

COUNTRY REPORT: INDIA

KAVITHA CHALAKKAL*

Introduction

In 2013, the National Green Tribunal (NGT) emerged as a force in the Indian environmental law arena. Some of the noteworthy efforts from the Tribunal included a demand for greater involvement and transparency from the governments in environmental decision-making and court cases. The Supreme Court (SC) gave a landmark decision, by ordering the translocation of lions, in an effort to save the subspecies from extinction, and reiterated the state's duty to protect the rights of wildlife. Progress on environmental protection matters in other legal arenas was slow. There were few legal enactments; specifically, climate change matters received little legal attention. Illegal sand-mining and wildlife deaths due to human-wildlife conflicts found a regular presence in the media, but failed to attract the attention of the legislature.

Judicial Bodies and Case Law

National Green Tribunal¹

A major milestone for the NGT in 2013 was the constitution of the Western Zone Bench of the NGT. The Bench sits at Pune and has jurisdiction over Maharashtra, Gujarat, Goa, Daman, Diu, Dadra and Nagar Haveli. The South and Central Zone Benches were created earlier, in Chennai and Bhopal, respectively.

Throughout 2013, the NGT maintained its strict environmental protection and sustainable development ethos. It cautioned the Indian government against acting indifferently towards

* PhD Candidate, Jawaharlal Nehru University, New Delhi, India.

¹ The National Green Tribunal (NGT) is the specialized national body with expertise and jurisdiction over cases relating to environment, including conservation of forests and natural resources. The Forest Bench of the Supreme Court, formed in 2010, deals with forest, wildlife and mining-related cases.

conservation.² It warned the Ministry of Environment and Forests (MoEF), who failed to appear before the Tribunal in over 14 matters, to either monitor the trend or face coercive orders. The NGT commented that the “routine absences” were causing considerable inconvenience and delaying cases.³ Another concern was the lack of public access to Environmental Clearance (EC). The NGT twice directed MoEF to make EC easily available by uploading them onto websites and displaying them on public notice boards.⁴ Project proponents were directed to publish EC online and in newspapers, and provide copies to local bodies and departments.

A particular NGT achievement was the upholding of a 2008 ban on the use, manufacture and sale of plastic carrier bags. After checking the constitutionality, legality and correctness of the prohibition,⁵ the NGT determined that economic and business interests must give way to the greater good and the interests of society. In another case, the NGT highlighted the importance of trees in urban landscapes and the government duty to protect them.⁶ The NGT directed authorities from the National Capital Territory to de-concretize all trees in the area. The work was carried out in a way that caused injury to the trees. Upon becoming aware of this, the NGT directed the authorities to cure the damage and avoid causing injury in the future. The authorities disregarded this order. The NGT then imposed a Rs 50,000 fine on the Municipal Corporation of Delhi, the Corporation being responsible for recovering the money from the authorities involved. In a similar case, the NGT ordered the authorities of Gwalior to remove all signage, advertising, wires, cables, nails and screws from trees, and manually de-concretize their bases.⁷ The NGT also rejected around 20 applications to review refusals to operate brick kilns in the ‘No Development Zone’ around the Kaziranga National Park, Assam.⁸

The NGT explained its approach to environmental protection and the public interest in a case concerning the legality of two mining operations clearances. The NGT said that

² For example, see the NGT decision on *Jeet Singh Kanwar and Another v Union of India and Others* application number 10/2011.

³ Staff Reporter (2013), “NGT wants severe action if MoEF continues absence from proceedings”, *The Hindu*, Nov 28, 2013, Accessed online at URL: <http://www.thehindu.com/news/national/ngt-wants-severe-action-if-moef-continues-absence-from-proceedings/article5401692.ece>.

⁴ *Save Mon Region Federation and Another v Union of India and Others*, Application No. 104/2012 and *Medha Patkar and Another v Ministry of Environment and Others*, Appeal No. 1/2013.

