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ENVIRONMENTAL LAW

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I INTRODUCTION

IN THEIR quest for development, majority of the human beings and nations seem to be ignoring the significance of environmental protection. The self-serving arguments like development versus environmental protection, sustainable development, compensatory afforestation, and the conflict between the interests developed and developing countries regarding the climate change, may sound acceptable at present but in the long run would certainly be inimical to the life in general. The governments of the day appear to be focussing more on infrastructure and development to serve the cause of anthropocentrism totally ignoring the much-desired shift towards the ecocentrism.

The year under survey has witnessed many decisions and directions issued by the National Green Tribunal (NGT), high courts and the Supreme Court regarding the various aspects of environmental protection. Surprisingly the issues of concern which appear to have been settled once and for all by the courts keep on raising their head, and they include burning of crackers, use of Plaster of Paris (PoP) idols, immersion of idols of deities made with PoP in urban lakes, use of loud speakers and sound amplifiers in public places in the name of religious practices, and the constructions in coastal zones in violation of CRZ norms. Another issue which is yet to be finally settled is the jurisdiction of NGT in spite of clear mandate under the NGT Act, 2010. The following are some of the most significant judicial and quasi-judicial developments in the area of environmental law in India.

II JURISDICTION OF NGT

In *H.S.M. Holdings Pvt. Ltd v. National Green Tribunal*,¹ a Division Bench of High Court of Allahabad distinguished the judgment of High Court of Madras in *Kollidam Aaru Pathukappu Nala Sangam v. Union of India*,² and held that the writ petition under article 226 would not be maintainable against the decision of the NGT in view of the availability of remedy of appeal under section 22 of the Act of 2010.

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1 MANU/UP/1919/2021.

2 A division bench decided on October 6, 2021.

In *A.V.C.B. Traditional Fishermen Association v. State of Goa*,³ a Division Bench of the High Court of Bombay held that in view of the NGT entirely seized with the issue of finalization of CZMP, the high court cannot entertain any writ petition on the same matter.⁴

In *Pedro Januario Carlosbarreto v. State of Goa*,⁵ a Division Bench of High Court of Bombay at Goa held that the question of demarcation private forest falls within the jurisdiction of the NGT, and that the high court cannot entertain a writ petition with regard to the same. It was held that if any party, has any grievance against the orders made by the NGT on this issue, then, it is only appropriate that such parties, avail of the statutory remedy of appeal provided under the NGT Act.⁶

In *Manoj Negi v. State of Uttarakhand*,⁷ the NGT was approached by the applicant application seeking enforcement of order of the tribunal passed in 2019 directing remedial action against damage to the environment on account of burning of garbage and causing pollution of River Khoh, in District Pauri Garhwal, by dumping garbage therein. The NGT held that the order of the Tribunal is binding as a decree and violation is also criminal offence under section 26 of the National Green Tribunal Act, 2010. The tribunal expressed regret that in the State of Uttarakhand there is rampant violation of directions of NGT and accordingly directed the Chief Secretary of Uttarakhand to ensure that remedial action is taken, which may include compliance of rules in respect of setting up of waste processing plant and clearing legacy waste site, recovery of compensation and coercive action against erring officers. Compliance report was directed to be filed before the next date of hearing. Such directions are necessary to trigger the necessary action from the governments.

III CONSTRUCTION PROJECTS AND ENVIRONMENTAL PROTECTION

In *Maharashtra Maritime Board v. of India*,⁸ the petitioner-Maharashtra Maritime Board was before the court praying for directions against the respondents to permit it to execute public works *inter alia* of construction of proposed passenger jetty and allied facilities at different places in Maharashtra. The court found that no destruction of mangroves was caused and that the project was being undertaken without destruction of any mangroves. Further, the Project is situated within 50 meters mangroves buffer zone area and peculiarly, no mangroves would be destroyed. The court permitted the petitioner to proceed with its public project strictly in accordance with conditions as stipulated by MCZMA and SEIAA and further directed to plant/replant 5 times number of mangroves being removed/destroyed or replanted during construction process.

3 MANU/MH/0584/2021.

4 See also *KCT Realcon Pvt. Ltd v. Goa Coastal Zone Management Authority*, MANU/MH/1124/2021.

5 MANU/MH/1857/202.

6 See also *Municipal Corporation of Gr. Mumbai v. Ankita Sinha*, MANU/SC/1076/2021: 2021(6) KLT133, See AIR 2021 SC 5147, *Vanashakti v. Union of India* MANU/MH/3121/2021, *Wayanad Prakrithi Samrakshana Samithi v. State of Kerala* MANU/KE/0510/2021, *Fleetguard Filters Pvt. Ltd v. State of Uttarakhand*, MANU/UC/0072/2021.

7 2021 SCC OnLine NGT 1016.

8 MANU/MH/3493/2021.

In *Municipal Corporation of Gr. Mumbai v. The Bombay Environmental Action Group*,⁹ the Municipal Corporation of Greater Mumbai intended to execute the mechanical screening for Irla Nalla at Irla storm water pumping station to remove huge quantity of floating material discharged into sea, which would otherwise adversely affect environment and more particularly the aquatic condition of the sea. The MCGM accordingly, moved a proposal with the Maharashtra Coastal Zone Management Authority (for short 'MCZMA') seeking its approval as the proposed work fell under the Coastal Zone Regulations. The MCZMA considered the MCGM's proposal and recommended the same from the CRZ point of view to the state environment impact assessment authority, subject to obtaining prior permission of the high court since the project was within 50 meters of the mangroves buffer zone. The high court directed the state environment impact assessment authority to expeditiously consider the proposal as recommended by the MCZMA and if the proposal meets all the necessary norms, and to pass appropriate orders permitting the MCGM to undertake the project. This judgment is important for the reason of coordination between different regulatory authorities in ensuring a balance between development and environmental protection.

