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SUPREME COURT JUDGEMENTS

Supreme Court directs governments to take various steps to contain air and water pollution in the National Capital Region (“NCR”)

M. C. Mehta v. Union of India; Order dated 13 January 2020.¹

A bench of the Supreme Court of India (Supreme Court) comprising of Justices Arun Mishra and Deepak Gupta in an order passed directions to prevent air and water pollution. The Supreme Court ordered preparation of the crop residuary management for preventing stubble burning. The State Governments of Delhi, Haryana and Uttar Pradesh were asked to file report on environmental hotspots and steps taken for their management. Also, the State Pollution

Control Boards were directed to ensure compliance of norms and standards by industries for particulate matter / oxides of nitrogen / oxides of sulphur. The State Governments were further ordered to inform the Supreme Court about the measures taken by them to control discharge of sewage and untreated industrial effluents in various rivers and the steps taken for managing construction and demolition waste, by filing a status report regarding the compliance with Construction and Demolition Waste Management Rules, 2016.

Supreme Court allows the construction of Mopa Airport, Goa after revoking its earlier suspension of the Environmental Clearance granted for the airport

Hanuman Laxman Aroskar v Union of India; Order dated 16 January 2020²

The Supreme Court had earlier through its order dated 29 March 2019 suspended the environmental clearance granted for the construction of the Mopa International Airport, Goa as the Expert Appraisal Committee (EAC) failed to perform its role in an effective and judicious manner. It had ordered the EAC to revisit its decision and conduct a proper reassessment of the environmental clearance. Therefore, after the minutes of the latest EAC meeting were taken on record, the Supreme Court allowed the construction of the greenfield airport subject to compliance with various general and specific conditions. Some of these conditions included treatment of sewage and effluents; water conservation; permission for drawing of ground water; regulation of land use around the airport complex;

rain water harvesting; energy conservation and efficiency; noise level monitoring; hazardous waste management; Corporate Environment Responsibility etc., besides the conditions imposed by National Green Tribunal (NGT) and those in the revised assessment of the EAC with respect to statutory compliance; air quality monitoring and preservation; water quality monitoring and preservation; energy conservation and climate change measures; waste management; green belt; public hearing; and human health issues. The Supreme Court also directed that a zero carbon programme be adopted by the concessionaire during the construction and operation of the airport. The Supreme Court also appointed an expert body in the form of National Environmental Engineering Research Institute (NEERI) to ensure that all the directions issued by the Supreme Court are duly complied with.

¹ Interlocutory Application 158128/2019 and 158129/2019 in Writ Petition (Civil) No. 13029/1985.

² Civil Appeal No. 12251/2018

Supreme Court grants permission for felling of trees for the over-bridges subject to compensatory plantation of 1000 plants of indigenous species in Fatehabad, Uttar Pradesh.

M. C. Mehta v. Union of India; Order dated 30 January 2020.³

Upon the recommendation of Central Empowered Committee (CEC), the Supreme Court granted permission for construction of the railway over bridges to ease the traffic congestion in the proposed three railway intersections. For

the same, 103 trees were required to be cut/translocated. The permission was granted subject to the condition that the Social Forestry Division, Agra, would undertake compensatory planting of 1000 plants of indigenous species in 1 hectare of land in Majua Mutavai Tehsil, Fatehabad at the cost of the Uttar Pradesh State Bridge Corporation Ltd.

NATIONAL GREEN TRIBUNAL ORDERS

National Green Tribunal directs Ministry of Environment, Forests and Climate Change to issue notification in two months to ban reverse osmosis technology water purifiers

Friends through its General Secretary v. Ministry of Water Resources; Order Dated 10 January 2020⁴

The NGT has granted Ministry of Environment, Forests and Climate Change (MoEF&CC) two months' time to ban water purifiers using reverse osmosis (RO) systems in places where the total dissolved solvents (TDS) content in

water is less than 500 mg per litre. This is to ensure compliance of NGT's earlier order dated 20 May 2019. The NGT ordered that any step for environmental protection has to be prompt and that the period for circulation of the draft notification or inviting comments need not be as long as four months, as was proposed by the applicants.

