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ENVIRONMENTAL LAW

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I INTRODUCTION

DURING THE year under survey *i.e.*, 2014 number of important developments took place in the area of environmental protection in India. They range from the oscillating shifting of the focus between eco-centrism and anthropocentrism, expanding jurisdiction of the National Green Tribunal (hereinafter NGT) in playing a vital role in the environmental adjudication, proposed streamlining of environmental legislations in India, and even the suggested appointment of a national regulator under the Environmental Protection Act, 1986 (hereinafter EPA).

II INDUSTRIAL POLLUTION AND ENVIRONMENTAL PROTECTION

During the year 2014, number of judgments has been delivered by various courts and the NGT in India regarding the industrial pollution. In *M/s U.A.L.Industries Limited* v. *State of Bihar*[1] a single judge of the Patna High Court raised certain serious issues relating to the conduct of the state pollution control board (SPCB) in first granting approvals for running an asbestos industry in a residential locality, later changing its stand after the filing of the Public Interest Litigation (PIL), which showed that the functionaries of the state board cannot, at least, be taken to be immune from influences and pressures. In view of the same the judge directed the Central Pollution Control Board (CPCB), to assist the court to clarify the questions:[2]

i) Whether the norms contained in the Guidelines framed by the State Board are in conformity with all India norms and with the same yardsticks and the same requirement of specifications for establishment of an industry; and

ii) Whether any State Pollution Control Board has the liberty to relax the norms in favour of any industry, already running

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1 [2014 (4) FLT 237 (Pat., HC)].

2 *Id.* at 239.

> or about to be established, in an industrial area, or elsewhere. Though this development appears to be insignificant in the larger scenario of environmental protection in India, it certainly highlights the failure of some of the state pollution control board in discharging their duties effectively while giving clearances for industries.

In *Krishan Kant Singh* v. *National Ganga River Basin*,[3] the applicants before the NGT raised a specific substantial question relating to environment with respect to water pollution in the River Ganga, particularly, between Garh Mukteshwar and Narora, due to discharge of highly toxic and harmful effluents. It was alleged that highly toxic and harmful effluents are being discharged by the respondent units including three sugar mills, three distilleries and a diary into the Sambhaoli drain/Phuldera drain that travels along with the Syana Escape Canal which finally joins River Ganga. The contamination from discharge of trade effluents is so high that it not only pollutes the Syana Escape canal and the River Ganga but also threatens the life of endangered aquatic species such as dolphins, turtles and other aquatic life. It has also polluted the groundwater of villages from where it passes through. The Gangetic Dolphin is a highly endangered species and is listed in schedule I of the Wildlife (Protection) Act, 1972 [4] (hereinafter WPA). It was also submitted that the World Wide Fund India (WWF) has come out with a report on Ganges and has recorded the finding that a large number of factories like sugar, chemicals, fertilizers, small-scale engineering *etc*. located at the bank of the river, discharge their effluents directly into the River Ganga and pollute the river to a considerable extent. It is estimated that nearly 260 million liters of industrial waste-water, largely untreated, is discharged by these units while the other major pollution inputs include runoff from the agricultural fields. It is submitted that more than 6 million tonnes of chemical fertilizers and 9,000 tonnes of pesticides are used annually within the basin. As a result thereof, the colour of green water turned black and it stinks around the year. Several large fishes and buffaloes of the villagers also died after they drank the drain water. On the above premises, the applicants prayed that these industries should be restricted from releasing harmful effluents in Sambhaoli drain leading to River Ganga and they should also be directed to pay the cost of restoration of the environment.

The tribunal after perusing the records found that despite repeated notices from the boards, violation of conditions of the consent orders, closure orders passed by the court as back as in the year 1986 and directions issued by the CPCB under section 5 of the EPA from time to time, some of the sugar units had persisted with untreated effluent or pollutant discharge into the municipal/ Phuldera drain and caused serious pollution of River Ganga. The unit has been discharging trade effluents on land. The effluent containing molasses which was

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3 2014 ALL (1) NGT Reporter (3) (Delhi) 1.

4 The Wildlife (Protection) Act, 1972 (Act No. 53 of 1972).

being stored in the lagoons were washed away because of overflowing, resulting from floods and, in turn, polluted the ground water. Undisputedly, for all this period, the unit was responsible for causing serious problem of the ground and surface water in and around its premises as well as in Phuldera drain, finally leading to River Ganga. The seriousness of the extent of pollution is evident from the fact that even when the unit was non-functional, expert team found the Phuldera drain water being brown in colour and contains discharge from distillery and sugar factory. This unit has been causing pollution for years. In any case, right from 1975, even one year after the coming into force of the Water Act of 1974,[5] they have failed to discharge their statutory obligations. They have intentionally avoided discharging their corporate social responsibility. The unit did not even take the various precautions to prevent and control pollution of ground/surface water despite notices and directions by the competent authorities. Such industries, which had been making profit for all these years are expected to, obey the law without demur and delay. Every unit is expected to aid the state in discharge of its constitutional obligations, to provide clean and decent environment to the citizenry. There is no cause, much less a plausible reason, for the tribunal to not to fasten the liability which ought to be imposed upon this unit in consonance with the principle stated under section 15 read with section 20 of the National Green Tribunal Act, 2010 (hereinafter NGT, Act) particularly in view of the conduct of the unit over such a long period. The tribunal went on to hold that: [6]

> It is not possible to assess exact environmental damage and the cost of restoration thereof in view of the long period involved in the present case and the fact that the statutory boards empowered to prevent and control pollution have not performed their statutory duties in accordance with the spirit and object of the environmental Acts and jurisprudence. This unit is responsible for causing great environmental pollution of different water bodies including Phuldera drain, the Syana Escape canal, the River Ganga and even the groundwater in and around the area of this industrial unit. Besides scientific data of inspection by the expert teams, officers of the pollution control board, analysis report and the fact that the water in the Phuldera drain had turned brown, even to the naked eye, demonstrates the extent of pollution caused by this unit. Considering the magnitude of the pollution caused by the unit, its capacity and prosperity, responsibility of the unit to pay compensation cannot be disputed on any plausible cause or ground.

Consequently, in exercise of the powers conferred upon this tribunal under section 15 and all other enabling provisions of the NGT Act and the legislative mandate

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5 The Water (Prevention and Control of Pollution) Act 1974 (Act No. 6 of 1974).

6 *Supra* note 3 at 36.

contained under section 20 of the said Act, the NGT passed the following order containing number of directions:[7]

i. For restoration and restitution of the degraded and damaged environment and for causing pollution of different water bodies, particularly River Ganga, directly or indirectly, resulting from its business activities carried on for a long period in the past the polluting Unit has to pay a compensation of rupees Five Crores (Rs.5, 00, 00,000/-) to UPPCB within one month from the date of passing of this order. Such direction is completely substantiated and is based on the Polluter Pays Principle, in the facts and circumstances of the present case.

ii. The amount of compensation received by the UPPCB shall be utilised for the cleaning of Syana Escape Canal, preventing and controlling ground water pollution, installation of an appropriate ETP or any other plant at the end point of Phuldera Drain where it joins River Ganga in order to ensure that no pollutants are permitted to enter River Ganga through that drain. The amount should also be utilised for restoring the quality of the groundwater.

iii. The amount shall be spent under and by a special Committee consisting of Member Secretary, CPCB, Member Secretary, UPPCB and a representative of MoEF, only and exclusively for the purposes afore-stated.; and

iv. The unit shall carry out the removal of sludge and cleaning of Puldhera drain in terms of the NGT order dated 31st May, 2014 as the work in furtherance thereto has already started, as stated by the unit. If the work of cleaning and removal of sludge in and along the Puldhera drain is not completed within three months by the industry, in that event, it shall be liable to pay a further sum of Rs. 1 crore, in addition to the amount afore-ordered to UPPCB. This amount of one crore will be used by the Committee only for cleaning of and removal of sludge in and along Phuldera drain.

This is a decision that deserves to be welcomed by one and all as its effective implementation would serve the cause of cleansing River Ganga at least to a small extent.