In *Remedios D'Cunha v. The State of Goa*,¹⁰ the high court restrained the respondents from undertaking any construction over a water body until the respondents complied with the Circular issued by the Chief Town Planner. The court relied upon the Supreme Court judgment in *Jagpal Singh v. State of Punjab*,¹¹ which made the following observations in the context of conservation and protection of water bodies:

“.....our ancestors were not fools. They knew that in certain years there may be droughts or water shortages for some other reason, and water was also required for cattle to drink and bathe in etc. Hence they built a pond attached to every village, a tank attached to every temple, etc. These were their traditional rain water harvesting methods, which served them for thousands of years.¹²

Over the last few decades, however, most of these ponds in our country have been filled with earth and built upon by greedy people, thus destroying their original character. This has contributed to the water shortages in the country. Also, many ponds are auctioned off at throw away prices to businessmen for fisheries in collusion with authorities/Gram Panchayat officials, and even this money collected from these so-called auctions are not used for the common benefit of the villagers but misappropriated by certain individuals. The time has come when these malpractices must stop¹³.”

In *Baithkol Bandharu Nirashrithara Yantrikrut Dhoni Meenugarara Sahakara Sangha Niyamitha v. The Chief Executive Officer, Karnataka Maritime Board*,¹⁴ the High Court of Karnataka dealt with the question whether decision to expand existing Karwar Port at Baithkol village in Karwar taluk, Uttara Kannada district is legal. The

9 MANU/MH/0019/2021

10 MANU/MH/2953/2021

11 MANU/SC/0078/2011 : (2011) 11 SCC 396

12 Para 19

13 *Id.*, para 20.

14 MANU/KA/3267/2021.

court directed the Karnataka State Pollution Control Board, the State of Karnataka and the Director of Ports and Inland Water, Karwar Port to ensure that all the terms and conditions of Environmental Clearance dated January 23, 2019 (Annexure-B) issued by the State Level Environment Impact Assessment Authority (SEIAA) are scrupulously followed and implemented. Needless to add that unless and until the consent for establishment is granted to the project by KSPCB, the work of the second stage Development of Karwar Port cannot be commenced.

In *Gireesh Achar v. Government of India*,¹⁵ the High Court of Karnataka reminded the state government of article 48A of the Constitution of India which is a part of the Directive Principles of State Policy which enjoins the State to protect and improve the environment and to safeguard the forests and wild life. Under clause (g) of article 51A of the Constitution, it is the fundamental duty of every citizen of India to protect and improve the forests. The officials of the state government who did the exercise of initiating and completing the process under section 28 of the Karnataka Forest Act of 1963 were also duty bound to protect the forest. The minimum which was expected of them was that they will not indulge in de-reservation of forest in complete violation of section 2 of the Forest (Conservation) Act of 1980. The court went on to hold that the power to permit use of a reserved forest for non-forest purpose under section 28 of the said Act of 1963 cannot be exercised without obtaining the prior approval of the Central Government in accordance with section 2 of the said Act of 1963.

In *Association for Protection of Democratic Rights v. The State of West Bengal*,¹⁶ the apex court the issue whether the court should allow the Government of West Bengal to fell the trees, in order to construct Road Over Bridges (ROBs) and widen the Roads. The court was told that ROBs are necessitated to prevent accidents, which are several, over the past few years. This is the human/development concern that has been expressed by the State of West Bengal. The court noted that the ROBs can only be constructed after felling of several trees, ages of which are said to be up to 150 years. As per the report of the expert committee submitted before the court, primarily, about 50 trees have already been felled and potentially another 306 trees are to be felled. As per the Report, many of the trees can be called 'historical trees', which have 'irreplaceable value' and compensatory afforestation cannot replace trees of this value. It is common ground that the trees cannot be transplanted at some other location. Considering the significance of the matter from the perspective of climate change as a growing national and international concern, the court appointed an expert committee to give its recommendations in a time bound programme.

In *Sridevi Datla v. Union of India*,¹⁷ the apex court held that nothing in the NGT Act which excludes parties who would be directly affected by a project, that has environmental repercussions, from accessing the tribunal (NGT).

15 MANU/KA/0872/2021: AIR 2021 Kant 89, ILR 2021 Kar. 3193.

16 MANU/SC/0215/2021 : 2021(11)FLT412, 2021(2)RCR(Civil)539, (2021) 5 SCC 466.

17 MANU/SC/0138/2021:2021 3 AWC 2524 SC; (2021)5SCC321.

In *Pratap Bhanu Singh Shekhawat v. Department of Mines and Geology*,¹⁸ the issue raised before the NGT was also overlapping with an issue pending before Supreme Court. The grievance in this application was against illegal open cast mining of limestone in and around the Chittorgarh, particularly Chittorgarh Fort, close to Bassi Wildlife Sanctuary, close to rivers, water bodies and their catchment areas. Mining activities are alleged to be without requisite EC and statutory consents under the Water and the Air Act and EP Acts and Rules and violating other environmental norms. The application was disposed of with directions *inter alia*: i) making interim orders prohibiting mining within Municipal limits of Chittorgarh City absolute subject to further orders of the Supreme Court. ii) continuing prohibition of mining in the radius of 10 km from Bassi Wild Life Sanctuary subject to further orders of the Supreme Court.

IV DESTRUCTION OF NATURAL/EXISTING BODIES AND ENVIRONMENTAL PROTECTION

In *S. Maheswari v. The State of Andhra Pradesh*,¹⁹ the High Court of Amaravati invalidated the proposal of the state government to convert a portion of the natural hillock into a government funded housing site for the weaker sections. The court found no dispute in the fact that the subject land is classified as gutta which is locally known as Yetteramma Gutta since the land in a survey number of a Village is classified as hillock, and held that the same cannot be converted into house site due to impact on the environment and bio-diversity in the area.

In the context of rampant illegal operation of stone crushers leading to high levels of pollution and destruction of green cover, the Bombay High Court in *Sao Jose De Areal Villagers Union v. The State of Goa*²⁰ declared an order passed by the State Government passed under section 35 of Goa Land Revenue Code, 1968 (GLRC) as invalid in the absence of any material to substantiate alleged claim of public interest.

In *Kiri Dini Bogum General Secretary v. National Hydro Power Corporation Ltd.*,²¹ a Division Bench of the High Court of Gauhati dealt with the compensation for land acquisition and affecting forest rights of tribals arising out of a dam constructed on the river Subansiri in Arunachal Pradesh which is a project to generate 2000 Mega Watt electricity. The land which will be so affected by the construction of the dam is 3183 hectares. The compensation to certain tribals who claimed certain cultivable and non-cultivable hereditary rights over this forest, claimed compensation and a settlement was initially granted by the state, in respect of which even the high court and the Supreme Court were seized of the matter. In the meantime, the state commission for scheduled tribes also directed to pay huge compensation. The division bench of the high court was of a considered view that the directions of the Commission are wholly without jurisdiction more particularly, when all these matters are subject

18 2021 SCC OnLine NGT 264.

