

10

ENVIRONMENTAL LAW*G.B.Reddy**

I INTRODUCTION

THE YEAR under this environmental survey has witnessed extensive action on the part of the courts, National Green Tribunal (NGT), and also the Pollution Control Boards (PCBs) apart from the Ministry of Forest, Environment and Climate Change (MoEF), Government of India. There have been numerous legal actions relating to various instances of environmental pollution and the preventive as well as the remedial measures. Some of the most prominent of the include indiscriminate cutting of trees for the purpose of infrastructure, discharging untreated effluents into rivers and other water bodies, demolishing illegal constructions, Industries operating in violation of environmental norms, unauthorised and illegal shrimp culture farming, banning the hydraulic fracturing method adopted to extract natural gas and oil, illegal constructions in water bodies and wetlands and their buffer zone, controlling untreated industrial effluents discharged in water bodies, remedial action against failure to remove encroachment from forest land, illegal mining, scientific waste management in the establishments of the Armed Forces ,pollution and violation of environmental norms by thermal power stations ,establishment of biodiversity management committees and maintenance of peoples biodiversity registers, and regarding the noise pollution caused on account of indiscriminate use of unregulated horns and modified silencers fitted to the vehicles. It may be noted that this list is only illustrative in nature. Some of the most important judicial responses have been discussed as under.

Pollution of rivers

In *Court's on its own motion v. State of Maharashtra*,¹ the court dealt with a writ petition reflecting the concern and sentiment citizens of Nagpur for the neglect towards, and polluting and spoiling, Nag River, the river from which the City of Nagpur derives its name, glory, pride, and life. This river which originates somewhere on the plateau of hill ranges just behind Ambazari tank. The citizens of Nagpur have been suffering in silence witnessing transformation of Nag River, gradually losing it's pristine, into a stinking channel of sewage, filth and industrial waste. What was once upon a time a vibrant and clear rivulet, reverberating with life and giving life

* Contributed by Professor, University College of Law, Osmania University, Hyderabad, India
1 MANU/MH/0814/2020 decided by a Division Bench of the High Court of Bombay on July 20, 2020.

force like a mother to her children, is now reduced to a cursed lady, thanks to industrialisation and urbanisation of Nagpur and alienation of the river by her own children. The Nagpur Municipal Corporation, filed its reply showing that some efforts are already taken and are still being taken by the corporation to clean up the river. However the court found that these efforts may not be enough, inasmuch as they are also temporary in nature. The judges felt that something more making a permanent impact would have to be done, if the river is to be cleaned up and restored to its original position. The court noted that the major sources polluting the water of Nag river include industrial effluents, discharge of sewage water originating from slums, the houses and establishments situated within the limits of Nagpur Municipal Corporation, Nagpur and also some parts of Nagpur Metropolitan region, free roaming of pigs on the banks of river and also in the shallow ponds formed along the course of river, dumping of garbage directly into the river, washing of clothes, animals and vehicles on the banks of river, encroachments made unauthorisedly into catchment areas and also along the banks of river, and soil erosion and indiscriminate felling of trees.

The above causative factors have been reproduced here to make an emphatic statement that almost every river in India is a victim of the same pollutants, behind which there is always a human element. The court directed the respondents as an interim measure to proceed with the implementation of the comprehensive plan that has been prepared /being prepared, to take care of the afore-stated polluting sources apart from other relevant factors, in an effective manner.

II DEVELOPMENT AND ENVIRONMENT

In *Jawaharlal Nehru Port Trust v. Union of India*,² the High Court of Bombay approved the issuance of Environment Clearance by the State Level Environment Impact Assessment Authority (SEIAA) to carry out work of widening of existing road from Y- Junction to North Gate complex in Jawaharlal Nehru Port Trust in village Sheva, Taluq Uran, District Raigad in view of the public importance of the project namely for the faster and free flow of traffic and faster evacuation of containerized cargo of the standalone container terminal which had been commissioned during years 2015 - 2016 and for which there was utmost necessity to construct/widen the dedicated four lane road for faster evacuation of cargo. Though the order was subject to strict compliance with the environmental norms, it reflects the anthropocentric approach.

In *Mumbai Metropolitan Region Development Authority v. Union of India*,³ following similar approach, the High Court of Bombay permitted the project viz., the Metro Line-4, which connects Wadala-Ghatkopar-Mulund-Thane-Kasarwadawali in Maharashtra which falls in CRZ-II area, on the ground that it is a project of immense public importance from point of view of public transport, and also in view of the grant of all requisite permissions for execution of Project by various statutory

² MANU/MH/0893/2020.

³ MANU/MH/0911/2020 .

authorities and also compliance with most of conditions imposed by those permissions.⁴

NGT: Jurisdiction and appeals

In *Prasad Naik v. The Goa Coastal Zone Management Authority*,⁵ the High Court of Bombay reiterated that section 22 of the NGT Act provides for an appeal to the Supreme Court against “any award, decision or order of the Tribunal”, and that the jurisdictional sweep of this provision is unmistakable and the powers of the adjudicatory forum—the Supreme Court of India—are plenary. After a survey of all the relevant judgments as to the jurisdiction of the high courts over the orders passed by the tribunal, Dama Seshadri Naidu J., dismissed the appeal on the ground of existence of alternative remedy before the apex court.⁶ Similar judgment was passed by the High Court of Telangana in *Srini Pharmaceuticals Pvt. Ltd. v. Union of India*⁷ where the court held that:⁸

keeping in mind the purpose of having Section 22 of the Act in the statute, the existence of the alternate remedy of filing of appeal before the Apex Court of the country is, indeed, the most efficacious remedy available. For, such an alternative remedy would shorten the period of judicial proceedings, thereby providing “an effective access to judicial proceedings.

In *State of Himachal Pradesh v. Bhag Singh*,⁹ the high court dealt with the question whether the high court could pass interim orders on the orders passed by the NGT. After considering the matter in its entirety and keeping in view the fact that the interim order was confined to stay, and had nothing to do with the disposal of the main petition, and to ensure exploitation of the natural resources without damaging the earth, ecology, environment and for overall sustainable development, the high court made the interim order made earlier absolute subject to the certain directions. The background of the entire controversy was that the Government of Himachal Pradesh framed guidelines relating to stone crushing units, and a notification was issued in 2004. In 2011 petitions were filed challenging the said notification and relating to the location of stone crushers and in 2012 the high court issued directions to the government. In the year 2014, as a consequence of such guidelines, the State of Himachal Pradesh issued notification and prescribed the distance of stone crushers from perennial riverbeds. In the year 2016, respondent Bhag Singh filed Original Application before the NGT against the operation of the stone crusher unit of Ruma Devi in forest land without prior approval. Consequently, a joint inspection was carried out, and in 2018 the Joint Inspection Report was filed. After that *vide* impugned

4 See also *The Project Director, Project Implementation Unit v. P.V. Krishnamoorthy*, MANU/SC/0924/2020 : (2021)1MLJ 271, 2021(1)RCR (Civil)223, (2021)3 SCC 572].

