11

ENVIRONMENTAL LAW

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I INTRODUCTION

DURING THE year under survey *i.e.,* 2019, a lot of developments relating to the environmental protection in India have taken place. Many man made issues like discharging industrial effluents into sea and other water bodies,illegal mining,indiscriminate use of loudspeakers,organizing mass events affecting environment, stubble burning, residential and other constructions flouting the environmental norms,felling of trees and even manipulating vehicle emission standards have come up for deliberations before the Supreme Court, various high courts and also the National Green Tribunal (NGT). As usual the conflict between development as perceived by governments and selfish elements with no vision, and environmental protection has occupied the centre stage. Some of the most important decisions have been highlighted and discussed as under.

II JURISDICTION OF NATIONAL GREEN TRIBUNAL

In *Tamil Nadu Pollution Control Board* v. *Sterlite Industries (I) Ltd.,*[1] the Supreme Court dealt with the closure of Sterlite Industries (India) Ltd. / Vedanta Ltd., which was operating a copper smelter plant at the State Industries Promotion Corporation of Tamil Nadu Ltd. (SIPCOT) Industrial Complex at Thoothukudi, Tamil Nadu. The closure was in compliance with the orders passed by the NGT while exercising its appellate jurisdiction. As per the section 31 of the Air Act, the appellate order passed by the proper authority under section 31 of the Act is appealable to the NGT in terms of section 31B. Thus, the NGT is the appellate authority of the appellate authority constituted under section 31 of the Air Act by the state government.

What becomes clear from the above narration of facts is the fact that while an appeal was still pending before the appellate authority, the NGT took up a matter directly against the original order which was challenged before the appellate authority even before the appellate authority could decide the same.[2]

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1 AIR 2019 SC 1074, 2019(4) Bom CR 306; 2019 (9) FLT 697, 2019 (1) KLT 726, 2019 (6) MhLJ 835, (2019) 2 MLJ 686, 2019 (4) MPLJ 628, 2019 (3) SCALE 721, 2020 (1) SCJ 126.

2 *Id*., para 23.

Following the judgment in *Bharat Sanchar Nigam Limited* v. *Telecom Regulatory Authority of India,*[3] the Supreme Court opined that the NGT has no general power of judicial review akin to that vested under article 226 of the Constitution of India possessed by the high courts of this country.[4]

Equally, the Supreme Court noted how the NGT stated that the doctrine of necessity would take over if an appellate authority under the Act is not properly constituted so that no appeal can then be effectively preferred. In response to this stand of NGT, the court held that if an appellate authority is either not yet constituted, or not properly constituted, a leap frog appeal to the NGT cannot be countenanced. Consequently it was declared that the NGT is only conferred appellate jurisdiction from an order passed in exercise of first appeal. Where there is no such order, the NGT has no jurisdiction.[5]

Illegal mining and impact on environment

In *State of Meghalaya* v. *All Dimasa Students Union, Dima-Hasao District Committee,*[6] the apex court dealt with certain appeals which were filed challenging various orders passed by NGT wherein several directions were issued, measures to be taken to check and combat the unregulated coal mining in tribal areas of State of Meghalaya. The allegation was that such coal mining with regard to rat-hole mining operation has been going on in Jaintia Hills in the state for last many years without being regulated by any law. While disposing the appeals the court *inter alia* held that while implementing statutory regime for carrying mining operations in the Hills Districts of the State of Meghalaya, the State of Meghalaya has to ensure compliance of not only MMDR Act, 1957 but Mines Act, 1952 as well as Environment (Protection) Act, 1986. The court also upheld the constitution of the "Meghalaya Environment Protection and Restoration Fund" as directed by the NGT , and directed the transfer of Rs.100 crores from the fund to the Central Pollution Control Boards (CPCB) to utilize the amount only for restoration of the environment in the State of Meghalaya. The court categorically held that: [7]

> The stand taken on behalf of the State of Meghalaya before this Court that the Tribunal has no jurisdiction cannot be approved. The State Government is under constitutional obligation to ensure clean environment to all its citizens. In cases pertaining to environmental matter, the State has to act as facilitator and not as obstructionist.

Discharge of industrial effluents and liability to pay charges

In *Vasant Chemicals Ltd.* v. *Hyderabad Metropolitan Water,*[8] the Supreme Court dealt with the validity of levy of sewerage cess by the Hyderabad Metropolitan Water

3 (2014) 3 SCC 222.

4 *Id.,* para 42.

5 *Id*., para 44.

6 (2019)8 SCC 177. See also *Lber Laloo* v. *All Dimasa Students Union, Hasao District Committee* 2019 (9) FLT 830, 2019 (7) SCALE 687.

7 *Id*., para 191.

8 2019(3) ALD 106, 2019 (3) SCALE 360, (2019) 4 SCC 562.

Supply and Sewerage Board (HMWS and SB-the Board) on certain chemical industries producing chemicals, bulk pharmaceuticals and dye intermediates causing heavy pollution. Due to the joint efforts of all the chemical units in Jeedimetla Industrial Area near Hyderabad, a company was formed namely Jeedimetla Effluents Treatment Limited (JETL) in the year 1987 to get the effluents treated at their own cost to bring the quality of the effluents to an acceptable level. After treating the effluents to sewer standards as prescribed under the Water (Prevention and Control of Pollution) Act, 1974 and the Environment (Protection) Act, between 1988 and 1995, JETL was discharging the treated waste water/effluents into the open drains/nalas in Jeedimetla area. After discussion with Hyderabad Metropolitan Water Supply and Sewerage Board (HMWS and SB-the Board) and the Government of then Andhra Pradesh and State Pollution Control Board, a dedicated pipeline was laid from the premises of JETL to connect to the sewerage system of HMWS and SB, located at a distance of about 10.38 kilometres. For the said dedicated pipeline, JETL paid an amount of Rs.75,00,000/- as its contribution and the balance amount was contributed by the Board and the Government of Andhra Pradesh. Since 1998, as per the direction of APPCB, the industries in IDA Jeedimetla have been discharging their industrial effluents to JETL, which in turn partially treat effluents and let into the dedicated pipeline connecting JETL and sewer line at Board's sewer at a distance and then carried to Sewerage Treatment Plant (STP) at about eight kilometres distance.

The appellant chemical company had obtained bulk water supply connection from the respondent-HMWS and SB and the Board accorded sanction for supply of 36,200 gallons water per day @ Rs.12 per kilo litre to the appellant-industry. An agreement was entered stipulating the terms and conditions of supply of water and the payments required to be made in terms thereto. The agreement provided that HMWS and SB will supply water to the appellant industry and water charges will be levied for the supply of water as per the agreement. Clause 16 of the agreement inter alia provided for payment of sewerage cess and that the appellant is liable to pay a sewerage cess in under the HMWS and Sewerage Act. Clause 17 of the agreement obligated the appellant to avail the sewer facility provided by the HMWS and SB if the premises of the appellant is located at a distance of less than 35 meters from the sewer line of the HMWS and SB.

The chemical industry contended that levy of sewerage cess was illegal and contrary to the provisions of HMWS and Sewerage Act as the appellant is not discharging its effluents into the sewerage system of the Board. When challenged, the high court held that though the appellant's premises is not directly connected to the sewer line of the Board, the industrial effluents of the appellant are being carried to JETL and after partial treatment at JETL, the same is let into the sewerage system of the Board. Review petition filed by the industry was dismissed. The Supreme Court upheld the concurrent decisions of the high court and held that:[9]

> the learned Single Judge and the Division Bench rightly recorded concurrent findings upholding the levy. Observing that the appellant

9 *Id.*, para 39.

> being occupier of the premises, though not directly connected to the sewer line of the Board, is ultimately letting into the sewerage system of the Board after partial treatment at JETL, the High Court was right in holding that the levy of sewerage cess is in accordance with Section 55 of HMWS&S Act. The payment of sewerage surcharges and the other charges by JETL cannot take away the statutory liability of sewerage cess levied on the occupier of the premises who consumes water and lets out the sewage into the Board sewer system. The payment of sewerage surcharge and other charges by JETL to the respondent-Board will not amount to double levy

This judgment substantially recognises the "polluter pays principle" and demonstrates that the attempts by polluting industries to avoid payment of sewerage cess on technical grounds was effectively thwarted by the court.

