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ENVIRONMENTAL LAW

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I INTRODUCTION

THE WORLD has been grappling with the issue of environmental protection. Each year, we are witnessing complex issues arising out of many forms of environmental hazards. The year 2017 was no exception. In a populous country like India, certain unique issues arise as majority of the Indians follow the principle of anthropocentrism and the regulators sometimes favour corporate-centrism. The year under survey also has witnessed certain major challenges to the ecological and environmental protection in India. They included issues like disappearance of urban lakes, pollution due to fireworks, hazards of kite flying, supply of drinking water to cool-drink manufacturing companies, overzealous pet or bird lovers causing pollution in apartments, attempt of car manufacturing companies to release vehicles with old emission standard, and felling of trees etc. On the legal front, there appears to be no major or new policy decision taken by the union and State governments in relation to environmental protection. On the judicial front, we have witnessed the usual balanced role of the bodies played by the Supreme Court, NGT and High Courts. Some of the major findings during the survey are as under:

II REVIVAL OF WATER BODY IN NCT OF DELHI

In *Sunder Singh, President Residents Welfare Association, Issarpur New Delhi* v. *State of NCT of Delhi,*[1] the NGT Principal Bench, New Delhi delivered an important judgment in relation to revival of water bodies. This case was filed under section 18(1) read with section 14(1) of the National Green Tribunal Act, 2010 by the President of the Residents Welfare Association (RWA) of Issarpur, NCT, New Delhi being aggrieved by the inaction of the Respondent authorities in removal of the illegal encroachments, even after the judgment of the Delhi high court in *Vikram Kumar Jain* v. *Government of NCT Delhi*[2] made in the water body 'Johad' admeasuring 6

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1 2017 (7) FLT 28 (NGT-PB-ND).

2 W.P. (C) No. 3502/2000.

Bighas and 13 Biswas of the Gram Sabha of Issarpur. He also prayed for evicting the encroachments from the said land and issuance of a direction to the Respondents to come up with a proper scheme for restoring the said water body.

The Applicant contended that there has been illegal encroachment on the said area and no action has been taken by the Respondents in furtherance of the encroachment of water bodies in and around NCT Delhi. The said inaction by the authorities has resulted in encroachment as well as alteration of the status of water bodies of Issarpur, either by construction of private residences or the catchment areas having been obstructed and some area of the water body being used as footpaths by the encroachers. This indiscriminate use has resulted in contamination of the ground water and hence it has become unfit for human consumption. The Applicant contended that the illegal encroachments and the indiscriminate use of the water body have led to violation of various rules framed under the Environmental (Protection) Act, 1986. The Applicant has placed reliance on various judgments of the apex court and the High Court of Delhi like *Jagpal Singh* v. *State of Punjab,*[3] *M. I. Builders (P) Ltd.* v. *Radhey Shyam Sahu,*[4] *Hinch Lal Tiwari* v. *Kamala Devi,*[5] the judgment of the Delhi high court in *Residents Welfare Association Ekta Enclave* v. *State of NCT of Delhi.*[6]

On the other hand, the respondents and also the court commissioners informed the tribunal that the area of 'Johad' was originally 6 Bigha and 13 Biswa out of which 2 Bigha 13 Biswa land was developed as an open land for the use of villagers. It was also informed that the water body at present consists of about 4 Bighas land only. In light of the arguments advanced, documents on record and the pronouncements by the Supreme Court, the High Court of Delhi and the NGT itself, referred to above, the tribunal disposed of the Application with the directions to the Sub-Divisional Magistrate, to remove encroachments, if any, and keep the existing pond 'Johad', measuring 4 Bighas; improve its cleanliness within a period of 3 months and eventually develop the water body into a reservoir. The tribunal also constituted a high level committee of the NCT administration to ensure that both the 'Johad' and the community land, totally measuring 6 Bigha and 13 Biswas, be excluded from any residential/ commercial infrastructure creation that may be planned in future so as to maintain the characteristics of the wetland, both in terms of their water holding capacity and their environmental role.

In fact, this appears to be the status of many of the water bodies in India in view of the rapid urbanization and industrialization. The directions of the NGT therefore have to be welcomed.

In *Diwan Singh* v. *Union of India*[7] a similar application was filed seeking restoration of water bodies in Dwarka, New Delhi, which are in need of restoration/

3 (2011) 11 SCC 396.
4 (1999) 6 SCC 464.
5 AIR 2001 SC 3215.
6 WP. No. 4437/2013 & CM No. 7 10260/2013.
7 2017 (7) FLT 222 (NGT Principal Bench, New Delhi).

revival and protection. The Applicants' prayer was not only for protection and revival of the 33 water bodies but also for direction to the DDA, to identify 12 more water bodies in Dwarka area and take necessary steps for their protection and revival. The NGT stated that a perusal of the observations and recommendations by the Central Ground Water Board (CGWB) clearly brings out the presence of 33 water bodies, most of which vary in size from 2 to 5 Acres, are subjected to illegal dumping, flow of sewage water, blockage of drainage channel leading to the water bodies being adversely affected and there is a complete absence of any maintenance like desilting, dredging. The NGT further observed that:[8]

> Water bodies and wetlands play an extremely crucial role in ground water recharge, maintenance of aquatic biodiversity, provide habitat for avifauna as well as aquatic life, and help regulate temperature and humidity in the locality, and thereby ameliorate the severity of extreme temperature and also provide drinking water during critical months to the wild life. Besides, a water body receives the surplus run off, subsurface and base flow from the adjoining catchment area during the monsoons and helps in the recharge of aquifers, thereby providing a dynamic equilibrium with the catchment as well as the aquifers underneath. Protection of water bodies is, therefore, critical to the associated aquatic and terrestrial ecosystem of the area. However, the capacity of the water bodies can be severely impacted adversely in the absence of a proper vegetative cover, unregulated flow of domestic sewage and industrial effluent into the water body or dumping of municipal waste which some of the water bodies in the present Application have been a victim of.