5 MANU/MH/0899/2020.

6 See also *Prasad Naik v. Goa Coastal Zone Management Authority* MANU/MH/1387/2020.

7 2020(5)ALD 497, 2020(5)ALD 497, 2020(6)ALT187, 2021(11)FLT66

8 *Id.*, para 37.

9 MANU/HP/0340/2020.

order, the NGT ordered that perennial water bodies would include non-perennial water bodies as well and consequently quashed the consent to operate given to the stone crushers, which were within 100 meters from non-perennial rivulets.

It may be noted that the passing of interim orders in the instant case affecting the orders of NGT, has to be understood in the light of the previous orders passed by the high court, and it may not be a precedent,¹⁰ where the Supreme Court held that 'Indeed, the dismissal of the suit would not come in the way of the plaintiffs or any other person affected by the proposed Project to make representation to the appropriate authority, considering the proposal for grant of statutory permissions under the concerned environment laws, and if that decision is not acceptable, to carry the matter further in appeal before the NGT or any other forum, as may be permissible by law.'¹¹

In *The Director General (Road Development) National Highways Authority of India v. Aam Aadmi Lokmanch*,¹² the Supreme Court clarified the jurisdiction and powers of the NGT as under:

The power and jurisdiction of the NGT Under Sections 15(1)(b) and (c) are not restitutionary, in the sense of restoring the environment to the position it was before the practise impugned, or before the incident occurred. The NGT's jurisdiction in one sense is a remedial one, based on a reflexive exercise of its powers. In another sense, based on the nature of the abusive practice, its powers can also be preventive.¹³

As a quasi-judicial body exercising both appellate jurisdiction over regulatory bodies' orders and directions (under Section 16) and its original jurisdiction Under Sections 14, 15 and 17 of the NGT Act, the tribunal, based on the cases and applications made before it, is an expert regulatory body. Its personnel include technically qualified and experienced members. The powers it exercises and directions it can potentially issue, impact not merely those before it, but also state agencies and state departments whose views are heard, after which general directions to prevent the future occurrence of incidents that impact the environment, are issued.¹⁴

Water pollution

In a petition filed by the textile entrepreneurs engaged in the activity of sizing of yarn which is used for manufacturing of grey cloth, against the issue of show-cause notices by the Maharashtra Pollution Control Board, the High Court of Bombay directed not to take any coercive action against the industrial units of the petitioners. In *Reliable Sizing Works and v. State of Maharashtra*,¹⁵ there were altogether 62 identical show cause notices issued for refusal of application for consent to operate

10 See also *Ratnagiri Nagar Parishad v. Gangaram Narayan Ambekar*, MANU/SC/0435/2020: 2020(4) ALLMR 619, 2020(4) BLJ 176, 2020(3) Bom CR 72, 2020-5-LW813, (2020)5 MLJ 35, (2020)7SCC 275.

11 *Id.*, para 19.

12 MANU/SC/0520/2020: 2020(5)ABR 114, AIR 2020 SC 3471, 2020(3)RCR (Civil) 218.

13 *Id.*, para 71.

14 *Id.*, para 72.

15 MANU/MH/0909/2020.

under the provisions of the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981, and the petitioners were given only 15 days' time limit for reply during the pandemic reflecting a totally mechanical approach of respondent in view of the fact that getting reports from NEERI or IIT, Mumbai within such a short span of time during the pandemic would be impossible. The court opined that section 33A of the Water Act and section 31A of the Air Act are governed by the provisions of the respective two Acts. It is not an unguided power to be exercised de hors the provisions of the two said Acts.

In *Vardhman Textiles Limited v. The State of Himachal Pradesh*,¹⁶ the petitioners assailed the show cause notices issued to it by the Himachal Pradesh State Pollution Control Board on various grounds, including, jurisdiction, want of authority, vagueness, cryptic and non-compliance of the provisions of Water (Prevention and Control of Pollution) Act, 1974 and the Environment (Protection) Act, 1986. The court was of the opinion that in the peculiar facts and circumstances of the case, it would be appropriate to dispose of the writ petitions, at this stage, with liberty to the Principal Secretary (Environment, Science and Technology) to the Government of Himachal Pradesh and also the Authorities under the Water Act, to issue appropriate directions to the petitioners to prevent emission of the treated effluent strictly in terms of the provisions of law. In case, even after the efforts made by the State and the Board, the petitioners failed to prevent the emission of treated effluent into the river, then the State and Board could take appropriate action in accordance with law.

While disposing the writ petition, the court made the following pertinent observations:¹⁷

The water bodies, like streams, lakes, rivers, are the precious gift from the nature to the mankind since time immemorial and it is our duty and responsibility to protect and preserve them. No industry can be allowed to pollute the water bodies by discharging or emitting the treated effluents or pollutants into the water. All the industries should adhere to the rules and regulations framed by the State/Central Governments with respect to environment protection.

Endangered species and trading

In *Re: Smuggling and illegal Trading of Endangered Species of Birds*,¹⁸ a Division Bench of High Court of Calcutta perused the provisions of the Prevention of Cruelty to Animals Act, 1960 and the Rules framed thereunder including those relating to transportation and prevention of cruelty relatable to capture of birds for any purpose as well as the Prevention of Cruelty to Animals (Pet Shop) Rules, 2018. The court confined themselves by noticing the provisions of the Pet Shop Rules which, inter alia, prohibit the carrying on or continuing the business of sale or trade in pet animals, whether retail or wholesale, and directed the official respondents to strictly ensure obedience to the laws relating to prevention of cruelty to animals and birds

¹⁶ MANU/HP/0621/2020.

¹⁷ *Id.*, para 14.

¹⁸ MANU/WB/0848/2020.

and also the laws governing the prevention of cruelty to captured animals, in particular capturing of birds as well as the activities of dealing with birds, utilising birds which are not eligible to be dealt with in any manner violative of the provisions of Prevention of Cruelty to Animals (Pet Shops), Rules, 2018.¹⁹

In *Khodiyar Animal Welfare Trust v. Ministry of Environment Forest and Climate Change*²⁰ a Division Bench of High Court of Delhi considered a PIL filed to include other vulnerable exotic animals/birds' species in the definition of "exotic live species". Referring to Convention on International Trade in Endangered Species on Wild Fauna and Flora (CITES), the court concurred with the petitioner's contention that there is a need to ensure that there is a proper record of keeping of even those vulnerable exotic animals and birds' species which are not mentioned in the Appendices I, II and III to the CITES and as such to ensure that such species are also protected. The court also recorded the respondents' stand to include other vulnerable exotic live species, other than which are referred to in Appendices I, II and III in the CITES–International Convention.