National Green Tribunal directs Central Pollution Control Board to finalise emission standards for locomotive engines in India

S.K. Goyal v. Chairperson, CPCB; Order Dated 17 January 2020⁵

The execution application was filed by the applicant with respect to the NGT order dated 4 October 2017, which directed that guidelines containing locomotive standards be put up on the website of the Central Pollution Control Board (CPCB) and expeditious efforts be

made by all the stakeholders including MoEF&CC, CPCB and any other Ministry that may be concerned with the same, to approve the final parameters for locomotive engines after completing the study and thereafter notifying the same. The NGT directed the CPCB to file a compliance report in this regard within a month.

³ Writ Petition (Civil) No. 13381/1984.

⁴ Original Application No. 134/2015.

⁵ Execution Application No.04 /2020 in Original Application No.356/2013.

Central Pollution Control Board to further assess the impact of brick-kilns operation on the loss of top soil and provide relevant data

Utkarsh Panwar v. CPCB⁶ and Dinesh Chahal v. Union of India⁷; Order Dated 30 January 2020.

The NGT had directed CPCB to conduct a study on the impact of brick kilns on loss/degradation of topsoil and assess whether brick kilns can be allowed by using crop residue as a substitute for zig-zag technology. The CPCB had also been asked to assess the carrying capacity of brick kilns with adequate samples in terms of brick kilns and days for which monitoring has been conducted, both in National Capital Region of Delhi (NCR) and non-NCR regions. The CPCB in its report suggested that brick kilns based on zig-zag technology using agro-residues are located only in NCR areas and if these are to be monitored to assess the performance of brick kilns operating on agro-residues, under comparable situations, the zig-zag type brick kilns in NCR regions, which are presently closed, had to be made

operational to facilitate monitoring. The CPCB also requested that at least four months' time be granted to CPCB for monitoring 65 brick kilns in NCR and non-NCR regions and collate relevant data. The CPCB further proposed to seek technical assistance from external experts, for assessing the impact of brick kilns operation on loss of topsoil. Therefore the final decision in this matter is still pending. It may be noted that the question for consideration in the aforesaid matter was the validity of the order issued by the Director, Food, Civil Supplies & Consumer Affairs, Govt. of Haryana, Chandigarh extending time limit for adoption of zig-zag technology for running of the brick-kilns beyond NCR area. The NGT had earlier stayed the operation of such order as it had held that even in non-NCR areas standards of ambient air quality laid down under Section 17(g) of the Air (Prevention and Control of Pollution) Act, 1981 are required to be complied with.

National Green Tribunal allows Delhi Metro Rail Corporation to construct bridge over Yamuna floodplains to ensure environmental safeguards for river

Manoj Misra v. Union of India; Order Dated 05 February 2020⁸

NGT in this order dealt with the issue of remedial measures for control of pollution and other measures for rejuvenation of Yamuna river. The application was filed by the Delhi Metro Rail Corporation (DMRC) in order to seek permission to construct a bridge on the Yamuna flood plains under Phase-IV of the DMRC project. The NGT after going through the report submitted by the principal committee said that 'prima facie' there is no objection to the project.

The NGT however observed that to ensure further environmental safeguards for Yamuna river and its flood plains on account of such activities in future, besides individual evaluation of such projects on environmental yardstick, cumulative impact assessment is required to be carried out. The principal committee has been asked to consider setting up of artificial wetlands, bio-diversity parks and other necessary mitigation measures, including phyto-remediation at the mouth of drains leading to the river, at the cost of project proponents.

⁶ Original Application No. 1016/2019

⁷ Original Application No. 1088/2018

⁸ Miscellaneous Application No. 09/2020 in Original Application No. 06/2012.

National Green Tribunal directs preparation of action plans to achieve 100% utilization of fly ash by thermal power plants

Shantanu Sharma v. Union of India; Order Dated 12 February 2020⁹

NGT considered the impact of non-utilization and improper disposal of fly ash by the Thermal Power Plants (TPPs) on air quality, surface water, ground water, health and environment and directed the TPPs to take prompt steps for scientific disposal of fly ash in accordance with the statutory notification issued by the MoEF&CC under the provisions of Environment Protection Act, 1986 requiring 100%

utilization and disposal of fly ash by 31 December 2017. The Committee comprising of officials from MoEF&CC, CPCB and Indian Institute of Technology Roorkee was to determine the liability of the TPPs for damages as per the 'Polluter Pays' principle. The NGT directed CPCB to compute and levy environmental compensation on the TPPs in violation and that the CPCB guidelines of May 2019 for utilization/disposal of fly ash for reclamation of low-lying areas and in stowing/back filling of abandoned mines/quarries should be complied with.

