

Supreme Court issues comprehensive guidelines for the functioning of environmental authorities

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1 Introduction

A three-judge bench of the Supreme Court of India has, in the case of *In Re: TN Godavarman Thirumulpad v Union of India and Ors.*,¹ (TN Godavarman) issued directions for the effective operation of the Central Empowered Committee (CEC) constituted recently through a notification of the Ministry of Environment, Forest and Climate Change (MoEFCC) on 5 September 2023. These directions were issued in proceedings wherein the Supreme Court was considering the validity and mandate of the CEC. Additionally, in furtherance of the principles of the environmental rule of law, the Supreme Court has also issued a set of guidelines for institutionalisation of all authorities, bodies, regulators and executive officers entrusted with environmental duties.

2 Background

The proceedings in TN Godavarman originate from a Public Interest Litigation (PIL) instituted in 1995 to protect forest lands in the Nilgiris in Tamil Nadu. Subsequently, the scope of the petition was enlarged to protect natural resources throughout the country. To that end, several bodies were constituted periodically by the Supreme Court to oversee and monitor compliance with its orders in the TN Godavarman case. Pertinently, by its order dated 9 May 2002 in TN Godavarman,² the Supreme Court had constituted the CEC for the first time to monitor the implementation of its orders and to present cases of non-compliance, including with respect to encroachment removals, implementation of working plans, compensatory afforestation, plantations, and other conservation-related issues. In this order, it was further directed that the CEC must be constituted to function until such time that the central government constitutes a statutory body in terms of Section 3 of the Environment (Protection) Act, 1986 (EPA). Therefore, in furtherance of subsequent Supreme Court orders dealing with the CEC's composition and functioning, the central government constituted the CEC under Section 3 (3) of the EPA by way of a notification on 17 September 2002. The composition and functioning of the CEC so constituted was subjected to several orders of the Supreme Court in the TN Godavarman case.

The issue of reconstitution and restructuring of the CEC surfaced in the year 2023, while the Supreme Court was dealing with an interim application³ in TN Godavarman seeking permission for the construction of a

While elaborating on the role of constitutional courts in upholding the environmental rule of law, the Supreme Court of India has, in a recent judgment, issued a fresh set of guidelines to be followed by all authorities, bodies, regulators and executive officers statutorily entrusted with monitoring, regulating, and overseeing the implementation of environmental laws in the country. This update discusses the guidelines issued by the Supreme Court and analyses their impact on the implementation of environmental laws in the country.

¹ W.P. (C) No. 202 of 1995

² T.N. Godavarman Thirumulpad v Union of India, (2013) 8 SCC 198

³ I.A. No. 174896 of 2019 in T.N. Godavarman Thirumulpad v Union of India - W.P. (C) 202 of 1995

convention centre at Patnitop hill station. While allowing this application, the Supreme Court had granted this permission subject to clearance from relevant statutory authorities. In this regard, the CEC submitted its report before the Supreme Court.⁴ While considering the report of the CEC in its order dated 24 March 2023,⁵ the Supreme Court acknowledged the need for reconstitution and restructuring of the CEC from an *ad hoc* body to a permanent body, for its effective functioning. In furtherance of this objective, a draft notification was placed before the Supreme Court, which the Supreme Court conditionally approved in its order on 18 August 2023.⁶

Accordingly, the MoEFCC constituted the CEC as a permanent statutory body under Section 3 (3) of the EPA, in the form and manner as is known to us today, by way of a notification on 5 September 2023. The CEC is tasked with monitoring and ensuring compliance with the Supreme Court's orders covering the subject matter of environment and related issues and with making recommendations to the state governments and the central government for the effective implementation of environmental laws in the country. This notification describes the composition, tenure, and functions of the CEC, in detail.

The Supreme Court has, in subsequent hearings considered the structure and functioning of the CEC along with suggestions for its effective functioning. In the backdrop of these developments, the Supreme Court has passed the present judgment, issuing directions for the institutionalisation of the CEC.