In *Vivek Swami v. Union of India*,²¹ the High Court Rajasthan of dealt with a PIL filed by an animal and bird lover who wanted the court to prevent any coercive action under Section 108 of the Customs Act, 1962 relating to the acquisition of the exotic species in possession of the petitioner in respect of which the petitioner was contemplating filing of a declaration under the voluntary disclosure scheme issued by the Central Government *vide* the Advisory. The facts of the case were that the Government of India, Ministry of Environment, Forest and Climate Change has issued an Advisory on June 11, 2020 under the heading "Government issues advisory to streamline the process for import and possession of exotic live species in India" and thereafter in furtherance thereof, a Voluntary Disclosure Scheme was issued by the Wildlife Division, Government of India under Annexure-2. The Voluntary Disclosure Scheme is apparently issued for the purpose of collecting stock information for persons who have in their possession "exotic live species" *i.e.*, exotic live animals and birds within India through such voluntary disclosure and limited such disclosure up to the period till December, 2020. Such scheme was evolved by the Government of India since it did not possess necessary information of such stock of exotic species either by the State or the Union. The clear object behind the collection of such data appears to be to enable the government to have necessary information/data, which would assist the government to protect the wild fauna as well as protecting public interest.

The advisory sought to bring within its control such "exotic live species" since there was no requirement to maintain any statutory record of possession, acquisition, storage, captive breeding and domestic trade of wild animals/birds within India under the Wild Life (Protection) Act, 1972, the Customs Act, 1962, the Code of Criminal

19 See also, *The court on its own Motion in Re: Smuggling and Illegal Trading of Endangered Species of Birds*, MANU/WB/0779/2020, High Court of Calcutta.

20 MANU/DE/1955/2020.

21 MANU/RH/0496/2020: 2021(375)ELT 121(Raj.).

Procedure, 1973 nor the Indian Penal Code, 1860. The court, after examining the rationale of the scheme and also apprehension of the petitioner, held that:²²

The petitioner or any other applicant seeking to avail the Voluntary Disclosure Scheme within time prescribed by making voluntary declaration of such exotic live species in his domestic possession and subjecting himself to future regulatory requirements, shall be entitled to the immunity promised under the scheme and thus, should not act on the basis of any apprehension, such as seizure, summon, confiscation, enquiry in relation to such declared exotic species in domestic possession neither under Customs Act, 1962 nor any other law.

Solid waste management and environmental protection

In *Anti-Corruption Council of India v. Government of NCT of Delhi*,²³ the High Court of Delhi dealt with a PIL praying for appropriate steps to stop dumping the garbage and waste solid material in residential areas Bhalswa, Ghazipur and Okhla in Delhi, which is causing/posing serious health hazards to the residents of the area and to make arrangement of dumping garbage and solid waste material instead of these living areas. The court was informed that the issue with respect of disposal of legacy waste dumped at Bhalswa, Ghazipur and Okhla is also pending before the NGT, which directed bio-mining and bio-remediation as environmentally safe treatment option. Recording that pursuant to the direction of NGT, an ESCROW account has been created by all the three municipal corporations, namely, North Delhi Municipal Corporation, South Delhi Municipal Corporation and East Delhi Municipal Corporation, which shall be utilized for solid waste management, and further that a high powered committee has been constituted by the Delhi government to coordinate and execute the proper solid waste management, the high court expected from the respondents that the steps initiated by them for solid waste management in Delhi shall continue and remain in operation in future. The real challenge however remains in the form of proper implementation of the NGT and court directions.

In *Ebbani Aggarwal v. South Delhi Municipal Corporation*,²⁴ a similar PIL was filed, the high court directed the respondent authorities to provide healthy and safe environment to the residents of Dwarka, New Delhi. Roads, footpaths and to maintain proper parking and also make every endeavour to implement solid waste management system in the area in question in accordance with law.

In *Kosher Pharmaceutical Private Limited v. The State of Telangana*,²⁵ the High Court of Telangana declared that the power vested in the State Pollution Control Board under Section 33A of the Water (Prevention and Control of Pollution) Act, 1974, and section 31A of the Air (Prevention and Control of Pollution) Act, 1981 doesn't require that the principles of natural justice should be followed, before issue

²² *Id.*, para 24.

²³ MANU/DE/0797/2020.

²⁴ MANU/DE/0440/2020.

²⁵ MANU/TL/0298/2020.

of the closure notice to a polluting industry found to be causing pollution to a great extent which would endanger human life. However, the court held that a post-decisional hearing can always be given by the Pollution Control Board to the erring unit to rectify the defects, or the violations, committed by the erring unit.

Publication of draft EIA notifications in official languages

In *Vikrant Tongad v. Union of India (MOEFCC)*,²⁶ a writ petition was filed for direction to the respondent to extend the notice period to the public, in the draft EIA notification 2020 until September 30, 2020 or till such further period till the COVID-19 lockdown/ restrictions subsist; a direction to the respondent to make translated copies of the draft notification available across the country in the official vernacular languages mentioned in the Eighth Schedule to the Constitution, and upload the same on all its websites including those of the environment ministries of all the states as well as those of the state pollution control boards; and for a direction to the respondent to conduct consultations with various stakeholders and concerned persons across the country through its state pollution control boards, as a precondition to considering the draft notification. This draft EIA notification dated 23rd March, 2020, was issued by the Central Government, in exercise of the power conferred by section 3(1) and section 3(2)(v) of the Environment (Protection) Act, 1986, for imposing certain restrictions and prohibition on the undertaking some projects or expansion or modernisation of such existing projects entailing capacity addition, in any part of India. It was issued for the information of the public likely to be affected thereby, and inviting any objections or suggestions on the proposal contained in the draft notification in writing for consideration of the Central Government, and notice was given that the said draft notification shall be taken into consideration on or after the expiry of a period of 60 days from the date on which the copies of the gazette containing notification are made available to the public. The court of the view that it would be in aid of effective dissemination of the proposed notification if arrangements are made for its translation into other languages as well, at least those mentioned in the Eighth Schedule to the Constitution, and issued directions accordingly.

Industrial infrastructure and environmental compliances

In *Balubhai Manjibhai Kachadiya v. State of Gujarat*,²⁷ the High Court of Gujarat dealt with two special civil applications seeking directions to scrupulously ensure compliance of the provisions of (1) The Environment (Protection) Act, 1986 (2) The Environment (Protection) Rules, 1986 (3) Air (Prevention and Control of Pollution) Act, 1981 (4) Air (Prevention and Control of Pollution) Rules, 1982 (5) Hazardous Waste (Management and Handling) Rules, 1989 and (6) The Water (Prevention and Control of Pollution) Act, 1974. It was further prayed for a direction to State Government of Gujarat and its PCB to initiate action against all such industrial establishment particularly Narmada Clean Tech Ltd *etc.* The moot question calling for attention and address was the proper monitoring of the pollution in the area in

26 MANU/DE/1326/2020.

27 MANU/GJ/0156/2020.

light of the provisions prevalent so that the citizens' life in the area could be improved and the problem of pollution could be taken care of. A major problem of sludge and the unpleasant odour emanating from aqua-industrial activities was the issue. The court recorded the assurances given by the respondent official and private parties, and closed the applications.

