

# Environment Law Monthly Updates - May 2024

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## 1 Judgments

### 1.1 Supreme Court

#### a. Supreme Court bans construction and development activities at Uttarakhand's Jilling Estate

The Supreme Court has put a stop to construction activities in Uttarakhand's Jilling Estate, located near Nainital. This order, issued on 17 May 2024, follows a long legal battle over the area's development.<sup>1</sup>

In 2020, the Supreme Court disposed of the appeal challenging the construction and directed that a demarcation exercise should be conducted to determine if the land qualified as a 'Deemed Forest'.<sup>2</sup> A Public Interest Litigation (PIL) was then filed in the Uttarakhand High Court challenging the construction.<sup>3</sup>

In November 2022, the High Court stayed construction due to the unresolved 'Deemed Forest' question, observing that the order of the Supreme Court had not been complied with. However, in April 2024, the High Court, disposing of the PIL, conditionally allowed construction in certain notified areas of the estate after noting that necessary clearances had been given through a single-window mode.

This final order of the High Court was challenged in the present round of litigation before the Supreme Court. It was contended that the requirement of prior environmental clearances cannot be bypassed through a 'single window clearance' system. The Supreme Court, concerned about potential irreversible environmental damage if construction proceeded, restored the High Court's 2022 order, effectively banning construction in the Jilling Estate.

#### b. Supreme Court rebukes NGT for dismissing environmental concerns regarding construction of Silchar airport

The Supreme Court set aside an order of the National Green Tribunal (NGT), Eastern Zone Bench, for failing to fulfil its adjudicatory duties. It observed that NGT did not properly examine the grievance set out in the Original Application (OA) and dismissed it without a thorough assessment.<sup>4</sup>

The appeals concerned a plan by the Ministry of Civil Aviation to build a commercial airport at Silchar in Assam, on existing tea estates. While the process for obtaining relevant approvals was underway, an OA was filed raising concerns about the illegal clearing of bushes and trees before environmental clearance was obtained.<sup>5</sup> However, the NGT dismissed the OA stating that it was premature as the Environment Impact Assessment Report was still pending.

The Supreme Court expressed concern that the NGT's order sets a bad precedent. The NGT's order could erode public trust in the efficacy of environmental governance mechanisms. The Court emphasised that development projects must be undertaken harmoniously with environmental laws to prevent irreparable damage to ecosystems and biodiversity.

The Supreme Court clarified that building an airport requires prior environment clearance, as mandated by the Environment Impact Assessment Notification, 2006. Therefore, if an application for grant of

<sup>1</sup> *Birendra Singh v Union of India and Ors.*, SLP (C) No. 10952 of 2024

<sup>2</sup> Order dated 11 February 2020 in Civil Appeal No. 8560 of 2018

<sup>3</sup> *Birendra Singh v Union of India and Ors.* before the High Court of Uttarakhand, WP (PIL) No. 44 of 2020

<sup>4</sup> *Tapas Guha and Ors v Union of India and Ors.*, C.A. Nos. 4603-4604 of 2024

<sup>5</sup> *Tapas Guha v Union of India and Ors. (Eastern Zone)* O.A. No. 15 of 2024

environment clearance has been filed or is filed after the judgment, it must be considered according to the state of the land before the illegal clearing of tea bushes and trees.

**c. Supreme Court halts PMLA action against company for environmental violations**

On 10 May 2024, the Supreme Court stayed an order of the NGT directing action against a company under the Prevention of Money Laundering Act, 2002 (PMLA) for environmental violations.<sup>6</sup>

The case began with a fine imposed by the Uttar Pradesh Pollution Control Board (UPPCB) of nearly Rs. 46.6 crore for illegal chromium dumping. The company challenged this before the NGT. In January 2023, the NGT noted that environmental offences fall under the PMLA. This makes the revenue of the company proceeds of crimes and liable for action under the PMLA. The NGT directed the company to pay an environmental compensation of nearly Rs. 25.4 crore, failing which the company would be subjected to recovery proceedings.<sup>7</sup>

The Supreme Court stayed the initiation of proceedings under the PMLA as well as the payment of environment compensation of nearly Rs. 25.4 crore. It observed that the NGT lacks jurisdiction to pass any direction for initiation of proceedings under the PMLA.

In recent years, the NGT has invoked PMLA in several instances, which have all been subject to challenge before the Supreme Court. However, this is the first instance where the Supreme Court has made a *prima facie* observation on the jurisdiction of the NGT in favour of companies.

## 1.2 High Courts

**a. Kerala High Court directs protection of roadside trees from removal for the benefit of commercial buildings**

On 22 May 2024, Kerala High Court issued a decision in a writ petition concerning the removal of roadside trees. The case stemmed from the rejection of a request by the public works department to cut down trees planted by the forest department. While deciding the petition, the High Court directed the Chief Secretary of the State to ensure no roadside trees are removed merely for obstructing commercial activities or casting shadows on adjacent buildings.<sup>8</sup>

The petitioners argued that the trees posed a hazard to their building, However, the High Court saw through this reasoning, recognising the true intent was to improve the building's visibility from the road. It emphasised that tree removal for the sake of buildings or commerce is only permissible if the trees pose a danger to human life.

**b. Delhi High Court orders halt to tree felling in the Central Ridge, without the permission of the Court**

In August 2023, an undertaking was given by the Deputy Conservator of Forests (DCF) (West Division) before the Delhi High Court in a contempt case dealing with illegal construction and clearing of trees<sup>9</sup> that there will be adequate monitoring and staffing to prevent waste dumping as well as no further felling of trees will take place without intimation to the Court. Despite this, large-scale felling of trees and clearing of forest land continued in the Central Ridge.

