

## 15

## ENVIRONMENTAL LAW

*G.B.Reddy\**

## I INTRODUCTION

THE YEAR under the survey *i.e.*, 2023 has witnessed many developments in the field of environmental laws. There have been number of important decisions rendered by the courts and the National Green Tribunal (NGT) on various aspects of environmental protection. Some of the most important developments have been discussed hereunder.

## II BANNING OF PLASTIC

Manufacture, storage, and use of plastic has been a contentious issue in recent decades. In *Tamil Nadu and Puducherry Paper Cup Manufacturers Association v. State of Tamil Nadu*,<sup>1</sup> the Supreme Court upheld a common judgment of the High Court of Madras, by which a government order banning manufacture, storage, supply, transport, sale, distribution, and use of 'one time use and throwaway plastics', was upheld. This common order was challenged by the appellant association representing manufacturing units involved in the manufacture of 'reinforced' paper cups, and a manufacturer of non-woven plastic bags, respectively. The apex court observed that the paper cups are near impossible to recycle due to the LDPE coating, while relying on the CIPET testing and held:<sup>2</sup>

That these cups are indiscriminately used and thrown, as a single use product (often to drink a warm beverage) - requires no statistics. By composition itself, they are non-biodegradable, and there is immense difficulty in their recycling, as it requires appropriate collecting mechanisms, strict segregation, to name a few of the challenges. The Appellants insisted that that this is a situation of not having an effective collective mechanism, which the local municipal corporations are responsible for as per the 2016 Rules; they also offered to take up the responsibility. However, given that there is scientific basis for the ban, and it is the State Government's policy decision to ban numerous categories of single use plastic

\* Senior Professor, University College of Law, Osmania University, Hyderabad, Telangana State.

<sup>1</sup> MANU/SC/1180/2023: 2024 (14) FLT 87

<sup>2</sup> *Id.*, para 45.

products, in public interest, there is little room or reason, for this Court to interfere on the ground of merits of the ban.

The court however took a liberal stand on the non-woven bags by noting that ‘the arguments in the case of the non-woven bag, stand on a slightly different footing. These bags, it appears are reusable in nature to some extent. Their composition/proportion of polypropene and filler used, in the manufacture of these bags, is customizable. Therefore, the appellant contended that the overall ban was disproportionate. The State insisted that despite being said to be reusable to an extent, they are indiscriminately disposed and cause littering, which damage ground water, soil quality, *etc.*, because they do not biodegrade properly, and this therefore, justified the ban. Unlike reinforced paper cups, these bags are reusable, recyclable, and capable of some level of biodegradation (based on the composition), but no committee was constituted to look into it more closely, and it was in fact brought within the scope of the ban subsequently by way of clarification; the ban of this product perhaps deserves further scrutiny.’<sup>3</sup>

In *Khandelwal Paper Industries v. Rajasthan State Pollution Control Board*,<sup>4</sup> a single judge of the High Court of Rajasthan held that the product manufactured by the petitioner-firm *i.e.*, ‘plastic laminated/coated papers’ would be covered under the ambit of the subject notification,<sup>5</sup> without the same being expressly included therein but forming a part and parcel of the prohibitions enumerated in the scope of the notification as well as within the expert opinions provided in the meeting of the National Task Force.<sup>6</sup> The court also reiterated that, a combined reading of Section 3 read with Sections 5 and 6 of the Environment Protection Act, 1986, would empower the Central Government to issue directions pertaining to the ban on single-use plastic items. The court made the following pertinent observation:<sup>7</sup>

Thus, considering the fact that subject notification under consideration, was enacted to advance the cause of environmental welfare and safety, by imposing a ban on the use of single-use plastic commodities and that the intent behind the issuance of the notification was to curb the pollution caused by single-use plastic items, which have far reaching consequences in adversely impacting the health of our environment and upon taking note of the fact that we are dealing with a law that has been formulated in the larger public interest, this Court deems it fit to hold that the amendments brought forth by the subject notification dated 12.08.2021 will have to be read in their entirety with the Plastic Waste Management Rules, 2016 and each provision of the Rules must be given its due intended

<sup>3</sup> *Id.*, para 48.

<sup>4</sup> MANU/RH/0775/2023.

<sup>5</sup> Aug. 12, 2021.

<sup>6</sup> June 24, 2022.

<sup>7</sup> *Id.*, para 67. See also *Sukhivender Kaur Gill v. State of Uttarakhand*, MANU/UC/0013/2023: AIR 2023 Utr 87).

meaning by comprehending and resolving the menace the provisions seek to address and rectify.

#### **Obtaining consent to establish and the consent to operate for industrial units**

In *Indian Oil Corporation Limited v. V.B.R. Menon*,<sup>8</sup> the apex court examined the order passed by the NGT, which directed the Central Pollution Control Board (CPCB) as well as the State Pollution Control Boards to issue directions to make it mandatory to obtain Consent to Establish (“CTE”) and the Consent to Operate (“CTO”) for new retail petroleum outlets as well as the existing retail petroleum outlets under Section 5 of the Environment (Protection) Act, 1986 and Section 18 of the Water (Prevention and Control of Pollution) Act, 1974 and Section 21 of the Air (Prevention and Control of Pollution) Act, 1981. While holding that the NGT was well within its powers and jurisdiction to issue the directions, the Supreme Court disposed of the Civil Appeal in the following among other terms:

The CPCB shall ensure that all the retail petroleum outlets located in different cities having population of more than 10 lakh and having turnover of more than 300 KL/Month shall install the VRS mechanism (also known as Vapour

Recovery Device circular) within the fresh timeline as prescribed ....

To put it in other words, the CPCB shall ensure that the directions issued by the NGT in the impugned order is fully complied with. It shall be the legal obligation of all the State Pollution Control Boards to ensure that the directions issued by the NGT in regard to the installation of the VRS mechanism is complied with within the fresh timeline as prescribed by the CPCB.