19 MANU/AP/1210/2021.

20 MANU/MH/3612/2021.

21 MANU/GH/0463/2021.

matters pending before this Court as well as before the Apex Court, the Commission in all fairness should have refrained from entertaining the matter.²²

In *K. Ramesh Kumar v. The District Collector*,²³ a full bench of the High Court of Madras observed that water bodies are the lifeline for all animal species. There has to be a zero tolerance for any kind of encroachment at or endangerment of any waterbody²⁴.

In *Himachal Pradesh Bus Stand Management and Development Authority v. The Central Empowered Committee*,²⁵ the Supreme Court upheld the validity of the orders passed by the NGT ordering demolition of a bus stand complex constructed in violation of the provisions of the Forest (Conservation) Act, 1980. D.Y.Chandrachud J., highlighted the importance of the environmental rule of law²⁶ and role of courts in ensuring environmental protection. The following observations are relevant in this context:²⁷

The need to adjudicate disputes over environmental harm within a Rule of law framework is rooted in a principled commitment to ensure fidelity to the legal framework regulating environmental protection in a manner that transcends a case-by case adjudication. Before this mode of analysis gained acceptance, we faced a situation in which, despite the existence of environmental legislation on the statute books, there was an absence of a set of overarching judicially recognized principles that could inform environmental adjudication in a manner that was stable, certain and predictable...

V SOLID WASTE MANAGEMENT

In a well-reasoned judgment, a full bench of High Court of Madras in *P. Karthikeyan v. The Commissioner, Coimbatore Corporation*,²⁸ it was held that:

Location of MCCs (Micro Composting Centres) or the Compost Yard in the park/play field cannot be construed as Development in terms of the scheme of the (Tamil Nadu Town and Country Planning) Act, 1971 or the Combined Development Rules, 2019, and therefore, any prohibition contemplated in the statutory rules and regulations does not apply to the implementation of the concept of solid waste management as envisaged in the SWM (Solid Waste Management) Rules, 2016.²⁹

22 See also *T.G. Enterprise v. New Socunoma Village* MANU/GH/0720/2021, where the high court directed the demolition of a stone crushing unit which was constructed in a protected zone without the NoC given by the Village Council.

23 MANU/TN/0051/2021.

24 See also *Suo Moto v. State of Rajasthan*, MANU/RH/0817/2021.

25 MANU/SC/0015/2021; AIR2021SC657; 2021(11)FLT293; (2021)4SCC309; 2021(1)Shim LC 449.

26 *Id.*, para 46 to 53.

27 *Id.*, para 50.

28 MANU/TN/7305/2021.

29 *Id.*, para 163.

The SWM Rules, 2016, are framed under the Central enactment, viz., the Environment [Protection] Act, 1986. The Rules thus prevail over the State laws to the extent of the implementation of the policies outlined towards solid waste management. Even otherwise, this Court does not see any palpable repugnancy between the SWM Rules, 2016 and the State laws.³⁰

It was thus held that, implementation of SWM Rules, 2016, fall within the “permissible deviation” in larger public interest even in terms of the Tamil Nadu Town and Country Planning Act, 1971, read with the Development Control Rules framed thereunder.

VI ENFORCEMENT OF ENVIRONMENT NORMS WHERE LARGE CONGREGATIONS TAKE PLACE

In *Citizens for Green Doon v. Union of India*,³¹ the Supreme Court dealt with the ChardhamMahamargVikasPariyojna, a wide road construction project aimed to widen relevant roads to connectholy shrines. The Construction activities were challenged on the ground of it having negative impact on the Himalayan ecosystem. It was also alleged that an Environment Impact Assessment under the Environment Impact Assessment Notification 2006 had not been conducted and that to obviate the requirement of conducting an EIA, the Project had been divided into smaller stretches. The application alleged violations of the EIA Notification, Forest (Conservation) Act 1980, Wildlife Protection Act 1972, Environment (Protection) Act 1986 and articles 14, 21 and 48A of the Constitution. The court after a thorough analysis of the history and previous litigations, made the following observations which are self-explanatory:³²

More than anything else, this requires a concerned shift in the approach which has been adopted till date. Making the Project environmentally compliant should not be seen a “checkbox” to be obtained on the path to development, but rather as the path to sustained development itself. Thus, the measures adopted have to be well thought out and should actually address the specific concerns associated with the Project. Understandably, this may make the Project costlier, but that cannot be a valid justification to not operate within the framework of the environmental Rule of law and sustainable development. In its bid to make the project more environmentally conscious, it is also imperative that the MoRTH (implementation agency) and MoD (Ministry of Defence) be transparent in the measures they adopt, in order for them to be held publicly accountable by spirited citizens.

VII POLLUTION OF RIVER GANGA

In *Geo Miller & Co. Pvt. Ltd v. U.P. Jal Nigam*,³³ a Division Bench of Allahabad observed that ‘The future of this nation to large extent will be depending on health and wellbeingof this river. It is, therefore, imperative that every effort should be made to revive the river and make it pollution free. (Para 13) The court noted that the

30 *Id.*, para 164.

31 MANU/SC/1251/2021.

32 *Id.*, para 100.

33 MANU/UP/1240/2021: 2021(5) ALJ 690.

government's *Namami Gange* Programme has revitalized India's efforts in rejuvenating river Ganga. Critical sewage infrastructure in 20 pollution hotspots along with the river and cleaning of its tributaries is underway. River Gomti is one of the tributaries of river Ganga. River Gomti is very highly polluted. Several strategies are being evolved and implemented under the Mission to see that the river is rejuvenated and becomes pollution free. National Mission for Clean Ganga (NMCG) is the implementing agency of *Namami Ganges Programme*. NMCG is treated as an authority with statutory powers under Environment Protection Act, 1986. It has been given bureaucratic autonomy and regulatory powers to execute the mission in coordination with respective State Governments. Though in this case, the writ petitions filed by the petitioner, whose bid was not found responsive as having not met the technical qualification criteria in executing the said project were dismissed, the observations of the court are noteworthy.

