the judiciary and the NGT on one hand, and from the pollution control boards and the governments concerned it becomes clear that it has been consistent and progressive. For instance, the Supreme Court refused to cave in ,with regard to the banning the sale of fire crackers in the NCT of Delhi brushing aside even sensitive grounds like religious freedom. The Kolkata Bench of the NGT came down heavily on those religious places temporarily permitted to use loud speakers and sound amplifiers but which continued to use them in disregard of the terms of permission. Illegal exploitation of ground water for construction purposes has been frowned upon. Regulations relating to establishment and running of poultry farms came to be issued. In certain cases even compensatory damages have been imposed on the wilful defaulters degrading the environment. Thus it can be summarised that the year under survey had witnessed a progressive and active year of environmental protection.

41 *Supra* note 35.