Environmental clearance for airport

In *Hanuman Laxman Aroskar* v. *Union of India,*[10] the Ministry of Environment, Forests and Climate Change, Union of India moved certain proceedings, seeking a direction on the basis of minutes of the meeting of the Expert Appraisal Committee (EAC) to lift the embargo imposed by the apex court on the Environmental Clearance (EC) for a greenfield airport at Mopa, Goa. This follows upon the judgment rendered on a challenge addressed to top court against a decision of the NGT upholding the EC, subject to compliance with certain conditions. By this judgment, the process leading up to the grant of an EC was held to be flawed. Essentially, the concerns which were highlighted in the judgment related to the need to preserve the biodiversity of the Western Ghats. While permitting the project to go on, the court held that – 'Remediation, restoration and compensation needs to be integral part of policy so as to provide adequate relief for any environmental or project related disasters' in view of need of taking measures relating to energy conservation/climate change, water quality monitoring and preservation, air quality monitoring and preservation, noise environment, and land environment.

Protection of storm water drains and master plans

In *Mantri Technoze Pvt. Ltd.* v. *Forward Foundation,*[11] the apex court dealt with the validity of judgment and order passed by the Principal Bench of the National Green Tribunal, New Delhi in relation to NGT directions to maintain a buffer/green zone of 75 meters in respect of lakes, 50 meters in respect of primary *Rajakaluves* (Storm Water Drains), 35 meters in case of secondary *Rajakaluves* and 25 meters in case of tertiary *Rajakaluves* with retrospective effect, in the State of Karnataka.The Supreme Court held that- the tribunal while providing for restoration of environment in an area, can specify buffer zones around specific lakes and water bodies in contradiction with zoning regulations under the state statutes or the revised master

10 MANU/SC/0444/2019:2019 (2) ALT 454, 2019 3 AWC 2125 SC, 2020(10) FLT 56, 2019(2)KLT143, (2019)3 MLJ 712, 2019(5)SCALE484, (2019)15 SCC 401.

11 MANU/SC/0315/2019: 2019(2) Bom CR 901, 2019(9) FLT 586, (2019)3 MLJ 396, 2019(4) SCALE 218.

plans .The court also made certain pertinent observations regarding the role of NGT, its jurisdiction and interpretation in this judgment.[12] The court observed that -The NGT Act being a beneficial legislation, the power bestowed upon the tribunal would not be read narrowly. An interpretation which furthers the interests of environment must be given a broader reading.[13]

Construction projects and environmental protection:

In *Keystone Realtors Pvt. Ltd*. v. *Anil V. Tharthare*,[14] the apex court dealt with the adverse impact of 'expansion' of a construction project in clear violation of the EIA Notification without complying with the regulatory procedure prescribed. The present dispute raises important questions regarding the interpretation the Environment Impact Assesment Notification. The EIA Notification seeks to ensure the protection and preservation of the environment during the execution of new projects and the expansion or modernisation of existing projects. It imposes restrictions on the execution of new projects and on the expansion of existing projects, until their potential environmental impact has been assessed and approved by the grant of an Environment Clearance. The brief facts of the case are that the appellant is the project proponent of a residential redevelopment, called 'Oriana Residential Project' situated at Gandhinagar, Bandra (East), Mumbai. On June 8, 2010 the appellant received a commencement certificate to carry out the development and erect a building situated at the project property. The appellant began construction. When the construction commenced, the total construction area was 8,720.32 square metres. The ambit of the project was expanded, and the constructed area was increased to 32,395.17 square metres. Under the EIA Notification, an EC 4 was necessary if the total construction area exceeded 20,000 square metres. Hence, the appellant applied for an EC under the EIA Notification.

The State Level Expert Appraisal Committee (SEAC) for Maharashtra recommended the grant of an EC for the project. On May 2, 2013 the State Level Environment Impact Assessment Authority for Maharashtra, based on the recommendations of the SEAC granted an EC. It was not in dispute that at the time when the EC dated May 2 2013 was granted, the total construction area of the project was 32,395.17 square metres. The grant of the EC was conditional on the appellant obtaining a 'consent for establishment' from the Maharashtra Pollution Control Board under the Air (Prevention and Control of Pollution) Act 1981 and the Water (Prevention and Control of Pollution) Act 1974. By a letter dated September 24, 2013, the project proponent informed the Environment Department of the Government of Maharashtra, that the construction area was being further increased by 8,085.71 square metres, as a result of which the total construction area of the project would stand enhanced to 40,480.88 square metres. In its letter, the appellant sought an 'amendment' to the EC dated May 2, 2013 by the third respondent to reflect the increase in the total construction

12 *Id.*, para 40 to 47.

13 *Id.*, para 44.

14 MANU/SC/1659/2019: 2020(1) Bom CR 1, 2020(10) FLT 203, 2019(17)SCALE 182, (2020)2SCC 66, 2020 (2) SCJ 322.

area. On March 13, 2014, the third respondent granted an 'amendment' to the EC dated May 2, 2013 on the ground that there was only a "marginal increase in built up and construction area". The same was challenged by a local resident before the NGT and high court, and finally the matter reached the Supreme Court.

The Supreme Court noted that subsequent to the EIA Notification published in 2006, a draft notification was issued on January19, 2009 which proposed an amendment to the effect that … "modernisation or expansion proposals without any increase in pollution load, and, or without any additional water and or land requirement are exempted from the provisions of this Notification: Provided that, a self-certification, stating that the proposals shall not involve any additional pollution load, waste generation or water requirement, be submitted to the regulatory authority by the project proponent."

Prior to adopting the draft notification, hearings were conducted and written comments were solicited from various stakeholders including: (i) central ministries and departments, (ii) state governments and their agencies, (ii) industries and their associations and (iv) civil society including NGOs. A committee, constituted by the Ministry of Environment and Forests, Government of India published a report in October 2009 specifically recommended against the adoption of the above amendment, noting:[15]

> The amendments propose to exempt modernisation and expansion of projects based on a self-certification by project authorities that there is no increase in pollution load. It is totally unacceptable that the modernisation and expansion of projects be removed from the environmental clearance regime, with or without the requirement of self-certification. There are several industries operating in critically polluted areas or are in violation of their environmental clearance conditions, which need to be considered before the expansion of a project is considered. What is to be considered is not just whether there is an increase in pollution load but also the current impact of the project and its compliance with environmental clearance conditions. We can provide clear examples wherein the non-compliance of the clearance conditions has not been considered while granting clearance for expansion which includes adding new components to the existing industrial operations etc. This has allowed several projects to continue their activities and expand despite blatant noncompliance. Finally, it is only with industrial, thermal power and other such related operations that one can decide on parameters of pollution. Development projects like highways, airports and other infrastructure projects which seek to expand might have a detrimental impact due to factors such as change in land use (i.e. construction over a wetland, grassland or agricultural land etc). Despite this, the project proponent can certify that there is no change in pollution load and hence expansion is to be allowed. The

15 *Id.*, para 15.

> current process seeks a detailed EIA report to determine whether impacts can be mitigated. If the amendment is brought into force, it will simply do away with this critical and necessary step in the environmental clearance process. Therefore, this amendment should not be allowed.
> ...
> The draft notification , thus takes a myopic view of environmental and social impact of modernisation and expansion. Any modernisation/ expansion projects will necessarily entail increase in production, increase in transportation, increase in pressure on the local infrastructure and local natural resources and increase in the pollution load during the construction phase. So, even if a modernisation/expansion does not lead to an increase in the pollution load or water or land requirement within the factory premises during the operation phase, it will lead to an increase in environmental and social impact outside the premise. (Emphasis supplied). The draft amendment was not adopted in subsequent amendments to the EIA Notification.

The court further noted that as on the date of the impugned order of NGT which declared the issue of revised EC for expansion of project, construction at the project site had already been completed. Therefore the court approved the action of NGT which already directed the appellant to deposit Rupees one crore and had set up an expert committee to evaluate the impact of the appellant's project and suggest remedial measures. In view of these circumstances, the court upheld the directions of the NGT and direct that the committee continue its evaluation of the appellant's project so as to bring its environmental impact as close as possible to that contemplated in the original EC and also suggested the compensatory exaction to be imposed on the appellant/project proponent.

Illegal construction of residential flats in coastal zone of Kerala

In *The Kerala State Coastal Zone Management Authority* v. *Maradu Municipality,*[16] the Supreme Court dealt with the much-debated construction of residential flats in Maradu in Kerala in clear violation of the notified Coastal Regulations Zones (in short, 'CRZ'). The area in which the construction activities were carried out, is part of tidal influenced water body and the construction activities in those areas are strictly restricted under the provisions of the CRZ Notifications. As per the appellant, these constructions activities are taking place in critically vulnerable coastal areas which are notified as CRZ-III. The panchayats have issued these permissions in violation of relevant statutory provisions and CRZ notifications. The vigilance section of Local Self Government Department, Government of Kerala detected these violations and anomalies in the issue of building permits and hence directed the concerned bodies to revoke all the flawed building permits exercising its powers under Rules 16 and 23 of the Kerala Municipality Building Rules, 1999. A show-cause notice was issued asking the builders to show cause why the building permit issued to them be not cancelled. Writ petitions were filed questioning the

16 2019(2) KLJ 944, 2019(2) KLT 835, 2019(8) SCALE 113.

same. The single judge allowed the writ petitions. The division bench dismissed the appeals. The high court has observed that the permit holders cannot be taken to task for the failure of local authorities in complying with the statutory provisions and notifications. Review petitions were filed that were also dismissed. Hence, the appeals by special leave have been preferred.