In *State of Rajasthan v. Gopal Menariya*<sup>9</sup> a division bench of the High Court of Rajasthan held that once a given land is declared as ‘not forest land’ and the appellate revenue authority also confirmed the same, the forest department cannot issue a subsequent notification reversing the same.<sup>10</sup>

#### **Preservation of lakes**

In *Shramjeevi Cooperative Housing Society Ltd. v. Dinesh Joshi*,<sup>11</sup> the apex court examined the order of the NGT which prohibited grant of permission for construction without demarcation of area of water bodies, and up to MWL (Maximum Water Level). The court noted that – “A plain reading of the main order by the NGT shows that it went by the pleadings, and proceeded to pass orders on the basis of the trace map produced before it. The NGT was aware that the applicant

<sup>8</sup> MANU/SC/0232/2023: AIR 2023 SC 1573.

<sup>9</sup> MANU/RH/0218/2023: 2023(3)RLW2434(Raj.).

<sup>10</sup> See also *Ayyappa Stone Crushers v. State of Telangana* 2023(13) FLT 715 wherein a single judge of the High Court of Telangana directed the Assistant Director of Survey and Land Records, Ranga Reddy District to conduct survey and fix the boundaries after issuing notice to the petitioner and all other affected parties including Respondent/Forest Department.

<sup>11</sup> MANU/SC/0284/2023: AIR 2023 SC 1558.

wished to interdict development in the vicinity of the *talab* (village lake), for which sanction had been granted. Yet, it did not feel the necessity of seeking particulars from the parties before it, and whether any parties were likely to be affected by its orders. As a judicial tribunal, bound by principles of natural justice, it ought to have impleaded, or at least issued a public notice, about the pendency of litigation, and sought intervention of those likely to be adversely affected. Its omission to take this step, has resulted in prejudice to all the appellants before this court, who were faced with drastic and serious consequences, because the sanction for development or construction upon the lands owned, purchased or developed by them, immediately became out of bounds.”<sup>12</sup> The second aspect noted by the court is that when some of the appellants approached NGT, in review proceedings, those review petitions were summarily rejected.<sup>13</sup>

In view of the above the court held that the NGT orders cannot be sustained, because they do not disclose any application of mind to the existence of the development plan, which had permitted development of the disputed areas; the orders in review also do not advert to or deal with the peculiar circumstances, concerning the society’s plot, on which a previous litigation had been fought, ending in a decree against the state.

In the Telangana State particularly in and around the capital city of Hyderabad, massive constructions took place in the full tank levels and buffer zones of many urban lakes. Adverting to the same, in *K.L. Vyas v. The Commissioner, Uppal Municipality*<sup>14</sup> a division bench of the High Court of Telangana entertained a PIL and took note of the undertaking of the Commissioner, Greater Hyderabad Municipal Corporation that he shall perform his statutory duties and shall take all possible steps to preserve the water body namely Ramanthapur Pedda Cheruvu spread on an area measuring Ac. 26.00. He submitted to the court that a preliminary intimation was prepared by Tahsildar, Uppal in 2016 and the same was forwarded to concerned officials to proceed further. It was further submitted by him that Full Tank Level demarcation has already been made and the notification for Full Tank Level has to be issued by Hyderabad Metropolitan Development Authority (HMDA). It was submitted by him that as soon as notification is issued, following steps shall be taken: (i) To fence the tank in question, and (ii) Steps shall be taken to de-silt the subject water body and to increase its water holding capacity. The officer also undertook that he will undertake the work of plantation in the catchment areas to stop soil erosion and de-silting of the tank. While keeping the matter pending, the court directed the Municipal Commissioner directed to ensure that the subject water body is not contaminated by drainage or effluents and to control the menace of mosquitoes and stray dogs. This interim direction has been mentioned in this survey, to point out that similar situation prevails in many urban-lakes, and the residences were

<sup>12</sup> *Id.*, para 16.

<sup>13</sup> *Id.*, para 19.

<sup>14</sup> MANU/TL/1699/2023.

constructed in the lake beds and *Nalas* with the connivance of political leaders and authorities by many citizens. It is hoped that the Government and its line departments would bring the issue to a logical end instead of dodging the issue on technical grounds.

In *Indian National Trust for Art and Cultural Heritage Ishika v. Govt. of NCT of Delhi*,<sup>15</sup> the National Green Tribunal Principal Bench, New Delhi dealt with two applications involving the common issue of compliance of orders of this tribunal for remedial steps for rejuvenation of Najafgarh lake, a transboundary wetland on border of Delhi and Gurgaon in Haryana and the damage to the lake is by discharge of waste and encroachments. The NGT disposed of the applications by observing that since issue of control of pollution of drains and water bodies impacting Yamuna is now being dealt with in Delhi by a high level Committee headed by L.G. and issue of rejuvenation of Najafgarh Lake is integral to rejuvenation of Yamuna, the same can also be dealt with by the same Committee as far as Delhi is concerned and by the Chief Secretary, Haryana for the areas in Haryana.

### III ENVIRONMENTAL REGULATION AND DEVELOPMENT

In *IL and FS Tamil Nadu Power Company Limited v. T. Muruganandam*<sup>16</sup> the Supreme Court noted that pursuant to the interim order passed by the court, the appellant company has commenced two power plants in Phase-I, which are in operation since September, 2015. The appellant is operating two units of 600MW since September, 2015 and April, 2016, which presently supply power to approximately 40 lakhs households. The power plants are situated in an energy deficit State (Tamil Nadu). Thus, closing the power plants/units would adversely affect power sector of the State and which shall not be in the larger public interest. However, the court clarified that at the same time, the appellant has to comply with all the conditions imposed while issuing Environmental Clearance (EC) as well as the additional conditions imposed *vide* corrigendum to the EC and the response of the project proponent, it appears that by and large there is a substantial compliance of the conditions imposed. In view of the finding that there do not appear to be any fundamental breaches or non-compliance of the conditions imposed while issuing EC as well as additional conditions imposed *vide* corrigendum to the EC, the operations were permitted to be continued subject to certain conditions and directions.