Mining and impact on environment

In *Rajukumar Bhagwanbhai Sutaria v. State of Gujarat*,²⁸ the High Court of Gujarat was approached for directing the state not to permit any mining activity within the radius of 10 kms., of the National Park and Sanctuary area of Gir, and for restraining the mining activity in the Shetrunji river bed. In its reply, the Forest Department admitted that the said areas are part of the proposed eco sensitive zone. After hearing both the parties, the court made the following observations are order:²⁹

Considering the affidavit filed by the mining authority, it is clearly stated that unless the lease is validly in operation, the mining activity in the Eco Sensitive Zone of Gir Paniya Matiyala Wild Life Sanctuary shall not be permitted. It is also evident from the averments made in the affidavit that All Time Royalty Pass for 67 mining quarry leases had been locked. The said statement made is not controverted by the petitioner. The State and its authorities are bound to follow the provisions of the Wild Life Protection Act and protective area falling within the Eco Sensitive Zone and considering the steps taken by the State, the main grievance raised by the petitioner by way of this petition under Public Interest Litigation gets redressed. The authorities are directed to act in accordance with law.

Ban on use of plastic bags etc

In *Gaurav Pandey v. Union of India*,³⁰ the High Court of Madhya Pradesh dealt with a PIL whereby public cause was raised to protect the environment from plastic carry bags. In this case, the petitioner had sought relief of implementation of Plastic Waste Management Rules, in whole of State of Madhya Pradesh and relief sought relief to initiate imposition of fine against the wrong doers.

The Municipal Corporation, Gwalior had informed that all possible steps were being taken by the municipal corporation and that it is regularly seizing the carry bags from various fruit vendors, grocery shops, sweet shops and with the help of

28 MANU/GJ/0432/2020.

29 *Id.*, para 5.

30 MANU/MP/0526/2020. See also the taking of cognizance of the menace of using plastic bags by the NGT in *Aditya Dubey v. Amazon Retail India Private Limited* (MANU/GT/0264/2020) wherein the tribunal was dealing with applications seeking enforcement of 'Extended Producer Responsibility' under the Plastic Waste Management Rules, 2016 against Amazon and Flipkart using excessive plastic packaging material without meeting statutory liability, and also against Coca-Cola India Pvt. Ltd, Pepsi Co India Holdings Pvt. Ltd, Bisleri International Pvt. Ltd, Parle Agro Pvt. Ltd., Patanjali Peya Private Ltd as well as Indian Railway Catering and Tourism Corp. Ltd.(IRCTC).

public they have spread message of 'Swachha Bharat.' Pollution Control Board and State in their return had submitted that the main responsibility is of the Municipal Corporation to meet these challenges and get the rules implemented.

In the light of above, the court considered that banning of polythene/plastic bags has to be treated as a significant moment of life as any material which is generally used is not biodegradable then the whole ecosystem will be affected and indirectly will affect all living organisms of the world. After analyzing the mechanical, thermal, electrical, chemical and optical properties of polyethylene, the division bench observed that the duty to ensure clean and unpolluted environment is as much of the State and its functionaries as it is of the citizen. The court felt compelled to remind all the stakeholders as well as citizens to awake for the welfare of all living organisms of the world by assuming participative role to achieve the goal of elimination of plastic waste/polythene in terms of the provisions contained in Plastic Waste Management Rules, 2016. Thus, petition was disposed of with the following suggestions/directions to the citizens/authorities/print and electronic media as under:

Suggestions:

- i. Citizens should be made aware of the causes and effects of plastic pollution and how to prevent it.
- ii. A campaign must be started to immediately stop using non-biodegradable
- iii. plastic/polythene.
- iv. Citizens should not purchase single use plastic/ polythene water bags etc.
- v. Citizens should use cloth/jute made bags for carrying purchases.
- vi. They may also themselves prepare paper bags from daily newspaper of their house.
- vii. Citizens should not embed any plastic/ polythene waste in soil/land.
- viii. Citizens (parents/teachers) should teach children not to use plastic bottles/ tiffins in schools/ park/ malls etc.
- ix. Citizens should cooperate in this task with different Authorities of the Government.
- x. Citizens should carry non-plastic water-bottles/daily need articles, which are reusable for many years together.
- xi. Similarly, it is expected of the Print & Electronic Media to propagate and install awareness amongst the citizens that use of non-biodegradable polythene/plastic has become a national problem. The Media should create an atmosphere in the society for non-use of non-biodegradable polythene/ plastic articles by publishing relevant topics regularly in the media and should also attempt to make the people aware regarding hazardous results of use of non-biodegradable plastic/ polythene.
- xii. For awareness amongst the children, the subject of adverse effects of use of plastic/polythene and means to manage its waste should be incorporated in curriculum.

Directions

- i. The state shall pass direction to schools and colleges to stop use of plastic immediately.
- ii. The state shall issue directions to the industries to take immediate steps to stop the production and use of single use plastic.
- iii. The state and its instrumentalities shall issue directives ensuring manufacturing and marketing of carry bags and packets made of non-plastic bio-degradable material on highly subsidized rates to be affordable to the common man.
- iv. For this purpose, the state should encourage the small-scale industry to manufacture and market such bags/packets by establishing necessary plants for this purpose in adequate number in all districts in the State of Madhya Pradesh
- v. The State shall install adequate number of Water Dispensers in the city area to make available pure water to the citizens.
- vi. The State should install single use plastic bottles crushing machines in every possible public place in adequate number and on crushing particular numbers of such bottles, deposit return scheme may be started.
- vii. The state shall install recycling plants at various places;
- viii. The state shall use plastic/polythene waste for thermal electric production plant.

This is an important judgment that needs to be taken seriously by all the stakeholders in view of the grave harm caused by use of plastic to the living organisms. Effective enforcement of the relevant law and the guidelines is the key to ensure a plastic free society.

Deforestation and its adverse impact

The impact of deforestation and the need to restore the destroyed forests is an issue that is applicable not only to the State of Manipur but it applies to the whole of the India and to other countries across the globe. The deforestation has affected the great Amazon forest of South America and other forests of the South American continent, the Congo Forest of Africa and other forest in the African continent, the various tropical and sub-tropical forests of Asian countries, the four seasonal forests of America, Canada, Europe, Russia and China to name a few. All these forests are impacted due to economy driven human activities. In the present crisis, there is a need for all the nations to come together and protect the forests and restore the lost forests. This will, in turn, save the ecology, environment and the planet.