The court after going through the report submitted by a specially constituted expert committee which heard the arguments of all the stakeholders, held that:[17]

> .. Permission granted by the Panchayat was illegal and void. No such development activity could have taken place. In view of the findings of the Enquiry Committee, let all the structures be removed forthwith within a period of one month from today and compliance be reported to this Court.

This is a wonderful instance of the judiciary ignoring certain well-established principles like balance of convenience and fait accompli for ensuring the compliance with the CRZ notifications.

Diversion of forest land for non-forest purposes under the Forest (Conservation) Act 1980

In *Southern Petrochemical Industries Corpn. Ltd.*v. *S. Joel,* [18] the Supreme Court dealt with a complaint regarding the diversion of forest land for non-forest purposes under the Forest (Conservation) Act 1980 by the state government. The June 2004 guidelines issued by Ministry of Environment and Forests (MoEF), Government of India, for regulating the diversion of forest land for non-forest purposes under the Forest (Conservation) Act 1980 (clarified on January 3 2005), delegated to the state governments the authority to permit diversion of forest land up to one hectare for the purpose of government departments for public utility purposes. Based on the above guidelines the Government of Tamil Nadu accorded approval for diversion of 0.055 hectares of forest land in Srivaigundam Village in Thoothukudi Division of the Tamil Nadu Water Supply and Drainage Board (TWAD Board) for construction of an intake well (along with a control room and foot bridge) for "drinking water purposes". A proceeding was instituted before the NGT complaining that instead of confining the use of water for drinking purposes, TWAD Board has permitted the use of water for industrial purposes. TWAD Board submitted before the tribunal that on July 23, 2018, it has moved the state government to approach MoEF and CC for its clearance, so as to permit the use of the area in question for both drinking water and industrial purposes. The tribunal issued a direction to the TWAD Board to prohibit the use of water drawn under the forest clearance for 0.055 hectares for industrial purposes, since it was granted only for the purpose of drinking water. The Supreme Court noted the initial stay by NGT, and its modification thereafter, was of the opinion that it would be necessary to put in place an administrative mechanism that would ensure that a decision to release water for industrial purposes is monitored by the collector of the district who shall conduct a due verification of the data which is available with the TWAD

17 *Id*., para 14.

18 2019(9) FLT 420, 2019(3) SCALE 303.

Board. The collector should independently assess the situation so as to ensure that the need for drinking water and irrigation is not compromised.

Probably, this order is reflective of the compromise between the claim for drinking water as a priority and the need to take care of industrialization. Environmental degradation always appears to be the certain casualty, as usual.

Environmental pollution and liability of citizens

In *Tata Power Delhi Distribution Ltd. NDPL House* v. *Manoj Misra*[19] the apex court examined the validity of direction of NGT for imposition of environmental compensation to be collected from every household by adding it to electricity bill of every household in NCT of Delhi, monthly in direct proportion to the property tax or electricity or water bill whichever is higher, payable by such house hold. This was necessitated due to generation sewage in the entire NCT of Delhi on the polluters pay principle, and in view of ongoing encroachment and the conversion of certain drains into parking and road-cum-parking space, conversion of land use of the certain other Link Drain from 'utility' to 'commercial', and proposed construction of commercial undertaking in the form and nature of 'Delhi Haat', over and above the drain. The grievance was that the conversion of the drains has reduced the easy and efficient drainage and compromised the biodiversity present in and along the drains and their ability to recharge ground water.

The court, in principle accepted the imposition of such environmental compensation on citizens, though the technicalities of clubbing the same with electricity bill etc could not be examined, in view of the subsequent direction of the NGT to the Government of NCT of Delhi to collect sewerage charges. This decision highlights the duty of citizens to protect environment and their liability for not honouring the same.

Vehicle parking in residential areas-environmental and other issues

In *M.C. Mehta* v. *Union of India,*[20] the Supreme Court took cognizance of the 'need to pass a detailed order on a mundane issue like parking because this may impact town planning' on the ground that proper parking policies will also lead to less pollution, less crime and a better and more dignified life which every citizen is entitled to under article 21 of the Constitution of India. In this case the court mainly dealt with the issue of parking in residential areas but while dealing with the issue in a holistic manner and also with the issue of parking in general. This was felt necessary because if adequate parking is not provided in transport hubs, institutional areas, commercial areas, *etc.,* the spill-over will go to the residential areas.

The court directed the New Delhi Municipal Corporation, North Delhi Municipal Corporation, South Delhi Municipal Corporation, East Delhi Municipal Corporation and Delhi Cantonment Board to ensure that all the pavements, in the residential areas are cleared from all encroachments and ensure that the pavements are made usable by

19 263(2019)DLT 660, 2020(10)FLT 355, 2019(14)SCALE 343, (2019)10SCC 104, 2019 (4) WLN 38 (SC).

20 2019(11) SCALE 811, (2019)10SCC 614.

pedestrians. It was also ordered that the persons who have encroached upon the pavements shall be given notice of 15 days to remove the encroachment and in case they fail to do so the encroachment shall be removed by the municipal authority/ authority concerned at the cost of the encroacher which shall be recovered as arrears of land revenue. It was directed direct that the draft Rules of the Delhi Maintenance and Management of Parking Places Rules, 2019 be notified at the earliest. Further the Government of NCT was directed to ensure that while granting permission to build any structures, there was proper assessment of the parking needs for the next 25 years and requisite parking facilities were available.

This order of the apex court should be regarded as a warning bell not only Delhi but also in the entire country, as the encroachment of roads and other public facilities by vehicle owners, will have a dangerous effect not only on human life but also on their right to live in a pollution free environment.

Claim of temple and forest lands- environmental protection

In *The Government of Tamil Nadu* v. *Arulmighu Kallalagar Thirukoil Alagar Koil,*[21] the Supreme Court dealt with a very old dispute regarding the claim by the devotees of Sri Arulmighu Kallalagar also called Sri Sundarajasami in respect of forest area of Alagar hills in Tamil Nadu on one hand, and the assertion of the state government that it is a forest area on the other hand. Having traced the history of litigation regarding the title of the scheduled land, and also having noted the ongoing efforts to facilitate a settlement, the court approved the following:[22]

> The Forest Department was willing to permit 50 ft. of pathway to reach all the spots and shrines from the foothill. The Forest Department was of the view that the temple should undertake very strict vigil on the ecosystem and environment and no non-forest activities shall be permitted within the 18.3032 hectares, except religious activities. We are in agreement with the proposal made by the Appellant. The Forest Department shall permit 50 ft. of pathway to reach all the spots and shrines from the foothills for which the earmarked area of 18.3032 hectares of land can be used. No non-forest activities shall be permitted to be undertaken by anybody, including the Respondent-temple administration within the 18.3032 hectares of land which is diverted for ease of movement of devotees to reach all the spots and shrines from the foothill.

This is one of the numerous decisions rendered in recent times that ensure the protection of environment even at religious places.

Stubble burning and impact on environment

In *M.C. Mehta* v. *Union of India (UOI),*[23] the apex court found that, no serious groundwork was made by the concerned states where the stubble burning is taking

21 AIR 2019 SC 5713, (2019) 8 MLJ 657, 2019(14) SCALE 751, 2020 (2) SCJ 739.

22 *Id.,* para 20.

23 2019(14) SCALE 721.

place. The court earlier passed an order on January 29, 2018 and the comments and recommendations made by EPCA on the report of the sub-committee of the high level task force on prevention of stubble burning in Punjab, Haryana and Western Uttar Pradesh was considered by this court. The court directed the high-level task force to adhere to the time lines decided upon by itself and to ensure full compliance by all concerned. This court also directed the Union of India to give the publicity to the report of the high-level task force so that the people are aware of the action being taken. Publicity can be given through the print and electronic media as well. Thus, in the pious hope that stubble burning and its impact on the environment shall be taken care of, the court disposed of the application. The court noted that the report of the sub-committee of the high-level task force on stubble burning in Punjab, Haryana and Western Uttar Pradesh has been placed on record, in which a suggestion was made to offer ‘ 100/- per quintal as incentive and disincentive both.