In *Mahant Madhu Mangal Sharan Daas Shukla v. Union of India*,³⁴ a DB of the Allahabad held that the rivers are taken as easy targets for drain of sewerage and trade effluent. Despite establishing STPs/ETPs, untreated water is drained polluting the rivers. This was noted by the Court while hearing the matter of Kanpur where huge money has been spent for establishment of ETPs/STPs, yet untreated water entering the river Ganga.

VII AIR POLLUTION

In *Society for Improvement, Greenery and Nature (Breach Candy Welfare Group) v. Authority Mumbai*,³⁵ the High Court of Bombay while dealing with a writ petition seeking restraining the Respondents from felling the trees, observed as under-

“A fine balance is required to be achieved and maintained between development on one hand and conservation of ecology and environment on the other, which in our opinion, ought to be the guiding philosophy to be imbibed and kept in mind by all the stakeholders. We cannot forget the importance and value of ecology and environment when the State undertakes development projects, conversely it is also not possible to only conserve environment and ecology and neglect development in large and complex cities like Mumbai, where the infrastructure requirements cannot be neglected. There is no similar city in the world which has not catered to the needs of infrastructure development..”(Para 16)

In *Raja Singh v. Union of India*,³⁶ the grievance was that one of the major reasons for the worsening air quality is the presence of biological contaminants in air as well as the improper dilution and ventilation of air in built-up spaces, such as houses, offices as well as air-conditioned modes of transport, such as buses, trains etc. According to the Petitioner, a research scholar, the mathematical solution to the problem of air pollution is to adopt a modelled approach to dilution-ventilation which

34 MANU/UP/1677/2021.

35 MANU/MH/2850/2021.

would diffuse the concentration of the droplets and minimise the probability of infection. It was also submitted that in the wake of pandemic COVID-19, there is an urgent need to take actions to minimise the air pollution. The petitioner accordingly sought directions to the respondents to take appropriate measures enabling proper dilution-ventilation of air in closed environments, keeping in view the presence of biological contaminants in the air. The court, while admitting that the issue needs to be looked into by the experts, directed the respondent authorities to treat the writ petition as a representation and look into the suggestions made by the Petitioner working in the field of Airborne Infection Spread.

In *Amit Manibhai Panchal v. State of Gujarat*,³⁷ a PIL was filed to contain air pollution in Gujarat in view of Section 2(d) of Air (Prevention and Control of Pollution) Act, 1981. The petitioner sought a direction to the state and other authorities to fix emission standards and parameters for industries in manner that pollution levels in state were maintained within acceptable limits, ensure that all industries/plants/sites be allowed to function, only if they were operated on natural gas and not with use of coal and identify and discontinue all polluting industries/plants/sites. The court was of view that there need not be any debate that use of coal had continued adverse effect on environment and lives of millions of people called upon the state to respond to why any notification/order by which it declares coal to be approved fuel under section 2(d) of Act be not struck down.

In *Cheshire Tarzan v. Union of India*,³⁸ a PIL was filed seeking a direction to the Union of India, the State of Kerala, and the Transport Commissioner, Kerala State, etc not to grant renewal of permits to the diesel operated transport vehicles including auto rickshaws etc., plying in the major cities and towns of Kerala, especially Kochi City; to grant replacement to the existing diesel transport vehicles/auto rickshaws with LPG/CNG vehicles of the BS - IV standard; to take steps, to completely phase out the BS - I and BS - II public transport vehicles, including auto rickshaws in major cities and towns of Kerala, within a specified period; to give incentives or financial help to the operators who are replacing their old BS - II transport vehicles/auto rickshaws, and to those who are replacing their diesel autos with LPG/CNG driven transport vehicles/auto rickshaws, which would facilitate for faster replacement as done by few other States, and to provide adequate number of LPG/CNG outlets in Kochi and other major cities in Kerala, to facilitate faster replacement of engines. The court noted that the issues addressed by the petitioner in the writ petition are taken care of by the state government, the Union Government as well as the NGT, hence no directions could be issued by the high court.³⁹

36 MANU/DE/1580/2021.

37 MANU/GJ/1741/2021.

38 MANU/KE/3255/2021.

39 See also *Ajay Gupta v. State of Rajasthan*, MANU/RH/0890/2021.

VIII TREATMENT SEWERAGE PLANT IN STATES/UTS

In *Suo Motu v. Ahmedabad Municipal Corporation*⁴⁰ a division bench of High Court of Gujarat considered the report of a Joint Task Force which inspected the outfalls/ discharges in Sabarmati River, Sewage Treatment Plants (STPs) and Common Effluent Treatment Plants (CETPs). The report mentioned that the operations of STPs are not being properly reviewed and evaluated and systematic problems are never questioned and addressed. Recalling that Sabarmati River is one of the 351 polluted rivers and that pursuant to the judgment rendered by the Supreme Court, NGT had rendered its judgment and in which every State was directed to form river rejuvenation team which would function under the guidance of the chief secretary of the concerned State, the court directed the Scientific operation of all STPs and exploration of in-situ treatment of drains carrying sewage in to Sabarmati River till the time arrangements for sewerage system and STP is ensured among other directions.⁴¹

In *Suo Motu v. Ahmedabad Municipal Corporation*,⁴² the court observed that it is important on the part of the regulatory/investigating agencies as well as the supervisory/operating agencies such as the GPCB and the AMC that their scope of inspection should not be limited to collecting inlet and outlet samples from an STP/ CETP/ETP. Stage-wise sampling and comparison of analysis besides physical observations would help them to determine which treatment unit/stage is functioning/ not functioning. Based on such observations, suggestions/ instructions may be given to replace/ repair/modify the non-functional treatment unit. Based on the analysis of treated effluent samples, it clearly appears that the CETPs are not meeting the prescribed discharge norms. Such CETPs should carry out the treatability studies to find suitable additional treatment process/es to achieve the discharge norms

IX FOREST CONSERVATION AND ENVIRONMENTAL PROTECTION

In *Mangala Prasad v. Principal Secretary*,⁴³ High Court of Allahabad held that the order of confiscation of the vehicle transporting sand excavated from the forest area under section 52(A)(1) of the Indian Forest Act, 1927 was just and proper. Such chronic offenders of law and persons, who recklessly destroy the environment without any care for the future generations have to be dissuaded by the deterrence of lawful penalties.