Environmental compensation recovered with reference to illegal activities in disposal of infected bio-medical waste, discharge of untreated hazardous effluents.

Amrish Gupta, President, Dushit Paryavaran Hatao Samiti v. State of Uttar Pradesh; Order Dated 14 February 2020¹⁰

A joint report was sought by the NGT from the District Magistrate, Barabanki, Central Pollution Control Board and the Uttar Pradesh Pollution Control Board (UPPCB) regarding allegation of irregularities and violation of law in disposal of infected bio-medical waste, discharge of untreated hazardous effluents and air pollution by M/s

Synergy Waste Management Pvt. Ltd., Barabanki, Lucknow, Uttar Pradesh. The tribunal directed UPPCB to find appropriate remedy after the report acknowledged the deficiencies and suggested recovery of environmental compensation for the past damages. The application was disposed of upon the filing of a further report on 10 February 2020 to the effect that remedial action has been taken and environmental compensation recovered from the polluting entity.

National Green Tribunal suggests requirement to furnish guarantees, including personal guarantees by the Directors of the project proponents to strengthen compliance of the environmental norms by housing projects

Aditya Jakhar v. State of Haryana; Order Dated 14 February 2020¹¹

The NGT had asked the Chief Secretary, Haryana to furnish the action taken report within one month regarding the act of disposal of untreated sewage in open by Sare Homes Society at Gurgaon, Haryana, causing health hazard in the

area. After the Haryana State Pollution Control Board (HSPCB) had filed its report on 27 November 2019 to the effect that sewage treatment plant of the project was not working properly and that it was discharging pollutants illegally, prosecution had been initiated against M/s Ramprastha Saare Township, Village Wazirpur Meoka, Gurugram, on

⁹ Original Application No.117/2014.

¹⁰ Original Application No. 609/2019.

¹¹ Original Application No. 688/2019

account of violation of environmental norms. Prosecution had also been recommended against the Directors of the project. The compensation for the same had been assessed as INR 41,62,500 (approx. USD 55,500) at the rate of INR 37,500 (approx. USD 500) per day. The NGT while observing that there have been allegations of non-compliance of environmental norms by the project proponents of group housing projects in the State of Haryana, directed the Chief Secretary, Haryana to urgently review the mechanism with the heads of

HSPCB, Town and Country Planning and State Environment Impact Assessment Authority to enforce the rights of citizens to clean environment. The NGT also suggested the requirement to furnish guarantees, including personal guarantees by the Directors of the project proponents, so that the state machinery is not helpless to remedy the situation after the project is complete and the project proponent has left the project, thus leaving the authorities and the inhabitants without any adequate safeguards.

Central Pollution Control Board submits status report to National Green Tribunal on industrial pollution especially those pertaining to polluted industrial clusters

News Item Published in The Asian Age Authored by Sanjay Kaw Titled "CPCB to Rank Industrial Units on Pollution Levels; Order dated 14 February 2020"¹²

CPCB submitted its consolidated status report on 14 February 2020 in compliance of the National Green Tribunal order dated 14 November 2019. The NGT in its order dated 19 November 2019, had directed CPCB to provide assessment report to state pollution control boards (SPCBs) / pollution control committees (PCCs) for necessary action. In response to the NGT order, the

CPCB collected this data from across the country. As per the data received from 18 SPCBs / PCCs, there were 3,892 non-complying industries / activities out of which 1,536 industries/activities had been issued closure directions. Further 5,302 industries / activities had been reported to be non-complying with environmental standards in the last five years, as a result of which a total environmental compensation of INR 592,85,67,500 (approx. USD 80 million) had been imposed on such industries / activities.

National Green Tribunal imposes restrictions on establishing new wood-based industries / saw mills in Uttar Pradesh in light of the Precautionary Principle

Samvit Foundation v. State of Uttar Pradesh; Order Dated 18 February 2020¹³

The NGT quashed the notice dated 1 March 2019 issued by the State of Uttar Pradesh for establishing new wood based industries/saw mills and all provisional licenses (around 1,350 for new units) given in pursuance thereof since the same was done without correctly determining availability of timber to sustain the same. The NGT

observed that based on data made available by the state of Uttar Pradesh, there would be hardly any industrial wood available for the requirement of the new wood-based industries. 'In these circumstances, if new industries are allowed to open, based on wrong estimation of availability of timber, a situation may arise when there may not be any timber to be allotted to the unit or the industry may resort to illegal means to procure round timber in order to keep its unit afloat. Such a situation

¹² Original Application No. 1038/2018

¹³ Original Application No. 335/2019

may not be allowed to come up in view of 'Precautionary' principle of environmental law. State should therefore make an inventory species wise and district wise and also have species wise consumption data of all the wood

based industries and their capacity to utilize them and not proceed with the present proposal till further exercise of making inventory and assessment of actual availability of timber / raw material is done,' the NGT order said.