Prevention of cruelty towards animals

During the year under survey, the Supreme Court asserted itself in this area and showed greater emphasis on the prevention of cruelty against animals. Some of the important decisions are discussed hereunder.

Regulation of Slaughter Houses

In *Laxmi Narain Modi* v. *Union of India* [8] the Supreme Court had dealt with the appointment of retired district judges by the chief justices of the high

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7 *Id.* at 41.

8 [2014 (4) FLT 248 (SC)].

courts as conveners of the state committees for the purpose of supervising and monitoring the implementation of the provisions of the Prevention of Cruelty to Animals (Establishment and Registration of Societies for Prevention of Cruelty to Animals) Rules, 2000, the EPA, the Solid Waste (Management and Handling) Rules, 2000, the Prevention of Cruelty to Animals (Slaughter House) Rules, 2000 *etc*. The court held that even though, almost all the states and union territories have constituted the state committees, there is no periodical supervision or inspection of the various slaughter houses functioning in various parts of the country and that the action taken reports indicated that, in many states, slaughter houses are functioning without any license and even the licensed slaughter houses are also not following the various provisions as well as the guidelines issued by the Ministry of Environment and Forest (Mo EF), The court therefore felt that the presence of an experienced judicial officer in the state committees would give more life and light to the committees, who can function as its convener. In this writ petition, the court requested the chief justices of the various high courts in the country to nominate the name of a retired district judge for a period of two years as a convener of the committee so as to enable him to send the quarterly reports to this court. This direction is to be welcomed for it enables effective monitoring of the slaughter houses in India.

Cruelty towards animals & Jallikattu

Jallikattu is a bull taming sport played in Tamil Nadu as a part of *Pongal* celebrations on *Mattu Pongal* day. Major injuries to and deaths of the bulls and also human beings, may occur from the sport. The Supreme Court passed a landmark judgment relating to prevention of cruelty towards animals more particularly in the case of *Jallikattu* in *Animal Welfare Board of India* v. *A. Nagaraja*.[9] The apex court held that the Animal Welfare Board of India (AWBI) is right in its stand that *Jallikattu*, the bullock-cart race and such events *per* se violate section 3, 11(1) (a) and 11(1) (m) (ii) of the Prevention of Cruelty to Animals Act, 1960 (hereinafter PCA Act) and hence upheld the notification dated 11.7.2011 issued by the Central Government. The net result is that at present the bulls cannot be used as performing animals either for the, *Jallikattu* events or bullock cart races in the state of Tamil Nadu, Maharashtra or elsewhere in the country. The court made the, following declarations and directions which are self-explanatory are given below: [10]

(1) …. that the rights guaranteed to the bulls under sections 3 and 11 of PCA Act read with Articles 51A(g) & (h) are cannot be taken away or curtailed, except under sections11(3) and 28 of PCA Act.

(2) …. that the five freedoms, referred to earlier be read into sections 3 and 11 of PCA Act, be protected and safeguarded by the states,

9 (2014) 7 SCC 547.

10 *Id.* at 601.

central Government, union territories (in short 'governments'), Mo EF and AWBI.

(3) AWBI and governments are directed to take appropriate steps to see that the persons in charge or care of animals take reasonable measures to ensure the well being of animals

(4) AWBI and governments are directed to take steps to prevent the infliction of unnecessary pain or suffering on the animals since their rights have been, statutorily protected under sections 3 and 11 of PCA Act.

(5) AWBI is also directed to ensure that the provisions of section 11(1) (m) (ii) are scrupulously followed , meaning thereby that the person in charge or care of the animal shall not incite any animal to fight against a human being or another animal.

(6) AWBI and the governments would also see that even in cases where section 11(3) is involved, the animals, be put to unnecessary pain and suffering and adequate and scientific methods be adopted to achieve the same.

(7) AWBI and the governments should take steps to impart education in relation to human treatment of animals in accordance with section 9(k) inculcating the spirit of articles 51A(g) & (h) of the Constitution.

(8) Parliament is expected to make proper amendment of the PCA Act to provide an effective deterrent to achieve the object and purpose of the act and for violation of section 11, adequate penalties and punishments should be imposed.

(9) Parliament, it is expected would elevate rights of animals to that of constitutional rights, as done by many of the countries around the world so as to, protect their dignity and honour.

(10) The governments would see that if the provisions of the PCA Act and the declarations and the directions issued by this court are not properly and effectively complied with, disciplinary action be taken against the erring officials so that the purpose and object of PCA Act could be achieved .

(11) The Tamil Nadu Regulation of Jallikattu (TNRJ) Act is found repugnant to PCA Act, which is a welfare legislation, Hence held constitutionally void being violative of Article 254(1) of the constitution of India

(12) AWBI is directed to take effective and speedy steps to implement the provisions of PCA Act in consultation with SPCA and make periodical reports to the governments and if any violation is noticed, the governments should take steps to remedy the same including appropriate follow up action.

This judgment highlights the cruelty towards the animals in India caused in the name of customs and traditions, also rituals by human beings. The parliament of India may take serious note of the suggestion of the apex court and can give constitutional recognition to the animal rights in India.

'Kaalapoottu' and 'Kannupoottu' in Kerala - Cruelty towards animals

Whether the ban imposed by the Central Government as per the notification dated 11.07.2011,issued in exercise of the power conferred under section 22 of the PCA Act declaring that bulls (along with five other animals) shall not be exhibited or trained as performing animals; and the recent verdict passed by the apex court upholding the validity of the said notification banning '*Jallikattu*' or 'bullock - cart race' in the State of Tamil Nadu or elsewhere in the country, in *Animal Welfare Board* case [11] could be pressed into service to ban 'Kaalapoottu' and 'Kannupoottu' in the northern parts of Kerala or 'Maramadi' competition in the southern parts of Kerala. It was the subject matter for consideration to the High Court of Kerala in *Cattle Race Club of India* v. *State of Kerala.*[12] The crux of the case of the petitioners is that 'Kaalapoottu'/ 'Kannupoottu'/Maramadi, is different from 'Jallikattu' or 'bullock-cart race' prohibited as per the decision of the apex court and hence stands on a different footing. It was stated that the instances involved herein do not come within the prohibited activity under any statute or notification and that no exhibition or training is being conducted/ imparted nor is there any sale of tickets in the course of such performance. It is also pointed out that no beating or whipping or any other instance of cruelty is meted out to the Bulls and that the event is being performed only as part of festival of agriculturists, to energize and revitalise the idle cattle and men, after the Monsoon /Onam and before the agricultural operations commence. However, the court found that the issue is squarely covered by the verdict passed by the apex court in *Animal Welfare Boards* case,[13] which is the law of the land and is applicable throughout the country by virtue of the mandate of article 141 of the Constitution of India. Accordingly, the court dismissed the writ petitions.

Shifting of camp elephants to rejuvenation camp

In *S. Jayachandran* v. *Secretary to Government of Tamil Nadu,*[14] a PIL was filed to restrain the forest authorities from shifting certain camp/captive elephants in Mudumalai Tiger Reserve and Annamalai Tiger Reserves in Tamil Nadu to the Rejuvenation Camp at Thekkampatti in Coimbatore district for about 48 days. His main contention was that by allowing the camp elephants to reside along with the domesticated elephants which may be suffering from Tuberculosis, Herpes and other contagious diseases, the camp elephants which were allowed

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11 *Supra* note 9.

12 2015 (3) KHC 114; ILR 2015 (3) Ker 49.

13 *Supra* note 9.

14 [2014 (4) FLT 422. (Mad., HC)].

to live in their natural habitats would exposed to such diseases. However the Madras High Court found no illegality in sending camp elephants as it was only for 48 days and further in view of the fact that it was for the well being of the camp elephants.[15]

Environment and ecology

It may be noticed that the environmental jurisprudence in India, in recent years has been veering towards the eco-centric approach and away from the anthropocentric approach. Continuing the same tradition, number of decisions has been rendered during the year under survey. Some of the important decisions have been analysed here under.

