

Significant interventions of the National Green Tribunal in March 2019

1. Case: *Lt. Col. (Retd.) Sarvadaman Singh Oberoi versus State of Haryana & Ors.* (O.A. No. 407/2017)

Issue: Determination of whether land in question in Haryana is ‘forest’

Date: 05.03.2019

Impact: The Tribunal held that the stand of the Haryana government which is upheld by MoEF & CC that the 52-acre land in question in Faridabad where a residential complex is proposed is ‘non-forest land’ for purposes of Forest (Conservation Act), 1980 is untenable in law. The Tribunal applied the test laid down by landmark rulings of the Supreme Court that for an area to be defined as forest land by the Forest Department, an ordinary dictionary meaning of the word forest is applicable and not whether the area is recorded as forest in the revenue record.

2. Case: *News item published in "The Times of India" Authored by Shri Vishwa Mohan Titled "NCAP with multiple timelines to clean air in 102 cities* (O.A. No. 681/2018)

Issue: Remedial measures to be taken to bring the air quality of 102 cities identified as ‘non-attainment cities’, which do not meet the National Ambient Air Quality Standards

Date: 15.03.2019

Impact: The Tribunal was tasked with taking action against states that have not furnished an action plan to Central Pollution Control Board (CPCB). While 89 of the 102 ‘non-attainment’ cities have submitted an action plan, 46 are approved while the remaining is under review. Significantly, The Tribunal directed that states that fail to submit action plans before 30 April 2019 will be liable to pay environment compensation of Rs. 1 crore each and states failing to remove deficiencies in action plans that are submitted before 30 April 2019, will be liable to pay Rs. 25 lacs each.

3. Case: ***Rajendra Kumar Goel versus Ministry of Environment & Forests & Ors.*** (O.A. No. 378/2016)

Issue: Violation of environmental norms by M/s Ansal Buildwell

Date: 25.03.2019

Impact: The Tribunal was tasked to taking up remedial, preventive and punitive measures against M/s Ansal Buildwells Ltd and its sister concern M/s Aadharsila Towers Private Limited for flouting environmental norms in construction of a 199 acre project in sector 57, Gurgaon. A committee of representatives from Ministry of Environment, Forest and Climate Change (MoEF& CC), State of Haryana, Town and Country Planning Department, Haryana and Municipal Corporation, Gurgaon inspected the site and the report belied the stand of the project proponent that the project did not require requisite environmental clearance.

The Tribunal directed the Haryana Pollution Control Board to take action including prosecution, recovery of damages and compliance of requirement of proper waste management, installation of rainwater harvesting system, ground water recharge system, stopping of illegally operating DJ sets and closing the illegally operating swimming pool in accordance with the applicable statutory scheme. Significantly, the Tribunal directed the real estate promoters to deposit a sum of Rs. 10 crores as interim compensation with the CPCB within one month and an interest of 12% for any delay in depositing the compensation.

4. Case: ***Harinder Dhingra Versus International Recreation & Amusement Ltd.& Ors*** (O.A. No. 458/2017)

Issue: Illegal drawl of ground water.

Date: 25.03.2019

Impact: The Tribunal dealing with the issue of illegal drawal of ground water at Gurgaon particularly by Appu Ghan, an amusement park among others, directed a committee with representatives of MoEF&CC, CPCB, Central Ground Water Authority and District Magistrate, Gurgaon to review the existing policy of permitting supply of water for commercial purposes, when there is scarcity of drinking water and whether the water is being diverted from the river supply for commercial use, without affecting e-flows.

The Tribunal approved the recommendations of the committee which suggested measures including providing treated sewage water for amusement parks and

disconnecting canal water supply, increasing recharge of water. Significantly, the Tribunal fixed timelines for the Haryana state government to implement short term strategies within three months and long term strategies within nine months.

5. Case: *Shailesh Singh Versus Sheela Hospital & Trauma Centre, Shahjhanpur & Ors* (O.A. No. 710/2017)

Issue: Non - compliance of the provisions of Bio-medical Waste Management Rules, 2016 (BMW Rules).