In *Kalam Pailan v. The State of West Bengal*,⁴⁴ The Calcutta High Court was apprised about the gross onslaught on to the ecological and environmental fabric and the animal life in the area, which is referred to as Sundarban and its adjoining areas, which operate as life support systems to that ecological unit. The Sundarban Biosphere Area is an area of 4000 sq. km., Sundarban Tiger Reserve holds 2500 sq. km. and the adjoining Reserve Forest is of 600 sq. km. The aforementioned ecologically and

40 MANU/GJ/1717/2021.

41 See also *Suo Motu v. Ahmedabad Municipal Corporation*, MANU/GJ/2350/2021, and *Suo Motu v. Ahmedabad Municipal Corporation*, MANU/GJ/1475/2021.

42 MANU/GJ/2072/2021.

43 MANU/UP/2119/2021:: 2021(8)ADJ66; 2021(11)FLT840.

44 MANU/WB/0199/2021.

environmentally fragile area is not only being encroached upon but also being deprived of its ability to sustain itself as a unit of ecological and environmental balance mechanism. The biosphere imbalance will directly impact the plant and animal life, which means the life of the flora, fauna and different units of the animal kingdom, which would be either on the land or in the waters or may be capable of utilizing the waters and the lands for their existence in the manner in which they have the freedom to move in that area. The classification of the animal kingdom into vertebrates and invertebrates and their further classification to different other categories including the crustaceans, fishes, reptiles, mammals and what not, in terms of their existence, have to be protected by insulating that critically challenged area from being disturbed by any mode of human intervention. No manner of dealing with any part of the aforesaid lands can be permitted except at the peril of the eligibility of that part of land to sustain itself as a biosphere with requisite ecological and environmental support systems through the neighbouring areas.

The court categorically held that the Sundarban area cannot be utilized or permitted to be accessed except for its preservation, management, protection and custody by and under the control of its custodians in law; and, to extremely limited purpose to which human access could be permitted under controlled conditions that would be imposed by those in custody of that area. Thus, to secure the best interest of that area, which is an ecologically fragile biosphere, in our assessment on the basis of the records before us, the court held that it is necessary to direct that there shall be no activity whatsoever by human intervention in any part of the three parcels, which are noted above as the Sundarban Biosphere Area, Tiger Reserve and the Reserve Forest. The court reminded all that the strict measures by way of restrictions imposed through a judicial order by this court in exercise of authority under article 226 of the Constitution of India is absolutely essential as of now, to ensure the protection of that environmentally sensitive and ecologically fragile area and the animal and plant life and other aspects relating to that area. For the aforesaid reasons, all activities in the aforesaid area, namely, Sundarban Biosphere Area, Sundarban Tiger Reserve and the adjoining Reserve Forest referred to above were prohibited except to the extent such activity may be permitted by the concerned authorities.

In the matter of, "*Protection of Forest Area, Forest Wealth and Wild Life due to devastation from the extensive forest fires in the State of Uttarakhand*" v. *State of Uttarakhand*,⁴⁵ a division bench of High Court of Uttarakhand admitted that forest fires have numerous adverse effects: firstly, on the green-coverage of the State; secondly, on the wildlife; thirdly, on the human population; fourthly, on the environment itself. Since 67% of the land in the State is covered by forest. There are large forests of Pine Trees. It was also observed that, forest fires are annual features which occur between March and June. Thus, it is imperative that the State should not just have a Crisis Management Plan, but most importantly should ensure that the plan is implemented in toto. Therefore, it is essential for the State to develop multi-pronged strategies to tackle this annual menace.

45 MANU/UC/0166/2021.

X BIOLOGICAL DIVERSITY AND ENVIRONMENTAL PROTECTION

Fishing has been going on since the time immemorial. However in recent years, new technologies are being developed to catch the fish. Regarding the fishermen carrying on modern means of fishing by using fishing method of trawl net and Purse Seine Net (PSN), the High Court of Bombay in *Suresh Ramchandra Dhanu v. State of Maharashtra*⁴⁶ noted that PSN fishermen use mechanized nets whereby much more fish than the traditional nets are caught. PSN has close meshes which catches even the smallest fish and their eggs leading to depletion of stock. Such a method of fishing is ecologically harmful. PSN kills juvenile fish and fish eggs thereby impeding fish breeding. In this connection, reference has been made to a report published by the National Human Rights Commission called 'The Coasts, the Fish Resources and the Fish Workers' Movement, 2006'. Fish stocks in the sea face serious threats of depletion due to the rampant use of PSN. Fish catch in Maharashtra has almost halved in recent years from 449000 tonnes in 2002 to 244000 tonnes in 2010. There is a direct link between PSN fishing and reduction in pelagic fish stock. Fish catch by PSN comprises of juvenile fish in large quantity. Mesh size in PSN being extremely fine and the nets being spread across a radius of 3 kms., they are responsible for large scale destruction of eggs and juveniles. The court remanded the matter back to the authorities for taking a fresh decision on review, as the period of five years has lapsed as per the recommendation of the study committee, in accordance with law after due consultation with the district advisory committees and after giving an opportunity of hearing to the petitioners or representatives of the PSN fishermen. While carrying out the review exercise on remand, the State was directed to examine the need to either continue with the regulatory and/or prohibitory measures or to relax/modify those measures or to withdraw the same.