Indiscriminate Felling of Trees & Diversion of Forest Area for Non-forest purposes - Role of Compensatory Afforestation Fund Management and Planning Authority (CAMPA)

In *T. N. Godavarman Thirumulpad* v. *Union of India*,[16] a PIL was filed for and on behalf of the people living in and around the Nilgiri Forest on the Western Ghats challenging the legality and the validity of the actions of the State of Tamil Nadu, the Collector, Nilgiris District and the District Forest Officer, Gudalur and the timber committee in destroying the tropical rain forest in the Gudalur and Nilgiri areas in violation of the Forest Act, 1927, Forest (Conservation) Act, 1980 and Tamil Nadu Hill Stations (Preservation of Trees) Act,1955 and the EPA. The petitioner contended that it has resulted in serious ecological imbalances affecting lives and livelihood of the people living in the State of Tamil Nadu. He further alleged that the respondents have in collusion with certain vested interests allowed trespassers to encroach and enter upon the forest land for the purpose of felling trees and conversion of forest land into plantations. It was pointed out that the encroachers on the forest land have been indiscriminately cutting and removing valuable rosewood trees, teak trees and ayni trees, which are immensely valuable and are found exclusively in the aforesaid forest. It was also pointed out that loss of such trees would be permanent and irreparable to the present and future generations to come. The petitioner has clearly pleaded that the value attached to rosewood and teak wood has resulted in a mad rush by timber contractors in collusion with government agencies, for making quick profits without any regard to the permanent damage and destruction caused to the rain forest and to the eco-system of the region. The petitioner also pointed out that cutting and removing of trees is not limited only to the mature trees. In their anxiety to make huge profits the entire forest areas are being cleared, by indiscriminate felling of trees. The petitioner also pointed out that the national policy adopted in the year 1952 provided for the protection and preservation of forests. The existence of large areas of land covered under forest is recognized as

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15 See also *Dr. Manilal V.Valliyate* v. *State of Maharashtra* [2014 (4) FLT 458 (Bom. HC)], involving the translocation of an elephant called 'Sunder'.

16 (2014) 6 SCC 150; [2014 (4) FLT 261(SC)]; AIR 2014 SC 3614. See observations of S.S.Nijjar,J at para 33.

a valuable segment of the national heritage. The petitioner also pointed out that the protection from exploitation of forests, in particular natural forests, is imperative as such forests once destroyed cannot be regenerated to their natural state. The petitioner has pleaded that the destruction of rain forests would adversely affect the environment, eco-system, the plants and animals living within the forests. This would result in such destruction, which would ultimately result in drastic changes in the environment and the quality of life of people living in and around the forests. The petitioner also highlighted that although the national policy has provided that 33% of the land mass of India shall be covered with forests, the present extent of the forest covered areas was below 15%. The natural rain forest cover was only around 5%. Such meager forest cover had led to the enactment of the Forest (Conservation) Act, 1980.

This apart, it was pointed out that forests are the main source of livelihood for a large number of people, who live within and around the forests, that the rain forests are the source of life and the plants and animals living in them are useful for enhanced quality of life enjoyed by mankind, and therefore the bio-diversity of the rain forest has to be preserved for the welfare and well being of future generations of mankind. The petitioner also lamented that all the protective legislation enacted by the Union of India are nothing more than statements in the statute books, in as much as the forest land and its wealth are being plundered every day.

In this writ petition, interlocutory applications (IA) were filed seeking either general or specific directions in relation to various issues concerning the protection and improvement of environment. After going through the developments so far, the court recollected that the CEC recommended the creation of a 'Compensatory Afforestation Fund' (CMP) in which all the monies received from the user-agencies towards compensatory afforestation, additional compensatory afforestation and penal compensatory afforestation, etc shall be deposited among other recommendations. Keeping this in view, the Mo EF issued a notification on 23.04.04 constituting a CAMPA as an authority under section 3(3) of the EPA. The jurisdiction of the CAMPA is throughout India. The court noted that the aforesaid notification has only remained on paper and it has not been made functional till the date of that judgment by the Mo EF. The court accepted a suggestions made by the *Central Empowered Committee* (CEC),[17] submitted in for constitution of an Ad-hoc body till CAMPA becomes operational. All State Governments/Union Territories were directed to account for and pay the amount collected with effect from 30th October, 2002 in conformity with the order dated 29th October, 2002 to the aforesaid Ad-hoc body (*ad-hoc* CAMPA).

In this judgment, the court noted that the state CAMPA has been constituted for each state/union territory. It has a three-tier structure. The executive committee

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17 The Central Empowered Committee (CEC) was set up as an authority under s.3 (3) of the Environment (Protection) Act, 1986 (amended in 1991) to adjudicate on forest and wildlife related issues.

functions under the chairmanship of the principal chief conservator of forests who is responsible for the annual plan of operation (APO) for various works planned to be undertaken during each year. The steering committee under the chairmanship of chief secretary is responsible for approving the APO for each year. The chief minister is the chairman of the governing body which is responsible for overall guidance and policy issues. The *ad-hoc* CAMPA releases the funds to each of the state CAMPAs as per the approved APO. At present, a total sum of Rs.1000 crore is permitted to be released to the state per year. The state wise accounts of the principal amounts and cumulative interest are maintained by the *ad-hoc* CAMPA. The funds are not permitted to be utilized for any purpose other than those authorized by the court. The administrative expenses of CAMPA are incurred by the CEC.

It was also noted that with the establishment of the *ad-hoc* CAMPA, huge sums of money have accumulated which can be released to the state CAMPA for utilization, for protection and for the improvement of the national environment. Now the aforesaid applications have been filed by different states seeking release of some funds for completing the task of compulsory afforestation, as directed by this court from time to time. The relief claimed in all the applications before the courts were almost identical. In its report on January 6, 2014, CEC has recommended that the prayer made in the application ought to be accepted. The CEC submitted to the court to partially modify its earlier order on July 10, 2009 and to consider permitting the *ad-hoc* CAMPA to annually release from the financial year 2014-2015 onwards, out of the interest received / receivable by it, an amount equal to 10% of the principal amount lying to the credit of each of the state/union territory at beginning of the year to the respective state CAMPA subject to the condition the funds will be released by utilizing interest received / being received by the *ad-hoc* CAMPA and that the principal amount lying with the *ad-hoc* CAMPA will not be released or transferred or utilized, among other grounds.

This direction by the highest court paves way for release of sufficient funds from the *ad-hoc* CAMPA to the states for dealing with the protection of the environment effectively.

Environment and natural resources

River sand Mining

In *Someswarapuram Vivasayigal Nala Padhukappu Sangam* v. *Union of India*,[18] the NGT dealt with the sand quarrying in rivers of Cauvery and Coleroon, and the role of the State Level Environmental Impact Assessment Authority (SEIAA) of Tamil Nadu, and Mo EF, Government of India in granting environmental clearances (EC).The NGT referred to its earlier judgment in *Deepak Kumar* v. *State of Haryana*[19] where certain guidelines were issued for

18 [2014 (4) FLT 275 (NGT)].

19 AIR 2012 SC 1386.

granting ECs for sand quarrying in the river beds, and further reiterated that river sand is a very important raw material for infrastructure development, construction activities including implementation of various welfare schemes of the government, and yet a balance has to be struck on economic and social needs on one hand, and with environmental consideration on the other. A striking point emerging from the present litigation has been found to be the inaction on the part of the Mo EF in its failure evolve guidelines regarding the categorization of the river sand mining projects from 2006 to 2013 (new guidelines were issued by the Mo EF and came into effect from December 24, 2013). In view of the vacuum left by the Mo EF, the NGT issued certain interim directions for grant of EC by the SEIAA of Tamil Nadu for river sand mining in the said rivers for a period of six months and thereafter to follow the guidelines issued by the Mo EF.