⁵ *M/s Goodwill Plastic Industries Anr. v Union Territory Chandigarh Anr.* Application No. 53/2013(THC) and *Jarnail Singh Anr. v Union Territory Chandigarh Anr.* Application No. 53/2013(THC).

⁶ *Aditya N. Prasad v Union of India & Ors.*, M.A. No.706/2013 and M.A. No.557/2013 in Application No. 82 of 2013.

⁷ *Sajag Public Charitable Trust v Municipal Corporation of Gwalior Ors.* Application No. 30/2013(CZ).

⁸ *Rohit Chaudhary v Union of India & Ors* (Application No 38 of 2011).

'[p]ublic interest has to be read in conjunction with environmental protection'⁹ The NGT pointed out that the entire process of setting up a mine requires utmost good faith and honesty on the part of the intending entrepreneurs.

One of the most significant NGT decisions of 2013 was its upholding of the ban on sand-mining along river beds and beaches in the absence of a Central government environmental clearance. The NGT order reinforced 2012 SC judgment requiring mineral and sand miners to obtain a MoEF's clearance before proceeding.¹⁰ The NGT rejected a plea from Madhya Pradesh (MP) to bring in newspapers sand-mining under state authorities, finding that state law could not prevail over Central rules.

Supreme Court of India

Arguably, the most important judicial decision of the year came from the Supreme Court of India (SC). The SC directed MoEF to take urgent steps to reintroduce the Asiatic lion (*Panthera leo persica*) to India, by, among other things, relocating a subpopulation of lions from Gujarat to the Kuno Wildlife Sanctuary in MP. The case had been ongoing since 1995.¹¹ On the one hand a scientific study recommended the relocation; on the other the Gujarat government opposed the idea. The case reached the SC in 2007 and in April 2013, the SC ordered the lions to be moved to the Sanctuary. The court drew on a range of provisions from national law, case law, policy and the *Conventions on Migratory Species and on Biological Diversity*.¹² The Court stated:

*"...our approach should be eco-centric and not anthropocentric and we must apply the "species best interest standard", that is the best interest of the Asiatic lions... We are committed to safeguard this endangered species because this species has a right to live on this earth... Article 21 of the Constitution of India protects not only the human rights but also casts an obligation on human beings to protect and preserve a specie becoming extinct, conservation and protection of environment is an inseparable part of right to life".*¹³

This case allowed the SC to reiterate the primacy of the "public trust" doctrine. The doctrine imposes a trusteeship duty on government to protect public resources such as water, forests and wild animals. The duty requires government to maintain these things for the benefit of

⁹ *Ms Lithofero v MoEF and others* Application 71/2012 and also in another application 72/2012.

¹⁰ *Deepak Kumar v. State of Haryana*, 2012; 4 SCC 629.

¹¹ *Centre for Environment Law, WWF-I Vs Union of India & Others*, I.A. No. 100 in Writ Petition (civil) NO. 337 OF 1995 and with IA No.3452 in WP(C) No.202 of 1995, decided on 15th April 2013. Accessed online from the website of the Supreme Court of India.

¹² The Convention on Biological Diversity, 1992 (1992) 31 ILM 818 (CBD) and the Convention on the Conservation of Migratory Species of Wild Animals, 1973 1979 UNTS 333 (CMS/Bonn Convention)

¹³ *Ibid* p 42.

the public and in the best interests of the fauna and flora involved. The SC further called on the Indian government to enact exclusive legislation dealing with the conservation of endangered species.

Another important case concerned the role of Village Councils in clearance decision-making. The Orissa Mining Corporation appealed to the SC against a MoEF refusal to allow the clearing of forest land for bauxite mining.¹⁴ The MoEF refused the application after identifying clearance violations and legislative infringements. The SC advised the parties to place the issues before the *Gram Sabhas* (Village Councils). The MoEF could then draw upon the views of the Councils when reconsidering the clearance.

