

Environment Law Monthly Updates - February 2024

1 March 2024

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1 Judgments

1.1 Supreme Court of India

- a. Dictionary meaning of '*forest*' to be followed till identification of forest lands is completed as per the relevant rules

On 19 February 2024, the Supreme Court, by way of an interim order in *Ashok Kumar Sharma, Indian Forest Service (Retd.) v Union of India*¹, directed all the States and Union Territories to follow the dictionary meaning of '*forest*', as identified in its earlier judgment in *T.N. Godavarman Thirumulpad v Union of India*² (T.N. Godavarman).

This interim order was passed in a petition contending that (a) the definition of '*forest*' as per amendments made to the Forest (Conservation) Act, 1980 (2023 Amendments) is much narrower, wherein only land either notified as a forest or specifically recorded as a forest in a government record, qualifies as a '*forest*'; and (b) Rule 16 of the Van (Sanrakshan Evam Samvardhan) Rules, 2023 requires preparation of a consolidated record of forest lands, and since this process has not yet been completed, applying the amended definition may lead to the diversion of forest land to non-forest use in the meantime.

Through this interim order, the Supreme Court has restored its earlier order in T.N. Godavarman, the scope of which was sought to be narrowed down by the 2023 Amendments. This is an interim measure until the exercise of consolidating records is completed.

- b. Supreme Court observes that the National Green Tribunal must ensure procedural integrity in its actions

In a judgment dated 30 January 2024, in *Veena Gupta and Anr. v Central Pollution Control Board and Ors.*,³ the Supreme Court has set aside the orders of the National Green Tribunal (NGT) whereby the NGT had passed *ex-parte* directions holding the appellants guilty and subjected them to compensation.

The Supreme Court, while remanding the issue back to the NGT, observed that the NGT is recurrently engaging in unilateral decision-making. It further noted that the practice of passing *ex-parte* orders imposing compensation running into crores has not succeeded in environmental safeguarding and has proved counterproductive.

This serves as a timely reminder to the NGT to give due regard to the principles of natural justice.

1.2 National Green Tribunal

- a. Environmental compensation of INR 45 crore imposed on National Highways Authority of India for violating environmental laws in the construction of a six-lane highway in Haryana

By way of its judgment dated 13 February 2024 in *Prem Mohan Gaur v National Highways Authority of India & Others*,⁴ the Principal Bench of NGT has observed glaring violations of environmental laws in Haryana by the National Highways Authority of India (NHAI).

After holding the NHAI liable for environmental violations on several counts, the NGT discussed the method to be adopted for assessing environmental compensation. It observed that the methodology is not

¹ [W.P.\(C\) No. 001164 of 2023](#)

² (1997) 2 SCC 267

³ [Civil Appeal No. 1865-1866 of 2022](#)

⁴ [OA No. 892 of 2022](#)

provided in any statute, however, certain guidelines have been published by the Central Pollution Control Board. While these guidelines attempt to comprehensively account for environmental damage, they fall short of accommodating the loss to all the components of the environment and therefore, have not been given the force of a binding statutory provision. Thus, NGT referred to the judgment of the Supreme Court in *Goel Ganga Developers v Union of India and Others*,⁵ wherein it was observed that environmental compensation may be up to 10% of the project cost, and normally, on an average, 5% should be imposed. Relying on this judgment, the NGT imposed environmental compensation of INR 45 crore (5% of the project cost) on NHAI. Pertinently, in light of overwhelming public interest, the NGT did not order the destruction of the highway.

This judgment reflects that there is a lack of uniformity in guidelines for the calculation and imposition of environmental compensation, which can be expected to be standardised in the near future.

2 Legislative updates

2.1 Decriminalisation of certain violations under the Water (Prevention and Control of Pollution) Act, 1974

On 15 February 2024, the Ministry of Law and Justice issued the Water (Prevention and Control of Pollution) Amendment Act, 2024⁶ (Water Amendment Act) to further amend the Water (Prevention and Control of Pollution) Act, 1974 (**Water Act**), applicable to Himachal Pradesh and Rajasthan and all the Union territories. It will also apply to such other states that adopt the Water Act by a resolution under Article 252 of the Constitution of India.