In *Rajesh Kumar v. State of H.P.*,<sup>17</sup> a division bench of the High Court of Himachal Pradesh dismissed a writ petition filed by certain residents of a village, aggrieved by the action of the respondents whereby a bandh (dam) has been proposed to be built/constructed on Bagna nalla in a Gram Panchayat. They argued that almost 90 to 95% inhabitants of Gram Panchayat will be affected by the construction of such dam to the extent that the very source of livelihood would be

<sup>15</sup> MANU/GT/0167/2023.

<sup>16</sup> MANU/SC/0142/2023: (2023) 6 SCC585.

<sup>17</sup> MANU/HP/0344/2023.

snatched. While dismissing the petition filed by only four persons, the court invoked the doctrine of public trust and observed that:<sup>18</sup>

There cannot be any two opinions that natural resources are the assets of the nation and its citizens. It is the obligation of all concerned, including the Central and the State Governments, to conserve and not waste such valuable resources. Article 48A of the Constitution requires that the State shall endeavour to protect and improve the environment and safeguard the forests and wildlife of the country. Similarly, Article 51A enjoins a duty upon every citizen to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for all the living creatures. In view of the constitutional provisions, the doctrine of public trust has become the law of the land. The said doctrine rests on the principle that certain resources like air, sea, water and forests are of such great importance to the people as a whole that it would be highly unjustifiable to make them a subject of private ownership.

In *Veerabhadra Gowda v. The State of Karnataka*,<sup>19</sup> a division bench of the High Court of Karnataka upheld the decision of the Deputy Commissioner's order whereby, a small portion of 5 acres of land has been reserved for the establishment of Solid and Liquid Waste Disposal Unit within the jurisdictional limits of a Gram Panchayat. The court observed that:<sup>20</sup>

The *gomal* lands are earmarked for the purpose of village cattle in public interest, is true. However, the authorities in their accumulated wisdom having processed the statistical data have taken a decision to earmark 5 acres of land for the establishment of waste processing unit. The public interest in such establishment again overrides the public interest that prompted them to reserve the land for the purpose of *gomal/gairon*. It is not that the *gomal* land can never be diverted to other larger public purpose like the one put in challenge. There is absolutely no material on record to substantiate the argument that any provision of law is violated by diversion of the Government land for the purpose of waste management which in turn serves the interest of environment and ecology. We cannot readily assume that every establishment of project of the kind will have a bad impact on the environment.

With regard to the use of cleaner technologies for operating brick kilns in Bihar, the High Court of Patna in *Anmol Kumar v. The State of Bihar*<sup>21</sup> held that it is the duty of the Government as also the court to protect and preserve the environment as emphasized by the Supreme Court in *Lal Bahadur v. State of*

<sup>18</sup> *Id.*, para 14.

<sup>19</sup> MANU/KA/2922/2023; ILR 2023 Kar. 3815, 2023.

<sup>20</sup> *Id.*, para 4.

<sup>21</sup> MANU/BH/0108/2023; 2023(2) BLJ 229, 2023(13) FLT 295.

*Uttar Pradesh*.<sup>22</sup> Although with the cutoff date to adopt cleaner technology having been clarified by a Bench of the court, it was noted that the State is now taking expedient steps in that direction and more than 3000 brick kilns have shifted to cleaner technology.

In *Devendra Singh Adhikari v. State of Uttarakhand*,<sup>23</sup> the High Court of Uttarakhand directed a stone crusher industry to stop operation of the stone crusher forthwith and to apply to the National Board for Wildlife (NBWL) to obtain its clearance for running its stone crusher plant in view of raising of grievances regarding the environmental pollution.

In *Prafulla Samantara v. Union of India*,<sup>24</sup> the NGT Bench at Calcutta noted that the project involves huge investment. At the same time, principle of sustainable development cannot be ignored. Apart from significant issue of public hearing, important issue of location of the project close to polluted area, jetty being unnecessarily close to an established port, huge water being taken from the river which may affect drinking water needs and flow of the river are important issues which need express consideration. Therefore, it was directed for fresh appraisal by the EAC by reasoned consideration and fresh decision by MoEF and CC.

#### **Jurisdiction and exercise of powers by NGT**

It is known that the NGT is not required to follow the provisions of the Code of Civil Procedure, 1908 while exercising its powers. Section 19(1) of the NGT Act, 2010 declares that the tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice.

In *Singrauli Super Thermal Power Station v. Ashwani Kumar Dubey*,<sup>25</sup> the Supreme Court found that while passing orders relating to the general issues applicable to all the Thermal Power Plants (TPPs) such as timely installation of air pollution control and monitoring devices, timely utilization and disposal of fly ash, scientific designing of fly ash dykes and safety norms, addressing public health issues, steps for restoration of deteriorated environment by bringing down CEPI scores in the entire area, restoration of reservoir and other damaged/degraded areas, providing arrangement for public health facilities, including water supply and by coordinated and concerted efforts and high level monitoring, the NGT has simply accepted the recommendations as remedial action suggested by the Committee but the same was in the absence of there being objections filed by the appellants herein who were the respondents before the NGT and without giving any hearing to them. The court found that the procedure adopted by the NGT is an instance of violation of the principles of natural justice. The court also observed that the recommendations made by an expert Committee are not binding on the NGT, they are only by way of assistance to enable the NGT to arrive at a correct

<sup>22</sup> MANU/SC/1742/2017: (2018) 15 SCC 407.

<sup>23</sup> MANU/UC/0002/2023.

<sup>24</sup> MANU/GT/0061/2023.