3 Judgment of the Supreme Court

The Supreme Court has divided its judgment into two parts, with the first part dealing with the CEC and its functioning, and the second, with guidelines for all authorities, bodies, regulators and executive officers established for protecting and regulating the environment and ecology, in furtherance of the environmental rule of law.

- a. The Supreme Court has directed the CEC to formulate guidelines for the following purposes to promote institutional transparency, efficiency, and accountability:
 - i. Guidelines of conduct and standard operating procedures, which will help in defining the roles of its members and ensure smooth internal conduct.
 - ii. Guidelines dealing with the discharge of its public functions to ensure greater awareness among the public, such as advance notice of public meetings, etc.
 - iii. Guidelines dealing with site visits and public hearings therein, including the time limits for such visits, preparation of site visit reports, etc.

The aforesaid guidelines must be made easily accessible to the public and shall be posted on the website of the CEC.

- b. Expanding on the true purport of environmental rule of law in Indian environmental governance, the Supreme Court deliberated upon the level of efficiency of the environmental bodies and observed as follows:

While numerous laws exist in the country for protection of the environment, they fall short of achieving their objective due to the gaps in enforcement and implementation. Accountability of such authorities,

⁴ CEC Report No. 11 of 2023 in T.N. Godavarman Thirumulpad v Union of India, W.P. (C) No. 202/1995

⁵ I.A. Nos. 196062 and 174896 of 2019 in T.N. Godavarman Thirumulpad v Union of India, W.P. (C) No. 202/1995

⁶ I.A. Nos. 196062 and 174896 of 2019 in T.N. Godavarman Thirumulpad v Union of India, W.P. (C) No. 202/1995

bodies, regulators and executive officers is an important feature of the environmental rule of law. The Supreme Court further observed that the existing institutional governance of environment in India has paved the way for the constitution of several bodies to monitor the enforcement and implementation of environmental laws. To that end, the Supreme Court has, in its judgment, listed all the bodies entrusted with such functions and has observed that constitutional courts must monitor their proper institutionalisation.

In furtherance of the environmental rule of law, all such bodies have been directed to adhere to the following guidelines to ensure their institutionalisation:

- i. The composition of the authorities, including the qualifications, tenure, and method of appointment must be laid down. Appointments must be made regularly to ensure the onboarding of relevant expertise and talent for efficient functioning.
- ii. The authorities must receive adequate funding and their finances must be made certain and their use made clear.
- iii. Mandates and roles of all authorities must be demarcated to avoid duplication and overlap and promote constructive coordination.
- iv. Rules, regulations (where such agency/body is permitted to frame these), and guidelines published by these authorities must be easily accessible to the public. Additionally, the authorities must lay down the procedure for application, consideration, and grant of permissions, consent, and approvals, where applicable.
- v. The authorities and bodies must notify norms for public hearings, the process of decision-making, and the right to appeal with timelines.
- vi. Duties and responsibilities of the officers must be allocated transparently to promote accountability.
- vii. Finally, all such authorities must be made subject to regular and systematic audits.

4 Observations

The process of navigating through the environmental law regime in India is no less than navigating a maze, for businesses in our country. There are multiple authorities, sometimes with overlapping functions, which are often under-staffed or not constituted despite a clear mandate in the governing law, for instance, the appellate bodies under the Water (Prevention and Control of Pollution) Act, 1974 or the committees under the River Ganga (Rejuvenation, Protection and Management) Authorities Order, 2016. Pertinently, the recent introduction of '*adjudicating officers*' under the EPA, Air (Pollution and Control of Prevention) Act, 1981, and the Public Liability Insurance Act, 1991 will also be subject to interesting developments, in view of this judgment.

An administrative overhaul of the environmental authorities, bodies, regulators and executive officers in our country was long overdue. With this judgment of the Supreme Court, it is hoped that the required reforms will be streamlined and expedited.

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