While highlighting the above undisputed facts, a division bench of the High Court of Manipur has highlighted the need to prevent destruction of forests in the case of *The Manipur Valley Village Reserve Forest Rights Protection Association v. The State of Manipur*.³¹ The court dealt with a PIL which focused on a very important

31 MANU/MN/0102/2020.

issue of forest and reserved forests of Manipur being denuded and illegally encroached for various activities. The court analyzed the adverse impact of deforestation for agriculture purpose and also on wildlife, forests, climate change, environment and decline in forest dwelling plants and animal species. In what could be described as a scholarly judgment, the high court referred to a large quantum of research literature on adverse impact of anthropocentric approach, nexus between human activities and natural disasters and also pandemics like COVID-19.

The court very aptly observed:³²

Human beings have to redefine their role in the cycle of nature. To believe that human beings are the dominant amongst all living species, fauna and flora, animals, mammals, bacteria, unicellular & multicellular organisms etc. appears to be a misconception. Homo sapiens though a dominant species, cannot claim predominance as one species is interlinked to the other in their own cycle of life. It has to co-exist within limits thereby maintaining the balance in nature. The indiscriminate population fueled deforestation and unnecessary animal human contact appears to be the cause of the present pandemic which could have been otherwise avoided.

The court further observed:³³

The impact of deforestation and the need to restore the destroyed forests is an issue that is applicable not only to the State of Manipur but it applies to the whole of the India and to other countries across the globe. The deforestation has affected the great Amazon forest of South America and other forests of the South American continent, the Congo Forest of Africa and other forest in the African continent, the various tropical and sub-tropical forests of Asian countries, the four seasonal forests of America, Canada, Europe, Russia and China to name a few. All these forests are impacted due to economy driven human activities. In the present crisis, there is a need for all the nations to come together and protect the forests and restore the lost forests. This will, in turn, save the ecology, environment and the planet

In the light of the scientific data which clearly established that deforestation coupled with wild animal-human contact as a major cause of diseases, the court was inclined to direct the State of Manipur and other respondents to safeguard the forests, environment and ecology on different parameters³⁴

Conversion of public places into residential areas

In *Jan Kalyan Samiti v. State of Haryana*,³⁵ the High Court of Punjab and Haryana dealt with a very common but undesirable phenomenon of the local government

³² *Id.*, para 41.

³³ *Id.*, para 42.

³⁴ *Id.*, para 43.

³⁵ (2020)200 PLR 543, 2020(4)RC R(Civil) 833.

authorities mostly in urban areas, converting public parks and other open spaces into residential areas, and the adverse impact thereof. In a PIL, it was averred that Faridabad Township came into existence immediately after partition of the country and that master-plan was drawn in the year 1986 for its development making provision for parks, schools and green areas. The court was apprised that in due course, jhuggis, residential houses, workshops *etc.*, came up unauthorizedly in the open areas. The *jhuggi* (hut) dwellers were occupying the public park land and Municipal Corporation, Faridabad was trying its best to vacate this land by issuing final notices to the jhuggi dwellers on 2016, but that in the meantime, *jhuggi* dwellers approached the court by way of various writ petitions. Which were disposed directing the corporation to constitute three committees for deciding the representations of the jhuggi dwellers. It was found by the committees that the jhuggi dwellers had unauthorizedly encroached upon the public land and were liable to be evicted. Later, probably with a view to accommodate the jhuggi dwellers, the state government proposed change of land use from park to residential area, which was challenged in the instant PIL. While staying the operation of the government order the high court reminded the stakeholders about the need to preserve ecological balance in the aftermath of urbanization as under: ³⁶

We are of the prima facie view that action of the respondents in converting public park into residential area is unconstitutional and contrary to law. The residents of the Society have a fundamental right to free air and to enjoy the public amenities. It was expected from the respondents to evict the illegal encroachers from the public land instead of nullifying the orders passed by this Court from time to time by converting the park into residential areas. The respondents are bound to preserve and save the open spaces. Every citizen has a fundamental right to fresh air. The ecology and environment of the area would be affected drastically if the parks are converted into residential area. The aesthetic characteristics of the city must be promoted and preserved

Demolition of Telangana secretariat buildings and environmental protection:

A division bench of High Court of Telangana allowed the continuation of demolition of the old secretariat buildings in Hyderabad in spite of stringent opposition from political opponents and also the environmental and social activists. In *P.L. Vishweshwar Rao v. Union of India*,³⁷ the petitioners filed a public interest litigation challenging the continuation of the demolition of the Telangana Secretariat Building with an area of more than 7 lakh square metres by the respondent government authorities, in order to construct a new secretariat building in the same campus. The petitioner contended that 'preparation of land' for construction of the new secretariat building includes demolition of old building, therefore it requires environmental clearance under the Environmental Impact Assessment (EIA) Notification, 2006 and also the Ministry's Construction and Demolition Waste Management Rules, 2016 notified under the Environment (Protection) Act, 1986 vide notification GSR 445(E)

³⁶ *Id.*, para 10.

³⁷ 2021(1)ALD 227, 2020(5) ALT 14, 2021(11)FLT 77.

dated 29.03.2016. The State Government argued that the term “preparation of land” does not include the act of demolition of the existing structures, and similar view was expressed by the Central Government . The court finally held that:³⁸

..... it is obvious from both the letters issued by the Central Ministry, and by the SEIAA, the State regulatory authority, that no EC is required while demolishing a building, as demolition is covered by the Rules of 2016. Hence, the only requirement prior to demolition is a permission to be granted by the local authority under Rule 4(3) of the Rules of 2016. However, an EC would be required before commencing the construction work i.e., excavation of foundation. Therefore, the contention raised by the learned counsel for the petitioner that a prior EC is required before beginning the demolition is clearly untenable

It is felt that demolition of such a large magnitude, should have certainly gone through the process of environmental clearance as the interpretation of ‘preparation of land’ obviously includes demolition also.

Penalty for operating industries without environmental clearances

In recent times, the courts are imposing heavy penalties on the industries for not complying with environmental norms. Continuing with this tradition, the Supreme Court in the case of *Alembic Pharmaceuticals Ltd. v. Rohit Prajapati*,³⁹ imposed a fine of Rupees ten crores on each of the three polluting industries by observing that:⁴⁰

In this backdrop, this Court must take a balanced approach which holds the industries to account for having operated without environmental clearances in the past without ordering a closure of operations. The directions of the NGT for the revocation of the ECs and for closure of the units do not accord with the principle of proportionality. At the same time, the Court cannot be oblivious to the environmental degradation caused by all three industries units that operated without valid ECs. The three industries have evaded the legally binding regime of obtaining ECs. They cannot escape the liability incurred on account of such non-compliance. Penalties must be imposed for the disobedience with a binding legal regime. The breach by the industries cannot be left unattended by legal consequences. The amount should be used for the purpose of restitution and restoration of the environment

Mining and environment

An ideological battle often rages between preservation of environment and economic development. Mining activity and the manner in which it is carried on has had its proponents and opponents. Its necessity as an input for economic development is recognised but mining activity throughout our country for minerals or sands has had a troubled history on account of large-scale violations. This has also resulted in a

38 *Id.*, para 28.