Stone crushing units and their social responsibility of environmental protection

In *Shree 1008 Kunwar Raj Rajeshwari Beti Baiju Maharani Kunwar Maharaj* v. *Sunil Sharma*,[20] the NGT has ensured a befitting solution rarely found in India with the consent of all the stakeholders in respect of the social responsibility of the stone crushing units operating in village *Bilua* of the Gwalior district of Madhya Pradesh. A look at the facts of the case shows that a large number of stone crushing units are operating in the said village causing air and noise pollution, depletion of ground water levels, apprehension of danger to the safety of the residents of the village and school children studying in a nearby government school. The state pollution control board, the forest department of the state government, and more importantly the state government had found that the stone crushing units which are located within the vicinity of the village at a distance of less than 500 meters had violated the terms of the licenses given to them. The violations included not planting and maintaining requisite number of trees in the area, and not contributing for construction of permanent roads. More importantly it was found that the new school building was constructed by the government also came up within the periphery of the crushing units .Consequently the units were ordered to be closed down. On an application filed by a public trust, the NGT examined all the relevant aspects and with its initiative ensured that an amount of Rs/- 50 lakhs was pooled by the association of the stone crushing units towards their commitment for improvement of roads in the area for preventing pollution. Half of that amount was already handed over to the district administration for that purpose. Further a new area was identified by the district collector for constructing the new school building with the same design and facilities for the students.

Thus, the NGT, having satisfied itself about the positive approach of all the stakeholders, permitted the stone crushers to operate subject to compliance with the conditions imposed. This is a rare development witnessed in India, and it can be safely said that environment would better protected with such an approach.

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20 [2014 (4) FLT 303 (NGT-CZ)].

Municipal solid waste management

In *Karamjit Singh* v. *State of Punjab*,[21] a division bench of the Punjab and Haryana High Court held that the refusal of the airport authority to permit setting –up of a solid waste management plant (SWMP) on the ground that such plant was within 10 kilometers of radius from the aerodrome reference point, and that it would increase bird menace and cause disturbance to flights was bad. The court found that the airport authority did not raise objection for the last 25 years when the dumping ground was already in existence. This is judgment which gave precedence to public interest. The court also laid down guidelines for setting-up of the SWMP in the instant case (the court was dealing with section 25 of the EPA and Municipal Solid Waste (Management & Handling) Rules, 2000.

Occupational diseases of workers, right to health and safe environment

Right to health *i.e*., right to live in a clean, hygienic and safe environment is a right flowing from article 21 of the Constitution. Clean surroundings lead to healthy body and healthy mind. But unfortunately, for eking a livelihood and for national interest, many employees work in dangerous, risky and unhygienic environment. In *Occupational Health and Safety Association Petitioner* v. *Union of India*,[22] the apex court dealt with the issue of occupational diseases tormenting number of workers in coal mines in India. The petitioner in the instant case represented that about 130 coal fired thermal power plants (CFTPPs) in India are spread over different states in the country, but no proper occupational health services with adequate facilities for health delivery system or guidelines with respect to occupational safety are in place. Factories Act, 1948 Boilers Act, 1923 Employees State Insurance Act, 1948, Workmen Compensation Act, 1923 the Water (Prevention and Control of Pollution) Act, 1977 the Air (Prevention and Control of Pollution) Act, 1974, EPA *etc*., are in place, but the lack of proper health delivery system, evaluation of occupational health status of workers, their safety and protection cause serious occupational health hazards. The petitioner highlighted the serious diseases, the workers working in thermal plants are suffering from over a period of years. The report produced by the petitioner would indicate that half of the workers have lung function abnormalities, pulmonary function test abnormalities, senor neuro loss, skin diseases, asthama, and so on. The court noticing the same passed an interim order in 2008, after taking note of the various suggestions made at the bar to reduce the occupational hazards of the employees working in various thermal power stations in the country.

In this judgment, the court placed reliance on a 2011 report of the committee prepared by the National Institute of Occupational Health (NIOH) titled Environment, Health and Safety Issues in coal fired thermal power plants. The court approvingly noted that of the report specifically refers to the occupational health and safety issues of workers in CFTPPs. The report also refers to the hazards associated with (a) dust, (b) heat, (c) noise, (d) vibration, (e) radiation,

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21 AIR 2014 (NOC) 320 (P&H).

22 (2014) 3 SCC 547.

and (f) disposal of waste.[23] After dealing with those health hazards, the committee has stated that the hazards associated with inhalation of coal dust might result in development of dust related morbidity in the form of pneumoconiosis (coal workers pneumoconiosis, silicosis) and non-pneumoconiotic persistent respiratory morbidities, such as chronic bronchitis, emphysema, asthma, *etc*. Further, it also pointed out that whenever asbestos fibers are used for insulation and other purposes, the possibility of asbestosis among workers due to inhalation of asbestos fibers cannot be ruled out. The report also says that other morbidities because of exposure to fly ash, including metallic constituents such as lead, arsenic, and mercury might also be present. Due to exposure to other chemicals used in different operations of CFTPP, the report says, may also be responsible to adversely affect human health. The report further says that occupational exposure to high heat in different thermal power plants may also cause heat related disorders, like heat exhaustion. Noise and vibration exposures in higher doses than the permissible limits may result in noise-induced hearing loss, raised blood pressure, regional vascular disorders, muscular-skeletal disorders, human error, productivity loss, accidents and injuries. Radiation hazards particularly from the generated fly ash and its used products have also been indicated of possible health risks. Different chemicals that are often being used in CFTPPs, such as chlorine, ammonia, fuel oil, and released in the working and community environment may be responsible for wide range of acute as well as chronic health impairments. Since large quantities of coal, other fuels and chemicals are stored and used in CFTPPs, the risks of fire and explosion are high, unless special care is taken in handling the materials. It may cause fire and explosion.

The court welcomed the recommendations made, but expressed serious concern as to how far they are put into practice and what preventive actions are taken to protect the workers from the serious Health -hazards associated with the work in CFTPPs. In view of the fact that the CFTPPs are spread over various states in the country like Uttar Pradesh, Chhattisgarh, Maharashtra, Andhra Pradesh, and so on, it would not be practicable for the court to examine whether CFTPPs are complying with safety standards and the rules and regulations relating to the health of the employees working in various CFTPPs throughout the country. Therefore it was felt that these aspects could be better examined by the respective high courts in whose jurisdiction these power plants are situated. The registrar generals of high courts of the concerned states were directed to place this judgment before the chief justices of the respective states so as to initiate *suo moto* proceedings in the larger interest of the workers working in CFTPPs in the respective states.

Though this judgment is not directly relevant to the environment, effective implementation of the same would be helpful in protecting a concomitant right namely the right to health.

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23 *Id.* at 553.

Mining and environmental protection

Mandatory requirement of environmental clearance

In *M/s Shiv Guru Stone Works* v. *State of Jharkhand*,[24] the high court reiterated that obtaining environmental clearance is essential for renewal of mining leases. In view of the facts mentioned in the writ petition, the court permitted the petitioner to approach the state level environment impact assessment authority (SEIAA) for seeking such clearance before making application for renewal of mining lease.[25]

In *Common Cause* v. *Union of India*,[26] the Supreme Court dealt with a situation where the lessee was operating the mining leases without clearances under the Environment (protection) Act, 1986 and the Forest (Conservation) Act,1980.Finding that in the State of Orissa, many such mining companies have been indulging in mining operations without such clearances mandatory under the said laws, the apex court stopped 26 leases which were not renewed by the state governments from fuehrer mining operations.

Making forest land available for mining

The Parliament had enacted the law in respect of conservation of the forest land and the forest areas and the Forest (Conservation) Act, 1980 (hereinafter FCA) was promulgated. The purpose of enacting the said Act was for the conservation of forest and for matters connected therewith or ancillary or incidental thereto.[27] A specific restriction is prescribed under section 2 of Act on the de-reservation of forests or use of forest land for non-forest purpose. Under the said provision –'Notwithstanding anything contained in any other law for the time being in force in a state, no state government or other authority shall make, except with the prior approval of the Central Government, any order directing; (i) that any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that state) or any portion thereof, shall cease to be reserve; (ii) that any forest land or any portion thereof may be used for any non-forest purpose; (iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, Corporation, agency or any other organisation not owned, managed or controlled by government; (iv) that any forest land or any portion thereof may be cleared of trees which has grown naturally in that land or portion, for the purpose of using it for reforestation. For the purpose of this section "non-forest purpose" means the breaking up or clearing of any forest land or portion thereof for— (a) the cultivation of tea, coffee, spices, rubber,

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24 AIR 2014 Jh.28.