The Water Amendment Act decriminalises several violations and replaces imprisonment with increased penalties in line with the notification of the Jan Vishwas Amendment Act, 2023, which decriminalised, amongst others, the Water Act, Indian Forest Act, 1927, Air (Prevention and Control of Pollution) Act, 1981, and Environment (Protection) Act, 1986. Through the Water Amendment Act, all the offences that amount to a violation of the provisions of the Water Act have now been decriminalised. However, the acts of unauthorised operation i.e., operating without valid consent as well as failure to pay penalties imposed for violation under the Water Act will continue to be punishable with imprisonment and fine.

2.2 Amendments to the method for calculation of the average sale price of certain minerals

On 20 February 2024, the Ministry of Mines issued the Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession (Second Amendment) Rules, 2024,⁷ to further amend the Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2016. By way of this amendment, Rule 45, which provides the formula for calculating the average sale price for metallurgical grade Bauxite to be used in alumina and aluminium extraction, Limestone, and Tungsten has been amended. The scope of this rule has been expanded to also apply to the calculation of average sale price of Cadmium, Indium, Rhenium, Selenium, Tellurium and Titanium, Beryllium, and Vanadium Pentoxide.

Further, Rule 45 (3), which provides the procedure to be followed by the Indian Bureau of Mines for publishing the average sale price of Tungsten concentrate has been amended to state that the average sale price is to be

⁵ (2018) 18 SCC 257

⁶ Available at: [https://moef.gov.in/wp-content/uploads/2024/02/The-Water-\(Prevention-and-Control-of-Pollution\)-Amendment-Act-2024.pdf](https://moef.gov.in/wp-content/uploads/2024/02/The-Water-(Prevention-and-Control-of-Pollution)-Amendment-Act-2024.pdf)

⁷ Available at: [Amendments to the method for calculation of the average sale price of certain minerals](#)

published on the basis of prices published by the United States Geological Survey or other reputed publications. The said price is then multiplied by (a) the average reference rate of the Reserve Bank of India for the calendar year and (b) the conversion factor of 1.54. This significantly deviates from the earlier practice where the conversion factor was not included in the formula.

3 Other relevant developments

3.1 The Ministry of New and Renewable Energy issues scheme guidelines for the implementation of pilot projects for the use of green hydrogen in the steel sector

On 2 February 2024, the Ministry of New and Renewable Energy (Hydrogen Division) (MNRE) issued '*Scheme Guidelines for implementation of Pilot projects for use of Green Hydrogen in the Steel Sector under the National Green Hydrogen Mission*'¹⁸ (Scheme). The Scheme has been introduced to leverage the existing resources and available infrastructure for transport, storage, and use of Green Hydrogen and its derivatives in the iron and steel sector as part of the National Green Hydrogen Mission.

Under the scheme, MNRE will implement pilot projects in the steel sector, for replacing fossil fuels and fossil fuel-based feedstock with Green Hydrogen and its derivatives. The Ministry of Steel will develop a competitive framework for the selection of pilot projects. These pilot projects will be implemented through the Ministry of Steel and Scheme Implementing Agency (SIA).

The Scheme aims to support projects with an intention to develop Pilot Scale/Demonstration Plants for replication of the technology. The SIAs will issue a call for proposals for the projects under the Scheme. The Scheme would primarily fund capital equipment required for the use of Green Hydrogen in the iron and steel manufacturing process. Financial support for projects will be evaluated and granted taking into consideration the specific needs, merits, and feasibility of each project.

3.2 Draft Green Hydrogen Policy for the State of Haryana

On 15 February 2024, the Government of Haryana published the Draft Haryana Green Hydrogen Policy, 2024⁹ (Draft Policy), inviting comments from the public/stakeholders. The Draft Policy has been prepared with the objective of accelerating the development and adoption of Green Hydrogen and its derivatives as alternative fuel and feedstock sources in line with the National Green Hydrogen Mission.

This Draft Policy, once finalised, will come into effect from the date of its notification in the official Gazette and remain in force till 31 March 2030, or until a new policy is announced by the Government of Haryana. The benefits of this policy shall be applicable for Green Hydrogen and its derivative projects within the State that are procuring Renewable Energy (RE) from certain sources specified in the Draft Policy.

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⁸ Available at: <https://static.pib.gov.in/WriteReadData/specificdocs/documents/2024/feb/doc202422305501.pdf>

⁹ Available at: <https://cdnbbsr.s3waas.gov.in/s3f80ff32e08a25270b5f252ce39522f72/uploads/2024/02/20240215954959595.pdf>