In the light of the documents on record and the Constitutional and statutory position enunciated in the various pronouncements by the Supreme Court, the NGT allowed the Original Application with the following directions:

i. The DDA shall inventorize all the water bodies and prepare a comprehensive management plan for water bodies and their management and revival in Dwarka. The DDA being land owning agency, shall take all steps for removal of all the illegal encroachments on water bodies, their catchments, removal of unauthorized dumped municipal waste including construction and demolition waste (*malba)*. This shall be done within a period of 3 months.
ii. The MoEF & CC shall after receipt of proposal from the Government of NCT Delhi, notify the wetlands under the Wetlands (Conservation and Management) Rules, 2010
iii. Management Plan shall also be prepared for greening of the area with local indigenous species through the Horticulture Department of DDA.
iv. The DDA shall also survey and map all the primary, secondary, tertiary drains leading to the water bodies and also make provision to divert flow

8 *Id.* at para 15.

from drains into the water bodies in case some of the drains do not have an outfall into the water body, and

v. No domestic sewage/industrial effluent should be permitted to flow into the water bodies and any domestic sewage which is flowing into the 20 water bodies such domestic sewage should either be diverted into sewage network in the area or trapped by constructing individual septic tanks by the households.

Thus, this judgment also assumes importance in restoration of water bodies in the urban areas as well.

III JURISDICTION OF NGT

The NGT constituted under the National Green Tribunal Act, 2010 has come to acquire plenary jurisdiction in the matter of environmental protection in India in recent times. One of the questions that are raised frequently is whether the NGT can pass any *ex parte* interim orders without hearing the concerned party. In *K K Rocks & Granites India (P) Ltd* v. *Latha,*[9] the Kerala high court considered the validity of staying the operation of an Environmental Clearance without hearing the concerned party in a matter relating to granite quarrying. In the instant case environmental clearance for renewal of the quarrying lease was obtained by the petitioner from the State Environmental Impact Assessment Authority. The first respondent challenged the Environmental Clearance before the Tribunal in an appeal under the Act and the Tribunal stayed its operation without notice to the petitioner. The petitioner challenged the order on the ground that the Tribunal has no jurisdiction to pass an *ex-parte* interim order in any matter. The petitioner contended that the Tribunal being a creature of the statute, it is bound by the provisions of the statute, and that in the light of section 19(4)(i) of the Act which provides that an interim order can be passed by the Tribunal only after providing the parties concerned an opportunity to be heard, the Tribunal cannot pass an *ex-parte* interim order.

The High Court held that as seen from section 19 of the Act that the Tribunal though not bound by the procedure laid down by the Code of Civil Procedure, 1908 the statute provides that the Tribunal shall be guided by the principles of natural justice. Section 19(4) of the Act confers on the Tribunal the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 in relation to matters enumerated therein for the purpose of discharging its functions while section 19(4) of the Act provides that the Tribunal will have the same power as are vested in a civil court in the matter of passing interim orders, it imposes a condition therein that an interim order shall be passed by the Tribunal only after providing the parties concerned an opportunity to be heard. It is, therefore, clear from the scheme of the Act that the legislature intended to confer power on the Tribunal to pass interim orders only after

9 2017 (7) FLT 7 (Kerala HC).

providing the parties concerned an opportunity to be heard. The said intention of the legislature is also evident from the provision contained in section 19(1) of the Act that the Tribunal shall be guided by the principles of natural justice. In the circumstances, it was held that the Tribunal has no jurisdiction to pass an interim order without hearing the party affected thereby.

IV CONCURRENT JURISDICTION OF HIGH COURTS UNDER ARTICLE 226 AND OF NGT TO ENTERTAIN ENVIRONMENTAL LITIGATION

The National Green Tribunal has been established on 18th October 2010 under the National Green Tribunal Act, 2010 for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources. The NGT is also empowered to enforce any legal right relating to environment and giving relief and compensation for damages to persons and property. It is a specialized body equipped with the necessary expertise to handle environmental disputes involving multi-disciplinary issues. On the other hand, the High Courts constituted under article 214 of the Constitution exercise different kinds of jurisdiction including the power to entertain Public Interest Litigations (PIL) for enforcement of fundamental and other rights. The question that arose in *Anilesh Tewari* v. *State of U.P.*[10] was regarding the maintainability of the PIL filed by an Advocate regarding the monitoring of air pollution in the State of Uttar Pradesh.

This writ petition was filed by a public spirited lawyer raising concerns about the prevention of air pollution in the State of U.P. particularly, in the district of Lucknow and he sought a direction for establishing air quality monitoring stations in order to monitor the critical pollutants of the districts, a Writ of Mandamus to the State of U.P. to convert all Government vehicles that are running on diesel to CNG mode and to promote the same also in the private sector by enforcing it and by encouraging reduction in tax on CNG fuel. Further relief was prayed for increasing the number of CNG outlets and also to improve the public transport by introducing the new buses and its frequency so that such measures may come to the aid of citizens of the State particularly, the citizens of the district Lucknow. The main issue before the Division Bench of the court was whether the PIL is maintainable in view of the fact that the matter falls under the purview of the Air (Prevention and Control of Pollution) Act, 1981 which is included in the First Schedule to the NGT Act, 2010 vesting the NGT with the power to deal with the issues relating to air pollution.

The court agreed with the established view that when expert tribunals are constituted to deal exclusively with matters like environmental protection, it would be a sound rule of precaution under article 226 to refrain from entertaining PILs as such issues can be more appropriately redressed under the statutory law framed exclusively for that purpose.[11]

10 2017 (7) FLT 23 (Allahabad HC-Lucknow Bench).

11 See also, *Kishore Dua* v. *State of M.P,* 2017 (7) FLT 428 (M.P. High Court).

V MULTIPLE CAUSES OF ACTION AND MISJOINDER OF CAUSES OF ACTION BEFORE THE NGT-CONSEQUENCES

In *Pankaj Kumar Mishra* v. *Union of India*[12] the National Green Tribunal dealt with the severe environmental pollution and health hazards caused by the Singrauli Industrial Area (which also falls in part of Sonebhadra District of Uttar Pradesh and Singrauli District in the State of Madhya Pradesh). The contention of the applicants was that the industries in the regions of the Singrauli district which consisted of thermal power plants and coal mines were causing extreme harm to the plaintiff as well as to the people living in the vicinity. According to the plaintiff, a large number of persons were suffering from various serious diseases due to the pollution caused by the respondent's industries. This petition was filed on behalf of the other residents of that area praying for the protection of the environment, life, health and property of the people living in that area.