The court took cognizance of the allocation of funds by the Central Government to certain states and observed that :

> The Central Government has provided the Scheme of Promotion of Agricultural Mechanization in the States of Punjab, Haryana, Uttar Pradesh and NCT of Delhi for the period of 2018-19 and 2019-20 with a total outlay of ‘ 1151.80 Crores for in-situ Crop Residue Management such as Super Straw Management System for Combine Harvesters, Happy Seeders, Hydraulically Reversible MB Plough, Paddy Straw Chopper, Mulcher, Rotary Slasher, Zero Till Seed Drill and Rotavators are promoted with 50% subsidy to the individual farmers and 80% subsidy for establishment of Custom Hiring Centres of these machines. The Central Government has disbursed its 100% share of funds amounting to ‘ 269.38 Crores, ‘ 137.84 crores, ‘ 148.60 Crores and ‘ 28.51 Crores to the States of Punjab, Haryana, Uttar Pradesh and Central Agencies respectively.

The court directed *inter alia*, in the facts and circumstances of the case, to take care of the stubble, which has not been burnt by the small and marginal farmers in the States of Punjab, Haryana and Western Uttar Pradesh and to provide them financial support, quantified amount at 100/- per quintal of Non-Basmati Paddy, shall be given to those farmers within seven days from today by the state governments to those who have not burnt the stubble.[24]

Air pollution in Mumbai

In *Charudatt Koli* v. *Sea Lord Containers Ltd.,*[25] the Principal Bench of NGT at Delhi examined the remedial steps to be taken for control of air pollution in the outskirts of Mumbai, at and around villages *Ambapada* and *Mahul.* The major contributor to the air pollution is said to be the logistic services, storing oil, gas and chemical items,

24 See also the NGT’s decision in *In Re: Air Quality Deterioration In And Around Delhi as reported in Print and Electronic Media* where the tribunal took note of the deterioration of air quality in Delhi due to several reasons including the ‘crop residue burning’.

25 MANU/GT/0019/2019 (decided on Mar.7, 2019).

as well as oil companies releasing emissions. The emissions include Volatile Organic Compounds (VOCs) on account of loading, storage and unloading operations of hazardous chemicals at various stages. The tribunal found that there was deterioration of ambient air quality causing threat to health of the residents and that probable sources are the activities of respondent company and other industries apart from certain other unidentified sources. Accordingly, the tribunal in 2015 directed the Maharashtra Pollution Control Board (MPCB) to prepare a comprehensive action plan for control of air pollution. Health Impact Assessment study was directed to carried out, apart from Volatile Organic Compounds (VOC) assessment study. The tribunal also issued other incidental directions for prevention and remedial action by the operators of various projects as well as regulatory authorities. In an execution application filed alleging non-compliance of the direction, The tribunal found that since there was damage to the air quality, the stand of the respondent industries that their contribution to the air pollution was not established could not be accepted. It was observed as follows: [26]

> We are of the view that once there is damage to the air quality adversely affecting the health of the inhabitants, no polluter can escape liability for the polluting activities. Even a suspect polluter can be held accountable precautionary principle as well as prohibitory remedial action can be required to be taken…….Action may be closure of unit, requiring steps to check pollution and also requiring payment of compensation for damage to the environment.

Accordingly, the NGT while directing compliance of the earlier order within three months, also directed payment of an interim amount of Rs. 10 crores to be deposited with CPCB for restoration of the environment apart from compensation to few direct victims.

Impact of felling of trees on environment

In *Chandra Prakash Budakoti* v. *Union of India*[27]the apex court confirmed the finding and orders of the NGT relating to complaints of a journalist and editor of a Hindi Newspaper having circulation in State of Uttarakhand that environmental damage was caused by large-scale felling of trees in private forests and also blasting activities resorted in the fragile Himalayan region. Based on a report submitted by Regional office of the Ministry of Environment and Forest at Dehradun, the NGT held that the area was a non-forest land and that the provisions of Forest (Conservation) Act, 1980 would not be applicable.

Construction of housing project for MLAs in eco-sensitive zones

In *Tata Housing Development Company* v. *Aalok Jagga,*[28] the apex court held that construction of housing projects cannot be permitted to come up within such a short distance from the wildlife sanctuary.

26 *Id*., para 7.

27 2020(10) FLT 336, 2019(14) SCALE 346, (2019)10 SCC 154, 2019 (4) WLN 82 (SC).

28 2020 (10) FLT1, (2020)3 MLJ 274, 2019(14) SCALE 641, 2020 (2) SCJ 722SC on Nov. 5, 2019).

The court noted that the construction of the proposed project not only requires the environmental clearance as provided under the Notification dated September 14, 2006 but it is also subject to the regulations provided under paragraph 4 of the notification dated January 18, 2017 issued by the Ministry of Environment, Forests and Climate Change. The notification makes it clear that no new commercial construction of any kind shall be permitted within 0.5 km. from the boundary of protected area or up to the boundary of the eco-sensitive zone. Construction of all types of new buildings and houses up to a distance of 0.5 km in the zone- shall be prohibited and that construction of low density (ground coverage less than half of the plot size) and low rise building about 15 feet can be permitted.

In view of the notification issued with respect to the Sukhna wildlife sanctuary towards the side of Chandigarh Union Territory and also considering the fact that proposal made by the Punjab Government, confining the buffer zone to 100 meters, the apex court held that it has rightly not been accepted by MoEF, as the Government of Punjab as well as the MoEF, cannot be the final arbiter in the matter. The court declared that it has to perform its duty in such a scenario when the authorities have failed to protect the wildlife sanctuary eco-sensitive zone. The entire exercise of obtaining clearance relating to the project was therefore quashed. The court also regretted that such a scenario had emerged in the matter involving a large number of MLAs of Punjab Legislative Assembly, and that the entire exercise smacks of arbitrariness on the part of government including functionaries. The court had also rightly invoked the doctrine of public trust in this case.

Taj Mahal and prevention of pollution

In *M.C. Mehta* v. *Union of India*[29] a three-judges bench of the Supreme Court headed by the chief justice permitted provision of basic amenities near Taj Mahal. Earlier, on December 8, 2017, the court identified an urgent public interest in preparing a future-oriented comprehensive Vision Plan to preserve the Taj and its environs, being the Taj Trapezium Zone (for short, "TTZ") which is spread over six districts of Uttar Pradesh and one district (Bharatpur) in Rajasthan. Directions were issued to undertake such exercise with consultation of all stake holders as well as experts in heritage (both cultural and historical), environment, wildlife and pollution-prevention. Consultation with civil society was also mandated, including with Mr. M.C. Mehta who has dedicated numerous decades to protecting the Taj. The court directed that "Until then (preparation of vision plan), there will be a status quo in the Taj Trapezium Zone (TTZ)". On the plea of Uttar Pradesh that in view of compliance of the 'conditional' status quo order, the state government and other statutory authorities may now be permitted to grant environmental clearances which are necessary for providing essential public facilities including drinking water supply, sewerage treatment plant, drainage system, solid waste disposal, Common Effluent Treatment Plant, Bio Medical Waste Treatment Facility, and Waste to Energy Plants *etc*, the court in the case held that there need not be any impediment for granting necessary clearances for the same. As regards permission for establishing non-polluting industrial units, the

29 2019(17) SCALE 332.

court held that only those small, micro and macro level industries which are both non-polluting and eco-friendly and which have necessary clearances from all statutory authorities as well as concurrence of the Central Empowerment Committee and NEERI, can be setup within the notified industrial area. Further, the court also held that there shall, however, be an embargo on granting clearances to and/or shifting of any heavy industry until a final decision is taken on the vision document.

This case is another instance of judicial assertion in preserving the great structure and also in ensuring environmental protection.

Pollution in Delhi

In *M.C. Mehta* v. *Union of India,*[30] the Supreme Court noted with concern the increasing pollution in Delhi and National capital region, and observed as under:

> Today everyone is concerned about level of pollution in Delhi and NCR region. This is not something new, every year this kind of piquant situation arises for a substantial period. It is compounded by the fact that year to year in spite of various directions issued by High Court, other authorities including this Court the State Governments, Government of NCT of Delhi and the corporations of Delhi and nearby States are not performing their duties as enjoined upon them. This is a shocking state of affairs in which we are put as on today. This is blatant and grave violation of right to life of the sizeable population by all these actions and the scientific data which has been pointed out indicates that life span of the people is being reduced by this kind of pollution which is being created and that people are being advised not to come back to Delhi or to leave the Delhi due to severe pollution condition which has been created. There cannot be large scale exodus. People have to perform their duty in Delhi also and people cannot be evacuated from Delhi being a capital city. We are at a loss to understand why we are not able to create a situation in which this kind of pollution does not take place, that too in a routine manner every year. Obviously, it is writ large that the State Governments, Government of NCT of Delhi and civic bodies have miserably failed to discharge their liability as per the directive principles of State Policy which have found statutory expression, they are being made statutory mockery and also the directions of this Court and High Courts in this regard are being violated with impunity.[31]
>
> Time has come when we have to fix the accountability for this kind of situation which has arisen and is destroying right to life itself in gross violation of Article 21 of the Constitution of India. No farmer can be said to be having a right under the guise that he is not having sufficient time to use the stubble for the purpose of manure, since they have less

30 2019(14) SCALE 602.