XI PRIOR PERMISSION TO COLLECT TENDU LEAVES

In *Sayeed Absar Bidi Works v. State of U.P.*⁴⁷ a Division Bench of the High Court of Allahabad held that the object and purpose of the U.P. Tendu Patta 1972 is to regulate the purchase and distribution of Tendu leaves, which is admittedly a plant product and would fall within the meaning of "biological resources" under section 2(c) of the Biological Diversity Act, 2002.[Para 20] The purpose and object with which the Act, 2002 has been enacted is clearly distinct from the U.P. Tendu Patta Act 1972. By the mere fact that the state government regulates sale and purchase of Tendu leaves, which is used as an end product in manufacturing bidis and that the manufacturers of bidi are required to be registered under the U.P. Act No. 19 of 1972, it cannot be said that by the registration of the bidi manufacturers under the Act, 1972, their obligation under the Act, 2002 to give prior intimation to the State Biodiversity Board for obtaining the biological resources (Tendu leaves) for commercial utilization is meted out. It was held by the court that both the Acts namely Tendu Patta Act, 1972 and the Act, 2002 operate in different fields and the fields/areas occupied by them are not overlapping. They have been enacted with distinct

46 MANU/MH/3287/2021.

47 MANU/UP/3251/2021.

objects and registration in Tendu Patta Act, 1972 would not exclude the petitioners from the purview of the Act, 2002, to share the benefits obtained from biological resources used for commercial purposes, to contribute to the fund for conservation of biological diversity and ensure sustenance of its components. This is a well-reasoned judgment that balances not only the central and State interests, but also serves the purpose of protection of biological diversity

In *Living Heritage Foundation v. State of Goa*,⁴⁸ in a writ petition was filed praying for revival of defunct Tree Authorities under the Goa, Daman and Diu Preservation of Trees Act, 1984 (Trees Act). The court agreed with the contention of the petitioner that no functions recognised under the statute were discharged by the state government. The court issued number of directions to the government including the direction are directed to carry out a census of the existing trees and obtaining, whenever considered necessary, declarations from all the owners or occupants about the number of trees in their lands. The tree authorities were also directed to consider using modern technology such as RFID and geo-tagging for this purpose covering areas comprising the entire State of Goa except for government forests under the control of the Forest Department, a forest or forest land notified under the Indian Forest Act, 1927 having regard to the provisions of section 30 of the Trees Act. This judgment in deed is a progressive one to awaken the government from its slumber and to protect the environment.

XII NOISE POLLUTION

Modified silencers, hooters and pressure horns: In *Noise Pollution v. State of U.P.*,⁴⁹ a division bench of High Court of Allahabad took a serious note of the noise pollution which is being caused through modified silencers, hooters and pressure horns and was apprised that nothing concrete has been done in this regard to control the same by the concerned authorities whereby indicating a lackadaisical and casual approach. The court was prima facie of the view that all the officials who have been impleaded in the present PIL for controlling noise pollution and to crack down on such vehicles causing noise pollution through modified silencer, hooters and pressure horns have miserably failed in their duty and no concrete action has been taken in this regard and thus prepared to summon them in person. Though the personal appearance of the authorities was exempted due to the plea of the senior counsel, they were issued notices to submit their failure to constitute a committee in terms of Rule 2(c) of The Noise Pollution (Regulation and Control) Rules, 2000. In a follow-up matter, *Noise Pollution v. State of U.P.*,⁵⁰ the court after perusing the affidavits expressed its dissatisfaction and observed that only half-hearted efforts have been made by the state authorities to control the noise pollution through modified silencers. The menace of noise pollution through modified silencer is open for all to see with vehicles roaring on the streets of Lucknow *i.e.*, the state capital and also other cities throughout the state. If this is the effort made by the state authorities to control the noise pollution

48 MANU/MH/1971/2021.

49 MANU/UP/1635/2021.

50 MANU/UP/1630/2021.

through modified silencer despite the previous specific order of the court to crack down on noise pollution then prima facie it is apparent that the authorities concerned are acting in a lackadaisical and casual manner and no concerted efforts have been made to combat the menace. In this view of the matter, it is expected that the state authorities and therespondents shall strictly crack down of such two wheelers and four Wheelers usingmodified silencers on their vehicles and the court hopes to see a visible change in thenoise pollution by the next date of listing failing which the court may be compelled tosummon the senior officials for having failed to adhere to the specific rules for checkingnoise pollution and having failed to crack down on such errant owners despite thespecific order of the court.

In *Sagardeep Sirsaikar v. State of Goa*,⁵¹the High Court of Bombay at Goa, issued many directions to the concerned Authorities so as to regulate, curb and control noise pollution. The court was called upon in this case for directions to strictly implement the provisions of the Environment (Protection) Act, 1986 read with the Environment (Protection) Rules, 1986 and the Noise Pollution (Regulation and Control) Rules, 2000 and to take action against the offenders.

In *Roshni Ali v. State of West Bengal*.⁵² The issue of burning only green crackers on the occasion of Deepavali festival was considered by the High Court of Calcutta. The court was conscious of the fact that it is not possible to inspect and ensure that green crackers are being used at every nook and corner of the State. However, it was felt that all necessary efforts must be made by the State to ensure that only green crackers are used and the sincerity of the State would be reflected in enforcement mechanism. The court further declared that the importance and need for maintaining clean environment and clean air cannot be overstressed and is the responsibility of one and all. All citizens must follow and ensure that even the green firecrackers used do not cause discomfort to others. Suitable awareness campaigns must be undertaken by all stakeholders in this regard; through the available media and those self-imposed restrictions must be aggressively encouraged.

In *A.S. Vishnu Bharath v. State of Karnataka*,⁵³ the High Court of Karnataka reiterated the fact that the fire-crackers have cultural, religious and social significance but the time has now come not to debate, but to realize that there must be sacrificing of all such expression or feelings through use of fire-crackers, feelings of joy, celebration, etc., and it must ultimately yield to environmental protection and elimination of noise pollution and air pollution on account of the use of fire-crackers. This is to improve the health of the citizens and environment of the nation⁵⁴.

XIII CONSTRUCTIONS IN COASTAL ZONES

In *Alex Pereira v. State of Goa* .,⁵⁵ a division bench of High Court of Bombay held that representations for regularization of constructions on Government land made

51 MANU/MH/4243/2021.

52 MANU/WB/0789/2021.

53 MANU/KA/1706/2021 .

54 *Id.*, para 45.

55 MANU/MH/2928/2021.

in contravention of the regulations of Goa Coastal Zone Management Authority (GCZMA) cannot be entertained even after the NGT dismissed the appeal against the order of the CZMA. The high court noted that despite the order of the GCZMA attaining finality on account of dismissal of the appeal by the NGT, none of the statutory authorities took steps to either seal the structures or to demolish the same so that the government land can be restored to its original position at the earliest. It was therefore held that once the GCZMA has made the order and challenge against the order was turned down by the NGT, there is no question of the builders making any further representations to the Deputy Collector or GCZMA or such authorities entertaining such representations.