25 See also *Mithlesh Bai Patel* v. *State of Madhya Pradesh*, [2014 (4) FLT 347 (NGT-CZ)].

26 [2014 (4) FLT 505 (SC)].

27 The Act was published and made in force with effect from 25.10.1980 and amendments were made in 1988.

palms, oil bearing plant, horticultural crops or medicinal plants; (b) any purpose other than reforestation, but does not include any work relating or ancillary to conservation, development and management of forests and wild life, namely, the establishment of check posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, water holes, trench marks, boundary marks, pipe lines or other like purposes. It was very specifically provided that except with the prior approval of the Central Government, any order directing that any forest land or any portion thereof may be used for any non-forest purpose would not be issued by the State. The issue came up before the apex court was whether such a provision is retrospective in operation, *i.e.*, to say, applicable question of grant of environmental clearances which state government could take with reference to activities undertaken for reserved forest or reserved land prior to the date of enforcement of the Act aforesaid. In the case of *Nature Lovers Movement* v. *State of Kerala*,[28] discussing at length the requirement of law and the purpose and the object of the Act aforesaid, the apex court categorically held that the action even subsequent to coming into force of the Act aforesaid, with respect to extension of time, renewal of lease etc. in all the cases of leases granted prior to coming into force of the FCA would be subject to the provisions of section 2 of the 1980 Act aforesaid.

In *M/S Olpherts Pvt. Ltd.* v. *Secretary, Union of India*,[29] a similar question arose before the Madhya Pradesh High Court. In this case, when the lease granted in favour of the petitioner expired on 31st July, 1981 and was not renewed and application for renewal was rejected, litigation in which respect was initiated, it was held that the state government could not have issued any notification for putting the said land including the forest land open for allotment on lease for mining purposes by notification dated 27.07.1984 without the prior approval of the Central Government. As nothing was stated in the return whether such a notification was issued by the state government after obtaining prior approval of the Central Government or not in terms of the provisions of section 2 of the 1980 Act, the matter was remitted back to the respondent-state to ascertain whether prior approval of Central Government was obtained under section 2 of the Forest (Conservation) Act, 1980 before issuance of the notification dated 27.07.1984 in respect of the land in dispute in these writ petitions and after completing the aforesaid formality, to consider the applications of all those, who have made the applications and whose applications were rejected.[30]

Illegal mining after expiry of lease

In *Goa Foundation* v. *Union of India*,[31] the Supreme Court dealt with the continuing menace of illegal, uncontrolled and unmonitored mining of minerals

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28 (2009) 5 SCC 373.

29 AIR 2014 MP 109.

30 See *B.S.Sandhu* v. *Government of India* [2014 (4) FLT 510 (SC)].

31 (2014) 6 SCC 590.

in Goa. It may be noted that as reports were received from various state governments of widespread mining of iron ore and manganese ore in contravention of the provisions of the Mines & Minerals (Development & Regulation) Act, 1957 (hereinafter MMDR Act), The Forests (Conservation) Act 1980, The Environment (Protection) Act, 1986 and other rules and guidelines issued there under, the Central Government appointed the Shah Commission J under section 3 of the Commissions of Inquiry Act, 1952. On 07.09.2012, the Shah Commission J Report on Goa was tabled in Parliament along with an action taken report of the Ministry of Mines and on 10.9.2012 the State Government of Goa passed an order suspending all mining operations in the State of Goa with effect from 11.9.2012.The court noted that the excavation was continued even after expiration of the lease period in contravention of the MMDR Act, the Forest (Conservation) Act, 1980 and the EPA or other rules and licenses issued there under. In the result, the court declared that:[32]

> …[t]he deemed mining leases of the lessees in Goa expired on 22.11.1987 and the maximum of 20 years renewal period of the deemed mining leases in Goa expired on 22.11.2007 and consequently mining by the lessees after 22.11.2007 was illegal and hence the impugned orders of Government of Goa and the impugned and of the Mo EF, Government of India are not liable to be quashed; dumping of minerals outside the leased area of the mining lessees is not permissible under the MMDR Act and the Rules made there under;
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> until the order dated 04.08.2006 of the Court is modified by the Court in I.A. No.1000 in *T.N. Godavarman Thirumulpad* v. *Union of India* there can be no mining activities within one kilometer from the boundaries of National Parks and Sanctuaries in Goa.

The court further directed *inter alia* that:[33]

> Mo EF will issue the notification of eco-sensitive zones around the National Park and Wildlife Sanctuaries of Goa after following the procedure discussed in this judgment within a period of six months
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> the Goa Pollution Control Board will strictly monitor the air and water pollution in the mining areas and exercise powers available to it under the 1974 Act and 1981 Act including the powers under section 33A of the 1974 Act and Section 31A of the 1981 Act and furnish all relevant data to the Expert Committee; and
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> the entire sale value of the e-auction of the inventorised ores will be forthwith realised and out of the total sale value, the Director of

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32 *Id.* at 637.

33 *Ibid.*

> Mines and Geology, Government of Goa, under the supervision of the Monitoring Committee will make the following payments: (a) Average cost of excavation of iron ores to the mining lessees; (b) 50% of the wages and dearness allowance to the workers in the muster rolls of the mining leases who have not been paid their wages during the period of suspension of mining operations; (c) 50% of the claim towards storage charges of Marmagoa Port Trust.
>
> Out of the balance, 10% will be appropriated towards the Goan Iron Ore Permanent Fund and the remaining amount will be appropriated by the state government as the owner of the ores.

Jurisdiction of the National Green Tribunal

In *M/s Laxmi Suiting* v. *State of Rajasthan*,[34] the Rajasthan High Court clarified while dealing with the transfer of writ petitions to NGT that where substantial questions relating to environment arise out of the implementation of enactments concerned, the NGT would be within its jurisdiction to hear the same; and further that absence of a specific provision of transfer in the NGT Act, 2010 does not suggest impermissibility of such transfer. Similar view was taken by a division bench of the Rajasthan High Court in *Dr. Sanjay Palintkar* v. *The State of Rajasthan* [35] wherein the court clarified that in, *Bhopal Gas Peedith Mahila Udyog Sangathan.* v. *Union of India*,[36] the Supreme Court had given directions to all courts of competent jurisdiction to transfer the cases pending before it, which involve the questions of environmental law and/or relating to any of the seven statutes specified in schedule I of the NGT Act of 2010, to the green tribunal. In the instant case, the high court ordered dismissed a PIL filed on the ground that the reliefs claimed in the writ petition can be agitated/ litigated in the NGT, as the reliefs are essentially in the nature of protection of environment by enforcement of the Rules of 1998, to be followed by all diagnostic centers under the scheme. The writ petition was dismissed on the ground of alternative remedy, with liberty to the petitioner to pursue the remedy in the NGT.

In *Sachin* v. *State of Maharashtra*,[37] however the NGT categorically declared that under section 14 of the NGT Act, the seven enactments mentioned under

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34 AIR 2014 (NOC) 121 (Raj).

35 Civil (PIL) Writ Petition No.16334/2013 dated Sep. 10, 2014, *available at* 2014 SCC Online Raj.3917.

36 (2012) 8 SCC 326. However it may be noted that in a petition for special leave to appeal (Civil) No.27327/2013-*Adarsh Cooperative Housing Society Ltd.* v. *Union of India* arising out of an order passed by the High Court of Judicature at Bombay, the Supreme Court has passed an order on 10.03.2014, proposing to reconsider the directions in para 40 and 41 of the judgment for transfer of pending cases to NGT. The Supreme Court has also directed, until final orders are passed on such reconsideration, that the direction for transferring the pending matters before the high court to the green tribunal in para 40 and 41 will not be given effect to.