In the judgment delivered by Justice Swatanter Kumar, it was held that the Singrauli Industrial Cluster has been assessed to be a critically polluted industrial area in the country and stands at No. 9 of the highly polluted areas as per Comprehensive Environmental Pollution Index. The case dealt with two main types of pollution, namely, mercury and fly ash pollution. The applicants relied upon the orders by the NGT earlier including order dated 13th May 2014 in the case of *Ashwani Kumar Dubey* v. *Union of India*, where a restraining order was passed. Industries were restrained from dumping any waste of any kind generated either from mining or even from domestic activity in the catchment area of the water reservoir, particularly, the Gobind Ballabh Pant Sagar known as Rihand Reservoir. However, the industries involved in that case did not follow the order. It was found that even the mining activities were being done in a manner that was seriously prejudicial to environmental health.

The applicants pleaded that his fundamental rights and those of the other people of that area under article 21 of the Constitution of India are being violated. Relying upon different judgments of the Supreme Court, the plaintiff further contended that the pollution of the environment in the area has to be stopped and various steps should be taken in accordance with the provisions of the Environment (Protection) Act, 1986, the Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974. Some of the reliefs demanded included reconstruction of public roads, installation of air pollution control devices, shifting of coal mines, closing of ash ponds, banning transport of mining and fly ash waste on trippers and so on.

The NGT declared that the cause of action in relation to the upgrading of roads, footpaths had nothing in common with the prayer for proper collection, transportation,

12 2017 (7) FLT 86 (NGT Principal Bench New Delhi).

and disposal of fly ash. Both these causes of action had nothing as consequential to the causing of pollution by the industries through their processes. They were held to be independent and distinct causes of action. Further, the plaintiff prayed for issuance of various directions for different respondents in relation to shifting of coal yards, shift of ash-silo from its present site to some other place, closure of ash ponds, transportation through bulkers and for a direction to plant trees. According to the judgment, these prayers were evidently bad for multiple causes of action.

The NGT wished to dispose of the application and held that the application is hit by the requirements of rule 14 of the National Green Tribunal (Practice and Procedure) Rules, 2011. Rule 14 requires that an application shall be based upon a single cause of action and may seek one or more reliefs provided that they are consequential to one another.

Finally, the Tribunal noted that the plaintiff had succeeded in inviting attention to serious violations on the part of the industries in causing environmental pollution of the area, thereby adding to the misery of the inhabitants around that area, whose public health standards have deteriorated. The Tribunal held that, although the case involved a serious case of environmental damage, the cause of action seeking multiple reliefs was not consequential to each other.

VI NGT CANNOT DECIDE THE VIRES OF A LAW

In *Central India Ayush Drugs Manufacturers Association* v. *State of Maharashtra,*[13] a Division Bench of the High Court held that[14]- considering the jurisdiction given to the National Green Tribunal only to decide civil cases, where substantial question involved is in relation to environment, it is apparent that the NGT cannot be said to be conferred with the absolute jurisdiction to adjudicate all types of disputes or even all civil disputes. A limited jurisdiction to deal with specific type of civil disputes is only made available to it. Bare reading of section 28 of the National Green Tribunal Act, 2010 prescribing the bar of jurisdiction also substantiates this. Thus, power to pronounce upon the vires of any statutory provision or of any subordinate legislation cannot be read into any of the provisions which confer either appellate or original jurisdiction upon National Green Tribunal.

VII AIR POLLUTION: CONTINUING BAN ON SALE OF FIREWORKS IN NATIONAL CAPITAL REGION

The Supreme Court, in the case of *Arjun Gopal* v. *Union of India,*[15] has issued an order[16] to ban the sale of fireworks (including fire crackers) in the territory of

13 2017 (7) FLT 100 (Bombay High Court).

14 *Id.* at para 27.

15 (2017) 16 SCC 267.

16 Dated 09.10.2017 (Order), *available at*: http://www.theindianlawyer.in/blog/2017/10/16/supreme-courts-ban-sale-firecrackers-delhi-ncr-region/.

Delhi-NCR till 01.11.2017 in order to control the deteriorating quality of air in this region and to reduce the adverse effects of bursting fireworks during the festival of Diwali. The apex court has, therefore, ordered for suspension of licenses for storing and selling fireworks in the Delhi and NCR area and added that it may issue further orders depending on the situation that may emerge during the Diwali season.

It may be recalled that the Supreme Court had issued a similar order last year when the bursting of fire crackers during Diwali appeared to be one of the major causes of worsening air quality in the Delhi-NCR area as a result of which various schools had to be closed and authorities had to take various measures on health emergency basis. The Supreme Court added that the impact of that order could only be tested during the festive season of Diwali. According to the order, although this suspension may have an adverse effect on the business of permanent and other license holders but currently, their primary concern is public health and to ensure that people are not compelled to breathe poor quality air, there is a dire need to ban the sale of fireworks in the Delhi-NCR area and to observe its resultant effect on the air quality.

VIII URANIUM MINING AND ADVERSE IMPACT ON PUBLIC HEALTH

In *Court on its Own Motion* v. *Union of India*[17] a Division Bench of the Jharkhand high court noted that a Public Interest Litigation is on board since the year 2014 when the Court had taken *suo motu* cognizance of the report published in 'The Hindustan Times' with regard to devastating effect of Radiation emanating from the mining of uranium on environment in village Jaduguda, District East Singhbhum in the State of Jharkhand. As Jaduguda was projected as "nuclear grave yard" affecting right to life and personal liberty, the Court vide its detailed order taking cognizance of the many diseases which could occur because of the uranium mining issued notice to the respondents to file a detailed report including the safety measures taken in mining of uranium in village-Jaduguda and surrounding areas.