Statutes

New Bills and Acts

The *Wildlife (Protection) Amendment Bill 2013*, introduced in the Rajya Sabha, aims to amend the *Wildlife (Protection) Act 1972* (WPA). The WPA protects wildlife and their habitats. The amendments seek to increase the involvement of grass-root communities in conservation decision-making. Increased involvement is to be achieved by the creation of community-managed Protected Areas (PA). The amendments also aim to bring Indian wildlife law into line with the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* (CITES).¹⁵ In this regard, the amendments seek to include a CITES Schedule in the WPA and increase penalties for WPA violations. Legal experts are concerned that the amendments might hamper scientific research and the prosecution of offences, a particular problem in a system already plagued by low conviction rates.

The *Biotechnology Regulatory Authority of India Bill 2013* aims to regulate biotechnology in India. Specific aims include the promotion of safe biotechnology, the creation of effective and efficient regulatory procedures and the establishment of a Biotechnology Regulatory Authority. The Authority would be responsible for regulating the research, transport, import, manufacture and use of biotechnology organisms and products.¹⁶ The Bill has attracted

¹⁴ Orissa Mining Corporation. v Ministry of Environment & Forest & Others, WP (Civil) No 180 of 2011. ¹⁵ 993 UNTS 241.

¹⁶ The Biotechnology Regulatory Authority of India Bill, 2013, Accessed online from URL: <http://www.prsindia.org/uploads/media//Biotech%20Regulatory/Biotechnology%20Regulatory%20Authority%20of%20India%20Bill.pdf>.

staunch opposition from environmental activists.¹⁷ In a similar vein, the *Agricultural Biosecurity Bill 2013* seeks to establish an Indian Authority for the management of agricultural biosecurity and regulation of biological imports and exports of pests and diseases of plants and animals and unwanted organisms for ensuring agricultural biosecurity and to meet international obligations of India for facilitating imports and exports of plants, plant products, animals, animal products, aquatic organisms and regulation of agriculturally important microorganisms” and related matters.¹⁸

Notifications and Draft Rules

In 2013, MoEF published a Draft Notification on Amendment to Hazardous Wastes (Management, Handling and Transboundary Movement) Rules 2008 and the Municipal Waste (Management & Handling) Rules 2013 (Draft). MoEF also published four guidelines dealing with the diversion of forest land for mining and infrastructure development. The National Board for Wild Life (NBWL)’s Standing Committee approved a Guidelines for Roads inside Protected Areas, prevents the widening or upgrading of roads inside Protected Areas and requires agencies to follow the planning principles of avoidance, realignment and restoration. These guidelines may impact many road-widening and construction proposals awaiting determination,¹⁹ particularly those posing a threat to wildlife habitats in Protected Areas.

In 2013, the MoEF reconstituted the Coastal Zone Management Authorities of Goa, Karnataka, Lakshadweep, Daman & Diu and Andhra Pradesh. The Authorities are the first-level of a two-tier coastal regulation system. Authorities are established under the Coastal Regulation Zone Notification 2011, the only law dealing with the conservation of India’s coastal ecosystems. The MoEF also declared the first marine Eco-Sensitive Zone around the Marine National Park and Sanctuary in Gulf of Kutch, Gujarat. The Zone covers up to one kilometer from the coastal boundary towards landward side; an area within 200 meters from the boundary of the PA towards seaward side, and 31 rivers. The Notification prohibits the carrying on of mechanized fishing, polluting industries, pollution from shipping and

¹⁷ Sood, Jyotika (2013), 400,000 people petition parliament panel to withdraw BRAI Bill, *Down to Earth*, August 24, 2013; Accessed online at URL: <http://www.downtoearth.org.in/content/400000-people-petition-parliament-panel-withdraw-brai-bill>.

¹⁸ The Agricultural Biosecurity Bill, Accessed online from URL: <http://www.prsindia.org/uploads/media//Agricultural%20Biosecurity/Agricultural%20Biosecurity%20Bill,%202013.pdf>.