37 [2014 (4) FLT 334 (NGT, WZ)].

schedule I thereto, do not cover the Wildlife (Protection) Act, 1972. Therefore, it was held that the question of Sanctuary of Great Indian Bustard falls outside the jurisdiction of the tribunal. Consequently, the NGT remitted back the writ petition transferred to it by the Aurangabad Bench of the Bombay High Court, to the same court.[38]

Appointment of a national regulator under the Environment Protection Act, 1986

It is well known that there are multiple number of regulators under different environmental laws in India vested with different kinds of jurisdiction. The adequacy of such regulators was considered by the Supreme Court in *Lafarge Umiam Mining Private Limited* v. *Union of India*.[39] While refusing to interfere with the decisions of the Ministry of Environment and Forests (Mo EF) granting site clearance, Environment Impact Assessment (EIA) clearance and revised environmental clearances along with stage-1 forest clearance to the mining project of the company, the Supreme Court had laid down certain guidelines to be followed in future cases.[40] The court had called upon the Central Government to appoint a National Regulator under section 3(3) of the EPA for appraising projects, enforcing environmental conditions for approvals and to impose penalties on polluters. Though such a direction was given on 06.07.11, the Central Government failed to appoint such regulator and at the same time no review petition was filed against such judgment.

In *T.N. Godavarman* v. *Union of India*,[41] the Supreme Court dealt with the compliance of the above direction. On 09.09.2013, the court requested the solicitor general, to obtain instructions and appraise the court as to when the direction of the court would be complied with. The solicitor general on behalf of the Mo EF, submitted that in *Lafarge Umiam Mining Private Limited* case, the court was really concerned with the National Forest Policy, 1988. He submitted that so far as the National Forest Policy, 1988 is concerned, the same relates to forests and under section 2 of the Forest (Conservation) Act, 1980 the duty of a regulator has been to cast upon the Central Government. He submitted that the responsibility to appraise proposals seeking prior approval of the Central Government under section 2 of the Forest (Conservation) Act, 1980 lies with the forest advisory committee constituted by the Central Government under section 3 of the Forest (Conservation) Act, 1980. He argued that these statutory duties of the Central Government under section 2 of the Forest (Conservation) Act, 1980 cannot be delegated to any other authority. The Ministry also submitted that sub-section (1) of section 3 of the EPA similarly confers powers on the Central Government to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution and the Central Government in

38 See also *Shreydeep Stone Crusher* v. *State of M.P* [2014 (4) FLT (M.P., H.C) 408].

39 (2011) 7 SCC 338.

40 *Id.* at 381.

41 [(2014 (4) FLT 221 (SC)].

exercise of its powers under sub-section (1) and clause (v) (b) of sub-section (2) of section 3 EPA had issued the EIA notification dated 14.09.2006. The notification provides prior environmental clearance from the Central Government, or as the case may be, from the state level environment impact assessment authority, shall be taken for construction of new projects or activities or the expansion or modernization of existing projects or activities mentioned in the schedule to this notification. He submitted that the Central Government through Mo EF is, thus, undertaking appraisals of projects in accordance with the notification dated September 9, 2006. He submitted that compliance of the conditions stipulated in the environmental clearance granted to the projects are being monitored and enforced six regional offices of the Mo EF are functioning at Bangalore, Bhopal, Bhubaneswar, Chandigarh, Lucknow and Shillong. He submitted that as an appropriate mechanism for appraising projects as well as monitoring and enforcing compliance of environmental conditions that govern environmental clearances is already in place, it is not necessary for the Central Government to appoint a National Regulator under sub section (3) of section 3 of EPA. The government finally submitted that part II of 4 the order dated 06.07.2011 of this court in the case of Lafarge Umiam Mining Private Limited is titled "Guidelines to be followed in future cases" and hence the observations of this court in part II were in the nature of suggestions of this court and the Central Government is considering these suggestions and has not taken a decision to appoint a National Regulator under sub-section (3) of section 3 of the EPA.

On the other hand, the *amicus curiae*, submitted that it will be clear, on a reading of all the documents in the case of *Lafarge Umiam Mining Private Limited*, that this court held that section 3 of the Environment (Protection) Act, 1986 confers a power coupled with duty and it is incumbent on the Central Government, to appoint a regulator. He submitted that the order of this court was therefore in the nature of a mandamus to the Central Government to appoint a National Regulator and the plea taken on behalf of the Union of India that the order to appoint a National Regulator was in the nature of a suggestion is misconceived. He argued that the order in *Lafarge Umiam Mining Private Limited* case was passed on July 6, 2011 and no review petition was filed in response of the order dated 06.07.2011, and after two years of the passing of the order, the Union of India cannot refuse to comply with the order of this court. He referred to notifications issued by the Central Government under section 3(3) of EPA constituting authorities, such as the notification dated 17.09.1998 constituting the Arunachal Pradesh Forest Protection Authority.

After considering the submissions of both the counsel, the focal question that arises is, whether the order of the court in *Lafarge Umiam Mining Private Limited* case for appointing a National Regulator under section 3(3) of the EPA was merely a suggestion or a mandamus to the Central Government, the Supreme Court declared that it had issued a *Mandamus* and not mere guidelines. The court further observed:[42]

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42 *Id.* at 340.

> the present mechanism under the EIA Notification dated 14.09.2006, issued by the Government with regard to processing, appraisals and approval of the projects for environmental clearance is deficient in many respects and what is required is a Regulator at the national level having its offices in all the States which can carry out an independent, objective and transparent appraisal and approval of the projects for environmental clearances and which can also monitor the implementation of the conditions laid down in the Environmental Clearances. The Regulator so appointed under Section 3(3) of the Environment (Protection) Act, 1986 can exercise only such powers and functions of the Central Government under the Environment (Protection) Act as are entrusted to it and obviously cannot exercise the powers of the Central Government under Section 2 of the Forest (Conservation) Act, 1980, but while exercising such powers under the Environment Protection Act will ensure that the National Forest Policy, 1988 is duly implemented…

The court, therefore, directed the Union of India to appoint a regulator with offices in as many states as possible under sub-section (3) of section 3 of the EPA as directed in the of *Lafarge Umiam Mining Private Limited* case and file an affidavit along with the notification appointing the Regulator in compliance of this direction. This judgment is an important judgment as it aims at streamlining the environmental governance in India through a single National Regulator.

Environmental laws versus infrastructural development

In *National Highways Authority of India* v. *Government of Tamil Nadu*,[43] the Madras High Court dealt with the validity of objections raised by the Public Works Department (PWD) of Tamil Nadu Government regarding the construction of the project "Chennai Port - Maduravoil Elevated Corridor. It was noted by the court that due to traffic regulations, many of the roads are not allowed for commercial traffic carrying cargo during day time and therefore the vehicles carrying cargo to the port are forced to take circuitous route, resulting in additional time and longer distance travel causing congestion on the roads and wastage of fuel, *etc*. Therefore, the Central Government thought it fit to execute the longest elevated "Chennai Port-Maduravoil Elevated Corridor" involving Rs.1,800 crores with a total length of 19 kms, which was undertaken at the behest of the Government of Tamil Nadu and Chennai Port Trust and so far, more than Rs.500 crores have been invested. The alignment of the project is along River Cooum (4.2 kms) and NH-4 (4.80 kms). The project was divided into two sections for implementation purpose, *viz*., section-I is from Chennai Port to Koyambedu along the banks of River Cooum (Napier Bridge to Koyambedu) at the length of 14.480 kms; and section-II is from Koyambedu to Maduravoil at the centre of NH-4 (Poonamallee High Road) at the length of 4.520 kms contains two entry ramps

43 (2014) 2 MLJ 280.

at Sivananda Salai and college road and two exit ramps at Kamarajar Salai and Spur Tank Road. After considering the facts and rival contentions of the parties, the high court observed:[44]

> From the narration of the facts as well as study of the Project, no one can deny that the Elevated Expressway from Chennai Port to Maduravoil is an imminent necessity and the decision was mooted during 2004-2005. The need for decongestion of traffic and to create alternate connectivity, the Elevated Expressway is required in order to mitigate the traffic congestion and for the movement of containers to the Port. Therefore, a decision to have an Elevated Expressway from Tambaram to Chennai Port and Elevated Expressway from Maduravoil to Chennai Port at the distance of 19 kms was conceived and accepted as a viable project by the Central Government, State Government at the instance of the Chennai Port Trust in consultation with NHAI, which is an expert body. After due deliberations, the Government of Tamilnadu agreed for the construction of the Elevated Expressway from Chennai Port to Maduravoil using the Cooum river bank, by NHAI. The Chief Engineer, PWD also discussed with the Chairman of the Committee on the proposed plan with the consultant on 24.4.2007. The conditions imposed in the Government Order issued in G.O.Ms.No.199 PWD, dated 22.6.2007 are mainly to obtain Coastal Regulation Zone clearance for the project by the Port Trust; the enumeration and rehabilitation of Slum Dwellers at the Cooum river bank has to be carried out as part of the project in consultation with the Tamilnadu Slum Clearance Board for rehabilitation in Government lands or by acquiring private land, if suitable Government lands are not available; a clear width of 8m in between the pillars have to be provided for provision of at-grade road; the project report be vetted through all the departments; and that, the protective measures like retaining wall and slope protection wall of Cooum river in the stretch has to be borne by the NHAI to accommodate the proposed maximum design discharge of 25,000 cusecs.