39 MANU/SC/0353/2020: 2020(3)ALT15, 2020(3)BLJ385, 2020(10)FLT534, (2020)4MLJ277, 2020 (5) SCJ 531

40 *Id.*, para 39.

ban on mining activity in certain areas at certain times - not the ideal method, but leaving little option open because of the rampant misuse of the licences to mine. The judgment of the Supreme Court in *Dharmendra Kumar Singh v. The State of Uttar Pradesh*,⁴¹ flows from the concern to regulate mining activity in eco-sensitive areas. The Court, recording the fact that there have been several rounds of litigation, licences, and policies earlier followed a middle path by stating that the appropriate course of action to be adopted cannot be to extend the lease for the obstructed period but to, direct that the security deposit, if not already refunded, should be refunded and the amount deposited by the appellants/leaseholders as advance royalties to the respondent/state be also paid back to them along with something more.

Greenfield airport at Mopa, Goa-environmental clearance

In *Hanuman Laxman Aroskar v. Union of India (UOI)*,⁴² Supreme Court paved way for construction of a Greenfield Airport at Mopa, Goa by observing that:⁴³

The earlier judgment of this Court highlighted numerous deficiencies by the project proponent leading to the grant of the EC. This Court highlighted numerous concerns including the preservation of forests, the existence of ESAs with their attendant features and the impact of the proposed project on natural water channels. The Court also noted the abject failure of the project proponent to provide complete information on the existence of reserved forests. In the proceedings that followed the judgment of this Court, the project proponent sought to remedy its failure by taking into account additional information on significant aspects of the environment. In the process leading to the grant of the EC as well as the lifting of its suspension by this Court, numerous mitigatory conditions have been imposed on the project proponent. We deem it appropriate to ensure the oversight of the project by a specialized body to ensure compliance with the directions cumulatively issued by this Court. We direct the National Environmental Engineering Research Institute to be appointed to oversee compliance with the directions cumulatively issued by this Court. The project proponent shall bear the costs, expenses and fees of NEERI.

Wildlife protection and economic development

In *Hospitality Association of Mudumalai v. In Defence of Environment and Animals*,⁴⁴ the Supreme Court dealt with the continuation of the wildlife corridors including elephant corridor in Sigur Plateau of Tamil Nadu even while the proposed corridor falls into the area used as resorts/ guest houses/ dwelling houses *etc*:

The court stated that the elephant corridors allow elephants to continue their nomadic mode of survival, despite shrinking forest cover, by facilitating travel between

41 2020(11)ADJ15, AIR2020SC5360, (2021)1SCC93, 2021 (1) SCJ 340 .

42 2020(1)ALT318, 2020(10)FLT478, (2020)12SCC1, 2020 (4) SCJ 81.

43 *Id.*, para 48.

44 MANU/SC/0762/2020:2020(6)ALT65, (2020)10SCC589, 2021 (1) SCJ 252.

distinct forest habitats. Corridors are narrow and linear patches of forest which establish and facilitate connectivity across habitats. In the context of today's world, where habitat fragmentation has become increasingly common, these corridors play a crucial role in sustaining wildlife by reducing the impact of habitat isolations. In their absence, elephants would be unable to move freely, which would in turn affect many other animal species and the ecosystem balance of several wild habitats would be unalterably upset. It would also eventually lead to the local extinction of elephants, a species which is widely revered in our country and across the world. To secure wild elephants' future, it is essential that we ensure their uninterrupted movement between different forest habitats. For this, elephant corridors must be protected.

The court in para 35 of the judgment made the following pertinent observations.

Legal intervention in preservation of these corridors has been necessitated because wildlife corridors are threatened by various social, economic and anthropogenic factors, as noted above. Commercial activities such as running of private resorts and construction of new buildings with barbed and electric fences within elephant corridors pose a serious threat of fragmentation and destruction of habitats. The long-term survival of the species depends on maintaining viable habitats and connecting corridors which maintain variance in the species' gene pool and avoid other risks associated with habitat fragmentation and isolation of species.

The apex court ultimately held that in order to protect the elephant population in the Sigur Plateau region, it was necessary and appropriate for the state government to limit commercial activity in the areas falling within the elephant corridor.

In *Kapico Kerala Resorts Pvt. Ltd. v. State of Kerala*,⁴⁵ the apex court was concerned with the validity of a common order passed by the High Court of Kerala, first in a batch of writ petitions and then in a batch of review petitions, prohibiting them from carrying on the activity of development of a resort in a backwater island namely Nedyathuruthu island in Vembanad lake, Alappuzha District of the State of Kerala, on the basis of Kerala Coastal Zone Management Plan (hereinafter 'KCZMP') and the Coastal Regulation Zone Notifications. The project proponent had come up with the present appeals. The high court was concerned, in the batch of cases, about the development of resorts in two backwater islands, by name Vettilla Thuruthu and Nedyathuruthu, located in Vembanad lake, Panavally Panchayat, in Alappuzha district of the State of Kerala. By a common order passed on, the high court disposed of seven writ petitions directing that the action initiated by the authorities under the Land Conservancy Act, against the project proponent in respect of Nedyathuruthu island for the removal of encroachments in Nedyathuruthu island should be proceeded further in accordance with law and that the Government of India/Authority should ensure that the encroachments made in the Nedyathuruthu island are removed within three months among other directions. The apex court relying upon its earlier judgment

45 129(2020)CLT619, 2020 (1) KHC 368, (2020)2MLJ85, (2020)3 SCC 18.

in *Vaamika Island v. Union of India*,⁴⁶ reiterated that the categorisation of the island as critically vulnerable coastal area (CVCA) is valid in view of 2019 CVCA notification. Consequently the directions given by the high court were upheld, and the principle of ecocentrism is once again upheld in this case.

In the matter pertaining to the environment pollution with which we are faced with today, not only the air pollution is being caused unabatingly, but also with the pollution of rivers in the country, the apex court held in the case of *M.C. Mehta v. Union of India (UOI)*,⁴⁷ the apex court noted that major polluting activities defined in identified hotspot regions in and around the National Capital Territory are Open dumping of garbage and C&D, traffic congestion, road dust, unpaved, industrial waste dumping and burning, garbage - dumping and burning, construction and demolition etc. The court issued as many as 34 directions to the government which include compliance with the Construction and Demolition Waste Management Rules, 2016, use of anti-smog guns in Delhi and NCR region for the large construction sites; road construction stretches, particularly during earthwork and compacting; mining activities; large parking sites on unpaved areas and during large public gatherings; and demolition activities. The court directed the Delhi Government, and neighbouring State governments, their local bodies and PCBs etc to comply with these directions. The noteworthy thing in this judgment is that the court gave three months' time for compliance with the directions given. The only problem appears to be the unmatching enthusiasm of the respondents and other stakeholders which makes the problem further confounded.