REGULATORY AND POLICY CHANGES

Environment (Protection) Rules, 1986 amended to include serial number 57 in Schedule-I providing for effluent standards for tanneries; 24 January 2020

MoEF&CC through its notification dated 24 January 2020 included in Schedule-I of the Environment (Protection) Rules, 1986 standards for discharge of effluents for tannery industry as serial number 57 in the industry category 'tanneries'. The standards provide for the maximum

permissible values for the biological oxygen demand, chemical oxygen demand, total suspended solids, total dissolved solids, sulphides, chromium, hexavalent chromium and oils and grease.

Government of India re-categorizes the on-shore and off-shore oil and gas exploration projects or activities from Category 'A' to Category 'B2'; 16 January 2020

Under the provisions of the Environmental Impact Assessment (EIA) Notification, 2006, the Government has re-categorized the on-shore and off-shore oil and gas exploration projects or activities from Category 'A' to Category 'B2' vide notification number S.O. 236 (E) dated the 16 January 2020. In the original EIA Notification, 2006, "offshore and onshore oil & gas exploration, development and production" has been covered under Schedule 1(b) and being category A projects require preparation of an EIA report, conduct of public hearing and clearance from MoEF&CC. The project proponent will now be only

required to apply to the State Environmental Impact Assessment Authority (SEIAA) and the State Coastal Zone Management Authority for clearances. The State Environmental Assessment Committee (SEAC) shall examine and appraise such projects with respect to environmental impact and proposed mitigation measures and thereafter make appropriate recommendation to the SEIAA. However, development or production, both on offshore /onshore fields as hydrocarbon blocks, will continue to merit assessment as "category A".

UNION BUDGET 2020-2021: SUSTAINABILITY RELATED PROVISIONS

- Allocation of INR 12,300 crore (approx. USD 1600 million) for Swachh Bharat Mission (Clean India Mission) for year 2020-21.
- The government proposes to expand the PM-KUSUM scheme to provide support 2 million farmers for setting up stand-alone solar pumps and support another 1.5 million farmers to solarise their grid-connected pump

sets. Moreover, in order to enable farmers to set up solar power generation capacity on their fallow/barren lands and to sell it to the grid, another scheme would be operationalised.

- In accordance with Blue Economy, the government proposes to put in place a framework for development, management and conservation of marine fishery resources.
- Jal Jeevan Mission will be provided INR 11,500 crore (approx. USD 1500 million) for the year 2020-2021. The scheme shall place emphasis on augmenting local water sources, recharging existing sources and will promote water harvesting and desalination. Cities with over a million population will be encouraged to meet this objective during the current year itself.
- The government has proposed to set up a large solar power capacity alongside the rail tracks, on the land owned by the railways. In order to drive such projects INR 22,000 crore (approx. USD 3000 million) have been allotted to power and renewable energy sector.
- In order to enhance climate change adaptation with a focus on disaster resilient infrastructure, the Prime Minister has launched the Coalition

for Disaster Resilient Infrastructure (CDRI) in September 2019. This global partnership will help in addressing several sustainable development goals (SDGs), as also the aims of Sendai framework.

- Government's action being executed in various sectors by the Departments/Ministries concerned through the normal budgeting process is in line with the commitment made by Prime Minister Narendra Modi in the International Paris Agreement on Climate Change, 2015. The implementation for the same effectively begins on 1 January 2021.
- Government plans to advice utilities running old thermal power plants that are emitting high level of carbon to shut them in case the emission is above the pre-set norms.
- The government has allocated INR 4400 crore (approx. USD 600 million) for the purpose of formulating and implementing plans for ensuring cleaner air in cities having population above one million.
- The budget also provides for comprehensive measures for 100 water-stressed districts in the country.

FURTHER INFORMATION

For feedback and queries please contact our Environment Practice Partner, Mr Nawneet Vibhaw at nawneet.vibhaw@khaitanco.com

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