<sup>25</sup> MANU/SC/0757/2023: (2023) 8 SCC 35.

decision in the matter. The apex court emphasized on the “official notice” to the parties concerned, and while remanding the case to be reconsidered afresh observed:<sup>26</sup>

Therefore, applying the aforesaid principle to the cases that come up before the NGT, if the NGT intends to rely upon an expert Committee report or any other relevant material that comes to its knowledge, it should disclose in advance to the party so as to give an opportunity for discussion and rebuttal. Thus, factual information which comes to the knowledge of NGT on the basis of the report of the Committee constituted by it, if to be relied upon by the NGT, then, the same must be disclosed to the parties for their response and a reasonable opportunity must be afforded to present their observations or comments on such a report to the Tribunal.

In *Optimus Drugs Private Limited v. The Union of India*,<sup>27</sup> a division bench of the High Court of Telangana dealt with the issue with regard to availability of an alternative remedy under the provisions of the Water Act and the Air Act against a composite order passed by the Board in exercise of powers under Section 33A of the Water Act and Section 31A of the Air Act. The court noted that the issue is no longer *res integra* and has been answered by Supreme Court in *Tamil Nadu Pollution Control Board v. Sterlite Industries (India) Limited*<sup>28</sup> to the effect that *the NGT is only conferred appellate jurisdiction from an order passed in exercise of first appeal. Where there is no such order, the NGT has no jurisdiction, and that given the fact that we are setting aside the NGT judgments involved in these appeals on the ground of maintainability, we state that it will be open for the respondents to file a writ petition in the High Court against all the aforesaid orders.*<sup>29</sup>

In *C. Kasturi Bai v. The State of Andhra Pradesh*,<sup>30</sup> a division bench of the Amaravati High Court set aside the order passed by the NGT, Southern Zone, Chennai, and the consequential notice issued by the Andhra Pradesh pollution Control Board on the ground that the Writ Petitioner was not even a party before the NGT, and remanded the matter to the National Green Tribunal, Southern Zone, Chennai, for consideration of all the issues afresh, after giving opportunity of hearing to the petitioner.

#### **Slaughter houses and compliance with environmental norms**

In *Panchayat Qureshian v. State of Rajasthan*,<sup>31</sup> the Supreme Court noted that a slaughter house was closed as a result of the failure to meet the prescribed

<sup>26</sup> *Id.*, para 16.

<sup>27</sup> MANU/TL/1583/2023.

<sup>28</sup> MANU/SC/0223/2019: (2019) 19 SCC 479.

<sup>29</sup> See also *Hotel The Grand Tulsi v. State of U.P.* MANU/UP/2283/2023.

<sup>30</sup> MANU/AP/2301/2023: 2024(1)ALD150.

<sup>31</sup> MANU/SC/1037/2023 Equivalent/Neutral Citation: 2023(13)FLT829, 2023 INSC 841, 2023(13)SCALE47.



pollution parameters and since the waste which was generated from its operation was being discharged without proper treatment. The basis of the appeals which question the jurisdiction of the Lok Adalat, directing a closure has since been overtaken by the subsequent developments in terms of which the slaughter house has been closed. The closure is not in pursuance of the direction of the Lok Adalat, but in exercise of the statutory jurisdiction of the Rajasthan Pollution Control Board. It was therefore held that the petitioners are not entitled to any relief since the closure of the slaughter house has been effected after following due process of law in terms of the statutory powers conferred on the Pollution Control Board under Section 33A of the Water Pollution Act 1974.

In *Al Haq Food Pvt. Ltd. v. State of U.P.*,<sup>32</sup> a division bench of the Allahabad upheld the refusal of the applicant company, the Uttar Pradesh Pollution Control Board's refusal to grant "consent to operate" a meat shop (integrated slaughter house) under Section 25/26 of Water (Prevention and Control of Pollution) Act, 1974 and Section 21/22 of Air (Prevention and Control of Pollution) Act, as it was an admitted fact that petitioner had not taken NOC from concern District Magistrate nor has obtained a re-validation of old NOC in order to comply with provisions of Government Order, which are mandatory in nature having been issued pursuant to dictum of apex court in *Common Cause v. Union of India*<sup>33</sup> and *Laxmi Narain Modi v. Union of India*,<sup>34</sup> for running modernized slaughterhouse.

In *Dharmdeo Paswan v. The State of Bihar*<sup>35</sup> the High Court of Patna dealt with a PIL filed against the opening and running of the illegal slaughter houses without any license, non-disposal of the remains of the animals in an unscientific manner leading to pollution in the entire area and as a result of which threat of spread of the diseases/pandemics exist. Quoting the Prevention of Cruelty to Animals Act, 1960, and the Prevention of Cruelty to Animals (Slaughter House) Rules, 2001, the court noted that the law clearly prescribes not only the mandatory requirement of slaughterhouse under the Act but also the detail and the manner it is to be established and run. Accordingly, the court disposed of the writ application with certain directions to check running of illegal slaughter houses by regular inspections both by police and the civil authorities and with periodical reports in writing, and to enforce the provisions of the Prevention of Cruelty to Animals Act, 1960, the Prevention of Cruelty to Animals (Slaughter House) Rules, 2001 and for issuance of license for running of slaughter house in accordance with the provisions contained therein.

#### **Stray cattle on the public roads and related developments**

In *Kabil Gama Roy v. State of Goa*,<sup>36</sup> a division bench of the High Court of Bombay addressed the issue of stray cattle squatting on public roads especially

32 MANU/UP/1531/2023: 2023(13) FLT 771.

33 In Writ Petition (C) No. 330 of 2001.

34 Writ Petition No.44 of 2004, Contempt Petition No. 124 of 2015 and connected Writ Petition (C) No. 309 of 2003 decided on Feb.17,2017.

35 MANU/BH/0107/2023: 2023(2)BLJ250, 2023(1)PLJR 922,

36 2023 SCC OnLine Bom.1623

in nights and thereby causing the serious road accidents. The court recognized not only the rights of the public /commuters but also the safety of stray cattle which suffer serious injuries, often left unattended to die on the roads. Relying on previous court judgments including *Animal Welfare Board of India v. A. Nagaraja*,<sup>37</sup> the court issued an array of directions to the local self government authorities and police to ensure road safety and also the safe upkeep of the cattle.