In *M.C. Mehta v. Respondent: Union of India (UOI)*⁴⁸ the apex court dealt with the authority of the "Monitoring Committee to seal the residential premises on the private land" particularly when they are not being used for the "commercial purpose". The court held that:⁴⁹

It is apparent from the various orders passed by this Court from time to time and from the various reports of the Monitoring Committee that it was never authorized by this Court to take action against the residential premises that were not being used for commercial purposes. It was appointed only to check the misuse of the residential properties for commercial purposes. After that, this Court directed that the Monitoring Committee should also look into the matter of "encroachment on the public land" and "unauthorized colonies" that have come up on the public land and were wholly unauthorized without sanction. At no point in time, this Court had empowered the Monitoring Committee to act vis-a-vis to the purely residential premises.

46 (2013) 8 SCC 760.

47 2020(1)ALT 251, 2020 (10) FLT 438, (2020) 7 SCC 530.

48 2020(4) Bom CR 17, 270(2020) DLT 446, (2020)6 MLJ 431.

49 *Id.*, para 85.

Installation of cheat devices in vehicles as to emissions and criminal action

In *Skoda Auto Volkswagen India Private Limited v. The State of Uttar Pradesh*,⁵⁰ the Supreme Court noted that:⁵¹

It may not be out of context to mention here that the European Union woke up way back in 2007 to the reality of car makers installing a software that manipulate exhaust emissions, depending upon whether the car ran on a test stand or on the road. After the European Commission's Joint Research Centre found in 2011 that the levels of harmful NOx emissions far exceeded the prescribed levels, a study conducted by the International Council on Clean Transportation (ICCT) revealed similar results in the United States. In September-2015, allegations of installation of manipulation devices by car manufacturers emerged from the US Environmental Protection Agency and this triggered investigations in several European Union States. After claims were lodged and legal action initiated, the German Federal Motor Transport Authority appears to have given permission in June-2016 for the recall of about 2 million vehicles across Europe. In the light of these developments, one of the manufacturers entered into an agreement with the United States Environmental Protection Agency in December-2016 giving certain options to the customers. These and the subsequent developments, which attained notoriety as the diesel-gate scandal, led to the German Federal Court of Justice (Bundesgerichtshof-BGH) giving a ruling on May 25, 2020 in favour of the car owners for damages.

It is in the backdrop of what transpired in Europe and United States, during the period from 2015 to 2019 that the action initiated by the Automotive Research Association of India in November 2015 and the proceedings that went on before the National Green Tribunal from the year 2015 to the year 2019, have to be seen. All of them were part of the global outrage that actually concerned the damage caused to the environment by the emissions from the cars allegedly fitted with manipulative devices. The proceedings before the NGT were not intended to address issues relating to individuals, such as (i) whether any emissions manipulation software, called in common parlance as 'defeat devices' were installed in the vehicles purchased by certain individuals; and (ii) whether any representation was made to the purchasers of the cars in which such devices had been installed, about the emission efficiency level of the cars.⁵²

Therefore, we are unable to agree with the contention of the learned Senior Counsel for the Petitioner that the substratum of the police

50 MANU/SC/0898/2020: 2021(218)AIC 99, AIR 2021 SC 931, 2021(2) ALJ 692, 2020(4)Crimes455 (SC), 2021(1)RCR(Cri)171.

51 *Id.*, para 38.

52 *Id.*, para 39.

complaint is something that is already the subject matter of adjudication before this Court in the appeals arising out of the order of the NGT. As a matter of fact, the High Court has been fair to the Petitioner, by granting protection against arrest till the filing of the report Under Section 173(2) of the Code. We do not think that the Petitioner can ask for anything more.⁵³

Accordingly the Supreme Court upheld the lower court's decision not to quash the FIRs filed against the vehicle manufacturing companies.

Use of fire crackers

The question of the remedial action against pollution by use of fire crackers, aggravating the menace of COVID-19 pandemic, posing higher danger to the lives and health of the vulnerable groups, was considered by the Principal Bench of the NGT in *Tribunal on its Own Motion v. Ministry of Environment, Forest & Climate Change*.⁵⁴ The NGT, after referring to the history of regulation of use of fire crackers in the country including the directions given by the apex court in *Arjun Gopal v. Union of India*,⁵⁵ which banned certain categories of fire crackers and directed the regulation of the remaining, issued *inter alia* the following directions:

- i. There will be total ban on sale and use of all kinds of fire crackers during COVID-19 pandemic in the NCR and all cities/towns in the country where the ambient air quality falls under the 'poor' and above category.
- ii. Direction to restrict use of fire crackers in cities/towns where air quality is 'moderate' or below to green crackers only and for duration of not more than two hours and only for celebration of any specified festivals or permitted occasions will continue. Such festivals be specified by the States. Other than specified festivals, prior permission of the District Magistrate of the area will be required for use of crackers for limited period which will be given having regard to air quality.
- iii. During Christmas and New Year, green crackers can be used from 11:55 pm to 12:30 am only at places where air quality is 'moderate' or below as directed by the Hon'ble Supreme Court.
- iv. With a view to ensure availability of air quality data, atleast one air quality monitoring station must be set up at every district headquarter at the earliest. Where no such monitoring station exists, atleast a manual monitoring station.
- v. The District Magistrates in every district may take steps to ensure that banned fire crackers are not sold in terms of order of the Supreme Court.
- vi. The District Magistrate, on a complaint or otherwise, will recover compensation from violators of the above directions.

⁵³ *Id.*, para 40.

⁵⁴ MANU/GT/0308/2020.

⁵⁵ MANU/SC/1141/2017: (2017) 16 SCC 280. See also *Arjun Gopal v. Union of India*, MANU/SC/1191/2018 : (2019) 13 SCC 523.

- vii. Any victim of pollution, apart from other remedies, can approach the District Magistrate for compensation, by showing evidence of individual damage and the person responsible for the damage. Such claim may be dealt with by a reasoned order.
- viii. If no such claim is made for six months after collection of the compensation, the amount credited to the 'District Environment Compensation Fund' can be spent for restoration of the Environment in the District.

These directions if implemented effectively would certainly ensure the protection of citizens from air, chemical and noise pollution.