<sup>6</sup> *Waris Chemicals Pvt. Ltd. v Uttar Pradesh Pollution Control Board*, C.A. (Diary) No. 15982 of 2023

<sup>7</sup> Appeal No. 18 of 2020, National Green Tribunal, Principal Bench

<sup>8</sup> *Musthafa and Ors. v. State of Kerala*, W.P. (C) No. 9108 of 2017

<sup>9</sup> Order dated 28 August 2023 in *Anjali College of Pharmacy and Science through its founder-cum-chairman Devendra Gupta v Dr Montu M Patel President Pharmacy Council of India & Anr.*, CONT.CAS(C) 934/2023

Considering the grave lapses in environmental protection, on 27 May 2024, the Court directed the forest department to explain how these activities were allowed to happen. The Court also issued a strict directive that no further felling of trees or removal of shrubs and other bushes can occur in the Central Ridge, without the permission of the Court.<sup>10</sup>

Recognising the Central Ridge's ecological importance, the Court mandated the forest department and local authorities to:

- i. Prevent any future dumping of garbage or waste materials.
- ii. Remove all existing garbage and waste materials from the Central Ridge.

### 1.3 National Green Tribunal

#### a. National Green Tribunal observes that environmental violations justify imposing no-fault liability

The NGT fined a petroleum corporation with INR 5 crore after inquiring into an oil spillage on the Nagapattinam beach on its own accord.<sup>11</sup> The NGT also called for several investigation reports by relevant authorities. While the investigation showed no visible damage to the seawater from the spillage of about 1000 litres of crude oil, NGT applied the no-fault liability principle to hold the petroleum corporation accountable.

Importantly, the NGT noted that environmental law is shifting from fault-based to no-fault liability which upholds the duty of care on entities in control of hazardous materials, even without proven negligence, and also ensures that the compensation matches the actual damages.

## 2 Other relevant developments

### 2.1 Securities and Exchange Board of India issues master circular for ESG Rating Providers, simplifying compliance and disclosures

ESG Rating Providers (ERP) are regulated by the Securities and Exchange Board of India (Credit Rating Agencies) Regulations, 1999 (CRA Regulations) that provide for the registration of ERPs, general obligations of ERPs, manner of inspection and code of conduct applicable to ERPs, etc.

On 16 May 2024, SEBI released a master circular for ESG Rating Providers to consolidate all procedural and disclosure requirements specific to ERPs under the CRA Regulations, offering a more user-friendly and centralised resource for the industry and other stakeholders.<sup>12</sup>

Given the vast amount of information and the varied standards for disclosure, this is a welcome move aimed at simplifying corporate disclosures.

<sup>10</sup> *Anjali College of Pharmacy and Science through its founder-cum-chairman, Devendra Gupta v Dr Montu M Patel President Pharmacy Council of India & Anr.*, CONT. CAS(C) 934 of 2023

<sup>11</sup> *In re: News item published in Newspaper The Times of India dated 07.03.2023 titled "Oil leaked in Tamil Nadu's Nagai spreading along coast, say experts"* in O.A. No. 02 of 2024 (SZ)

<sup>12</sup> *Master Circular for ESG Rating Providers*

## **2.2 Timeline for registration and filing of annual returns under Plastic Waste Management Rules, 2016 extended till 30 May 2024**

The online centralised portal of the Central Pollution Control Board (CPCB) under Plastic Waste Management Rules, 2016 (**Plastic Rules**) was not functional between March 2024 to April 2024. Therefore, the CPCB, through two circulars, extended the timeline until 30 May 2024 for:

- a. obtaining applicable registration under Plastic Rules,<sup>13</sup> and
- b. filling of annual returns for the financial year 2022-2023,<sup>14</sup> respectively.

The circular on registration clarifies that the delay in registration will not absolve the entities of their Extended Producer Responsibility (EPR) obligations for the intervening period. Further, non-compliance with EPR obligations will result in the levy of environmental compensation. The circular extending the timeline for filing of annual returns lays down the amount of environmental compensation that will be levied for delay in filing of such returns.

## **2.3 Imports under the E-Waste Management Rules, 2022 to be allowed with an undertaking till 30 June 2024**

The online centralised portal of the CPCB under E-Waste Management Rules, 2022 (**E-waste Rules**) has not been functional since March 2024, resulting in imports being held up by the customs authorities for want of registration under the E-waste Rules. Therefore, CPCB has issued a draft undertaking that may be submitted to CPCB for the release of such imports. This undertaking will be valid till 30 June 2024.<sup>15</sup>

The undertaking states that the producers (importing electrical and electronic equipment) will submit a copy of their EPR registration under E-waste Rules to the CPCB by 30 June 2024.

## **2.4 Timelines for filing of quarterly and annual returns under Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 extended till 30 June 2024**

The original timeline for filing quarterly and annual returns for the financial year 2023-2024 under Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 was 30 April 2024. On 17 May 2024, based on a representation made by the industry body, CPCB extended the timeline for filing of quarterly and annual returns till 30 June 2024.<sup>16</sup>

This reflects the CPCB's attempt to ensure the implementation of EPR obligations under various waste management rules while keeping in mind the hurdles being faced by the stakeholders.

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<sup>13</sup> To access the notice, [click here](#).

<sup>14</sup> To access the notice, [click here](#).

<sup>15</sup> To access the notification, [click here](#).

<sup>16</sup> To access the order, [click here](#).