In *Rajesh Traders v. Union of India*,<sup>38</sup> a division bench of the High Court of Allahabad set aside the order of the Divisional Forest Officer (DFO) rejecting the representation for renewal of license to run and operate a plywood veneer unit. In this case, there was no dispute that the earlier site was located within the restricted area and therefore petitioner applied for relocation of its unit. On its application, respondents carried out GPS survey of the proposed site and found it to be located at an aerial distance of around 18 kms from the nearest forest. After grant of the license, the petitioner invested money and established its unit. Admittedly before grant of license for relocation a GPS survey was conducted and it was again conducted after factory was established and later when the license was renewed and each time, it was found beyond 10kms. When application for renewal was made in 2018, it is claimed by respondent authorities that the site is situated at a distance of 9.55 kms from the forest range and thus the license was refused. Hence the impugned order was quashed.

#### **Freedom of religion and environmental protection**

In *Telangana Ganesh Murti Kalakaar Welfare Association v. Union of India*,<sup>39</sup> the petitioners claiming to be an Association of Idol makers in the State of Telangana have assailed the validity of Clause 2.0 of the Revised Guidelines for Idol Immersion issued by Central Pollution Control Board which bans the making of Plaster of Paris idols as well as its immersion completely. The challenge to the aforesaid guidelines was made by the petitioners on the ground that the same violates the fundamental rights of the members of the petitioner association guaranteed to them under Articles 14, 19, 21, 25 and 300-A of the Constitution of India. The High Court of Telangana noted that recently a Division Bench of High Court of Madras by an order<sup>40</sup> *inter alia* holding that a person has no right to make an idol of Plaster of Paris and granted an interim order against manufacture, selling and immersion of idols made of Plaster of Paris or plastic in adherence to the revised guidelines. Against the aforesaid interim order, a special leave petition was preferred before Supreme Court which has been dismissed by a three-judge Bench of Supreme Court.<sup>41</sup>

37 (2014) 7 SCC 547.

38 MANU/UP/3049/2023:2023: AHC-LKO:59814-DB.

39 MANU/TL/1232/2023.

40 Dated Sep.17, 2023 passed in CMP. No. 12428 of 2023.

41 *Vide* order dated Sep. 18, 2023 passed in S.L.P.(Civil). No. 38492 of 2023.

The high court also noted that in the year 2021, a Bench of High Court of Telangana passed an order,<sup>42</sup> by which the contempt case was closed. The aforesaid order was assailed before the Supreme Court.<sup>43</sup> In the aforesaid order, a statement was made on behalf of the state government, which reads as under:

During the course of hearing, learned Solicitor General submits that immersion of POP idols would be banned from the next year in the light of the guidelines issued by the State Pollution Control Board. However, he submits that, for this year, the Greater Hyderabad Municipal Corporation (GHMC) may be granted exemption, as there is paucity of time for preparing new plans, the arrangements for the festival having been made long back.

Solicitor General assures the Court that all steps to minimize pollution to the Hussain Sagar Lake will be taken and modernized cranes are being deployed at the immersion sites and on the idols being immersed, they will be lifted soon after and transported to the solid waste dumping sites for recycling purposes.

In view of the undertaking given by the learned Solicitor General that in future the state would not allow immersion of the idols in the Hussain Sagar lake, as a last chance, we permit immersion of idols in the said Lake only for this year.

As it is obvious that the undertaking furnished on behalf of the State government before the Supreme Court binds the state government and in view of the fact the immersion of Ganesh Idols was scheduled to take place on September 28, 2023, it is directed that the state government shall ensure that no Idols made by Plaster of Paris are immersed in either Hussain Sagar lake or any of the water bodies in the city of Hyderabad. The Commissioner of Police was directed to ensure that the immersion of the Idols made of Plaster of Paris takes place in baby ponds created by GHMC only. This episode reflects a seesaw battle going on for the last so many years between the religious freedom and the environmental protection.

The practice of bursting of crackers in festivals, may no doubt cause happiness to few but also causes inconvenience to many citizens. The Supreme Court also took cognizance of the same in a number of cases and also issued necessary directions to regulate the practice by the authorities. In *Sarenga Pragati Sangha v. The State of West Bengal*<sup>44</sup> the High Court of Calcutta entertained a public interest petition which prayed for a direction to the private respondents not to burn firecrackers during the “Urush” festival. The petitioners have pointed out that annual celebration and fair for anniversary of Hazrat Sultan Pirshah (RA) at Pir Sarenga Jattala, Sankrail, Horah is to be organized from in February, 2023 and that there will be huge fireworks show on a certain date. The counsel for the petitioners

42 Dated Sep. 9, 2021 in Contempt Case (SR). No. 3139 of 2014.

43 In S.L.P.(Civil). No. 21921 of 221.

44 MANU/WB/0169/2023.

submitted that there is restriction on burning firecrackers and only green crackers are allowed. The State PCB also admitted the restrictions. The court noticed that the same issue had come up during the festive season of Diwali, Kali puja and Chhat puja in another writ petition, wherein the Division Bench of this Court, after considering the Memo of the West Bengal Pollution Control Board and also the judgment of the Supreme Court in the matter of *Goutam Roy v. The State of West Bengal*,<sup>45</sup> had issued the following directions:

- i. No firecrackers other than green crackers bearing QR Code would be sold in event is proposed to be held in Kolkata
- ii. State Pollution Control Board as well as the Commissioner of Police, Kolkata shall deploy appropriate number of personnel in the event to ensure implementation of the aforesaid direction.
- iii. The representatives of the State Pollution Control Board and the police personnel shall be at liberty to inspect the firecrackers sold and the police personnel shall seize any banned firecrackers which are offered for sale in the bazar *etc.*; and
- iv. State Pollution Control Board and the State of West Bengal shall undertake public awareness measures including issuance of advertisements in newspapers, announcements on radio/television/social media platforms *etc.*, to spread awareness with regard to restrictions on sale and bursting of crackers during festive season and its beneficial impact on pollution and environment. It shall also make members of the public aware of the penal consequences arising from sale and bursting of banned crackers *etc.*

Consequently, the high court directed the parties and the authorities to comply with the above directions.

