



Centre for Environmental Law Newsletter

-Dr. Madhuri Parikh, Shikha Tripathi, Pruthvirajsinh Zala, Nandini Goyal and Piyush Seinger

Monthly Newsletter – November 2019

1. Fresh Environmental Clearance Must

In the recent case of Keystone Realtors Pvt. Ltd. v. Shri Anil V Tharthare & Ors, the Supreme Court held that a fresh environmental clearance is necessary for the expansion of a project beyond the limits approved by the prior environmental clearance. The court stated that a fresh environmental clearance is mandatory, even if the expanded project is within the upper limits prescribed under the Environment Impact Assessment notification of 2006.

In the present case, the project proponent had obtained a fresh clearance by merely amending the prior Environment clearance.

The Court further went onto state that if a project is expanded beyond the certified limit then a fresh application needs to be made.

2. National Ganga Bill to be introduced in Winter Session of parliament

The government plans to introduce “The National River Ganga (Rejuvenation,

Protection and Management) Bill, 2019” in the winter session of Parliament. Polluting or obstructing the flow of Ganga may attract a penalty of up to five years imprisonment and a fine as high as Rs 50 crore under the proposed bill, similarly the maximum punishment of five years has been proposed for constructing permanent residential or commercial structures in the active flood plains of Ganga and its tributaries. The draft bill circulated by the Ministry of Jal Shakti for cabinet approval states that the offence under this act will be non-bailable and cognizable for causing pollution in the river. The draft bill comprises of thirteen chapters and three schedules which lists graded penalties depending upon the severity of the offence. The activities include illegal construction of ports or jetties, mining, stone quarrying, storage or diversion of water by any means causing obstruction the flow of the water, extracting ground water or defacing the ghats of Ganga and its tributaries.

3. NGT shuts down Chinese steel plant in Gujarat

Chromeni steels, a Chinese giant plant operated in Gujarat’s Mundra block in Kutchh district. The project was ensued without

obtaining environmental clearance. So, the National Green Tribunal on 21 November ordered the plant to stop all its activities until clarification is received from Ministry of Environment, Forest and Climate change. The order was passed keeping in mind the necessity of Environmental clearance under Environment Impact Assessment Notification 2006. Even no consent was obtained from Gujarat State Pollution Control Board to operate, many complaints were filed in regard of this matter but the board paid no heed and the production at the plant continued. The next hearing of the case has been scheduled on January 14, 2020.

4. Cancer water of India

Arsenic contamination in groundwater in the Ganga- Brahmaputra fluvial plains in India have been reported as one of the world's biggest natural groundwater calamities to the mankind. In India it has been reported the water affected by Arsenic contamination in groundwater above the permissible limit of 10 µg/L. People in these affected states have chronically been exposed to drinking Arsenic contaminated hand tube-wells water. With every new survey, more Arsenic affected villages and people suffering from Arsenic related diseases are being reported, and the issues are getting complicated by a number of unknown factors. Arsenic groundwater contamination has far reaching consequences including its ingestion through food chain which are in the form of social disorders, health hazards and socio-economic dissolution besides its sprawling with movement, and exploitation of groundwater. Arsenic contamination is understood to be of geogenic origin released from soil under

conditions conducive to dissolution of Arsenic from solid phase on soil grains to liquid phase in water, and percolation of fertilizer residues might have played a modifying role in its further exaggeration. The present state of affairs of the Arsenic menace in India demand a systematic translation of success stories of one place/region to another, and overcoming the shortfalls by conceiving R&D studies in areas wherever deemed fit. Advancement in understanding of geochemical and mobilization processes, devising satisfactory Arsenic removal filters, identification of shortfalls in operation and maintenance of Arsenic removal techniques, delineation of risk free deeper aquifers as an alternate source of groundwater, developing surface water based water supply schemes in many Arsenic affected areas, success stories of community participation in running Arsenic removal plants, etc. are some of the important achievements, which could help derive a comprehensive framework of activities leading to mitigation and remediation of the issues emerging out of Arsenic menace. The paper is thus aimed at highlighting the state-of-affairs of Arsenic groundwater contamination in India along with narration of various corrective and precautionary measures taken up so far 1 by different states and success achieved and failure experienced. The paper would also discuss the gaps and areas in which further actions are to be taken up and their scope.

5. Ahmedabad Construction Woes

Ahmedabad has a problem. The city is coming up with its ambitious metro project. The construction is resulting in traffic and

pollution. Although, it's just not limited to this. There are many societal impacts of construction. Methods, materials, and operations all contribute to the environmental impact of construction. Construction projects worsen climate change. The sector accounts for 25 to 40 percent of the world's total carbon emissions. It is estimated that emissions from commercial buildings can grow up to 1.8 percent in 2030. Mining projects extract minerals needed for construction materials. Companies then transport these materials to different parts of the world. Both processes burn up fossil fuels and the combustion of fossil fuels produces greenhouse gases. One of the biggest environmental problems related to infrastructure development is energy use. The global buildings sector consumes around 36 percent of the world's energy.