Date: 12.03.2019

Impact: The Tribunal, seized with the issue of ensuring compliance of BMW Rules in Uttar Pradesh had earlier directed that an action plan be submitted with CPCB. As per Rule 13 of the BMW Rules every occupier or operator of common bio-medical waste facility is required to submit its annual report to the prescribed authority. The prescribed authorities are to send information to the CPCB on or before 30th July every year and a report from CPCB is further submitted to MoEF&CC and is then put up in public domain. However, on finding that the state had made very little progress and realising that the lack of proper disposal mechanism of BMW is a national issue, the Tribunal has directed all states to file annual reports as per the statutory framework before 30 April. Significantly, to ensure compliance, the Tribunal directed that states will be liable to pay a compensation of Rs 1 crore a month for delay in filing reports.

6. Case: *Charudatt Koli Versus M/s Sea Lord Containers Ltd. (O.A. No. 40/2014)*

Issue: *Remedial steps to be taken for control of air pollution in the outskirts of Mumbai*

Date: 07.03.2019

Impact: In its previous order, the Tribunal had directed preparation of an integrated action plan to be submitted to CPCB by the public sector refineries. The regulatory body has filed a report with remarks on the action plan which has been approved by the Tribunal. Significantly, the Tribunal directed that the refineries pay an interim compensation to the petitioners who have suffered health consequences over and above their medical bills.

7. Case: ***Sandeep Mittal Versus Ministry of Environment, Forests & Climate Change & Ors.*** (O.A. No. 837/2018)

Issue: Monitoring mechanism for compliance of conditions of environment clearance evolved by MoEF&CC.

Date: 14.03.2019

Impact: On 10 January 2019, the Tribunal had directed the MoEF &CC to furnish data and strengthen the mechanism to periodically monitor the compliance of environmental clearance conditions. However, the data furnished is wholly inadequate to evaluate the effectiveness of functioning of mechanism and merely mentions figures of the projects monitored, without mentioning the extent of defaults found and further action taken. Taking note of the omission, the Tribunal directed the official who has furnished the data to remain present in person with the entire relevant data.

8. Case: ***Sandplast (India) Ltd. & Anr. Versus Ministry of Environment and Forest & Ors.*** (O.A. No. 102/2014)

Issue: improper disposal of the fly ash by the Thermal Power Plants

Date: 12.03.2019

Impact: As per the Tribunal's decision on 20 November 2018, thermal power plants were to pay damages for non-compliance of requirement of fly ash management as per the 2017 MoEF &CC notification of 100% utilization of fly ash. On a plea by the applicants, the Supreme Court suspended the direction on damages and permitted an opportunity to the applicants to indicate the steps taken for compliance of the Notification to this Tribunal. The Tribunal directed that the MoEF & CC committee that determined the damages shall also consider the views of the applicants and submit a report by 31 May 2019.

9. Case: ***M.C. Mehta Versus Union of India & Ors.*** (O.A. No. 200/2014)

Issue: Implementation of orders issued to remedy pollution of River Ganga

Date: 11.03.2019

Impact: The Tribunal while dealing with the execution of its 2015 orders on cleaning of River Ganga looked into reports of the supervisory committee appointed by the Tribunal on Segment A and B of Phase 1 of the river. Finding incomplete action plans, the Tribunal warned that the National Mission for Clean Ganga and the states of Uttar Pradesh, Bihar, Jharkhand and West Bengal will have to pay compensation for not responding and failing to formulate the action plans for Phase II and III within a week.

10. Case: ***Himmat Singh Shekhawat Versus State of Rajasthan & Ors.***
(O.A. No. 671/2017)

Issue: Illegal sand mining- particularly where mining leases were granted prior to obtaining environmental clearance.

Date: 15.03.2019

Impact: As per the Tribunal's 2015 decision declaring the notifications granting mining leases without a valid environmental clearance invalid, states were required to submit a progress report. States lack clear regulations for compounding of vehicles engaged in illegal sand mining despite the Tribunal's decision in *Threat to life arising out of coal mining in south Garo Hills district Vs. State of Meghalaya & Ors* where it held that the compounding fee of the seized vehicle should not be less than 50% of the showroom price of the vehicle. While holding that the report filed by Himachal Pradesh expressing inability to conform to norms due to shortage of staff is unsatisfactory, the Tribunal noted that Karnataka, Rajasthan and Madhya Pradesh had also failed to file the reports.