In another issue concerning the beating of drums continuously by a group of persons, throughout the day and night on the alleged ground that they are performing the mourning ritual on occasion of Muharram, the High Court of Calcutta in the case of *Shagufta Sulaiman v. The State of West Bengal*,<sup>46</sup> directed the respondent/police to immediately issue public notice regulating the timing for beating of drums. The respondents were also directed to identify the groups, which can be permitted to carry on beating of drums by maintaining the permissible noise level. The court also directed to draw a Standard Operating Procedure (SOP) in this regard before any other religious festival or meetings or rallies are conducted, where DJ music is being played and beating of drums and other musical instruments are being used. The court referred to many apex court judgments relating to rights under Articles 25 and 26 of the Constitution including *Acharya Maharajshri Narendra Prasadji Anand Prasadji Maharaj v. The State of Gujarat*<sup>47</sup> where the Supreme Court after considering the various contentions observed as hereunder:

45 MANU/SCOR/39063/2021.

46 MANU/WB/1559/2023.

47 MANU/SC/0034/1974: (1975) 1 SCC 11.

no rights in an organized society can be absolute. Enjoyment of one's rights must be consistent with the enjoyment of rights also by others. Where in a free play of social forces it is not possible to bring about a voluntary harmony, the State has to step in to set right the imbalance between competing interests.

and that,

a particular fundamental right cannot exist in isolation in a water-tight compartment. One Fundamental Right of a person may have to co-exist in harmony with the exercise of another Fundamental right by others also with reasonable and valid exercise of power by the State in the light of the Directive Principles in the interests of social welfare as a whole.<sup>48</sup>

#### IV WILD LIFE PROTECTION AND ENVIRONMENT

Every species has a right to life and security, subject to the law of the land, which includes depriving its life, out of human necessity. Article 21 of the Constitution, while safeguarding the rights of humans, protects life and the word "life" has been given an expanded definition and any disturbance from the basic environment which includes all forms of life, including animal life, which are necessary for human life, fall within the meaning of Article 21 of the Constitution. The High Court of Calcutta made the above observations in *Human and Environment Alliance League v. Debal Ray*.<sup>49</sup> while dealing with a contempt petition filed for alleged willful violation of a judgment and order passed in 2019, with regard to protection of environment, forests and wild life at large and in particular, the indiscriminate killing of thousands of wild mammals, birds and reptiles, which are protected under various Schedules to the Wild Life (Protection) Act, 1972 and other statutory provisions. The court observed that it is of utmost importance that the environment, the forest and the wild life at large are protected and preserved. This is not only because the humans must act with humanity. This is also necessary for maintaining the ecological balance without which Mother Earth will not survive resulting in annihilation of all kinds of life in the planet. The court specifically pointed that "*When we look at the rights of animals from the national and international perspective, what emerges is that every species has an inherent right to live and shall be protected by law, subject to the exception provided out of necessity. Animal has also honour and dignity which cannot be arbitrarily deprived of and its rights and privacy have to be respected and protected from unlawful attacks.*"<sup>50</sup>

The court proposed to form a committee to ensure implementation of its judgment and order passed in 2019 to take steps for protection and preservation of

48 See also *Kishore Jain v. The State of Bihar*, MANU/BH/1001/2023 relating to complaint by a senior citizen against continuous pollution during the wedding season.

49 MANU/WB/0321/2023.

50 *Id.*, para 61.

the animals in the forest and to see that the animals are not killed indiscriminately whether during Hunting Festivals or otherwise.

In *Karnataka Growers' Federation v. State of Karnataka*,<sup>51</sup> the High Court of Karnataka entertained a PIL filed raising issue with regard to human-elephant conflict in the region of Sakleshpur, Alur, Arkalgud Taluk, Hassan District and Mudigere Taluk, Chikkamagalur District of the State. The PIL was filed seeking various reliefs in the nature of time bound implementation of recommendation of Appayya-Desai report and Karnataka Elephant Task Force (KETF) report in relation to capture and detention of captivity of elephants that have transgressed into human-dominated areas. Noting that this problem has been spread to the other regions in the State also, the court gave certain additional directions to the authorities including establishment of a grievance cell in every Taluk *etc.*, to make a safe habitat and corridor for the elephants.

#### **Forest conservation, felling and pruning of trees**

In *Sanjeev Bagai v. Department of Environment Govt. of NCT of Delhi*,<sup>52</sup> the High Court of Delhi held that Under the Delhi Preservation of Trees Act, 1994 there is no sanction for the 15.7 cms girth of a tree branch to be cut. Therefore, this figure is incongruous with the statutory requirements as mandated under sections 8 and 9 of the DPT Act. The so-called permission granted under the Guidelines seek to over-reach the statute. The guidelines, are in conflict with the DPT Act, they are arbitrary and illegal. Consequently, the permission for pruning, presumed to be granted under the Guidelines [the Guidelines for Pruning of Trees dated October 1, 2019 ('Guidelines')].<sup>53</sup> would be of no consequence and shall always be non-est. Therefore, the Guidelines permitting regular pruning of branches of trees with girth upto 15.7 cm without specific prior permission of the Tree Officer are hereby set aside. The only permission that can be granted for pruning, *etc.*, is under section 9 of the Act.

In *Suo Motu PIL v. Chief Conservator of Forest, Kumaon*,<sup>54</sup> a division bench of the High Court of Uttarakhand on the basis of the personal cognizance of one of the judges being taken, on account of illegal collection and felling of trees in the notified jungle areas, had taken a *suo motu* cognizance on an issue of a grave concern for the public at large. The prime concern was, that invariably it was seen by this court, that people even belonging to the urbanized aboriginal areas, adjoining the forest areas, have been found rampantly plundering the forest produce for their personal gains without there being any checks and controls being exercised by the officials of the Forest Department, who are duty bound and were supposed to otherwise discharge their duties in accordance with the provisions of Indian Forest Act of 1927, the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and the Rules framed thereunder. While

<sup>51</sup> MANU/KA/3146/2023.