31 *Id.,* para 5.

> time between two crops, cutting and sowing of next crop. As such, they cannot by burning it in their fields, put life of sizeable population in jeopardy.[32]
>
> It was apparent from the satellite images produced before the court for the period 30.10.2019 to 04.11.2019 that in Punjab there is widespread stubble burning which has taken place as compared to Haryana, in which only in four districts it has taken place. There is some burning in Western U.P. also. It could not have taken place even in a singular district or gram panchayat area as we live in a civilized country in which such kind of activities which create such menacing pollution not only in the area concerned but to the neighbouring States also, by ill-effects of that people cannot be left to die or to suffer various ailments.[33]

Everybody has to be answerable including the top state machinery percolating down to the level of gram panchayat. The very purpose of giving administration power up to the panchayat level is that there has to be proper administration and there is no room for such activities. The action is clearly tortuous one and is clearly punishable under statutory provisions, besides the violation of the court's' order. In the circumstances, as widespread stubble burning has taken place, The court directed the States of Punjab and Haryana and adjoining State of Uttar Pradesh where there is blatant violation which has taken place, to halt it.[34]

The court directed "the Chief Secretaries of the State Governments, District Collectors, Tehsildars, Director General, IG/SP and other police officers of the area of concerned police station and the entire police machinery to ensure that not even a single incident takes place of stubble burning henceforth. If it is found that any stubble burning has been made not only that person doing it will be hauled up for the violation of the order passed by this Court but the entire administration, right from the Chief Secretary, Commissioner, Collector and all other concerned functionaries and Panchayats. Gram Pradhan/Sarpanch Panchayat are also directed to ensure that no such stubble burning takes place."

The court also sought clarification from the State Governments of Punjab, Haryana and Uttar Pradesh and officials also to explain that why they should not be asked to pay the compensation for tortious liability as they have acquiesced and due to their failure in preventing stubble burning which is in utter violation of the public trust doctrine, why they should not be held liable to compensate, and also the incumbents who are burning the stubble in spite of clear restrictions imposed by this court and statutory prohibition.

The tone of the court has been very serious in this case; however the net result appears to be insignificant.

32 *Id*., para 6.
33 *Id*., para 7.
34 *Id*., para 8.

Destruction of natural/existing bodies and environmental protection

In *Jitendra Singh* v. *Ministry of Environment,*[35] the Supreme Court addressed the issue of the agents of a private entity using excavators and other heavy machinery in an attempt to forcibly takeover possession of a 'common-pond' in the National Capital Region , which had been in use by local villagers for a century. When objected to, by the local villagers and activists, the concerned authorities failed to prevent the private company, and even the NGT failed to respond in appropriate manner. Thus ,in the appeal filed before the apex court, the court reiterated the principle that 'ponds' are a public utility meant for common use and that they could not be allotted or commercialized.[36] The court reemphasized that: [37]

> Protection of such village-commons is essential to safeguard the fundamental right guaranteed by Article 21 of our Constitution. These common areas are the lifeline of village communities, and often sustain various chores and provide resources necessary for life. Waterbodies, specifically, are an important source of fishery and much needed potable water. Many areas of this country perennially face a water crisis and access to drinking water is woefully inadequate for most Indians. Allowing such invaluable community resources to be taken over by a few is hence grossly illegal.

Adverting to the argument that a larger pond is being constructed to replace the existing natural lake, the court held that:[38]

> The Respondents' scheme of allowing destruction of existing water bodies and providing for replacements, exhibits a mechanical application of environmental protection. Although it might be possible to superficially replicate a waterbody elsewhere, however, there is no guarantee that the adverse effect of destroying the earlier one would be offset. Destroying the lake ……, would kill the vegetation around it and would prevent seepage of groundwater which would affect the already low water-table in the area. The people living around the lake would be compelled to travel all the way to the alternative site, in this case allegedly almost 3 kms away. Many animals and marine organisms present in the earlier site would perish, and wouldn't resuscitate by merely filling a hole with water elsewhere. Further, the soil quality and other factors at the alternate site might not be conducive to growth of the same flora, and the local environment would be altered permanently. The Respondents' reduction of the complex and cascading effects of extinguishing natural water-bodies into mere numbers and their attempt to justify the same through replacement by geographically larger

35 2020(10)FLT 322, 2020(1)KLT 56, 2019(17)SCALE 29, 2020 (2) SCJ 715.

36 Relying upon the Supreme Court judgment in *Hinch Lal Tiwari* v. *Kamala Devi* MANU/SC/0410/2001: (2001) 6 SCC 496 and *Jagpal Singh* v. *State of Punjab* (2011) 11 SCC 396).

37 *Id*., para 20.

38 *Id.,* para 21.

artificial water-bodies, fails to capture the spirit of the Constitutional scheme and is, therefore, impermissible.

This judgment should act as a warning to all the government authorities and also the private companies, not to meddle with the natural water bodies in the name of development.

Revocation of environmental clearance

In *Department of Mines and Geology, State of Punjab* v. *State Level Environment Impact Assessment Authority, Punjab*[39] the Supreme Court held that an order of revocation of the environmental clearance, issued pursuant to the acceptance of the report submitted by the expert committee constituted by the sub-divisional magistrate, could be revoked if the report shows that the ground reality was different from what was projected by the project proponent, in its application for grant of the environmental clearance.

Noise pollution due to use of LCDs and sound amplifiers (loud speakers)

Nowadays, it has become a fashion to use LCDs and loud speakers at public places even to celebrate religious functions or to offer prayers. Though the Supreme Court has taken cognizance of this menace and evil consequences of the same on human health and environment in landmark cases like Noise Pollution (V), In Re,[40] and issued number of directions to the authorities, the use of such loud speakers still continues. In view of the indiscriminate and unregulated use of such loud speakers in Hashimpur Road, Prayagraj in Uttar Pradesh State of India, which is a densely populated area, two Writ Petitions were filed by aggrieved persons in the Allahabad High Court in *Sushil Chandra Srivastava* v. *State of U.P.*[41]

The facts as stated were that the LCD starts from 4.00 A.M. till midnight regularly without any break with full sound, thus creates sound problem as well as public nuisance in the residential area. It was also stated that the mother of petitioner no. 1 is aged about 85 years and she is suffering from multiple age-related diseases and the high noise pollution is causing serious problem in her ears and heart. It is further stated that the son of petitioner no. 2 is studying in Class 12th and due to sound pollution, he is unable to prepare for the examination. It is stated that in the area there are three hospitals/ nursing homes, and large number of patients are admitted in these hospitals, some of them are suffering from heart and other serious ailments, and that they are also affected by high noise pollution.

It appeared to the High Court of Allahabad that they were using loudspeakers indiscriminately and no action has been taken against persons using loudspeakers and that state government and its functionaries have failed to perform their duties cast upon them. The court noted that no valid reasons have been furnished by authorities for not complying law. Consequently, the court was of the firm view that the law relating to noise pollution needs to be strictly complied with, in larger public interest.

39 2020(10)FLT 358, 2019(16) SCALE 504

40 2005 (5) SCC 733.

41 2019(8)ADJ 466, 2019(9)FLT 837, (2019)ILR 9 All 1174.

It is sincerely hoped the regulating authorities including police and also the citizens would follow the directions of court in this regard.