Further it was also observed by the court that:[45]

> …[T]he main conditions imposed in the said CRZ clearance are that there shall not be any hindrance to free flow of water in Cooum river at any point of time; and the State PWD may be associated

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44 *Id.* at 293.

45 *Id.* at 295.

> for incorporating features such as raising the height of the bund and desilting the river Cooum; and there shall be no disposal of solid and liquid wastes into the water body. In the event of any change in the project profile, a fresh reference shall be made to the Ministry of Environment and Forests and the Ministry reserves its right to revoke the clearance, if the conditions are not followed.
>
> Thus, it is evident that the CRZ clearance was already obtained for the project, wherein it is stated that the project can go along the banks of river Cooum. The apprehension expressed by the PWD that by virtue of putting up of 32 pillars along the Cooum river, there may be obstruction in the free flow of water was clarified by stating that efflux likely to be caused due to the presence of piers of Elevated road will be far less than the efflux caused by 11 bridges already constructed across Cooum river by various state Departments.

In this case, as the CRZ clearance has already been obtained from the Ministry of Environment and Forests; and also in view of the fact that the advantages in completing the mega project outweigh the alleged/possible disadvantage, [46] the court came to the conclusion that 'the demerits/apprehension of the contesting respondents is that there will be possible blockade of rain/ storm water during rainy season, which may cause floods in residential areas. The same can be prevented by taking adequate and serious steps to ensure free flow of waste water to the maximum level of 25000 cusecs and the NHAI and the Concessionaire have already agreed to maintain the same. Hence no inundation is possible'. Consequently the court issued a direction to the Government of Tamil Nadu and all the contesting respondents to extend full co-operation for continuance of the project, which has already been started after getting coastal regulation zone (CRZ) clearance from the Mo EF.[47]

In *Ranjana Jetley* v. *Union of India*,[48] the NGT dealt with the question pertaining to the proposed road widening of sectoral roads involving the cutting of number of trees in front of the National Media Centre. The applicants in the instant case argued that there would be significant air and noise pollution problems due to movement of traffic in the area due to cutting of trees which were acting as a buffer and reducing noise and dust pollution. On the other hand the

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46 The court referred to the Supreme Court's decision in *G. Sundarrajan* v. *Union of India* (2013) 6 SCC 620 & observations in para 240.

47 See also *Alaknanda Hydropower Co. Ltd.* v. *Anuj Joshi* (2014) 1 SCC 769,810. In this judgment,expressing concern over the proliferation of hydroelectric projects and their impact on the Bhagirathi and Alaknanda rivers, the Supreme Court has directed the environment ministry to not to grant any environmental clearances to the hydro-electric projects in Uttarakhand.

48 [2014 (4) FLT 336 (NGT, ND)].

respondents contended that the relevant issues are not covered in the Forest Conservation Act,1986 as forest land is not involved in the cutting of the green belt as also the provisions of the EIA notification, 2006 and the Environmental Protection Act,1986 are not attracted to as no environmental clearance was required. The NGT, after traversing through the documents, affidavits of the parties, and also their contentions, reiterated the importance of sustainable development, and the need of the project in question which would serve the larger public interest by way of ensuring smother flow traffic. Consequently it was held that the in question may be allowed subject to the environmental safeguards like undertaking afforestation work, and providing adequate and effective acoustic barriers in front of the affected structures and other affected human settlements.

Tourism and environment

One of the most significant gifts of nature to mankind in the wide Himalayan range is Rohtang Pass at a height of 13,500 feet above the sea level. The satellite spots of major tourist destination at Manali in the north-western Himalayas are mostly spread in snow (environment) and include Rohtang Pass, Marhi, Kothi, Salang Nala apart from other spots. In *Court on Its Own Motion* v. *State of Himachal Pradesh*,[49] the NGT found that this tourist spot which is termed as the 'Crown Jewel' of Himachal Pradesh has been attracting a large number of tourists. It was also found that the heavy tourism, besides being a boon to the economy of Himachal Pradesh, is also the cause for adverse impacts on ecology and environment of the state. Diverse and devastating impacts are attributable to unregulated and heavy tourism, overcrowding, misuse of natural resources, construction of buildings and infrastructure, littering of waste and other activities associated with tourism. The characteristics of these tourism spots are unique and are very vulnerable *i.e.*, their ecology and environment can be subjected to rapid degradation because of the above activities.

Noting that as per the report of the expert committee constituted by the High Court of Himachal Pradesh, *vide* order dated 12.10.10, nearly 10,000 persons visit this tourist spot and nearly 3600 (75% taxis) go to the Rohtang Pass per day in the months of May and June, every year, which number is continuously increasing. The available amenities and facilities for tourists within the township are becoming insufficient and thus, the carrying capacity of these amenities and facilities have virtually crossed its physical and ecological limits. Over-construction, increased vehicular traffic and associated air pollution and its impact on snow caps owing to unregulated tourism remain the notable impacts. The study suggests that 40% of the glacial retreat could be attributed to black carbon impact and hence black carbon emission reduction can lead to near term impact on warming and thus reduce glacier melting. As per the latest reports available, as a country, India emits 534 kilo tons of black carbon annually with major contributions from domestic usage, burning of crop residues, sugar industry,

49 2014 ALL (I) NGT Reporter (1) (Del) 66.

dung cake burning, vehicles, brick kilns, steel industry and power plants. Dust and black carbon from forest fire also accelerate melting of snow and glaciers in the Himalayas. This is because black colour absorbs all colours of light.

The bench rightly observed that: [50]

> Considerable increase in vehicular traffic in Himachal Pradesh, particularly, in this part, has resulted in blackening/browning of snow cover in mountains, especially emissions of un-burnt hydrocarbon and carbon soot. The air pollution problem has aggravated in the recent years due to tremendous increase in the number of trucks and other vehicles for tourists and local population, being plied on these routes. Another serious impact of increased vehicular traffic in these areas is on the wild animals living along the traffic routes. These include walking or running away from vehicles. Many wild animals including birds show "high response" to vehicles. Increase in number of vehicles coincides with decrease in walking activity and vice versa. The vehicles are interfering with the animal activity and their mobility in particular. In some sections, even survival of the animals is affected. Curiosity on the part of tourists to approach the animals too closely is another additional factor interfering with their other activities such as searching for prey, mating and seeking cover. Vehicular noise may disturb many animals in their routine activities including breeding behaviour, which may affect the sustenance of ecosystem

The area of Gulaba, Kothi and Tunol in Manali was once a dense forest with deodar, kail and chir trees standing tall. This not only provided a forest area but also protected the environment of the zone. Deforestation of the area has caused serious environmental degradation which has further been seriously affected by the vehicular traffic and human interference. The trees in the hilly areas not only provide environmental protection but are also essential for maintaining the capacity to bind the soil in the hills. Thus, indiscriminate deforestation results in landslides and soil erosion as well as causes ecological obstructions in human living.

While reiterating that the citizens of the country have a fundamental right to a wholesome, clean and decent environment, the bench of the NGT observed in this case that, it is indisputable that the glacier of Rohtang Pass is facing serious pollution issues and with the passage of time, is being degraded environmentally, ecologically and aesthetically. The time has come when not only the state government, the authorities concerned but even the citizens must realize their responsibility towards restoring the degraded environment of one of the most beautiful zones of the country as well as preventing further damage.