<sup>52</sup> MANU/DE/4014/2023:2023: DHC:004171.

<sup>53</sup> The latter have been framed under the Delhi Preservation of Trees Rules, 1996.

<sup>54</sup> MANU/UC/0558/2023: 2024(14)FLT167.

observing that the dereliction in performance of the assigned official duties in itself is a professional misconduct, and at least, the senior officers of the department cannot say, and have an excuse, that they were not aware of law, because *ignorantia of law is non excusat*, and directed the State to take an action against the erring officials, by proceedings in accordance with the provisions of Government Servants (Discipline and Appeal) Rules, 2003. The court imposed a complete restriction and ban on lifting forest wood from forest areas by anyone during the stipulated period.

In yet another case, *Prakash Singh Bisht v. Union of India*,<sup>55</sup> a division bench of the High Court of Uttarakhand entertained a writ petition filed to seek the quashing of a government communication and also to seek a declaration that the Government of Uttarakhand is not entitled to lease out protected forest land, as protected by a government order, for any non-forest purpose, without obtaining the prior approval of the Central Government, in terms of Section 2 of the Forest (Conservation) Act, 1980. The petitioner also assailed the mining lease dated 18.08.2015 granted by the state government in respect of the protected forest land, without obtaining the prior approval of the Central Government. The court held that the state government could not have, by issuing the Notification, taken away the protected forest, and converted the same into any other kind of land, without the prior approval of the Central Government. *Prima facie*, it appeared to the court that the area to the extent of 6.25 Hectares, falling in a protected forest, has, indeed, been leased out under the mining lease in question, which could not have been done.<sup>56</sup>

#### **Water conservation**

In *R.K. Kapoor v. National Capital Territory of Delhi*,<sup>57</sup> the High Court of Delhi entertained a PIL that revolved around the pressing concern of water conservation in the National Capital Territory (NCT) of Delhi, specifically focusing on implementation of rainwater harvesting initiatives. The petition outlined a series of remedies aimed at fostering a comprehensive approach to address the issue of rainwater harvesting. The petitioner strongly advocated for widespread adoption of rainwater harvesting practices, urging authorities to implement them rigorously across government and private buildings, as well as infrastructure installations. Furthermore, he emphasizes the necessity of making rainwater harvesting mandatory for all new construction projects as a crucial step towards water conservation. The court noted the various initiatives of other state governments and also of the Delhi administration and disposed of the PIL with the following observation:

<sup>55</sup> MANU/UC/0649/2023: 2024(14)FLT248.

<sup>56</sup> See also *Subhash Mishra v. State of Uttarakhand* MANU/GT/0248/2023 regarding the directions of NGT in relation to forest degradation and afforestation measures, *Kalu Ram Yadav v. State of Rajasthan*, MANU/GT/0096/2023.

<sup>57</sup> MANU/DE/5412/2023.



Thus, while substantial progress has undoubtedly been made, the evolving landscape of the Delhi, where urbanization and climate change intersect, amplifies the urgency of water conservation. The unwavering commitment of concerned authorities, to this cause, is thus imperative. Rainwater harvesting should be seamlessly integrated into the city's climate resilience planning. To achieve this, the authorities must continually explore innovative strategies, adapt to evolving conditions, and proactively confront emerging challenges. A persistent focus on educating the public and resident welfare associations about the advantages of rainwater harvesting, coupled with practical implementation guidance, can catalyze a cultural shift towards sustainable water practices. Respondents must periodically review empirical data on implementation of rain water harvesting measures to ascertain whether their efforts are producing tangible results and take corrective measures, if so required.(Para 19)

#### **Liquid and solid waste management**

In *Re: Compliance of Municipal Solid Waste Management Rules, 2016 and other environmental issues*,<sup>58</sup> decided by the Principal Bench of the NGT dealt with the alarming issue of the gap between generation and management of solid waste. Adverting to the Issue of monitoring of compliance of waste in terms of orders of Supreme Court<sup>59</sup> and considering the gap in sewage generation and treatment and also gap in solid waste management, the NGT levied a heavy compensation of Rs. 4,000/- crores on the State on polluter pays principle for its failure inscientifically managing the liquid and solid waste in violation of mandate of law, particularly judgments of the Supreme Court and this tribunal. The amount was directed to be kept in a ring-fenced account within two months to be operated as per directions of the Chief Secretary only for waste management (liquid and solid) in the State, and to be utilized for setting up solid waste processing facilities, remediation of legacy waste and setting up of STPs and FSSTPs so there remains no gap. Better alternatives to utilize the wet waste for composting at appropriate locations were directed to be explored and the scale of expenditure for STPs to be reviewed in the light of realistic expenses involved in decentralized/traditional systems or otherwise. This direction is timely and reminds the governments of the day about their omissions in spite of the apex court directions issued about eight years ago.<sup>60</sup>

In *Lal Ji v. State of Haryana*<sup>61</sup> the NGT Principal Bench considered the grievance about unregulated and unscientific dumping of municipal solid waste

<sup>58</sup> MANU/GT/0170/2023.

<sup>59</sup> Dated Sep. 2, 2014 and Feb 22, 2017.

<sup>60</sup> See also *Poonam Yadav v. Ecogreen Energy Pvt. Ltd.* MANU/GT/0027/2023, *Priyadarshini Colony D, Residence Welfare Society v. State of Uttar Pradesh* MANU/GT/0072/2023, *Satyendra Rawat v. Medical Pollution Control Committee* MANU/GT/0290/2023

<sup>61</sup> MANU/GT/0252/2023.



and construction & demolition waste in a village, but found the same to be baseless.