Pursuant to the said order, certain reports were placed before the Court and once again, a news item was published in 'Times of India' in 2015 (Ranchi Edition) indicating that the radioactive waste coming out of three Uranium Corporation of India Limited owned Uranium Mines, had put about 50,000 people in Jharkhand at risk, mostly belonging to tribal community resulting into many diseases. Once again the High Court directed the Department of Atomic Energy, Government of India, New Delhi to suggest the name of such organization/expert body which could take the task of carrying out fresh survey so that objective analysis could be made by such expert body for the consideration of the Court and further direction, if any, required. It is thereafter, on the basis of the supplementary affidavit filed by the Department of Atomic Energy, Union of India an expert committee in the field for carrying out the

17 2017 (7) FLT 45 (Jharkhand High Court).

fresh survey was constituted and a detailed report of Expert Body was filed before the court. The *Amicus Curiae* appointed by the Court after perusing the same, stated that the report indicates the situation to be, by and large satisfactory. He referred to recommendations made *inter alia* by the Expert Team like:

1) The fencings, gates and security arrangements for tailings pond needs to be strengthened, maintained and regularly inspected to prevent inadvertent entry of public.
2) The pipelines carrying tailings from the mill to tailings pond should be effectively maintained and inspected to minimize any possibility of leakage. Preventive measures should be strengthened to restrict public from coming too close to these pipelines.
3) The transport mechanism of ore and mill tailings needs to be further strengthened including effective covering of the trucks to eliminate spillages.
4) UCIL is collecting considerable amount of observational data on radiation parameters in operational areas and environmental matrices. These data should be put in public domain.
5) In the ongoing health camps and community development activities, awareness about radiation and healthy habits should be imparted to the public.
6) Regular interaction should be undertaken in the form of workshops, seminars, lectures etc involving villagers, students and teaching community, responsible citizens, medical practitioners, legal professionals, policy makers, media personnel, bureaucrats etc regarding radiation and its health effect to give a proper perspective on radiation risk.

The court therefore directed the respondents to comply with the recommendations.

IX PROHIBITION OF MANUFACTURE, SALE AND PURCHASE OF SYNTHETIC MANJHA/NYLON KITE THREAD (CHINESE MANJHA)

In *Zulfiquar Hussain* v. *Government of NCT of Delhi*[18] a writ petition was filed as a PIL seeking issuance of directions to Ministry of Environment, Government of NCT of Delhi-Respondent to take steps under the provisions of Environment (Protection) Act, 1986 and other relevant Acts to prohibit the manufacture, use, sale and purchase of synthetic *manjha*/nylon kite thread and all similar synthetic threads used in kite flying and to enforce the prohibition throughout Delhi. The contention was that the thread used for flying of kites which is made of nylon or synthetic material and other toxic materials, often referred to as "Chinese manjha" though it has nothing to do with China, being razor sharp is very dangerous and is capable of causing severe injuries to birds and humans.

18 2017 (7) FLT 57 (Delhi HC).

The Government of NCT of Delhi apprised the court that the Government is seized of the matter and submitted that the draft Notification proposed by and in the name of Lt. Governor, made in exercise of powers conferred by section 5 of the Environment (Protection) Act, 1986, rule 5(3) of Environment (Protection) Rules, 1986 read with Government of India, Ministry of Home Affairs, Notification No. SO. 667 (E) dated 10.9.1992 delegating the power under section 5 of the Act to the Lt. Governor, for prohibition on the manufacture, use, sale and purchase of synthetic *manja*/nylon kite thread and all similar synthetic threads used in kite flying, has been placed before the Law Department for vetting. It was further submitted that in light of rule 13 of Environment (Protection) Rules, 1986, objections are yet to be invited in public interest and, therefore, the issuance of the notification is likely to take some time.

After hearing counsel for the parties and also going through the relevant records, the court noted the steps already initiated by the Government of NCT. It was sought to be contended by the petitioner that the present case falls within the ambit of rule 4 (5) of the Environment (Protection) Rules, 1986 which provides an exception to receiving objections from the public in view of the likelihood of a grave injury to the environment, but the court did not agree to the same. However certain directions were issued to the Government of NCT to give advisories to the general public about the fatal effects of use of razor sharp thread/*manjha* made of nylon/plastic/synthetic using glass/metal and/or other toxic materials to prevent any untoward incidents in Delhi. Government of NCT of Delhi was also directed to expedite the process of inviting suggestions/objections from the general public and thereafter to issue the notification following the procedure laid down under the Environment (Protection) Act, 1986 read with the Environment (Protection) Rules, 1986, to tackle the adverse effects of razor sharp kite flying threads on humans as well as other living creatures as expeditiously as possible.

X WILDLIFE PROTECTION

In *M/s R.D.S. Bricks & Pawan Kumar Singh* v. *State of Jharkhand*[19] the Ministry of Environment and Forests, Union of India issued notification in exercise of the power conferred under section 3 of the Environment (Protection) Act, 1986, declaring the area up to five kilometers from the boundary of the protected area of Dalma Wild Life Sanctuary as Eco-sensitive Zone. The notification declared that- 'On and after the publication of this notification in the Official Gazette, no new polluting industries shall be allowed to be setup within the 'Eco-sensitive Zone'. The appellants herein were running their brick kilns within the 'Eco-sensitive Zone' and as per the notification, the activities relating to commercial mining, setting up industries causing pollution (water, air, soil, noise etc.), commercial use of firewood, discharge of effluents

19 2015 (5) FLT 19 (Jharkhand HC).

and solid waste in natural water bodies or terrestrial area, were completely prohibited in order to regulate air and vehicular pollution. Consequently, they were informed that they were prohibited by from carrying out brick kiln activities which they had been carrying out even before the issue of the said notification. Their contention in the appeals before the High Court was that the notification would be applicable only to the new industries but not the existing industries.