¹⁹ For more details, see National Highway Development Project at URL: <http://www.nhai.org/WHATITIS.asp>.

refineries, effluents, solid-waste disposal, quarrying and felling and trees and mangroves in the Zone.

International Agreements

Since its 2012 declaration as a Natural World Heritage Site, the Western Ghats has become a major source of tension in India. In 2011, the MoEF commissioned one of India's premier conservation scientists to lead an Expert Panel in developing management recommendations for the Ghats; their report was not implemented by the government. In 2012, the government later appointed a High-Level Working Group, led by a renowned space scientist, for developing fresh management recommendations for the Ghats. The government has given 'in principle' support for the Group's report and ordered the implementation of the recommendations. The order has generated significant protest from environmental groups; a primary concern being that the second report waters down the recommendations of the first.

India and China renewed a Memorandum of Understanding (MoU) to share information regarding the Brahmaputra. The Brahmaputra is a trans-boundary river that originates in China and flows through India and Bangladesh. The MoU recognized that trans-boundary rivers are assets of immense value to riparian countries. According to the MoU, China is to provide India with richer hydrological data on the river and data on the massive dams China is currently building on the Brahmaputra. These dams could have serious hydrological, ecological and political impacts on downstream countries. The MoU is particularly important in light of the fact that India and China are not signatories to any international water treaty, especially, the *Convention on the Protection and Use of Transboundary Watercourses and International Lakes*.²⁰

Common but Differentiated Responsibility on Climate Change

In 2013, India continued to oppose the imposition of binding emission reductions on developing countries. India reiterated its stance that developed countries should take responsibility for their historical emissions before developing countries compromise their economic growth by regulating industrial emissions. India's environment minister reaffirmed support for this principle of common but differentiated responsibility just before the

²⁰ 1936 UNTS 269.

Conference of the Parties to the Convention on Climate Change met in Warsaw this year.²¹ The minister opposed the phasing out a group of greenhouse gases on the basis that there was a lack of 'clarity on identified substitutes, their costs, safety and economic feasibility'. The minister concluded India's contribution to the greenhouse gas discussion by stating that India 'can't take a leap of faith without knowing the exact path and the pitfalls'.²²

Conclusion

In 2013, the Indian judiciary emerged as a major force in the environmental protection arena. A standout is the steadfastness of the NGT. The Tribunal managed to uphold the spirit of conservation without ignoring the developmental discourses and 'public interest' rhetoric. The SC also starred, particularly in its determination to ensure the rights of wild animals to live, and the duty of the State to act in the best interest of all living beings. Legislative efforts have been less impressive. The proposed amendments to the *Wildlife (Protection) Act* to make it CITES-compatible are unlikely to achieve the desired objective. For example, 59 of the 88 wild tigers found dead in 2012 were poached and the hunting of the one-horned rhino has reached alarming levels.²³ The Protected Area road guidelines of NBWL struggle to save the last of the healthy wilderness, in a country revving to build more guidelines. Perhaps the controversy created by the replacement of a conservation report prepared by one of the country's renowned conservation scientists in favor of another report prepared by a space scientist will go on for some more time. Overall, the above review suggests the Indian judiciary may be the last hope the country's ecosystems and species.

²¹ Sethi, Nitin (2013), 'India is not a nay-sayer on climate change', The Hindu, November 7, 2013; accessed online at URL: <http://www.thehindu.com/sci-tech/energy-and-environment/india-is-not-a-naysayer-on-climate-change/article5323166.ece>.

²² Natarajan, Jayanthi (2013), "Opening statement by Smt. Jayanthi Natarajan minister environment and forests India", Ministry of Environment and Forests; Accessed online at URL: <http://envfor.nic.in/sites/default/files/HLS-STATEMENT-OF-INDIA.pdf>.

²³ Dutta, A.P. (2013), "Curse of the horn", *Down to Earth*, Published April 30, 2013, Accessed online at URL: <http://www.downtoearth.org.in/content/curse-horn>.