#### Miscellaneous developments

In *Conservation Action Trust v. The Ministry of Environment Forest and Climate Change*,<sup>62</sup> the National Green Tribunal, Eastern Zone Bench, Kolkata noted that:<sup>63</sup>

We are of the opinion that there can be no two views about need for adequate studies of adverse impact on coral reefs, mangroves, turtle nesting sites, bird nesting sites, other wildlife, of erosion, disaster management and other conservation and mitigation measures. ICRZ 2019 has to be duly complied with about the location of the Port. Tribal rights and their rehabilitation has to be ensured. Compensatory Afforestation/mangrove plantations have to be as per forest policy. Stand of the respondents shows that such studies have already been undertaken and further studies are proposed. The respondents are committed to comply with the ICRZ 2019 and tribal rights. They have also planned compensatory afforestation and mangrove plantations. Thus, by and large the project is compliant and EC does not call for interference.(Para 32)

In *Kandra Battachhatri v. State of Odisha*<sup>64</sup> reiterated in relation to sand mining that: <sup>65</sup>

Mining is hazardous activity. It results in huge degradation of environment. Though it is otherwise lucrative activity, it poses threat to bio-diversity, destroys riverine vegetation, causes erosion, pollutes water sources, badly affects riparian ecology, damages ecosystem of rivers, safety of bridges, weakens riverbeds, causes destruction of natural habitats of organisms living on the riverbeds, affects fish breeding and migration, spells disaster for the conservation of bird species, increases saline water in the rivers. It has direct impact on the physical habitat characteristics of the rivers such as bed elevation, substrate composition and stability, in-stream roughness elements, depth, velocity, turbidity, sediment transport, stream discharge and temperature. Increase in demand of sand has placed immense pressure in the supply of sand resource and mining activities were going on illegally as well as legally without requisite restrictions. Lack of proper planning and sand management disturbs marine ecosystem and upsets the ability of natural marine processes to replenish the sand

The tribunal directed the District Magistrate concerned to ensure recovery of the assessed amount towards the environmental compensation and its utilization

62 MANU/GT/0079/2023.

63 *Id.*, para 32.

64 MANU/GT/0036/202.

65 Para 10. See also *Junaid Ayubi v. State of Uttarakhand.*, MANU/GT/0025/2023:2023(13)FLT256).

forrestoration of environment in accordance with the recommendations in the report and also considering the District Environment Plan.

In *Amelia Textile and Chemical Pvt. Ltd. v. Uttar Pradesh Pollution Control Board*,<sup>66</sup> the NGT Principal Bench at Delhi imposed an Environmental Compensation of Rs.11,92,50,000/- to utilize the same for recovery, restoration and remediation of the environment which has been deteriorated and damaged by dumping hazardous waste.<sup>67</sup>

In *Subhas Dutta v. State of West Bengal*,<sup>68</sup> the NGT Eastern Zone Bench, Kolkata dealt with a grievance against inadequacy of remedial action against environmental degradation of Sundarban in West Bengal. Such degradation is *inter alia* on account of illegal constructions, operation of sea vessels, unscientific waste management, delay in finalizing Coastal Zone Management Plan. The NGT noted that in view of neglect by the state of sensitive matters, resulting in continuous and irreversible damage to the environment, wildlife and biodiversity, as found in the earlier order of this tribunal and since matter is pending at least since 2014 without satisfactory and adequate action, there is need for monitoring at higher level in the state administration. Accordingly directed the monitoring by a nine-member Committee headed by the Chief Secretary, West Bengal with Regional Officer, MoEF and CC, Integrated Regional Office at Kolkata, Chairman State PCB, Member Secretary, State Coastal Zone Management Authority and District Magistrates of Purba Medinipur, North 24 Parganas and South 24 Parganas, Director, Sundarban Tiger Reserve and the State Wetland Authority.<sup>69</sup>

In *Harpal Singh Rana v. State of Uttarakhand*,<sup>70</sup> the Principal Bench of NGT. Grievance in this application was against undue wastage of water by way of discharge during construction of Metro Rail at Delhi, Jaipur and Mumbai and that the discharge of water is against the Government Policies including the National Water Policy, 2012, Jal Shakti Abhiyan initiated in 2019, appeal of the Prime Minister to all Sarpanches to conserve water and principle of Sustainable Development requiring water conservation. Considering the above, the NGT directed that a joint Committee of CPCB, Secretary, Ministry of Jal Shakti and Metro Rail Corporations may consider the issue and take requisite remedial measures.

#### V CONCLUSION

The year 2023 had witnessed many developments in the area of environmental law in India. They have been mostly in the form of judicial pronouncements and directions. Issues like solid waste management, proper treatment of sewage to prevent untreated sewage and other effluents being discharged in water bodies, the

66 MANU/GT/0010/2023.

67 See also *Waris Chemicals Pvt. Ltd. v. Uttar Pradesh Pollution Control Board*, MANU/GT/0011/2023.

68 MANU/GT/0037/2023

69 See Para 14. See also *Atul Singh Chauhan v. Ministry of Environment, Forests and Climate Change*, MANU/GT/0312/2023.

70 MANU/GT/0134/2023.

setting up of “common effluent treatment plants, diversion of vast areas of pristine tropical rainforests on biodiversity, wildlife habitats and Tribals for developmental purposes, continuing illegal sand mining, rejuvenation of lakes, computing and levying of environmental compensation, validity of Environmental Clearances, establishment of industries in eco-sensitive areas, and protection of wetlands have been brought before the Supreme Court, various high courts and also the benches of the NGT. In certain cases, the NGT has imposed heavy amounts as environmental compensation to be paid by the defaulters, and to be utilized for environmental protection.

More often and as usual, the directions to establish monitoring committees, the framing of certain timelines for compliances and the reiteration that the regulatory regime is available and only issue is failure of specified authority to take necessary measures, have been the important reliefs this year also. It reminds all the stakeholders that the environment is not the concern of the governments alone, it is equally the duty of the citizens, industries and the civil society to protect the environment as there is only one earth for our inhabitation till now.