Prohibition of sale of fuel to vehicles not having PUC certificate and its validity

In *State of Madhya Pradesh v. Centre for Environment Protection Research and Development*,⁵⁶ the Supreme Court set aside the direction of the NGT to the Fuel Supply companies and to the State government, not to sell fuel to those vehicle owners without Pollution Under Control (PUC). The court held as under-

There can be no doubt that strong measures must be taken to protect the environment and improve the air quality whenever there is contravention of statutory Rules causing environmental pollution. Stringent action has to be taken, but in accordance with law.⁵⁷

Stoppage of supply of fuel to vehicles not complying with the requirement to have and/or display a valid PUC Certificate is not contemplated either in the 1989 Rules or in the NGT Act. Motor Vehicles not complying with the requirement of possessing and/or displaying a valid PUC Certificate cannot be debarred from being supplied fuel.⁵⁸

In passing blanket direction, directing the Appellant State Government to ensure that no dealer and/or outlet and/or petrol pump should supply fuel to vehicles without PUC Certificate, de hors the Central Motor Vehicles Rules, the learned Tribunal overlooked the fact that no vehicle can either be repaired to comply with pollution norms, nor tested for compliance with the political norms upon repair, without fuel.⁵⁹

The court, therefore, held that the tribunal had no power and/or authority and/or jurisdiction to pass orders directing the appellant state government to issue orders, instructions or directions on dealers, outlets and petrol pumps not to supply fuel to vehicles without PUC Certificate.

Heritage tourism and environmental protection

In a matter pertaining to "Sisodia Rani ka Bagh" (for short, 'the Monument'), situated at Jhalana, Jaipur, State of Rajasthan, which is popular for destination weddings

56 MANU/SC/0647/2020: AIR 2020 SC 4221, 2020(5)ALD 232, 2020(10) FLT 658, 2020(5)KLT 688, (2020)7 MLJ 64, (2020)9 SCC 781.

57 *Id.*, para 51.

58 *Id.*, para 52.

59 *Id.*, para 53.

and other events, a writ petition was preferred before the High Court of Rajasthan by way of Public Interest Litigation, in which a prayer was made to issue appropriate directions about the safety and security of the wildlife in the Reserve Forest Area and further directions for restraining the use of laser lights, loud music and fireworks in the Monument. The High Court of Rajasthan transferred the matter to the NGT. By way of impugned judgment and order, the Tribunal held that the Monument is part of the forest area and directed that no permission should be granted to organise social functions like marriages, etc. and for the use of fireworks, loud music in the Monument. In appeal filed against such directions, the apex court in *The Director, Department of Archaeology and Museums, Jaipur v. Ashish Gautam*,⁶⁰ the apex court opined that the tourism can grow with proper planning through a more sustainable and environmentally conscious development of basic tourist facilities. Accordingly, the stringent directions were modified to ensure a balance between the heritage tourism and environmental development.

Guidelines for setting up of biodiversity parks in floodplains of rivers of India, including river Ganga:

The degradation and loss of river ecosystems in India not only reduced flows into the rivers but also deteriorated the quality of river water and ground water. This fact has been acknowledged by several courts and also the NGT in recent times. The Principal Bench of NGT, New Delhi, had taken initiative and passed an order in the year 2019⁶¹ to bring out the Guidelines for Setting Up of Biodiversity Parks in Floodplains of Rivers of India, including River Ganga. It is gratifying to note that in pursuance of the said order, the Central Pollution Control Board, Ministry of Environment, Forest and Climate Change Government of India came out with the Guidelines for Setting up of Biodiversity Parks in Floodplains of Rivers of India, including River Ganga in October, 2020.⁶² These guidelines reflect the fact that one way to rejuvenate rivers and sustain the quantity and quality of water in rivers is to set up Biodiversity Parks in the riverscape. The Biodiversity Park approach is a holistic approach for the rejuvenation of rivers, as it involves the restoration of degraded diverse river ecosystems in the riverscapes, bioremediation of wastewater that enters into rivers and use of natural floodplain wetlands for cleaning channel water and storage of floodwaters. Biodiversity Parks approach is exemplified by the DDA's Yamuna Biodiversity Park of Delhi. The guidelines are comprehensive and contain the concept of biodiversity parks, the ways and means of their establishment including the preparation of DPRs, and also provides details on the development of other landscape elements such as Butterfly Park, Herbal Garden, Birding Area, and Garden of fruit-yielding plants.

Though it appears to be a small step, the initiative is very significant and can ensure rejuvenation of rivers and also water courses which have become the most

60 MANU/SC/0442/2020: 2020(10)FLT529, (2020)5SCC112, 2020(2) Shim LC 926.

61 Order dated May 14, 2019 (in O.A. No. 200/2014).

62 Available at: <https://cpcb.nic.in> (last visited on Mar. 20, 2022).

polluted in recent times. The State Governments and the PCBs would do well to implement these guidelines.⁶³

III CONCLUSION

From the above survey it can be seen that the courts and the NGT have responded well to the issue of environmental protection in India. One welcoming feature noticed in the year under survey is the proactive role played by the NGT as can be seen from sizable number of cases taken up as *suo motu* applications based on the media reports.⁶⁴ This facet shows that the NGT, which is the primary adjudicator in the matter of environmental protection in India cannot remain a silent spectator anymore. Another oft repeated observation is that the courts and tribunal are very active but the laws and their directions are not being effectively implemented in substantial number of cases. It is also equally true that the citizens who are seeking protection as to ecology and environment themselves are largely responsible for the present alarming situation in the country.

To conclude, it is desirable to consider the following observations made by the NGT carefully by the enforcement authorities:⁶⁵

When the law protector becomes the law violators, how law will be protected. The basic principle of rule of law is to follow rule/law and not to break or violate it. For the negligence of those to whom public duties have been entrusted can never be allowed to cause public mischief. Public servants if committing wrong in discharge of statutory functions and later on if it was found not be in accordance with law within the knowledge of the officer concerned then it cannot be said to be the work and duty within the definition of State Act

63 See the Annual Report of the Central Pollution Control Board for the year 2019-20, *available at*: www.cpcb.nic.in for the response from the judiciary, NGT and various ministries of the Central Government. See also the Annual Report of the Ministry of Environment, Forest and Climate Change (MoEF), Government of India for 2020-21, *available at*: <https://moef.gov.in> (last visited on May 20, 2022).

64 In Re: News item published in “The Times of India” Authored by Vijay Pinjarkar Titled “String of new road projects in Maha to cut off tiger corridors”, MANU/GT/0033/2020 and In Re: News item published on July 13, 2020 in the local daily named “India Today” titled “Massive fire engulf Vizag chemical plant, explosions heard, injuries reported”, MANU/GT/0324/2020 *etc.*

65 *Balvant Murlidhar Parchure v. Sub Divisional Officer PWD, Guhagar*, MANU/GT/0241/2020, decided on July 20, 2020.