In *Kashinath Jairam Shetye v. Union of India*,⁵⁶ the High Court of Bombay at Goa struck down the notification issued by the Union of India in exercise of powers conferred by sub-section (1) and clauses (i) to (iv) of sub-section 2 of section 3 of the Environment (Protection) Act, 1986 (EPA) declaring that to obtain blue flag certification, on 12 beaches, including in particular Miramar (Panaji Goa), certain specified structures/facilities shall be permitted in the Coastal Regulation Zone (CRZ) area subject to maintaining a minimum distance of 10 meters from High Tide Line (HTL). In issuing this notification, the respondents, had dispensed with the requirement of notice under Rule 5 of the Environment (Protection) Rules, 1986. In the present case, the Central Government by dispensing with the public notice under Rule 5 of the said Rules had deprived the stakeholders of valuable opportunity of filing their objections against the imposition of prohibition or restrictions on carrying on of processes or operations.

In *Maria Thelma Suresh Poojari v. Maharashtra Coastal Zone Management Authority*⁵⁷ the NGT dealt with two matters involving common questions. The issue for consideration was compliance of conditions of the CRZ Clearance for providing “Infrastructural post harvesting facility to fishermen at fish landing centres along the coast of Maharashtra”. The case of the applicants was that they are fishermen of the area and that in violation of Environmental Clearance (EC) conditions, the Project Proponent (PP) is undertaking activities contrary to the environmental norms. Taking an over-all view of the matter, the NGT while not stopping the project as such and applying the ‘Sustainable’ and ‘Precautionary’ principles of environment law, directed constitution of a seven-member Monitoring Committee comprising nominees of the Ministry of Environment, Forests and Climate Change, Central Pollution Control Board, State Pollution Control Board, Principal Chief Conservator of Forests, and the Collector and the District Magistrate *etc.* It was further directed that the proceedings of the Committee will be steered by the nominee of MoEF and CC. The Member Secretary, MCZMA will be the nodal agency for coordination and compliance. The Mandate of the Committee will be strict compliance of abatement measures as per EMP and compliance of CRZ/EC conditions. If any grievance survives, the aggrieved

⁵⁶ MANU/MH/2406/2021.

⁵⁷ 2021 SCC OnLine NGT 1414.

parties will be at liberty to take their remedies in accordance with law. The Committee was directed to continue monitoring till completion of the project.⁵⁸

XIV POP IDOLS AND STATUTES-IMPACT ON ENVIRONMENT

In *Vinodkumar Rameshchand Gupta v. Union of India*,⁵⁹ the High Court of Bombay dealt with a prayer from the manufacturers challenging the ban on sale of idols of Lord Ganesh and other Hindu Gods/Goddesses made up of Plaster of Paris (“PoP” for short) during present Ganesh Festival, Durga Festival and other festivals. The court made a reference to the judgment of another Division Bench of the same court delivered in *Dhondiba Irba Namwad v. State of Maharashtra*,⁶⁰ wherein the Division Bench had issued several directions to the Central Government and the state government for putting in place appropriate prohibition and regulations as regards use of PoP made objects, use of oil paints and synthetic colours for shading and decorating all kinds of idols.

In *Mamidi Venu Madhav v. Prasanna Kumar Mohanty*,⁶¹ a division bench of High Court of Telangana dealt with a contempt petition where it was complained that the action of the respondents in permitting immersion of all types of idols including idols made with Plaster of Paris (POP) in the Hussain Sagar Lake in Hyderabad and sought protection of the said lake from water pollution amounted to contempt of court. Keeping in mind the pollution of the Hussain Sagar Lake as well as COVID-19 pandemic, the court *inter alia* issued the following directions the respondents for strict implementation in the interest of the public: (i) not to allow idols made of Plaster of Paris to be immersed in Hussain Sagar Lake and other lakes in the city; and (ii) to permit immersion of POP Ganesh idols (i) in baby ponds already constructed by the GHMC or (iii) separate areas/ponds which do not result/spread the water pollution into the main water body. It is unfortunate that in spite of clear directions of the court and unconditional undertakings given by the authorities to abide by the same, the saga of immersion of PoP idols is still continuing in the State.

XV WILDLIFE AND ENVIRONMENTAL PROTECTION

In *Re: Smuggling and Illegal Trading of Endangered Species of Birds*,⁶² dealt with the efforts of the forest department in West Bengal to control wildlife crimes especially illegal trade and smuggling. The court considered the report submitted and noted that:

... It is seen that birds and smaller animals are often subjected to hunting during different local festivals involving tribals in the districts of Bankura, Purulia, Paschim Medinipur, Birbhum, Burdwan, Howrah and Purba Medinipur. Melas and different fairs are organized throughout

58 In *Roshni B Patel v. Union of India*, 2021 SCC OnLine NGT 1338 similar directions were given in respect of a port in Gujarat.

59 MANU/MH/2917/2021.

60 MANU/MH/1113/2020 : 2020 ALL Mr. (Cri.) 2252.

61 MANU/TL/0691/202.

62 MANU/WB/0220/2021.

the year on different occasions in West Bengal, wherein live birds are sold and bought openly. In Kolkata and surrounding areas, there are different Pet markets like Galiff Street, Banerjee Hat, Boral Hat wherein Indian birds are sold and bought along other domestic animals. It is also common practice to transport and smuggle live birds through various couriers' services and packages both through inland transport and through Airports. The concerned authorities at these exit points are totally unaware and ignorant about the illegality of such a transport in live Indian birds and other smaller animals.”

The court observed that all illegal activities in relation to birds and animals in whatever form and in connection with whatever melas and other festivals have to be completely stopped by the State, in exercise of its police power, if needed. Therefore it was ordered that hunting, selling, buying or exchanging of birds either as part of sale of domestic animals or otherwise shall stand prohibited by the court's order, apart from the prohibitory provisions contained in the different statute laws. The court also directed that transport and smuggling of live birds through various courier services or packages or any other mode through inland transport or through airports in any manner shall be prevented by the State Police and Police Authorities, Customs Authorities and security personnel in charge of the airports as well as police officials and other officials in control of the inland transport system.