Relying on the Supreme Court's judgment in *Bhopal Gas Peedith Mahila Udyog Sangathan* v. *Union of India*,[20] the Division Bench of the High Court held that[21] 'it does not appear to reason that an existing industry, even if a polluting one, can be continued within the Eco-sensitive Zone.'

XI AIR POLLUTION

In *Somasekharan Nair* v. *District Collector,*[22] a Public Interest Litigation was filed in the High Court seeking a prayer for the issuance of a Writ of Mandamus directing the respondents to close and seal the illegal road construction materials processing unit run by them in accordance with law. The Petitioner contended that the subject matter go down, is in the vicinity of the residents' locality and that they are the most affected victims as they are highly disturbed and affected due to the heavy air pollution and nuisance caused. It was also argued that there were no licenses or permits obtained by those carrying out the processing. After hearing both the parties, the High Court disposed of the case by observing that – 'the environmental issues and matters covered under the NGT Act, Schedule I should be instituted and litigated before the National Green Tribunal only and not before the High Court under article 226 of the Constitution of India. Such approach may be necessary to avoid likelihood of conflict of orders between the High Court and National Green Tribunal. After the National Green Tribunal Act, 2010 came into force, the environmental issues and matters covered under the NGT Act, Schedule-I should be instituted and litigated before the National Green Tribunal and the High Courts have no competent jurisdiction to entertain this writ petition'. Accordingly, the writ petition was dismissed with a direction to the petitioner to approach the National Green Tribunal. Probably, the High Court could have passed certain interim orders before asking the petitioner to approach, in the interest of justice.[23]

In another important case the Guwahati high court took cognizance of the adverse environmental impact of brick kilns on the neighboring agricultural fields.[24]

20 (2012) 8 SCC 326.

21 *Id.* at para 15.

22 2017 (7) FLT 198 (Madras HC).

23 When the fundamental rights of citizens like the right to pollution free environment implicit under art.21 of the Constitution are involved, the technicalities may have to take a backseat.

24 *Dilip Chetri* v. *State of Assam,* 2017 (7) FLT 624.

XII POLLUTION CAUSED DUE TO PIGEON POULTRY FARM

In *Samiran Co-operative Housing Society Ltd, Kolkata* v. *Lopamudra Ghosh,*[25] an application was filed by a Housing Society under section 14 and section 18(1) of the National Green Tribunal Act, 2010, being aggrieved by the inaction of the respondent authorities in failing to prevent and control air pollution caused due to an illegal pigeon poultry farm located on the 10th floor flat of the Megha Mallar Apartment Complex occupied by Respondent No.1, a bird lover. It was alleged that the respondent No. 1, one MS. Lopamudra Ghosh, residing at her uncle's flat No.10 C/1 in the multi-storied building complex, has converted it to a pigeon poultry breeding and feeds more than 1000 pigeons regularly resulting in the residents suffering from regular health problems caused by pigeon droppings and foul smell. The applicant has pleaded elaborately on the potential of pigeon droppings in transmitting over 30 human diseases and ten domestic animal diseases amongst which a serious air pollutant is air-borne fungi that causes Blast mycosis, a disease, to human beings which affects the lungs apart from discharging a large number of compounds like ammonia, volatile organic compounds, hydrogen sulphide, etc., adding to the air pollution of the locality thereby creating public health problems.

Coming to the merit of the case, it was the admitted position of the parties that there have been disputes subsisting between the apartment owners Society and MS. Lopamudra Ghosh on the issue of feeding large number of pigeons daily in the latter's flat since 2009 and the nuisance, environmental and health problems caused thereby in the locality. The NGT deemed it would be expedient to invoke the precautionary principle and hold that such large scale feeding of pigeons, even if feral as claimed by the Respondent No.1, leading to pollution of the locality and contamination of the ambient air and ultimately contributing to health problems of the neighbor, is not at all desirable and should not be allowed to continue and must be stopped immediately. While expressing its view that such activities create nuisance and put the neighbors into inconvenience besides being an environmental issue, the NGT also appreciated the compassion which the Respondent No.1 has for birds and animals.

XIII MANUFACTURE OF BS-IV COMPLIANT VEHICLES

In *M.C. Mehta* v. *Union of India*[26] the seminal issue was whether the sale and registration and therefore the commercial interests of manufacturers and dealers of such vehicles that do not meet the Bharat Stage-IV (for short 'BS-IV') emission standards as on 1st April, 2017 takes primacy over the health hazard due to increased air pollution of millions of our country men and women. The controversy relates to the sale and registration (on and after 1st April, 2017) of such vehicles lying in stock with the manufacturers and dealers that meet the Bharat Stage III emission standards

25 2017 (7) FLT 344 (NGT EZ).

26 2017 (7) FLT 367 (Supreme Court).

(for short BS-III standards) but do not meet the BS-IV emission standards. Briefly, according to the manufacturers, they are entitled to manufacture such vehicles till 31st March, 2017 and they have done so. In so doing, they contended that they have not violated any prohibition or any law. Hence, the sale and registration of such vehicles on and from 1st April, 2017 ought not to be prohibited. They argued that they will not be manufacturing any vehicle that does not comply with the BS-IV emission standards from and after 1st April, 2017 and therefore the only issue is the sale and registration of the existing stock of such vehicles that comply with BS-III emission standards. They prayed that they may be given reasonable time to dispose of the existing stock of such vehicles.

On the other hand, according to the learned *Amicus*, permitting such vehicles to be sold or registered on or after 1st April, 2017 would constitute a health hazard to millions of our country men and women by adding to the air pollution levels in the country (which are already quite alarming). It was her submission that the manufacturers of such vehicles were fully aware, way back in 2010, that all vehicles would have to convert to BS-IV fuel on and from 1st April, 2017 and therefore, they had more than enough time to stop the production of BS-III compliant vehicles and switch over to the manufacture of BS-IV compliant vehicles. Therefore, keeping the larger public interest in mind and the potential health hazard to millions of our country men and women due to increased air pollution, there is no justification for any of the manufacturers not shifting to the manufacture of BS-IV compliant vehicles well before 1st April, 2017.