11. Case: ***Doaba Paryavaran Samiti Versus State of U.P. & Ors*** (O.A. No. 231/2014)

Issue: remedial measures for the industrial or other pollution in Kali Nadi, Krishna and Hindon Rivers

Date: 15.03.2019

Impact: The Tribunal seized with pollution of rivers Kali, Krishna and Hindon which has resulted in diseases and deaths of inhabitants of the area, had appointed a supervisory committee to effectively monitor the progress. So far, prosecution has been initiated against 118 non-complying industries in Muzaffarnagar, Shamli, Meerut, Baghpat, Ghaziabad and Gautam Budh Nagar in Uttar Pradesh. Based on the recommendations, the Tribunal has directed UP to prepare an action plan to ensure water quality of river Hindon at least meets the water quality criteria for bathing and furnish a performance guarantee of Rs. 5 crores. Significantly, the Tribunal directed that failure to implement the action plan within six months will result in forfeiture of the guarantee.

12.Case: ***Hardeep Singh & Ors. Versus SDMC & Ors.*** (O.A. No. 519/2016)

Issue: control of noise pollution in accordance with the Noise Pollution (Regulation and Control) Rules, 2000

Date: 14.03.2019

Impact: The Tribunal had earlier directed the presence of the Deputy Commissioner of Police nominated by the Commissioner of Police, Delhi to deal with noise pollution and the District Magistrate and apprise of the action taken. The task of creating an interactive website to monitor noise pollution and identifying hotspots was highlighted. However, on finding that the action taken was found wholly unsatisfactory, the Tribunal came down heavily on the officials and directions have been issued to the Chief Secretary and the Commissioner of Police to monitor the progress and submit a fresh action taken report.

13.Case: ***Central Pollution Control Board versus State of Andaman & Nicobar & Ors.*** (O.A. No. 247/2017)

Issue: implementation of Plastic Waste Management Rules, 2016 (PWM Rules, 2016).

Date: 12.03.2019

Impact: Despite 22 states banning the use of plastic carry bags following guidelines issued by CPCB in 2016, the regulator moved the Tribunal with a grievance that there is lack of implementation. The Tribunal directed that as per Rule 13 of the PWM Rules, 2016 states and union territories are required to furnish a report to CPCB within one month and stated that failing to do so would invite a fine of Rs 1 crore per month thereafter.

14.Case: ***Saloni Ailawadi versus Union of India & Ors.*** (O.A. No. 509/2015)

Issue: Action against Volkswagen India Private Limited for employing 'deceit devices'

Date: 07.03.2019

Impact: The expert committee constituted by the Tribunal recommended a conservative sum of damages against Volkswagen India to the tune of Rs 100 crores due to lack of methodologies for calculating the overall impacts of NOx on the environment and the health. However, the Tribunal enhanced the fine to Rs 500 crores since apart from actual damage by a conservative estimate,

deterrent element has to be considered, especially in view of international unethical practice by the auto manufacturer.

15. Case: *News item published in "The Times of India" Authored by Vijay Pinjarkar Titled "String of new road projects in Maha to cut off tiger corridors"* (O.A. No. 1030/2018)

Issue: Obstruction of tiger corridors by new road projects in the State of Maharashtra.

Date: 26.03.2019

Impact: In December 2018 the Tribunal had sought an expert report from the joint Committee comprising representatives of Ministry of Road Transport and Highways, Government of India, National Highways Authority of India, Public Works Department, State of Maharashtra, State Forest Department and Director of Project Tiger, MoEF&CC. However, a report has been submitted by the Principal Chief Conservator Forest (Wildlife), Maharashtra on 28 February 2019 which only states that mitigation measures are required for roads but there is nothing to show whether such measures have been identified, incorporated in the plan and adopted. Taking a serious note of the omission, the Tribunal directed the Maharashtra government to furnish an action taken report before 30 May 2019.

16. Case: *Westend Green Farms Society Versus Union of India & Ors.* (O.A. No. 400/2017)

Issue: Enforcement of environmental norms by hotels and banquets operating near Indira Gandhi International Airport, Delhi and also by similar establishments elsewhere.

Date: 08.03.2019

Impact: The area in question is littered with popular venues for social gatherings that are organised in flagrant violation of statutory norms of environment. The Tribunal had directed preparation of an action plan and appointed an oversight committee to look into the issue. Delhi Government has been directed to furnish a performance guarantee of Rs. 5 crores within one month to ensure compliance and file an action taken report. Significantly, the Tribunal directed that the compliance will be cross checked by the oversight committee and if deficiencies are found the performance guarantee can be forfeited.