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50 *Id.* para 6.

Observing that if proper steps in this direction are taken by all the authorities concerned, certainly environmental and ecological damage to this eco-sensitive area can be prevented to a large extent, the NGT issued the following among other directions:[51]

> i) At the entry point to the climb, near Vashishta, there shall be common check posts/barriers to be provided by the authorities concerned to check over-loading of the vehicles.
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> ii) The officials posted at the barriers shall ensure that the vehicles which are permitted and are plying on this route, particularly, public and private transport, trucks and even the other private vehicles, including two wheelers, adhere to the prescribed norms of emission.
>
> (iii) Irrespective of the fact that the vehicles are in possession of PUC, still at the barrier, they shall be subjected to random pollution checks. If any vehicle is not adhering to the prescribed emission norms, it shall not be permitted to ply on that road.
>
> (iv) No over-loaded vehicle would be permitted to ply on that road, as recorded by the weigh-in-motion system
>
> (v) The vehicles which are more than 10 years' old and plying on this route, shall be phased out and should not be permitted to operate or ply on the route to Rohtang Pass from Vashishta; and
>
> (vi) The State Government and all authorities concerned shall take immediate and effective measures for reforestation of the area *etc*.

In *Gulf Goans Hotels Co. Ltd.* v. *Union of India*,[52] the main issue before the supreme court was whether the High Court of Mumbai was justified in upholding the orders passed by the authorities requiring the appellants, the owners of hotels, beach resorts and beach bungalows in Goa to demolish the existing structures on the ground that such constructions are in derogation of the environmental guidelines in force, and to safeguard the environment of the beaches in Goa. Specifically, it is the case of the state that the constructions in question are between 90 to 200 meters from the High Tide Line (HTL) despite the fact that under the guidelines in force, which partake the character of law, constructions within 500 meters of the HTL are prohibited except in rare situations where

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51 *Id.* at 88.

52 [2014 (4) FLT 922 (SC)].

construction activity between 200 to 500 meters from the HTL are permitted subject to observance of strict conditions. Admittedly, all constructions, though completed on different dates and in different phases, were so completed before the Coastal Regulation Zone (CRZ) were enacted (*w.e.f.*19.02.91) in exercise of the powers under the EPA. The appellants contended that at the relevant point of time when building permissions and sanctions were granted in respect of the constructions undertaken, the prohibition was with regard to construction within 90 meters from the HTL. Admittedly, none of the constructions are within the said divide. The court though agreed with the view that environment and ecology deserve highest consideration from the courts, however found that the guidelines of 1983 and 1986 cannot be considered as binding laws and that they are basically in the nature of mere suggestions or opinions expressed in the process of a continuing exploration to identify the correct parameters that would effectuate the purpose *i.e.*, safeguarding and protecting the environment (sea beaches) from human exploitation and degradation. The court ultimately held that if the guidelines relied upon by Union of India in the present case fail to satisfy the essential and vital parameters/requirements of law, the same cannot be enforced to the prejudice of the appellants in the instant case.[53]

In *Jai Mahal Resorts P.Ltd* v. *K.P.Sharma*,[54] the Supreme Court of India dealt with the validity of the public/private partnership in the case of (i) Restoration of Mansagar Lake; (ii) Restoration of Jal Mahal ; and (iii) Development of tourism/ recreational components at the lake precincts in the State of Rajasthan. The court found that while restoration of Mansagar Lake was confined to the development of lake area, restoration of Jal Mahal which lies within the precinct of the lake, development of lake and the adjoining area to the lake fell within the domain of the Government of Rajasthan which related to development of tourism/ recreational components at the lake precincts. The court directed that the lease period for the appellants perpetual in nature, and therefore directed its reduction to 30 years, and held that that the project comprising the lease hold land is not in conflict with the development of lake area or Jal Mahal monument so as to raise issues or concern regarding the lake area or environment degradation as restoration and maintenance of Jal Mahal cannot possibly disturb the monument or lead to environmental degradation.

Noise pollution and pedestrian congestions

In *R.K.Sharma* v. *State of U.P* [55] a division bench of the Allahabad High Court dealt with a PIL raising important issues relating to noise pollution, safety of the pedestrians and traffic congestion at Noida in the State of Uttar Pradesh which an important industrial centre of the state falling within the National Capital Region (NCT). Through this PIL, the petitioners had highlighted that in

53 *Id.* at 933.

54 (2014) 8 SCC 804.

55 [2014 (4) FLT 485 (All.HC-DB)].

the residential sectors of Noida, use of loudspeakers, public address systems, vehicular horns and other sound producing mechanical devices had become a common feature, leading to noise pollution and nuisance which not only disturbed the quality of life of the residents but also would have adverse effect on their health. The court referred to the regulatory framework of noise pollution in India including the Noise Pollution (Regulation and Control) Rules, 2000 framed under the Environmental (Protection) Act, 1986 and in particular to the rule 3 that deals with the ambient air quality in respect of noise for different areas/zones, and their enforcement under rule 4 thereof. While relying on the landmark judgment of the Supreme Court in *Re Noise Pollution*,[56] the high court reemphasized that noise is more than just a nuisance and that it constitutes a real and present danger to people's health; and further that noise can disturb our work, rest, sleep and communication thereby evoking other psychological, and possibly pathological reactions. The high court several directions to the local administration to implement scrupulously the Rules of 2000, and also the directions of the Supreme Court judgment in true letter and spirit. This judgment highlights apathy of the authorities in spite of clear and binding directions from the Supreme Court.

III CONCLUSION

A look at the above judicial responses shows that, for the environment, the Supreme Court has continued its responsibility of a watchdog even during the year 2014. It is ably supported by the NGT and also few high courts that came to the rescue of environmental protection. The noticeable development during the last year has been the increasing focus on the jurisdiction of the NGT in respect of the seven important legislations and allied matters. This appears to have brought down the burden of the Supreme Court to a great extent. Another good development has been in the area of wild life protection which primarily deals with the human-animal conflicts. The National Board for Wildlife (NBWL) which is a statutory board under section 5 of the Wild Life (Protection) Act, 1972 has been rejuvenated by reconstitution of its standing committee in July 2014.This committee appears to be very active as it considered 262 proposals both within and outside protected areas and 29 proposals on policy matters within a short time. The main focus has been to ensure that the projects including dams, roads, power lines and canals *etc.*, would not be held up due to 'frivolous' reasons.

On August 29 the Ministry of Environment, Forests and Climate Change issued an order to set up what it called a high level committee to review various Acts including the Environment (Protection) Act, 1986, Forest (Conservation) Act, 1980, Wildlife (Protection) Act, 1972, the Water (Prevention and Control of Pollution) Act, 1974, and the Air (Prevention and Control of Pollution) Act, 1981. Since these Acts provide the backbone of environmental governance in the country and any changes are likely to have far reaching impact, environmental

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56 (2005) 5 SCC 733.

activists and lawyers have raised an alarm on a few aspects of this order like there is no clarity as to the objectives that the Acts that need to be realigned with; the committee has no subject experts or environment experts; and that the time frame of two months is too short a period for such a mammoth task. The committee submitted its report to the government on November 18, 2014 which identified some of the major concerns in Indian environmental governance, such as the declining quality of the environment; piecemeal legislation and *ad hoc* decision making; 'rent-seeking propensity'of the government; lack of faith in the executive and, consequently, the dominant role played by the judiciary; and the complete failure of monitoring and enforcement mechanisms under the various environmental laws. It also suggested, revamping the environmental clearance process under the EIA Notification 2006 by constituting two new institutions – National Environment Management Authority (NEMA) and State Environment Management Authorities (SEMA) which have been proposed as full time technical organizations with the capacity to process all environmental clearance applications in a time-bound manner. Eventually, these agencies are expected to subsume the Central and state Pollution Control Boards (PCBs). Since the most of EIAs in India are accused of being merely cursory, it is hoped that the Government of India gives effect to the recommendations of the T.S.R.Subramanian committee [57] at the earliest.

57 Ministry of Environment, Forest & Climate Change, Government of India, Report of the High Level Committee on Forest and Environment Related Laws, (Nov. 2014).