6. Environment (Protection) Act a special enactment takes precedence over CrPC

Bombay High Court in the month of October dismissed a criminal application filed by Pratap Teli against some of the Industrialist including Kumar Mangalam Birla and other others, seeking registration of FIR for violating the Environmental (Protection) Act. The applicant alleged that the respondent commenced the construction of a building in Worli without obtaining environmental clearance under the EIA notification of 2006. Hence the complaint was filed under Section 156(3) of the Criminal Procedure Code seeking police investigation for the alleged offences under Section 19 of Environment (Protection) Act and Sections 420, 120-B and 187 of the Indian Penal Code. The application was rejected by the Metropolitan Magistrate and also by the Sessions court in the

subsequent revision due to Section 19 of the Environment (Protection) Act. Aditya Pratap, Applicants counsel submitted that the offence under Section 15 of the act is to be classified as a cognizable offence on the other hand Senior Advocate Amit Desai appearing for the respondents questioned the locus standi of the applicant and submitted that since the total built up area to be constructed is less than 20000 sq. mtrs. then no environmental clearance was required as per EIA Notification 2006. The petition was dismissed by the Bombay High court by reasoning that Section 19 of the said act creates a barrier in taking cognizance of an offence.

7. World's largest waterfall is running out of water

The world's largest waterfall - Victoria Falls - is in an unprecedented struggle of survival, after a prolonged drought affecting much of Southern Africa. Also known as 'The Smoke That Thunders', it is normal to run low on water during the dry season, according to reports.

However, this year, water flow is at its lowest. While Zambian President, Edgar Lungu, has warned people of the mighty fall's disappearance in entirety, he has linked the same to climate change.

"Do we want to pass on the Zambezi without the mighty Victoria Falls? It is a serious problem, a genuine one. It is surprising when people trivialise it and say 'climate change is not real'. Probably they are living in a different world. But this world we live in, Zambia, we are feeling the effects of climate change really adversely. And it is impacting on everyone," he told Sky News.

Combating climate change is a joint venture and effective change needs more participation from the rich and powerful countries. The prolonged drought in both Zambia and Zimbabwe has led to food shortage and unprecedented power cuts. More than two million people in Zambia and seven million people in Zimbabwe, go to bed hungry.

8. Recycling of ships bill, 2019 passed in the Upper House of the Parliament.

The new bill is yet to receive the President's assent and proposes that the ships recycling facilities will become compliant to international standards and will be recycled only in authorised facilities. India contributes 30% to global shipping recycling industry.

The Bill will ensure global standards for environmentally friendly ship recycling and ensure adequate security for yard staff, will also improve job opportunities and business opportunities, shipping minister Mansukh Mandaviya said, adding that more foreign ships will join Indian shipyards for recycling, which will increase jobs and create business prospects.

The government issued statement states that now, ships to be recycled in India will need to obtain a 'Ready for Recycling Certificate' in accordance with the Hong Kong Convention.

9. Development in an era of climate change

Industrialized countries have grown using fossil fuels to expand their economies, but developing countries like India will find a different way in an age of climate change.

Developing countries now account for about 60% of global carbon emissions, but only because of China and India, respectively the first and third largest emitters. They are also the two most populous in the world.

Under the Paris Agreement, developed countries are required to contribute funds to help developing nations curb their carbon emissions in accordance with their targets and prepare to alleviate the impacts of climate change. Growth can be accomplished by increasing reliance on coal, but it is costly, while the costs of solar and wind energy have dropped, the upfront investment has fallen.

While nations are under growing pressure to reduce their carbon emissions in a concerted effort to reduce global warming to well below 2 degrees Celsius above pre-industrial levels, developing countries are being called upon to abandon fossil fuels in favour of renewable technologies.

10. NGT orders against bio-medical hazard

Order of the National Green Tribunal on L. R. Tomar, President, Dushit Paryavaran Hatao Samiti Vs State of Uttar Pradesh on allegations of disposal of infected bio-medical waste, discharge of untreated hazardous effluents and pollution of the air by M / s Medicare Environmental Management Pvt. Step Ltd. –I, State Industrial Development Corporation Masoori, Gulawati Road, Ghaziabad, Uttar Pradesh came out on December 4, 2019. A joint report of the District Magistrate, Ghaziabad, Central Pollution Control Board and Uttar Pradesh Pollution Control Board acknowledged the environmental violations and recommended

action to be taken which included imposition of environmental compensation of Rs. 75,000/- and prosecution to be initiated against the facility under the Water Act, 1974.

11. Davi Kopenawa- the Dalai Lama of the Environment rainforest

Yanomami shaman Davi Kopenawa, the “Dalai Lama of the Rainforest,” has received this year’s Right Livelihood Award, also known as the “Alternative Nobel Prize” at Stockholm, Sweden.

Gold miners and politicians who exploit the wealth within the Yanomami region have often challenged Davi. He lives in his village, Watoriki, practicing shamanism. His law father, Lourival, was one of Yanomami's oldest and most respected shamans.