In Re: Water Pollution by Tanneries at Jajmau, Kanpur, Uttar Pradesh.[42] is an important decision of the NGT delivered in the year under survey. The NGT heard petition filed impugning state government order permitting discharge of untreated sewage containing toxic chromium directly into river Ganga pending cleaning of trunk sewer and non-functioning of sewerage treatment plant. The NGT took cognizance of the erroneous stand of the State of Uttar Pradesh that, during monsoon any pollution load, including sewage or any other polluting effluents can be discharged in the water bodies/rivers which is clearly against the mandate of section 25 of the Water (Prevention and Control of Pollution) Act, 1974. The tribunal ultimately held that:[43]

> i. The State of U.P. is … liable for failing to take any action for shifting of Chromium dumps at Rania and Rakhi Mandi which resulted in damage to the environment and the public health for the period from 1976 till date. The amount of compensation in this regard is held to be the amount assessed by the UPPCB to be recovered from the erring industries. Till such recovery, the State itself must pay the amount by way of transfer to an ESCROW account. The amount is to be utilized for restoration of the environment and the public health in the area in the manner mentioned earlier. The State of U.P. is at liberty to recover the amount from the erring industries or erring officers as already mentioned in para 13 above.
>
> ii. The State of U.P. must take further steps for disposal of the hazardous Chromium dumps as per directions of … Tribunal …., failing which it will be liable to pay compensation …….
>
> iii. State of U.P. is held liable to pay environmental compensation of Rs. 10 crores for damage to the environment for permitting discharge of untreated sewage containing toxic Chromium into river Ganga directly vide its order ….. ……The UPPCB is held liable to pay sum of Rs. 1 crore for ignoring illegal discharge of sewage and other effluent containing toxic Chromium directly into river Ganga and taking action after a long time in spite of earlier proceedings before this Tribunal (NGT) . U.P. Jal Nigam is held liable to pay sum of Rs. 1 crore for releasing untreated large quantity sewage containing toxic Chromium in river Ganga. These amounts may be deposited with the CPCB within one month which may be overseen by the Chief Secretary, UP. UPPCB is at liberty to recover the amount from the erring industries.
>
> iv. The State of U.P. may take steps for supply of potable water to the inhabitants of the
>
> …..

42 MANU/GT/0102/2019.

43 *Id.,* para 19.

vi. CPCB may issue appropriate directions to ensure that no authority allows discharge of polluted sewage or polluted effluents directly into a water channel or stream in violation of law even in monsoon and also the standards for faecal coliform are duly maintained.

This is yet another bold order passed by the NGT, and it is to be seen whether it will be implanted in its true spirit given the insensitive attitude of the state government in the past, and also the other authorities.

Polluted industrial areas and environmental protection

One of the principal attributes of good governance is the establishment of viable institutions comprising professionally competent persons and the strengthening of such institutions so thatthe duties and responsibilities conferred on them are performed with dedication and sincerity in public interest. The NGT reiterated the above principle in *In Re: News item published in "The Asian Age" Authored by Sanjay Kaw Titled "CPCB to rank industrial units on pollution levels*",[44] the NGT directed the Pollution Control Boards/Pollution Control Committees (PCBs/PCCs) to finalize time bound action plan to bring all the Polluted Industrial Areas (PIAs) within safe parameters as per the Air Act, 1981 the Water Act, 1974 and the Environment Protection Act, 1986. Accordingly, report was compiled by the CPCB and furnished to the MoEF and CC and also to the tribunal. After considering the said data, this held that the rule of law required prohibiting polluting activities to protect the environment and public health. While remedial action may certainly be planned, current violation of lawcould not be ignored and was actionable by way of stopping polluting activities,initiating prosecution and recovering compensation on 'Polluter Pays' principle. The statutory authorities are accountable for performing their statutory duties. Noting the pollution levels in 100 industrial areas and clusters in the country, as reported by the CPCB, the NGT held that mere making of action plans obviates the requirement of enforcing the law, and further that the continued polluting activities are criminal offences under the law of the land. It was reiterated that economic development is not to be at the cost of health of the public and in violation of law of the land. Unless the polluting industries tackle the problem, they have created, their operations have to be stopped/suspended.

Accordingly, the NGT directed the CPCB in coordination with all state PCBs/ PCCs to take steps in exercise of statutory powers under the Air (Prevention and Controlof Pollution) Act, 1981, Water (Prevention and Control of Pollution) Act, 1974, Environment (Protection) Act, 1986 or any other law to prohibit operation of polluting activities in the said CPAs and SPAs within three months and furnish acompliance report to this tribunal. The Central Pollution Control Board, in-coordination with the state boards/PCBs may make assessment ofcompensation to be recovered from the said polluting units for the period of last five years, taking into account the cost of restoration and cost of damage tothe public health and environment

44 MANU/GT/0095/2019 *vide* its order issued in Dec. 2018.

and the deterrence element. The scale of deterrence may be related to the period and the frequency of defaults. Such other factors as may be found relevant may also be taken into account.The NGT further directed as under: [45]

> The Tribunal has thus no option except to reiterate that meaningful action has to betaken by the State PCBs/PCCs as already directed and action taken report furnishedshowing the number of identified polluters in polluted industrial areas mentioned above, the extent of closure of polluting activities, the extent of environmental compensation recovered, the cost of restoration of the damage to the environment of the said areas,otherwise there will be no meaningful environmental governance. This may be failure ofrule of law and breach of trust reposed in statutory authorities rendering their existenceuseless and burden on the society. On default, the Tribunal will have no option exceptto proceed against the Chairmen and the Member Secretaries of the State PCBs/PCCs byway of coercive action under Section 25 of the National Green Tribunal Act, 2010 readwith Section 51, CPC. Such action may include replacement of persons heading such PCBs/PCCs or direction for stopping their salaries till meaningful action for complianceof order of this Tribunal. The Tribunal may also consider deterrent compensation to berecovered from the State PCBs/PCCs.

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In *Jitendra Singh* v. *Ministry of Environment*,[46] the Supreme Court addressed the issue of the agents of a private entity using excavators and other heavy machinery in an attempt to forcibly takeover possession of a 'common-pond' in the National Capital Region, which had been in use by local villagers for a century. When objected to, by the local villagers and activists, the concerned authorities failed to prevent the private company, and even the NGT failed to respond in appropriate manner. Thus, in the appeal filed before the apex court, the court reiterated the principle that 'ponds' are a public utility meant for common use and that they could not be allotted or commercialized relying upon the Supreme Court judgment in *Hinch Lal Tiwari* v. *Kamala Devi*[47] and *Jagpal Singh* v. *State of Punjab*.[48]

The court reemphasized that: [49]

> Protection of such village-commons is essential to safeguard the fundamental right guaranteed by Article 21 of our Constitution. These common areas are the lifeline of village communities, and often sustain various chores and provide resources necessary for life. Water bodies, specifically, are an important source of fishery and much needed potable water. Many areas of this country perennially face a water crisis and

45 *Id.,* para 11.

46 2020(10)FLT 322, 2020(1)KLT 56, 2019(17)SCALE 29, 2020 (2) SCJ 715.

47 (2001) 6 SCC 496.

48 (2011) 11 SCC 396.

49 *Id.*, para 20.

> access to drinking water is woefully inadequate for most Indians. Allowing such invaluable community resources to be taken over by a few is hence grossly illegal.

Adverting to the argument that a larger pond is being constructed to replace the existing natural lake, the court held that: [50]

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Solid waste management

In *Re: Compliance of Municipal Solid Waste Management Rules, 2016* [52]is an important decision of the NGT in 2019.The tribunal dealt with the issue of non-implementation of the Municipal Solid Waste Management Rules, 2016 .It was held

50 *Id*., para 21.

51 2020(10)FLT 358, 2019(16) SCALE 504.

52 MANU/GT/0009/2019.

that the issue of solid waste management is of paramount importance for protection of environment and that failure to address the issue in a satisfactory manner impacts air pollution as well as water pollution . In spite of statutory framework and binding legal precedents and orders, violation of law was rampant. Consequently, the NGT noted that 'Polluter Pays Principle' can be applied by every regulatory authority and compensation can be and must be recovered from every polluter and the amount which is to be recovered spent for the restoration of the environment. Administrators of states were directed to review progress on all issues.

Dumping industrial wastes into river

In *Human Right Redemption Social Welfare Association of India* v. *Union of India,*[53] the NGT dealt with an industry in district *Singrauli* in State of Madhya Pradesh, depositing of coal sand, rocks, dust, mud, sludge and overburden and explosive residue into Kanchan river thereby polluting and shrinking it day by day. In the instant case of the mining lease, even if the mining overburden was allowed to be dumped within the mining area it had not been satisfactorily explained why the dumping site was selected close to the river. The joint inspection team pointed out that the garland drains which were constructed along the periphery of the dumping sites had not been effective at all as debris have been found to be flowing into the river.

The NGT was of the considered opinion that there has been total disregard of the environmental norms, with respect to the dumping of overburden, by respondent industries. The NGT, therefore, prohibited the dumping of overburden at the site by either acquiring non-forest land outside mining lease area or if they had to dump the overburden within the lease area, it had to be at a distance of at least 1 km from the river. It was also directed that the river Kanchan or any other stream which is flowing through the lease area should be excluded from the mining lease and that there shall be no mining activity including dumping of overburden within 100 meters of Kanchan River or any other water body as given in the Madhya Pradesh Mines and Mineral Rules,1996.