The apex court has categorically held that in view of the assurance given by the Union government on 5th January, 2016 that the requisite quality fuel for BS-IV compliant vehicles would be available (all over the country) with effect from 1st April, 2017,[27] and keeping in mind the potential health hazard of such vehicles being introduced on the road affecting millions of our people in the country, the sale of such vehicles cannot be permitted after the stipulated date. Accordingly, the court directed that: (a) On and from 1st April, 2017 such vehicles that are not BS-IV compliant shall not be sold in India by any manufacturer or dealer, that is to say that such vehicles whether two wheeler, three wheeler, four wheeler or commercial vehicles will not be sold in India by any manufacturer or dealer on and from 1st April, 2017 and (b) All the vehicle registering authorities under the Motor Vehicles Act, 1988 are prohibited for registering such vehicles on and from 1st April, 2017 that do not meet BS-IV emission standards, except on proof that such a vehicle has already been sold on or before 31st March, 2017.

XIV INDISCRIMINATE FELLING OF TREES

In *Tara Singh Rajput* v. *State of Uttarakhand*[28] a question of a great public importance was raised in the petition, whereby, the issue of felling of trees

27 In *M.C. Mehta* v. *Union of India*, (2016) 4 SCC 269.

28 2017 (7) FLT 216 (Uttarakhand HC).

indiscriminately as well as the raising of the unauthorized constructions, in the close vicinity of Bhimtal Lake area. The Court had taken judicial notice of the grave threat caused to the fragile ecology and environment of the area abutting the Lakes including the flora and due to unauthorized and haphazard constructions being carried out in these areas.

Accordingly, directions were issued to the effect that:

i) No fresh/further construction shall be carried out within the radius of two kilometers, as the crow flies, in and around Bhimtal, Nainital, Khurpatal, Sattal, Nauckuchiytal Lakes, without getting assessed the bearing capacity of the areas from a specialized institution like National Environment Engineering Research Institute, Nagpur (NEERI).

ii) There shall also be a complete ban on the felling of trees within the radius of five kilometers in and around Bhimtal, Nainital, Khurpatal, Sattal, Nauckuchiytal Lakes.

iii) The burning of fossil fuel within a radius of 10 kilometers from the edges of glaciers is hereby banned. The State Government is directed to provide the Liquefied Petroleum Gas (LPG) and Kerosene Oil, in abundance, to the people living in these areas to mitigate their hardships by involving Oil Companies.

iv) Use of plastic, in any form, may it be carry bags, plastic bottles, plastic wrappers, is totally prohibited within the radius of 20 kilometers of glaciers. The State machinery shall put up *Nakas* every 20 kilometers short of every Glacier in the State of Uttarakhand to enforce the direction.

v) The Ministry of Environment and Forests, Union of India is also directed to issue directions declaring all the hill stations, throughout the State of Uttarakhand and Glaciers, as eco-sensitive zones under the Environment (Protection) Act, 1986.

vi) There shall be a direction to all the Municipal Corporations, Municipal Councils, Nagar Panchayats situate on the banks of Ganges and Yamuna to set up Sewage Treatment Plans (STPs), if not already constructed, within a period of six months; and

vii) Direction to ensure that there is no open burning of garbage, waste and dry leaves within their respective jurisdiction.

XV WATER POLLUTION

In *Sainath Seva Mandal* v. *State of Uttarakhand*[29] a petition was filed pro bono public and made a startling revelation in the petition that the municipal waste generated in Kashipur city is being dumped directly in Dhela river near the Sai Temple situated on the Moradabad Road in Kashipur town. It also emanates foul gases which are

29 2017 (7) FLT 432 (NULL) (Uttarakhand HC).

detrimental to the health of the people residing in the vicinity of the river. The court noted that the Central Government has framed the Solid Waste Management Rules, 2016. These rules were notified on 8.2.2016. Under rule 2, these rules have been made applicable to every urban local body, outgrowths in urban agglomerations, census towns as declared by the Registrar General and Census Commissioner of India, notified areas, notified industrial townships, areas under the control of Indian Railways, airports, airbases, Ports and harbors, defense establishments, special economic zones, State and Central government organizations, places of pilgrims, religious and historical importance as may be notified by respective State government from time to time and to every domestic, institutional, commercial and any other non-residential solid waste generator situated in the areas except industrial waste, hazardous waste, hazardous chemicals, bio medical wastes, e-waste, lead acid batteries and radio-active waste, that are covered under separate rules framed under the Environment (Protection) Act, 1986.

The court made the following pertinent observations in the instant case:

> The essential objective of all provisions relating to waste disposal must be the protection of human health and the environment against harmful effects caused by the collection, transport, treatment, storage and tipping of waste.[30]
>
> The zenith of civilization can only be gauged how clean the cities and towns are. Every citizen has a fundamental as well as human right to clean and hygienic environment. Every citizen, at the same time, has a fundamental duty to maintain the cleanliness in and around his abode. There are more persons indulging in littering, dumping of garbage at public places vis-à-vis the persons employed to clean up the mess. We must keep and maintain the dignity of the workers employed to clean the cities and towns. The Court can take judicial notice of the fact that the government/public properties, walls, religious places, educational institutions, offices, sign boards, signage, are disfigured/defaced by unscrupulous persons by pasting the posters/pamphlets on them. Pasting of posters/pamphlets destroys the aesthetic values of cities and towns. Stringent law is required to be made to prohibit the persons from defacing/disfiguring the public property(s) including government or private place or building, monument, statue, post, wall, fence, tree or contrivance visible to a person being in, or passing along, any public place.[31]
>
> An endeavor should be made to protect the natural environment and protect the health and safety of people and also remove aesthetical unpleasant sight and smell related to solid waste management.[32]

30 *Id.* at para 84.
31 *Id.* at para 85.
32 *Id.* at para 86.

Accordingly, the petition was allowed and certain mandatory directions were issued to the respondents for proper management of solid waste.