In a related case *i.e.*, *In Re: Smuggling and Illegal Trading of Endangered Species of Birds*,⁶³ the court remarked that the wide spectrum of environment management, ecological management, forest management and management of animal wealth which include different categories which fall within the definition of 'animals' in the relevant laws, indicate that the judiciary should be prompt to ensure that all allegations of intrusion into the domain of the animals which result in allegations as to commission of offences gain prompt attention, requisite and timely adjudication. Accordingly the court directed that all the subordinate courts where such matters are pending, shall forthwith proceed on war-footing in all such matters since the victims in all those cases are not "State" as is understood in the Constitution and the laws but primarily the animals who are voice-less creatures who cannot be represented before any adjudicating authority except by the duly authorised representative of the State Government.

In *Gaurav Kumar Bansal v. National Tiger Conservation Authority*,⁶⁴ the principal grievance highlighted in the present petition was the alleged illegal construction of bridges and walls within the Tiger Breeding Habitat of Corbett Tiger Reserve and that too, without the approval from the Respondent herein under Section 38(O) of the

63 MANU/WB/0173/2021.

64 MANU/DE/1774/2021.

Wildlife Protection Act, 1972. Petitioner, thus, sought intervention of this Court to protect and conserve the Biological Diversity, flora and fauna as well as the ecology of the Corbett National Park. The court directed the respondent to treat the writ petition as a representation and look into the issues flagged and highlighted by the petitioner, and in case the respondent found merit in the issues raised, to take necessary action in accordance with law, keeping in mind the provisions of the Wildlife Protection Act, 1972 and the necessity of conserving the flora and fauna as well as the ecology of the National Park.

In *M.K. Ranjitsinh v. Union of India*,⁶⁵ a PIL was filed before the Supreme Court seeking to protect two species of birds namely the Great Indian Bustard (GIB) and the Lesser Florican, which is on the verge of extinction. The existence of overhead power lines was stated to have become a hazard due to which the said species of birds on collision are getting killed. The petitioner prayed not to permit installation of overhead power lines and also not permit further construction of windmills and installation of solar infrastructure in priority and potential habitat as identified by the Wildlife Institute of India apart from a direction to install divertors for the powerlines. The Court primarily dealing with the action to be taken in the State of Gujarat, directed that in all cases where the overhead powerlines exist in the priority and potential GIB area the divertors shall be installed. Further it was also directed where it is found feasible to convert the overhead cables into underground powerlines and that the same shall be undertaken and completed within a period of one year and till such time the divertors shall be hung from the existing powerlines.

XVI FELLING OF TREES

When, the concretization of the street is unmindful of the directions of the courts and that of the NGT, it shows disregard of the law not only by the Municipal Corporation but by the road maintaining agency-the Public Works Department. In *Bhavreen Kandhari v. Gyanesh Bharti*,⁶⁶ the High Court of Delhi dealt with a PIL complaining about the inaction of the respondents apropos preservation of trees and non-compliance of the orders passed by the court as well as by the NGT. The photographs produced in the court depicted that hundreds of trees have been concretized right up to the tree trunk and nails have been embedded in them and metallic wires have been strung along the trees which established evident victimization of the trees. The court took a serious note of the same and issued notices to the Delhi Municipal Corporation, police and the public works department.

In *Ammi v. State of Kerala*,⁶⁷ the High of Kerala held that:

May be the concern of the Wildlife Warden is genuine. But, that cannot be a reason to deprive citizens the constitutional right to property

65 MANU/SC/0288/2021:2021(11)FLT 533.

66 MANU/DE/3174/2021.

67 MANU/KE/0775/2021 : ILR2021(2)Ker. 934.

guaranteed under Article 300-A of the Constitution of India. The constitutional right of the petitioners to hold and enjoy property would indeed include the right to cut and transport trees standing on their private property, subject to any statutory restrictions. That right of the petitioners cannot be taken away except with the authority of law. (Para 27)

The State legislations regulating cutting and removal of trees do not impose an absolute bar/prohibition on the petitioners from selling the trees standing on their private property. Had the respondents notified the Eco-Sensitive Zone around the Silent Valley National Park, the respondents would have been perhaps justified in not permitting the petitioners to transport trees belonging to them, provided there are provisions in the Notification prohibiting tree felling and transportation. The requisite Notification is yet to be gazetted. The respondents have not brought to the notice of this Court any order of the Apex Court in the Goa foundation case, which imposes any prohibition on felling trees in private lands in Eco-Sensitive Zones.⁶⁸

In *Johny Kulangara v. The Secretary to Government, Local Self Government Department* .,⁶⁹ writ petitions were filed seeking for a direction to remove the unauthorised and unwanted postures, advertisement boards, hoardings, cut outs, buntings, hangings, billboards etc., placed on public roads and streets, and to recover the expenses incurred for the same from the persons or companies responsible, as arrears of land revenue. According to the petitioner, the flex boards are put up unauthorisedly, without permission, in public places, telephone posts and even on trees, which would deface public space. Petitioner has further stated that flex banners are made up of Poly Vinyl Chloride (PVC), which would cause serious environmental and health hazards like cancer and infertility. The court issued number of directions including -

All the unauthorised arches, display boards, hoardings, placards, and banners with poles or frames, etc., fixed to and/or dug into the ground, which abuts the highways, public streets, and pedestrian pavements, shall forthwith be removed. No poles or frames or structures for arches, boards, placards, hoardings, display boards or banners shall be erected on any highway, public road, public passage or pedestrian pathway or pavement. Holes caused on pavements and roads, by reason of erection of frames, poles, structures, placards, hoardings, displaying boards, banners, etc., shall forthwith be repaired.

XVII CONCLUSION

An analysis of the above survey of decisions shows that there has been a constructive response from the courts and the NGT in the matter of environmental

⁶⁸ *Id.*, para 28.

⁶⁹ MANU/KE/0402/2021. See also *State Environment Protection Council v. State of Kerala*.

protection. The regulatory bodies like have been finding it difficult to ensure the compliance with the required norms particularly when the government or public corporations are the project proponents. In view of the adverse effects of the climate change being experienced by all throughout the globe, time has come for all the stakeholders including the citizens to scale up the efforts on the issues like climate change, Ozone layer protection, hazardous waste management, and e-waste management while continuing to bestow the attention on the traditional modes of environmental protection. It is hoped that everyone realizes the importance of the saying “We never know the worth of water till the well is dry”.