In *Social Action for Forest and Environment (SAFE)* v. *Union of India,*[54] the main issue before the NGT was compliance of Solid Waste Management Rules, 2016, Hazardous and other Wastes (Management and Transboundary Movement) Rules, 2016 and Bio-medical Waste Management Rules, 2016 in the city of Agra as well as the areas coming under the Cantonment Board, Agra and eco-sensitive zone of Taj Trapezium Zone.

In view of grave situation affecting the public health in a big way and failure of authorities in discharging their duties, the NGT directed the State of Uttar Pradesh to furnish a performance guarantee in the sum of Rs. 25 crores to the satisfaction of the CPCB to comply with the timelines in the action plan to be submitted, consistent with the earlier orders of NGT, as an interim arrangement pending further consideration of the matter. The NGT also permitted the State of Uttar Pradesh to determine the liability

53 MANU/GT/0049/2019.

54 MANU/GT/0008/2019

of the erring officers and the polluters and take appropriate action against them and observed that: [55]

> The concerned State authorities may take steps to recover appropriate compensation from the identified polluters in accordance with law and furnish an action taken report within three months to the Tribunal

This order reflects the increasing but welcoming trend of the NGT and courts making the erring officials liable to compensate the victims of environmental pollution.[56] In case of threat to life arising out of coal mining, the tribunal held that it is necessary that the state machinery is required to compensate for their negligence and failure which may act as deterrent against the officers who neglected their basic duty of protecting the environment or colluded with the polluters and law violators. This is required not only as a part of principle of 'polluter pays' which applies not only to actual polluters but also to those who collude with polluters or enable pollution to be caused and also for the negligence of public duties, adversely affecting the citizens

Solid waste management by Indian railways

In *Saloni Singh* v. *Union of India*[57] the Principal Bench of NGT at New Delhi took cognizance of the initiatives taken by the Indian Railways for solid waste management, prevention of littering of solid and plastic waste, prevention of open defecation on Railway land adjoining tracks and open discharge of human waste on platforms and lines and prevention of encroachments. This was in respect of 37 identified railway stations and with regard to remaining 683 major railway stations has also been given. The NGT held in this case that: [58]

> There can also no dispute with the proposition that Environment (Protection) Act,1986 also applies to all major railway stations. The said Act aims to protect and improve environment. Section 3 empowers the Central Government to take measures to protect and improve the environment. Section 5 deals with power to give directions. Section 25 empowers the Central Government to frame Rules laying down standards for environment pollutants, safeguards for hazardous substances, manner of analysis of air, water and soil. The Rules framed under the said Act include solid waste, plastic waste, bio-medical waste, hazardous waste, C&D waste, e-waste Rules. Several activities take place at major railway stations which may attract provisions of the Rules. The said Rules have, thus, to be complied by all the major railway

55 *Id.*, para 24.

56 See *Aryavart Foundation* v. *Vapi Green Enviro Ltd.,* (O.A. No. 95/2018) order dated Jan 11, 2019 wherein the tribunal reiterated that 'Polluter Pays' principle is ingrained in the environmental jurisprudence of the country as well as statutory mandate under Section 20 of the NGT Act, 2010.; and also *Garo Hills District* v. *State of Meghalaya* (O.A. No. 110 (THC)/ 2012) order dated Jan. 4, 2019.

57 MANU/GT/0100/2019.

58 *Id.*, para 20.

> stations, to the extent applicable. The EP Act is an umbrella legislation which enables the Central Government to frame Rules on the subject of environment protection and to issue directions. Rules framed applied to every generator of waste and occupier of the place where waste is generated. Undoubtedly, the railway premises are such places. The Railway Administration is the occupier of such places where waste is generated.

Discharge of untreated sewage and effluents in to water bodies including sea

In *Sarvadaman Singh Oberoi* v. *Union of India,*[59] the NGT dealt with the discharge of untreated sewage and effluents into the sea which is continuing in large scale. In the instant case the applicant sought direction to formulate an action plan to restore sea water quality along the Indian Coastal areas by placing reliance on report of CPCB "Classification of Indian Coasts and Conflicts" (1982-86) referring to marine pollution by sewage and other discharge in violation of environment laws. According to the applicant, certain coastal areas are critically polluted on account of dumping of sewerage and waste. Over 80% of marine pollution is from land-based sources-industrial, agricultural and urban. Municipal sewage is the main source of pollution. The NGT referred to its earlier order dated September 17, 2019, wherein the tribunal has directed that 'no untreated sewage/industrial effluent be discharged into any water bodies (which includes coastal waters).Any violation is to result in compensation starting from April 1, 2020'. Accordingly, the NGT directed that all the state PCBs/ PCCs of coastal states/UTs may give the relevant information to CPCB within one month from today failing which defaulting states/UTs will be liable to pay Rs. 10 lakhs per month till compliance.

This is a welcome step; especially when the state governments/Union Territories unduly focus on beautification of lakes but simply ignore the quality of water in them. Further the governments are the main culprits of pollution of natural lakes by releasing the sewage and drainage water into them without operationalizing the STPs.

Revision of environmental policies

In *Shailesh Singh* v. *State of Haryana,*[60] the NGT considered the question of the need for revision of existing monitoring mechanism to oversee compliance of environmental norms by the state PCBs including duration for mandatory inspections of 'highly polluting 17 category', 'red' and 'orange' and 'green' category industries and policy of auto renewals of consent to operate under the Water (Prevention and Control of Pollution) Act, 1974 as well as the Air (Prevention and Control of Pollution) Act, 1981.The tribunal noted that the data presented by the CPCB shows that there is rampant non-compliance of environmental norms by the industries resulting in contamination of ground water and deterioration of air quality. So much so, the source of drinking water is contaminated depriving the citizens of right to access potable water. Such unsatisfactory state of affairs needs to be factored in the policy framework

59 MANU/GT/0111/2019.

60 MANU/GT/0082/2019.

for remedial action. Revised policy must match the gap in violations and remedial measures by the regulators.

The court made the following observations pertinent to maintain the balance between industrialization and environmental protection-[61]

> The report of the Chief Secretary refers to ease of doing business initiatives to encourage industrial development. Needless to say that while industrial development in sustainable manner is necessary, it cannot be at the cost of air and water quality which are the means of sustenance of life. The industrial development cannot be on the graves of human beings. There can be no objection to bureaucratic procedures and hassles being relaxed, simplified and shortened and industrial growth and employment generation programmes being encouraged but at the same time, such initiatives are to be balanced against deterioration of air and water quality which must be protected.

Having considered the material on record, we are of the view that there is need for further reduction of period of inspections and increase in frequency with regard to 'highly polluting 17 category', 'red category' and 'orange category'. Vigilance is also required on 'green category' to verify that 'green' status is being genuinely used. Since the report of the chief secretary states that similar policies are operating in 19 States, there is need for the CPCB to ensure revision of such policies in all the states having regard to the data of air and water quality, CEPI, non-attainment cities and polluted water stretches, *etc.* in said states. The policy should cover inspections with reference to the Water (Prevention and Control of Pollution) Act, 1974 as well as the Air (Prevention and Control of Pollution) Act, 1981.[62]

Enforcement of environment norms where large congregations take place

In *Westend Green Farms Society* v. *Union of India.*[63] The issue for consideration was the enforcement of environment norms against running of restaurants/hotels/motels/banquets where large congregations take place. Noting that its earlier finding of violation of law on the subjects of waste management, discharge of effluents, illegal ground water extraction, ground water contamination, emission by illegally operating diesel generators, absence of statutory consents under the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and violation of conditions of consents where such consents had been granted, by the restaurants/hotels/motels/banquets in Mahipalpur, Rajokri areas in Delhi, the tribunal also considered the issue of absence of rain water harvesting, ground water recharge system, excess noise pollution, illegal parking and encroachments. The NGT observed as under: [64]

> There can be no dispute that violation of environment norms having adverse impact on environment and public health cannot be ignored.

61 *Id.,* para 10.

62 *Id.,* para 11.

63 MANU/GT/0076/2019.

64 *Id.*,para 12.

> Apart from formalizing and enforcing the action plan reproduced above, the MoEF&CC may evolve appropriate sitting guidelines as well as mechanism for undertaking impact assessment either of individual establishments or of the area/cluster to ensure that activities beyond carrying capacity of the area are duly regulated to enforce the 'Precautionary' principle as well as 'sustainable development'. The MoEF&CC may also review the reports which may be furnished by the CPCB in respect of progress made by the SPCBs/PCCs. We direct the MoEF & CC to entrust the responsibility of evolving mechanism for mitigation to the CPCB which is a statutory body under the Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974 and/or any other expert/ institution. It will be appreciated if the CPCB can lay down suitable guidelines for the regulation of such entities, within the framework of law. The guidelines must provide for coercive measures in case of violations and also a monitoring mechanism.