XVI BEACH CAMPS ALONG THE RIVER GANGA FROM SHIVPURI TO RISHIKESH

In *Social Action for Forest & Environment (SAFE)* v. *Union of India*[33] the NGT delivered an important order regarding the closure and removal of the camps along the River Ganga from Shivpuri to Rishikesh. The applicant NGO contended that camping and rafting etc. along the river were causing environmental and water pollution. The issues involved in this and other previous cases were - requirement of sustainable tourism had to be satisfied subject to compliance of the environmental laws, raising permanent or semi-permanent structures raised in and around the sites, and whether the concept of 'Back to Nature' ought to be used for revenue generation at the cost of environment and ecology. The NGT considered its previous orders relating to the matter,[34] the Rapid Assessment on Ecological Impacts of Camping Operations for River Rafting filed by the Uttarakhand Environment Protection & Pollution Control Board relating to the Management Plan, Travel and Camp on Stable/Specified Surfaces, Waste Disposal, Erection of Camp site, Wildlife Protection, and Livelihood and Socio-economics, and the proposed regulatory mechanism.

The NGT directed that all licenses for carrying on of rafting activity and camping sites would henceforth be issued strictly in accordance with the Management Plan dated February 2016 and Regulatory Regime dated 25th July, 2016. NGT also ordered that out of 33 recommended sites for beach camping, 8 sites for camping activities which entirely fall within 100 meters from the middle of the river Ganga during lean season flow shall not be used for any activity whatsoever including beach camping activity. The tribunal directed the Principal Chief Conservator of Forests and the Secretary Revenue of the State of Uttarakhand to ensure that six monthly reports are submitted to them in relation to carrying on of rafting and beach camping activity on all these 25 sites and River Ganga, for regularly monitoring the implementation of its directions.

XVII SUPPLYING RIVER WATER FOR THE PREPARATION OF SOFT DRINKS OR SELLING DRINKING WATER UNDER THE NAME OF MINERAL WATER OR SOFT DRINKS

In *M. Appavu, Ex. M.L.A.* v. *The Chief Secretary to Government of Tamil Nadu,*[35] a Division Bench of Madras high court dealt with two PILs filed under article 226 of

33 NGT- Principal Bench Order dated 02/03/2017, *available at:* http://www.indiaenvironmentportal.org.in (last visited on September 27, 2018).

34 In '*Indian Council for Enviro Legal Action* v. *National Ganga River Basis Authority',* Original Application No. 10 of 2015, and the detailed order passed on 10th/18th December, 2015 etc.

35 2017 (7) FLT 573 (Mad. H.C.). Judgment dated 02 March 2017. Also *available at:* https://indiankanoon.org/doc/119710256/.

the Constitution of India, seeking direction for bearing the authorities from supplying Tamirabarani river water either for the preparation of soft drinks or drinking water under the name of mineral water or soft drinks to the Prathishta Business Solution Private Limited and South India Bottling Company (P) Ltd., by way of issuing writ of mandamus. The petitioners contended that selling of Tamirabarani water to the water intensified industries would create a great set back to the agriculturist and the residents, who are already utilizing the water from the river. Further it was also argued that at present, there is acute shortage of drinking water in Tirunelveli Municipal Corporation, Municipalities, Town Panchayats and Village Panchayats lying within above mentioned four districts. It was, therefore, prayed that in the common interest of the residents of the said four districts, both the industries should not be permitted to take water from Tamirabarani. In essence the grievance was that the Public Trust Doctrine demands water should be used for common people in preference to the multinational corporate companies who sell the national resources at a price, and that proper management of our limited water resources will be essential enabling to avoid the growing conflicts and the possibility of social unrest in the country in future due to water scarcity.

On the other hand, the Government authorities filed their counter stating that there was no scarcity of water and rainfall was still expected. If any distress arises, drinking water and agriculture would be given top priority. Further the Government pleaded that the quantity of water utilized by the two water based industries is 43Mcft, which is only 0.80% of surplus water (5049.09 Mcft), which goes to sea as waste. The petitioner according to the government was having ulterior motive against the two water based companies and he by his parochial attitude tried to frighten all the industries in Sipcot complex and in the Tamirabarani region with ulterior motive. One of the respondent companies alleged that the petitioner as an Advocate was dealing with the cases of that respondent company for nearly three years. Due to unethical practice of petitioner, his legal service was dispensed with, following which the petitioner has filed various petitions against the respondent company before various Fora and several cases before this Court and National Green Tribunal. It was forcefully argued that the present writ petitions do not involve any issue of Public Interest and is only an attempt by the petitioner to settle his personal grievance with the present respondent.

Having heard both the parties, the Court dismissed the PILs observing that:[36]

> "The Court does not have the expertise to law down the policy for distribution of water within the State. It involves collection of various data which is variable and many a times policy formulated will have political overtones. It may require a political decision with which the Court has no concern so long it is within the constitutional limits. Even if we assume that this Court has the expertise, it will not encroach upon the field earmarked for the executive".

36 *Id.* at para 13.

It is submitted that the judgment of the Division Bench could have been a little more progressive, as the issue is significant affecting the rights of the people to drinking water which is an implied fundamental right, apart from affecting the environment adversely.

XVIII MANDATORY FUNCTIONAL EFFLUENT TREATMENT PLANTS IN INDUSTRIES IN INDIA

In *Paryavaran Suraksha Samiti* v. *Union of India,*[37] the petitioners approached the Supreme Court, seeking a writ in the nature of mandamus, for a direction to the respondents, (which includes the Union Government, all the State Governments and the Union Territories) to ensure, that no industry which requires consent to operate from the concerned Pollution Control Board, is permitted to function, unless it has a functional effluent treatment plant, which is capable to meet the prescribed norms for removing the pollutants from the effluent, before it is discharged.

During the course of hearing, it was not disputed between the rival parties, that the initiation of the process has to be at the individual level of the industry itself. It was suggested that each industry which requires consent to operate from the concerned Pollution Control Board, should be mandated to set up a functional primary effluent treatment plant. The apex court was informed, that only when such an effluent treatment plant has been set up, the concerned Pollution Control Board grants a no objection to the industry, and accordingly consent to operate, so as to allow the industry to become functional. It is therefore apparent, that all running industrial units, which require consent to operate from the concerned Pollution Control Board; have a functional primary effluent treatment plant, in place.

The question that arose for the Court's consideration was, whether the same is maintained in good order, after the industry itself has become functional. The court after hearing the parties issued the following directions:

> a) For the purpose of setting up of common effluent treatment plants, the concerned State Governments (including, the concerned Union Territories) will prioritize such cities, towns and villages, which discharge industrial pollutants and sewer, directly into rivers and water bodies.[38]
>
> b) The malady of sewer treatment should also be dealt with simultaneously. We therefore hereby direct, that 'sewage treatment plants' shall also be set up and made functional, within the time lines.[39]
>
> c) We are of the view, that mere directions are inconsequential, unless a rigid implementation mechanism is laid down. We therefore hereby

37 Judgment of Supreme Court of India dated 22 February, 2017.

38 *Id.* at para 11.

39 *Id.* at para 12.

> provide, that the directions pertaining to continuation of industrial activity only when there is in place a functional primary effluent treatment plants, and the setting up of functional common effluent treatment plants within the time lines, expressed above, shall be of the Member Secretaries of the concerned Pollution Control Boards. The Secretary of the Department of Environment, of the concerned State Government (and the concerned Union Territory), shall be answerable in case of default. The concerned Secretaries to the Government shall be responsible of monitoring the progress, and issuing necessary directions to the concerned Pollution Control Board, as may be required, for the implementation of the above directions. They shall be also responsible for collecting and maintaining records of data, in respect of the directions contained in this order. The said data shall be furnished to the Central Ground Water Authority, which shall evaluate the data, and shall furnish the same to the Bench of the jurisdictional National Green Tribunal.[40]
>
> c) To supervise complaints of non-implementation of the instant directions, the concerned Benches of the National Green Tribunal, will maintain running and numbered case files, by dividing the jurisdictional area into units. The above mentioned case files, will be listed periodically. The concerned Pollution Control Board is also hereby directed, to initiate such civil or criminal action, as may be permissible in law, against all or any of the defaulters.[41]
>
> d) Liberty is granted to private individuals, and organizations, to approach the concerned Bench of the jurisdictional National Green Tribunal, for appropriate orders, by pointing out deficiencies, in implementation of the above directions.[42]

This judgment is important because it has highlighted the futility of merely issuing the directions which are not effectively implemented. It has also provided a mechanism to the affected persons to approach the NGT for implementation of the directions given. It is for the appropriate authorities and vigilant public to ensure the setting up/continuation of functional effluent treatment plants in industries in India.

XIX MINING, EXPANSION AND POLLUTION CONTROL

In *Common Cause* v. *Union of India,*[43] it was found by the apex court that the lessees in the districts of Keonjhar, Sundergarh and Mayurbhanj in Odisha have rapaciously mined iron ore and manganese ore, apparently destroyed the environment

40 *Id.* at para 13.

41 *Id.* at para 14.

42 *Id.* at para 15.

43 2017 (7) FLT 778 (SC), also *available at:* http://www.indiaenvironmentportal.org.in/files/SC%20judgement%20odisha%20mining_Judgement_02-Aug-2017%20(1).pdf.

and forests and perhaps caused untold misery to the tribals in the area. Though they claimed to have taken certain steps to ameliorate the hardships of the tribals, it appeared that their contribution is perhaps not more than a drop in the ocean – also too little, too late. The Court recalled in the instant case that the Central Empowered Committee (CEC) gave its final report on 25th April, 2014 which was considered by the Court and a detailed interim order was passed on 16th May, 2014. The sum and substance of the final report dated 25th April, 2014 and the interim order is that in the districts of Odisha namely, Keonjhar, Sundergarh and Mayurbhanj, the total number of leases granted for mining iron and manganese ore are 187. Of these, 102 lease holders did not have requisite environmental clearance under The Environment (Protection) Act, 1986 or approval under the Forest (Conservation) Act, 1980 or approved mining plan and/or consent to operate under the provisions of the Air (Prevention and Control of Pollution) Act, 1981 or the Water (Prevention and Control of Pollution) Act, 1974. The Court earlier directed that mining operations in these 102 mining leases shall remain suspended until they obtained the necessary clearances, approvals or consents and "as and when the mining lessees are able to obtain all the clearances/approvals/ consent they may move (the) Court for modification of this interim order in relation to their cases".

The Court found that, there have been very serious lapses that have enabled large scale mining activities to be carried out without forest clearance or environment clearance and eventually the persons responsible for this need to be booked but the violation of the laws and policy need to be prevented in other parts of the country in accordance with rule of law. The Court was therefore of the view that it would be appropriate if an Expert Committee is set up under the guidance of a retired judge of the Supreme Court to identify the lapses that have occurred over the years enabling rampant illegal or unlawful mining in Odisha and measures to prevent this from happening in other parts of the country.[44] The Court hoped that the recommendations of the Commission can form a platform for the study but it is also necessary to use technology for maintenance of registers, records and data through computers, satellite imagery, videography and other technology tools so that the natural wealth of our country is not rapaciously exploited for the benefit of a few to the detriment of a large number, many of whom are tribal inhabiting the land for several generations.

This is an appropriate and timely action expected from the apex court which has regulated the illegal mining of minerals in the country through various measures like establishing the CEC, monitoring the license mechanism and extent of mining and the environmental degradation due to indiscriminate mining by the greedy individuals and companies etc.

XX CONCLUSION

An analysis of the relevant cases decided by various courts and tribunals on environmental protection during the year under survey shows that several proactive

44 *Id.* at para 211.

directions have been given by them with a view to protecting the fragile ecology and environment in India. The burden therefore appears to be on the Government's concerned and regulatory authorities, as well as the citizens themselves, to ensure that at least within their limits there is pollution free environment, ecological protection and sustainable development. The usual refrain that 'we have number of laws and legal provisions but the real problem is about their implementation' must be made a thing of the past or else all the stake holders will be culpable and unpardonable.