Pollution of river Ganga

In *M.C. Mehta* v. *Union of India*.[65] the NGT Principal Bench, New Delhi considered the question of prevention and remedying of pollution of River Ganga, which has been taken-up and monitored by the Supreme Court for the last three and half decades *i.e*., since 1985. The tribunal also categorically noted that orders passed in the last 34 years remain uncomplied which is a matter of serious concern.In view of the above, the NGT directed the States of Bihar, Jharkhand and West Bengal to deposit a sum of Rs. 25 lakhs each by way of interim compensation for the continued damage to the River Ganga and inaction of the said states even in responding to this tribunal with the CPCB within one month which may be spent on restoration of the environment.

Flouting of vehicle emission norms by car manufacturers

In *Saloni Ailawadi* v. *Union of India.,*[66] the NGT dealt with the deceptive practice of manipulating the vehicle emission norms by using computer software by certain foreign car manufacturers like Volkswagen and Skoda . The present case has attained notoriety and has been termed as "Volkswagen emission scandal" or "dieselgate". While imposing a heavy penalty of Rs. 500 crores on Volkswagen which failed emission tests in India, the NGT made the following very relevant observations: [67]

> Pollution cannot be allowed to be profitable activity. The environment is priceless. Intentional violations have to be visited with more stringent damages than accidental or unintended.
>
> The tribunal had taken into account the principles for determining quantum of damages laid down, *inter-alia*, in several judgments of the

65 MANU/GT/0044/2019.

66 MANU/GT/0022/2019.

67 *Id*., para 27.

> Supreme Court.[68] The tribunal opined that, the measure of damages has to be fixed taking into account not only the actual damage but also the magnitude and the capacity of the enterprise so that compensation has deterrent effect. Circumstances are also to be considered. This test has not been applied in the above report. As noted in the earlier order, the worth of the company is stated to be USD 75 billion. Thus, apart from actual damage by a conservative estimate, deterrent element has to be considered, specially in view of international unethical practice.[69]

Having regard to all the circumstances including violations, financial capacity of manufacturers, extent of penalties levied world over, it was found to be just and fair to enhance the amount to Rs. 500 crores. It was further noted that this amount is insignificant compared to the amount of compensation which the company has been required to pay in other jurisdictions. The amount is also insignificant in the light of magnitude of the business of the company.

Air pollution in the outskirts of Mumbai

In *Charudatt Koli* v. *Sea Lord Containers Ltd* [70] the issue for consideration is the remedial steps to be taken for control of air pollution in the outskirts of Mumbai, in and around villages Ambapada and Mahul. The major contributor to the air pollution is said to be the logistic services, storing oil, gas and chemical items, as well as oil companies releasing emissions. The emissions include Volatile Organic Compounds (VOCs) on account of loading, storage and unloading operations of hazardous chemicals at various stages. While referring to its earlier direction given in 2015, and non-compliance with the same by the respondents, the NGT made it clear that CPCB must refer to the earlier reports and data base and consider the observations in the orders of the Supreme Court and assess the value of the damage to the environment and public health and the proportion in which the amount is required to be recovered from the identified contributors to the pollution. The oil companies BPCL and HPCL were directed to deposit the amount with CPCB in terms of orders of the Supreme Court. CPCB was also directed, in consultation with MPCB to evolve source standards for chemical storage terminals in accordance with the earlier direction of the NGT. It is necessary to note that in the same case, by a subsequent direction,[71] the NGT fixed

68 *Sterlite Industries (India) Ltd*. v. *Union of India* [MANU/SC/0284/2013: (2013) 4 SCC 575 : 47], *T.N. Godavarman Thirumulpad* v. *UOI* [MANU/SC/0596/2005 : (2006) 1 SCC 1 : 1,] *Indian Council for Enviro-Legal Action* v. *Union of India* MANU/SC/1112/1996 : (1996) 3 SCC 212 : 67,] *Vellore Citizens Welfare Forum* v. UOI, [MANU/SC/0686/1996 : (1996) 5 SCC 647 :11 to 13,] *M.C. Mehta* v. *Kamal Nath* [MANU/SC/1007/1997: (1997) 1 SCC 388 :10], *Public Trust Doctrine*, 24, *M.C. Mehta* v. *UOI*., [W.P.(C) No. 13029/1985 order dated 24.10.2017], *MCD* v. *Uphaar Tragedy Victims Association* [MANU/SC/1255/2011 : (2011) 14 SCC 481 :99, 100,], *Vadodra Municipal Corporation* v. *Purshottam* v. *Murjani* [MANU/SC/0792/2014 : (2014) 16 SCC 14 :17and *M.C. Mehta* v. *Union of India* [MANU/SC/0092/1986 : (1987) 1 SCC 395 :32.]

69 *Id.*, para 29.

70 MANU/GT/0051/2019.

71 MANU/GT/0019/2019.

an interim amount of Rs. 10 crores to be deposited with CPCB for restoration of the environment.

Treatment sewerage plant in states/Union Territory

In *Mahesh Chandra Saxena* v. *South Delhi Municipal Corporation*[72] the NGT directed the states/UTs to submit their action plans to CPCB in terms of timelines and measurable indicators with regard to utilization of treated sewage water and institutional set up in the states/UTs validating the use of treated water in terms of its safety to human health and environment. It recalled that previously it was held that standards of faecal coliform need to be adhered to by the STPs so that treated sewage water can be safely utilized.

In view above, NGT directed that the states/UTs to furnish their action plans may do so on or before November 30, 2019, failing which defaulting states/UTs would l be liable to pay compensation @ of Rs. one lakh per month till action plans are filed. Further the states/UTs which already furnished the action plans were directed remove the deficiencies noticed above by November 30, 2019, failing which they would be liable to pay compensation @ of Rs. 1 lakh per month. The compensation was directed to be deposited with the CPCB which should be used for restoration of the environment.

Restrictions on the packaging by use of plastic material

In *Him Jagriti Uttaranchal Welfare Society* v. *Union of India,*[73] the issue for consideration is restriction on use of plastic bottles and multi layered plastic packages used for packaging of carbonated soft drink and liquor as well as other items, in view of the adverse impact on the environment and health. According to the applicant, use of plastics, including polyethylene terephthalate (PET) bottles and multi-layered packs such as tetra packs has an adverse impact on health and environment. On behalf of the applicants, it was submitted that MoEF and CC has only focused on waste management and not on the subject of restrictions on use of plastic as packaging material. MoEF and CC itself has found the Plastic Waste Management Rules to be deficient. The Packaging and Labelling Regulations, 2018 under the Food Safety and Standards Act, 2006 do not deal with the issue in entirety and are not adequate to deal with the problem. In view of the above, the NGT referred the matter of any further restrictions on the packaging by use of plastic material, to be decided by an expert committee.

III CONCLUSION

A look at the catena of decisions rendered during the year 2019 by all the concerned courts and tribunals shows that the NGT had really asserted itself in majority of the cases, even by going to the extent of imposing heavy penalties. Comparatively, except in few cases like those relating to air pollution due to stubble burning around Delhi, the apex court has not been so active and assertive. Another trend which has been continuing for the last few decades has been to appoint expert committees to come out with certain reports and recommendations in a given area of environmental

72 MANU/GT/0075/2019.

73 MANU/GT/0039/2019.

protection, and to wait incessantly till those recommendations are accepted by the government, and even after such acceptance or adoption,to find that they have not been adhered to,in true letter and spirit.The simple issue is that of implementation of the environmental laws and policies by the governmental authorities even when the polluters have been coming up with certain ingenious strategies to flout the norms.

There appears to be a self-induced lethargy on the part of the governments to remain as silent spectators when large scale destruction of environment is taking place. Such classic cases include attempts to beautify urban lakes at exorbitant costs, while releasing sewerage, drainage and industrial effluents into those water bodies. The net result is that while the so-called development in the name beautification by concretization continues, the water becomes foul and toxic, the air pollution grows, the flora and fauna die, and the local inhabitants suffer from incurable diseases including *asthma* and *cancer*. All these developments denote an unholy alliance between the selfish citizens, profit -oriented entrepreneurs and corporate sector, and governments which collude with enemies against the nature. At least in the new millennium it is hoped that the real and sustainable development takes place without compromising environment and ecology of this great nation.